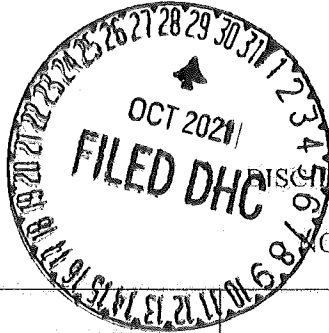


NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
16 DHC 22

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

ROBERT N. WECKWORTH, Jr.,
Attorney,

Defendant

AMENDED
ORDER OF
DISCIPLINE

This matter was initially heard on April 7 and June 20, 2017 before a Hearing Panel of the Disciplinary Hearing Commission composed of R. Lee Farmer, Chair, and members N. Hunter Wyche, Jr. and Michael S. Edwards pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff was represented by G. Patrick Murphy. Defendant, Robert N. Weckworth, Jr., ("Weckworth" or "Defendant"), appeared *pro se*. An Order of Discipline was entered by the Hearing Panel on October 6, 2017.

Defendant appealed the Order of Discipline and the Court of Appeals issued an opinion on June 4, 2019 that affirmed the rule violations found by the Hearing Panel but remanded the case to the Disciplinary Hearing Commission "for the limited purpose of 'allowing the DHC to make proper findings of fact and conclusions of law[,] and reconsideration of [D]efendant's sanction pursuant to N.C. Gen. Stat. §84-28 (c).'"

On September 28, 2021, the matter came before a Hearing Panel of the Disciplinary Hearing Commission composed of Stephanie N. Davis, Chair, and members Margit Monaco Hicks and Heath R. Jenkins. Based upon the Hearing Panel's review of the pleadings in this matter, the transcript of evidence and the exhibits presented at original hearing, and hearing argument from 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 was admitted to the North Carolina State Bar on February 28, 1989, 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, Defendant was engaged in the practice of law in the State of North Carolina and maintained a law office in Guilford County, North Carolina,

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

5. Defendant was retained by Scott and Caroline Carrithers ("Carrithers") in December 2013 to represent them in their effort to obtain custody of a minor child, SM.

6. SM's birth mother is Lisa Anne Chasten ("Chasten").

7. On or about September 26, 2013, SM was placed in the custody of the Guilford County Department of Social Services ("GCDSS") pursuant to a Petition and Order for Non-secure Custody filed in a Guilford County juvenile proceeding ("juvenile proceeding") alleging SM was neglected and dependent.

8. SM had been placed with the Carrithers for a period of time in 2013 but GCDSS removed SM from the Carrithers' residence in November 2013.

9. Chasten was represented in the juvenile proceeding related to SM by Danielle Caldwell ("Caldwell"). Caldwell was appointed to represent Chasten on or about September 26, 2013 and continued in that capacity until she was allowed to withdraw from the case by court order on January 30, 2014.

10. Robert W. Brown III ("Brown") represented the GCDSS in the juvenile proceeding.

11. On or about December 23, 2013, Chasten was at the Carrithers' residence with Defendant and the Carrithers. At that time, Defendant and Chasten discussed the custody of SM.

12. At the time Defendant and Chasten discussed the custody of SM at the Carrithers' residence, Chasten was aware that the Carrithers had talked about retaining an attorney in their effort to contest the removal of SM by GCDSS, and to obtain custody of SM.

13. At the time Defendant and Chasten were at the Carrithers' residence, Defendant knew Chasten was represented in the juvenile proceeding by Caldwell, and Defendant did not have the consent of Caldwell to communicate with Chasten about the custody of SM.

14. At the time Defendant and Chasten were together at the Carrithers' residence, Defendant and Chasten talked about Defendant representing Chasten and Defendant advised Chasten that he could not represent her because that would constitute a conflict of interest.

15. On or about December 20-23, 2013, Defendant left a voice mail with Caldwell stating that he was going to be representing the Carrithers and that he thought Chasten supported what he was doing on behalf of the Carrithers.

16. On December 26, 2013, Defendant signed a formal retainer agreement with the Carrithers.

17. The Carrithers talked with Chasten about Chasten providing an affidavit in support of the legal action that Defendant was preparing on behalf of the Carrithers.

18. Defendant told the Carrithers that a statement by Chasten would be helpful to their legal action because it would show "everyone's on the same page."

19. Defendant never sought or obtained Caldwell's consent for the Carrithers to talk with Chasten about Chasten providing an affidavit in support of the Carrithers' legal action.

20. On or about December 27, 2013, Defendant called Connie Bowman ("Bowman"), a foster care social worker with GCDSS, who was assigned to SM's juvenile proceedings.

21. At the time Defendant called Bowman, he knew GCDSS was represented in the juvenile proceeding by the Guilford County Attorney's Office.

22. Defendant asked Bowman about her thoughts on returning SM to the Carrithers.

23. Defendant told Bowman that he had been retained by the Carrithers to file a motion to intervene in the juvenile proceeding related to SM.

24. Bowman told Defendant that Brown was the attorney assigned to SM's juvenile proceeding.

25. On or before January 3, 2014, the Carrithers delivered to Defendant an affidavit signed by Chasten. The affidavit was dated January 2, 2014.

26. Defendant never informed Caldwell that he had obtained an affidavit from her client or obtained Caldwell's consent to use Chasten's affidavit in support of the Carrithers' legal action.

27. On January 3, 2014, Defendant filed a motion to intervene in the juvenile proceeding on behalf of the Carrithers.

28. Pursuant to N.C. Gen. Stat. §7B-200, the District Court has exclusive, original jurisdiction over any case involving a juvenile who is alleged to be abused, neglected, or dependent.

29. On January 3, 2014, Defendant also filed a civil action, *Carrithers v. Lisa Anne Chasten, Jason Morgan, and Guilford County DSS*, 14 CVD 2538 ("civil complaint"), on behalf of the Carrithers in Guilford County District Court seeking, among other relief, immediate, temporary, and exclusive care, custody and control of SM pursuant to N.C. Gen. Stat. § 50-13.5(d)(2)(3).

30. Defendant attached Chasten's affidavit to both the motion to intervene in the juvenile proceeding, and the civil complaint.

31. The civil complainant references the parallel juvenile proceeding.

32. Attorney Edward Branscomb ("Branscomb") represented Charles Jason Morgan, SM's father, in the juvenile proceeding.

33. On January 6, 2014, Defendant approached the Honorable Michelle Fletcher, Guilford County District Court Judge, and communicated with her *ex parte* requesting that Judge Fletcher immediately consider granting the Carrithers temporary custody of SM.

34. Defendant told Judge Fletcher that it was important that Judge Fletcher hear his concerns about the placement of SM as soon as possible.

35. Defendant knew that Branscomb was representing Morgan in the juvenile proceeding at the time Defendant engaged in his *ex parte* communication with Judge Fletcher.

36. Defendant did not notify Brown, Caldwell or Branscomb before he communicated *ex parte* with Judge Fletcher about granting emergency temporary custody of SM to the Carrithers.

37. At the time Defendant contacted Judge Fletcher, GCDSS had not been served with the civil complaint.

38. Judge Fletcher told Defendant to return at 2:30 p.m. to the office of the district court judges in order to address the Carrithers' request to emergency custody.

39. Judge Fletcher contacted Brown, who works in High Point, on January 6, 2014 at approximately 1:30 p.m., and told Brown about Defendant's request for an emergency custody hearing.

40. Brown immediately drove to Greensboro to attend a hearing at 2:30 p.m. on Defendant's request for emergency custody.

41. Defendant did not contact defendants Chasten or Morgan, or their attorneys in the juvenile proceeding, to notify them of his plan to communicate *ex parte* with Judge Fletcher or to notify them of the hearing scheduled for 2:30 p.m. on January 6, 2014.

42. At or about 2:30 p.m., Judge Fletcher conducted a hearing based on Defendant's request.

43. Chasten and Morgan, the parents of SM and named defendants in the civil action, were not personally present or represented by counsel at the hearing on Defendant's request for emergency custody.

44. The civil complaint alleged, based on information and belief, that SM had lost weight, from 18 pounds, 4 ounces to 17 pounds, 3 ounces, within the first 11 days after being removed from the Carrithers' residence.

45. The civil complaint also alleged SM had been born prematurely and had a greater risk to contract common illnesses if left in foster care since the foster system promoted the use of day care facilities.

46. At the hearing, Defendant did not present any witnesses.

47. Defendant did not present any evidence or information to prove when SM had weighed 17 pounds, 3 ounces, why SM had lost weight, or whether the weight had been regained.

48. SM had been removed from the Carrithers residence on or about November 19, 2013.

49. After the hearing for emergency temporary custody, Judge Fletcher entered an order finding the Carrithers had failed to allege or show grounds sufficient to support an award of temporary custody pursuant to N.C. Gen. Stat. § 50-13.5(d)(2)(3).

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 out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:

- a. By failing to obtain Caldwell's consent prior to the use and filing of Chasten's affidavit with the Carrithers' complaint in Guilford County Civil Proceeding 14 CVD 2538, Defendant violated Rule 4.2(a); and
- b. By failing to notify opposing counsel Brown, Caldwell and Branscomb before his *ex parte* communications with Judge Fletcher on January 6, 2014, Defendant engaged in an *ex parte* communications with a judge without adequate notice to an opposing party in violation of Rule 3.5(a)(3).

3. The evidence was not sufficient to find by clear, cogent and convincing evidence that Defendant's communication with Bowman violated Rule 4.2(a) as alleged in paragraph b of the Complaint; or that Defendant brought or asserted a frivolous claim in violation of Rule 3.1 as alleged in paragraph c of the Complaint.

Based upon 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 REGARDING DISCIPLINE

1. Defendant has prior disciplinary offenses in North Carolina. Defendant received an Admonition by the State Bar's Grievance Committee in *In Re: Robert N. Weckworth, Jr.*, 12G1035 & 13G0434 (2013) and a Reprimand by the Disciplinary Hearing Commission in *The North Carolina State Bar v. Robert N. Weckworth, Jr.*, 7 DHC 14 (2008).

2. Defendant was admitted to the North Carolina State Bar in 1989 and has substantial experience in the practice of law.

3. Defendant refuses to acknowledge the wrongful nature of his conduct.

4. Chasten has a history of substance abuse and was in a recovery program at Mary's House in Greensboro in 2013 when the events leading to DSS obtaining custody of SM and the Carrithers' legal actions began to unfold.

5. At the time Defendant obtained Chasten's affidavit, he knew she was represented by Caldwell and that Chasten's uncounselled disclosures were damaging to Chasten's interests in reunifying with SM.

6. The orderly and efficient resolution of legal issues and the concept of judicial impartiality are compromised when a lawyer fails to provide adequate notice to all parties and lawyers interested in a legal proceeding before communicating *ex parte* with the tribunal.

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

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has carefully considered all of the different forms of discipline available.

2. The Hearing Panel has also carefully considered all the factors enumerated in 27 N.C. Admin. Code § 1B .0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and determines the following factor is applicable:

a. Negative impact of Defendant's actions on the administration of justice.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code § 1B .0114 (w)(2) and concludes no factors are present that would warrant disbarment.

4. In addition, the Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code § 1B .0114(w)(3) and determines the following factors are applicable:

a. Prior disciplinary offenses in this State;

b. Multiple offenses;

c. Defendant's refusal to acknowledge the wrongfulness of his conduct;

d. Vulnerability of the victim; and

e. Defendant's degree of experience in the practice of law.

5. Defendant's conduct resulting in the rule violations found by the Hearing Panel caused potential harm to the administration of justice and the legal profession.

6. The Hearing Panel has considered lesser alternatives and find that an admonition or anything less would be insufficient discipline because of the potential harm to the administration of justice and the legal profession caused by Defendant's conduct.

7. The potential harm in this matter by the Defendant was the attempt to gain access to a tribunal without first contacting the opposing counsel or the parties involved in the matter, which prevents equal access to the tribunal by attorneys and other parties involved in subsequent or similar actions.

8. Although Defendant's conduct is serious, it does not warrant a suspension of his license.

9. A reprimand is warranted because entry of an order imposing less severe discipline would fail to acknowledge the seriousness of the conduct 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 Findings and Conclusions Regarding Discipline, the Hearing Panel enters the following:

ORDER OF DISCIPLINE

1. Defendant, Robert N. Weckworth, Jr., is hereby Reprimanded for his conduct with the following additional conditions:

- a. Defendant will respond to all letters of notice and requests for information from the North Carolina State Bar by the deadline stated in the communication;
- b. Defendant will advise the Bar in writing of all address changes within 10 days of the change;
- c. Defendant will timely comply with his State Bar continuing legal education requirements and will pay all fees and costs assessed by the applicable deadline; and
- d. Defendant will not violate the laws of any state or of the United States.

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

Signed by the Chair with the consent of the other Hearing Panel members, this the 29th
day of October, 2021.

Stephanie N. Davis
Stephanie N. Davis, Chair
Disciplinary Hearing Panel