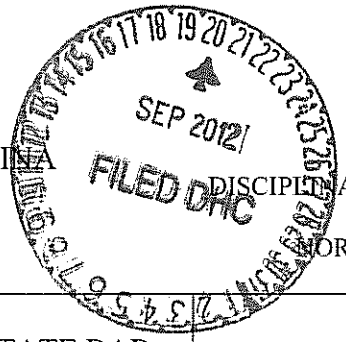


STATE OF NORTH CAROLINA WAKE COUNTY	BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR 12 DHC 14
THE NORTH CAROLINA STATE BAR, Plaintiff v. DAWN DONLEYCOTT JOHNSON, Attorney, Defendant	ORDER OF DISCIPLINE

This matter was heard on August 9 and 10, 2012, before a hearing panel of the Disciplinary Hearing Commission composed of Fred M. Morelock, Chair, Walter E. Brock, Jr. and Percy L. Taylor. Mary D. Winstead represented Plaintiff, the North Carolina State Bar. Defendant, Dawn Donleycott Johnson, was represented by Dudley A. Witt and David B. Freedman.

Based upon the evidence presented at the hearing, the Hearing Panel makes by clear, cogent, and convincing evidence the following:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar (hereinafter "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, Dawn Donleycott Johnson ("Johnson" or "Defendant"), was admitted to the North Carolina State Bar on August 26, 2003 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 times relevant herein, Johnson was actively engaged in the practice of law in the State of North Carolina and maintained a law office in Graham, Alamance County, North Carolina.

4. Child Planning Conferences are an integral part of the juvenile court system in Alamance County.

5. Defendant represented a client in a juvenile court matter who had a case scheduled for a Child Planning Conference in Alamance County on December 9, 2008.

6. Once Defendant arrived for the conference, she provided several excuses why she could not stay.

7. Defendant also informed Alamance County Juvenile Court Coordinator Nichole Melton that Jamie Hamlett, the Department of Social Services attorney, had left a message at Defendant's office stating that she would not be able to attend the meeting.

8. Ms. Hamlett arrived at the meeting a short time later.

9. Ms. Hamlett had not called Defendant's office nor had she left any such message.

10. Defendant left the meeting before it was concluded.

11. Defendant represented a client in a juvenile court matter who had a case scheduled for a Child Planning Conference in Alamance County on December 16, 2008.

12. Defendant's client was present at the meeting.

13. Defendant failed to appear at the scheduled Child Planning Conference.

14. Defendant did not notify the clerk that she would not be present at the meeting in accordance with the Local Rules for Juvenile Court for 15A Judicial District.

15. Because Defendant did not attend the Child Planning Conference, the parties were unable to address all of the issues that needed to be addressed at that meeting.

16. Defendant's failure to appear at this scheduled meeting was disruptive to the juvenile court system in Alamance County.

17. On or about December 16, 2008 Defendant informed Nichole Melton, the Alamance County Juvenile Court Coordinator, that she would be on secure leave the week of December 29, 2008 and could not be present in juvenile court on a case that was scheduled for December 31, 2008.

18. Defendant had not applied for secure leave for the week of December 29, 2008 and had previously exhausted her secure leave for 2008.

19. In a meeting with Chief District Court Judge James Roberson on December 17, 2008, Defendant denied that she had told Ms. Melton or anyone else that

she would be on secure leave the week of December 29, 2008 or that she would be unavailable on December 31, 2008.

20. Prior to March 9, 2009, Defendant had failed to appear in district court several times prompting Chief District Court Judge James Roberson to discuss this problem with her on two separate occasions.

21. On March 9, 2009, Defendant had several cases scheduled in Alamance County District Court.

22. Several of Defendant's clients were present in district court on that day.

23. Defendant did not appear in district court.

24. While court was in session, Defendant called the office of the Alamance County district court judges and informed the Trial Court Coordinator that she was in Houston, Texas taking care of her sick brother.

25. The court was unable to resolve the cases of Defendant's clients and had to continue the cases to another date.

26. Defendant's failure to appear in court was disruptive to the court.

27. As a result of Defendant's failure to appear in court to represent her clients on March 9, 2009 and prior occasions, Chief Judge Roberson took steps to remove Defendant as attorney of record in pending cases to which she was court appointed and to appoint new counsel in those cases.

28. In October 2008, Ricky Anderson Moore ("Moore") was the subject of a criminal investigation being conducted by the Alamance County Sheriff's Department.

29. On or about October 9, 2008, Moore met with Defendant regarding this investigation and Defendant agreed to represent him in the matter.

30. On or about October 9, 2008, Moore paid Defendant the agreed upon retainer of $2500.

31. On November 24, 2008, warrants for Moore's arrest were issued charging Moore with three felonies and three misdemeanors.

32. The offenses Moore was charged with on November 24, 2008 arose out of the investigation in which Defendant undertook to represent Moore on or about October 9, 2008.

33. On or about November 25, 2008, Moore was arrested on these six offenses.

34. On or about November 25, 2008, Defendant agreed to represent Moore on the offenses for which he was charged on November 24, 2008 for an additional retainer of $10,000.

35. On or about November 25, 2008, Defendant was paid $5,000 to represent Moore on these charges.

36. On or about December 3, 2008, Defendant was paid an additional $5000 to represent Moore on these charges.

37. On February 16, 2009 the Alamance County Grand Jury returned true bills of indictment against Moore on the charges on which Defendant represented him.

38. On or about February 16, 2009, the Alamance County Clerk of Court provided the Defendant with the Notice of Return of Bill of Indictment in Moore's cases by delivering a copy of the notice to Defendant's mail bin in the courthouse.

39. Defendant did not inform Moore that he had been indicted.

40. The cases on which Defendant represented Moore were calendared for March 9, 2009 in Alamance County Superior Court.

41. Defendant did not inform her client, Ricky Moore, of the March 9, 2009 court date.

42. Defendant did not inform her client, Ricky Moore, that she would not be present in court on March 9, 2009.

43. Neither Defendant nor Moore appeared in Superior Court on March 9, 2009 as the defendant was in Houston, Texas taking care of her sick brother.

44. As a result of Moore's failure to appear on March 9, 2009, he was called and failed and the presiding judge ordered that an order for his arrest be issued.

45. Moore learned that he had been called and failed and appeared in Superior Court later the week of March 9, 2009, informed the court that he had not been notified of his court date, and asked that the called and failed be stricken.

46. The presiding judge ordered the called and failed stricken.

47. On March 12, 2009, the presiding judge ordered Moore's cases continued until April 20, 2009.

48. On April 20, 2009, Moore appeared in Alamance County Superior Court on the cases in which Defendant represented him but Defendant did not appear.

49. On April 20, 2009, the presiding judge ordered Moore's cases continued until June 1, 2009.

50. After the April 20, 2009 court date, Moore tried repeatedly to reach Defendant but was unable to do so.

51. Moore retained other counsel to represent him on these charges.

52. At the time Moore retained another attorney, Defendant had not made an appearance in Superior Court on Moore's behalf.

53. Moore mailed Defendant a letter requesting a refund of the $12,500 that Defendant was paid to represent him.

54. Defendant did not respond to Moore's letter.

55. On or about October 7, 2009, Moore filed a petition for resolution of disputed fee with Plaintiff's Attorney Client Assistance Program requesting a return of the $12,500.

56. Defendant agreed to refund only $5000 of the $12,500 fee she had been paid to represent Moore.

57. Defendant did not earn the full $7500 she was unwilling to refund Moore.

58. Defendant has a poor reputation for truth and veracity.

Based on the record and the foregoing Findings of Fact, the Hearing Panel makes the following:

CONCLUSIONS OF LAW

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 conduct, as set out above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:

a. Defendant, by being disruptive during the December 9, 2008 Child Planning Conference, engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

b. Defendant, by failing to appear for the Child Planning Conference on December 16, 2008, failed to act with reasonable diligence in representing her client in violation of Rule 1.3.

c. Defendant, by failing to appear for the Child Planning Conference on December 16, 2008, engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

d. Defendant, by failing to appear in district court to represent her clients, failed to act with reasonable diligence in representing her clients in violation of Rule 1.3.

e. Defendant, by failing to appear in district court to represent her clients, engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

f. Defendant, by failing to notify Moore that he had been indicted, failing to notify Moore of his court date, and failing to appear in court to represent Moore, failed to act with reasonable diligence in representing a client in violation of Rule 1.3.

g. Defendant, by failing to notify Moore that he had been indicted, failing to notify Moore of his court date, and failing to appear in court to represent Moore, failed to keep a client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3).

h. Defendant, by failing to appear in court to represent Moore, engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

i. Defendant, by collecting a $12,500 fee to represent Moore and failing to agree to refund more than $5000 of that fee, collected a clearly excessive fee in violation of Rule 1.5.

j. Defendant, by charging $12,500 to represent Moore and failing to agree to refund more than $5000 of that fee, failed to refund an advance payment of a fee that had not been earned in violation of Rule 1.16(d).

k. Defendant, by falsely representing that Ms. Hamlett would not be at the December 9, 2008 Child Planning Conference, engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c).

l. Defendant, by falsely representing to Ms. Melton that she would be on secure leave the week of December 29, 2008, engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c).

m. Defendant, by falsely representing to Ms. Melton that she would be on secure leave the week of December 29, 2008, engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

n. Defendant, by being untruthful to Judge Roberson about her conversation with Ms. Melton, engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c).

o. Defendant, by being untruthful to Judge Roberson about her conversation with Ms. Melton, engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

3. The Hearing Panel further finds that the State Bar did not prove by clear cogent, and convincing evidence that Defendant, by delivering a controlled substance to another person, committed a criminal act that reflects adversely on her honesty, trustworthiness, or fitness as a lawyer in other respects in violation of Rule 8.4(b) and therefore, this claim is dismissed.

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. Defendant was disciplined by Admonition in 2011 for charging and collecting an excessive fee in violation of Rule 1.5(a).

2. The conduct for which Defendant received an Admonition in 2011 occurred well prior to the conduct alleged in this Complaint.

3. The Hearing Panel recognizes and takes into account that it was Defendant's stated intention to reject this Admonition and to have it included in the Complaint in this matter so that it would not constitute prior discipline, but that because Defendant did not reject the Admonition in writing, it became final pursuant to the Rules.

4. During the time period in which Defendant committed these violations, Defendant was under considerable stress in her personal life and sought mental health treatment.

5. The testimony established that Defendant's conduct in failing to appear in court to represent her clients and failing to appear in court on time demonstrated a pattern of lack of attention to the orderly administration of justice in Alamance County District Court.

6. Ricky Moore testified that his experience with Defendant had a negative impact on his opinion of attorneys.

Based on 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 of Defendant's law license are present:

(C) Circumstances reflecting the Defendant's lack of honesty, trustworthiness, or integrity;

(D) Elevation of 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 Defendant's actions on the administration of justice;

(G) Impairment of the client's ability to achieve the goals of the representation; and

(I) Acts of dishonesty, misrepresentation, deceit, or fabrication.

The remaining factors enumerated in 27 N.C.A.C. 1B § .0114(w)(1) are not applicable.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(2), the Rules and Regulations of the State Bar and concludes that that the following factor indicating that disbarment should be considered, is present:

(A) Acts of dishonesty, misrepresentation, deceit, or fabrication.

3. Although a factor delineated in 27 N.C.A.C. 1B § .0114(w)(2) is present, the circumstances of this case do not dictate that disbarment is necessary in order to adequately protect the public.

The remaining factors enumerated in 27 N.C.A.C. 1B § .0114(w)(2) are not applicable.

4. 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 factors are applicable in this matter:

(A) Prior disciplinary offense;

(C) Dishonest or selfish motive;

(E) Indifference to making restitution;

(F) A pattern of misconduct;

(G) Multiple offenses;

(H) Effect of any personal or emotional problems on the conduct in question;

(I) Effect of any physical or mental disability on the conduct in question;

(Q) Poor character and reputation; and

(R) Vulnerability of the victim.

The remaining factors enumerated in 27 N.C.A.C. 1B § .0114(w)(3) are not applicable.

5. Defendant's conduct caused significant harm to at least one client, the administration of justice, and the profession, and potential significant harm to other clients.

6. Defendant's conduct caused harm to the legal profession by undermining her client's trust and confidence in lawyers and the legal system.

7. Defendant's conduct caused harm to the administration of justice by creating a situation in which court officials were unable to rely on her word in conducting the business of the court and by causing court time and resources to be devoted to dealing with the ramifications of her misconduct rather than the administration of justice.

8. The Hearing Panel has considered lesser alternatives and finds that a censure, reprimand, or admonition would be insufficient discipline because of the harm to the administration of justice and the public caused by Defendant's conduct.

9. The Hearing Panel finds that discipline short of suspension would not adequately protect the public and would send the wrong message to attorneys and to the public about conduct expected of members of the bar.

10. Defendant should be allowed the opportunity to apply for a stay of the balance of the suspension imposed by this order upon compliance with certain conditions

designed to ensure the protection of the public as well as Defendant's compliance with the Rules of Professional Conduct.

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 hereby enters the following:

ORDER OF DISCIPLINE

1. The law license of Defendant, Dawn Donleycott Johnson, is hereby suspended for three (3) years effective thirty (30) days from the date this Order of Discipline is served upon her.

2. Defendant shall submit her law license and membership card to the Secretary of the State Bar no later than thirty (30) days following the date that this Order is served upon Defendant.

3. Defendant shall comply with the wind down provisions contained in 27 N.C.A.C. 1B § .0124, the North Carolina State Bar Discipline and Disability Rules.

4. Defendant shall file an affidavit with the Secretary of the State Bar within ten (10) days of the effective date of this Order of Discipline certifying that she has complied with the wind down rule.

5. Within fifteen (15) days of the effective date of this Order, Defendant will provide the State Bar with a street address (not P.O. box or drawer address) and mailing address at which clients seeking return of their files and records in Defendant's possession or control may obtain such files and records and at which the State Bar may serve any notices or other matters upon her.

6. Defendant is taxed with the administrative fees and the costs of this action. As allowed by statute, these costs include the costs of Defendant's deposition, which are found to be reasonable and necessary expenses in this case. Defendant shall pay the administrative fees and costs within thirty days of service of the statement of administrative fees and costs upon her.

7. After the completion of one year of active suspension of her law license, Defendant may apply for a stay of the balance of the suspension upon filing a verified petition with the Secretary of the North Carolina State Bar at least thirty days before any proposed effective date of the stay as provided in 27 N.C.A.C. 1B, §.0125. The remaining term of Defendant's suspension may be stayed only if she establishes by clear, cogent, and convincing evidence that during the active portion of the stay, Defendant complied with the following:

   a. That within six months prior to Defendant's application for a stay, she has received a comprehensive psychiatric evaluation by a board certified

psychiatrist who has been approved in advance by the Office of Counsel of the North Carolina State Bar and that she has complied with any recommended treatment, including, but not limited to, psychotherapy;

b. That Defendant has provided the State Bar with written authorization allowing the State Bar to provide to the treatment providers(s) information and documents obtained during the disciplinary process that the State Bar deems relevant to Defendant's mental health issues;

c. That the psychiatrist has certified under oath, based on his/her independent comprehensive evaluation of Defendant, that in his/her professional opinion, 1) Defendant is in compliance with the prescribed course of treatment, including the taking of prescribed medication(s) and is in compliance with any recommended psychotherapy, 2) the treatment plan is controlling any diagnosed psychiatric condition(s) and/or disorder(s), and 3) Defendant does not suffer from any mental, psychological, or emotional condition that significantly impairs her professional judgment, performance, or competence;

d. That Defendant was solely responsible for paying all costs of such evaluations, opinions, and treatment;

e. That Defendant has kept the North Carolina State Bar Membership Department advised of her current business and home addresses and notified the State Bar of any change in address within ten days of such change;

f. That Defendant has responded to all communications from the North Carolina State Bar within thirty days of receipt or by the deadline stated in the communication, whichever is sooner, and has participated in good faith in the State Bar's fee dispute resolution process for any petition received after the effective date of this Order;

g. That Defendant has not violated the Rules of Professional Conduct or the laws of the United States or of any state or local government during her suspension;

h. That if Defendant proposes to practice law in North Carolina as a sole practitioner if the stay is granted, she has asked a member in good standing with the State Bar who practices law in the county where she proposes to practice and who has been approved by Office of Counsel, to serve as a practice monitor and that the selected monitor has agreed to so serve and has agreed to submit monthly reports to the Office of Counsel;

i. That she has made restitution in the amount of $10,000 to Ricky Moore.

j. That Defendant has otherwise complied with the requirements of 27 N.C.A.C. 1B §.0125(b).

8. If Defendant successfully seeks a stay of the suspension of her law license, such stay will continue in force only as long as she complies with the following conditions:

a. Defendant shall keep the North Carolina State Bar Membership Department advised of her current business and home addresses;

b. Defendant shall respond to all communications from the North Carolina State Bar within thirty days of receipt or by the deadline stated in the communication, whichever is sooner, and participate in good faith in the State Bar's fee dispute resolution process for any petition received during the stay;

c. Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or of any state or local government during her suspension;

d. Defendant shall timely comply with all State Bar membership and continuing legal education requirements and shall pay all fees and costs assessed for such by the applicable deadline;

e. During the period of the stay, Defendant shall continue to consult with a board certified psychiatrist licensed to practice in North Carolina or in the state in which Defendant resides during the stay and approved by the Office of Counsel. Defendant shall comply with all treatment prescribed by the psychiatrist including, but not limited to, any psychotherapy recommended by the psychiatrist. Defendant shall ensure that the psychiatrist and any other treating mental health professional(s) provide quarterly written reports to the Office of Counsel. These reports shall be due January 1, April 1, July 1, and October 1 throughout the stayed suspension and shall certify: 1) that Defendant is in compliance with the prescribed course of treatment, including the taking of prescribed medication(s), 2) that the treatment plan is controlling any diagnosed psychiatric condition(s) and/or disorder(s), and 3) that Defendant is not then suffering from any mental, psychological, or emotional condition that significantly impairs her professional judgment, performance, or competence. In the event the psychiatrist has reason to believe these conditions are not being met during the interim periods between reports, the psychiatrist has agreed to immediately notify the State Bar;

f. Defendant shall be responsible for all expenses of such treatment and reports;

g. Defendant shall execute written waivers and releases authorizing the Defendant's psychiatrist and psychologist to confer with the Office of Counsel for the purpose of determining whether Defendant is in compliance with the conditions contained in paragraph a through d above. Defendant shall not revoke such releases during the period of stayed suspension;

h. In the event that the stay is granted and Defendant does not actively engage in the practice of law in any manner, whether in private practice, public service, as corporate counsel, or in any other form, Defendant shall notify the State Bar by the first day of January following the effective date of the stay and thereafter by April 1, July 1, and October 1 each year of the stayed suspension by written communication under oath, that Defendant has not so engaged in the practice of law during the preceding three months;

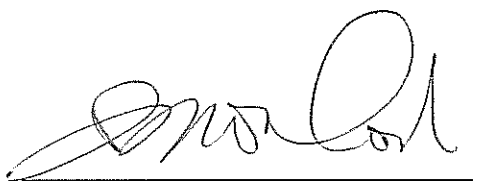
i. In the event that, during the stay, Defendant does actively engage in the practice of law in any manner, whether in private practice, public service, as corporate counsel, or in any other form, Defendant shall notify the State Bar prior to engaging in such practice, by written communication under oath, that Defendant intends to become so engaged, and state when, where, and under what circumstances Defendant intends to practice; and

j. If Defendant proposes to practice law in North Carolina as a sole practitioner, Defendant must meet monthly with her monitoring attorney to whom she shall report the status of all current client matters, and provide any information the monitor deems reasonably necessary to ensure that Defendant is diligently handling all client matters. Beginning January 1 following the effective date of the stay and thereafter on every April 1, July 1, and October 1 during the stayed suspension, Defendant will deliver to the Office of Counsel written reports signed by the monitor confirming that the meetings are occurring, that Defendant is reporting on the status of Defendant's client matters to the monitor, and that the practice monitor is satisfied with the status of such client matters. Defendant must pay all costs associated with the monitor arrangement.

9. If Defendant fails to comply with any of the conditions of the stayed suspension provided in paragraph 8 above, the stay of the suspension may be lifted as provided in §.0114(x) of the North Carolina State Bar Discipline and Disability Rules.

10. If Defendant does not seek a stay of the active portion of the suspension or if some part of the suspension is stayed and thereafter the stay is revoked, Defendant must comply with the conditions set out in paragraphs 7(a) through (j) above before seeking reinstatement of her license to practice law.

Signed by the Chair with the full knowledge and consent of the other hearing panel members, this the 19th day of ~~August~~ September, 2012.



Fred M. Morelock, Chair
Disciplinary Hearing Panel