

STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
22 DHC 11

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

TIMOTHY A. GUNTHER, Attorney,

Defendant

CONSENT
ORDER OF DISCIPLINE

THIS MATTER was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Margit Monaco Hicks, Chair, and members William A. Oden, III and Ronald C. Brinson. Jennifer A. Porter and Thomas L. Crosby represented Plaintiff, the North Carolina State Bar. Defendant, Timothy A. Gunther, was represented by Alan M. Schneider.

The parties stipulate and agree to the findings of fact and conclusions of law recited in this Consent Order. The parties consent to the discipline imposed by this Order. By consenting to this Order, Defendant knowingly, freely, and voluntarily waives his right to appeal this Consent Order or to challenge in any way its sufficiency.

Based upon the stipulated facts and upon 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 ("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, Timothy A. Gunther ("Gunther" or "Defendant"), was admitted to the North Carolina State Bar in 1992, 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. Gunther was properly served with process and the matter came before the Hearing Panel with due notice to all parties.

4. In 2019, Gunther sought election to the office of District Court Judge.

5. In order to be qualified for the office of District Court Judge in a particular judicial district, Gunther had to reside in that particular judicial district.

6. On all dates relevant to this Complaint, Gunther owned and resided at 103 Solway Court in Cary, NC (“the Cary address”).

7. The Cary address was in Judicial District 10D.

8. On or about April 26, 2019, Gunther filed to run for election to District Court Judge in Judicial District 10D.

9. Subsequently, however, the District Court Judge seat was moved from Judicial District 10D to Judicial District 10F.

10. The Cary address was not in Judicial District 10F.

11. On December 12, 2019, Gunther went to an office of the North Carolina Department of Motor Vehicles (DMV) and changed his driver’s license address from the Cary address to 821 Hepplewhite Court, Fuquay-Varina, NC (“the Fuquay-Varina address”), and obtained a new driver’s license listing the Fuquay-Varina address.

12. The Fuquay-Varina address is in Judicial District 10F.

13. Gunther still owned his home at the Cary address when he changed his address to the Fuquay-Varina address at DMV.

14. Gunther still resided at the Cary address when he changed his address to the Fuquay-Varina address at DMV.

15. Gunther did not reside at the Fuquay-Varina address.

16. Gunther provided a false address to DMV when he changed his address with DMV on or about December 12, 2019 and got a new driver’s license with the Fuquay-Varina address on it.

17. While at DMV on or about December 12, 2019, Gunther executed and submitted a North Carolina Voter Registration Application on which he listed the Fuquay-Varina address as his residential address.

18. Gunther attested to and signed this North Carolina Voter Registration Application under penalty of perjury.

19. Gunther made a false statement regarding his residential address on this North Carolina Voter Registration Application.

20. Gunther's false statement regarding his address on the North Carolina Voter Registration Application was made knowingly, willfully, intentionally, and with fraudulent intent.

21. On December 13, 2019, Gunther went to the Wake County Board of Elections and completed the pertinent part of the Notice of Candidacy form to run for the office of North Carolina District Court Judge in Judicial District 10F, Seat 02.

22. The Director of the Wake County Board of Elections certified on the Notice of Candidacy form that Gunther resided in District Court District 10F.

23. The Director's certification was based upon the Fuquay-Varina address in the voter registration system that Gunther had changed on December 12, 2019 when he submitted the North Carolina Voter Registration Application at DMV.

24. On December 16, 2019, Gunther executed and submitted the Notice of Candidacy Form to the State Board of Elections on which his address was listed as 821 Hepplewhite Court, Fuquay-Varina, NC.

25. Gunther swore or affirmed that the statements on the Notice of Candidacy Form were true, correct and complete to the best of his knowledge or belief.

26. Gunther did not reside at the address listed on the Notice of Candidacy form, the Fuquay-Varina address.

27. Gunther resided at the Cary address on December 13, 2019 and December 16, 2019 when he completed and submitted the Notice of Candidacy form.

28. Gunther was not eligible to run for District Court Judge in District 10F because he did not reside in District 10F.

29. Gunther knowingly and intentionally made false statements on the Notice of Candidacy form and knowingly misrepresented himself as eligible to run for District Court Judge in District 10F.

30. Gunther filed the above-described North Carolina Voter Registration Application and Notice of Candidacy form containing false statements regarding his residency knowingly and with deceit and intent to defraud, for the purpose of running as a candidate for District Court Judge in District 10F when he did not reside in District 10F.

31. By filing the above-described North Carolina Voter Registration Application and Notice of Candidacy form containing false statements regarding his residency knowingly and with deceit and intent to defraud, for the purpose of running as a candidate for District Court Judge in District 10F when he did not reside in District 10F, Gunther obstructed justice.

32. It is a Class 1 misdemeanor to give a false address to DMV in any application for or renewal of a driver's license pursuant to N.C. Gen. Stat. § 20-30.

33. It is a Class I felony for a person to willfully, knowingly, and with fraudulent intent give false information on a North Carolina Voter Registration Application at the DMV pursuant to N.C. Gen. Stat. § 163-82.19.

34. It is a Class I felony for a person to knowingly swear falsely with respect to any matter pertaining to any primary or election pursuant to N.C. Gen. Stat. § 163-275.

35. It is a Class F felony for a person to knowingly and intentionally make a false statement in any oath or affirmation duly administered of or concerning any matter or thing where such person is lawfully required to be sworn or affirmed pursuant to N.C. Gen. Stat. § 14-209.

36. It is a Class H felony to unlawfully and willfully obstruct justice with deceit and intent to defraud.

37. Gunther ran for election for District Court Judge in District 10F from December 2019 through November 2020 and during that time falsely held himself out as qualified and eligible for election as a District Court Judge in District 10F.

38. Because Gunther did not reside in District 10F, Defendant was not qualified or eligible to be elected as a District Court Judge in District 10F.

39. Canon 7 of the North Carolina Code of Judicial Conduct states in subsection (C) that "[a] judge or a candidate should not: ... (3) intentionally and knowingly misrepresent his/her identity or qualifications."

40. In the course of the State Bar grievance investigation, Gunther presented the State Bar with a document titled Residential Lease and Roommate Agreement ("lease").

41. Under the lease, Gunther purported to lease a portion of the Fuquay-Varina address.

42. The lease stated the lease term began on October 28, 2019 and terminated on December 31, 2020.

43. The end date of the lease term was the month after the November 3, 2020 general election in which Gunther ran for District Court Judge in District 10F.

44. The lease stated two amounts for rent, \$550.00 per month and \$400.00 per month plus half of the monthly utility bills.

45. Gunther made no payments under the lease.

46. Gunther brought only some clothes, toiletries, and books to the Fuquay-Varina address.

47. The remainder of Gunther's belongings remained at the Cary address.

48. Gunther continued to reside at the Cary address during this time.

49. The lease was a sham lease created to further the false pretense that Gunther resided at the Fuquay-Varina address.

50. To further the false pretense that he resided at the Fuquay-Varina address, Gunther also changed his address from the Cary address to the Fuquay-Varina address on other items including his concealed handgun permit and his vehicle registration.

51. On or about October 29, 2020, an election protest petition was filed with the Wake County Board of Elections, contending Gunther did not reside in Judicial District 10F and therefore did not meet the applicable qualification and eligibility requirements for the office of District Court Judge for Judicial District 10F ("the protest petition").

52. The protest petition came before the Wake County Board of Elections for hearing on November 18, 2020.

53. Gunther did not contest the protest petition.

54. The Wake County Board of Elections entered an order on November 20, 2020 concluding Gunther did not reside in Judicial District 10F and was therefore ineligible as a candidate for the office of District Court Judge in Judicial District 10F.

55. Gunther changed his address back to the Cary address for all items he had switched to the Fuquay-Varina address, including his driver's license, vehicle registration, and concealed handgun permit, in late November 2020 to December 2020.

Based on the foregoing Findings of Fact and upon the consent of the parties, the Hearing Panel enters the following

CONCLUSIONS OF LAW

1. All the parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, Timothy A. Gunther, and the subject matter.

2. Defendant'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 Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- a. By holding himself out as eligible to be elected as district court judge in District 10F when he was not eligible to be elected in District 10F, Gunther engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c) and failed to comply with the applicable provisions of the Code of Judicial Conduct in violation of Rule 8.2(b);
- b. By willfully, knowingly, and with fraudulent intent falsely stating his residential address was 821 Hepplewhite Court, Fuquay-Varina, NC on the North Carolina Voter Registration Application that he attested to and signed under penalty of perjury and submitted, Gunther engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c) and engaged in criminal acts (including violations of N.C. Gen. Stat. § 163-82.19 and § 14-209 and common law obstruction of justice) that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b);
- c. By knowingly and intentionally falsely stating his residential address was 821 Hepplewhite Court, Fuquay-Varina, NC on the Notice of Candidacy form for the office of North Carolina District Court Judge Seat 02 in District 10F, which he signed swearing or affirming that the statements on the form were true, correct, and complete to the best of his knowledge or belief and submitted, Gunther engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c), engaged in criminal acts (including violations of N.C. Gen. Stat. § 163-275 and § 14-209 and common law obstruction of justice) that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b), and failed to comply with the applicable provisions of the Code of Judicial Conduct in violation of Rule 8.2(b);
- d. By using his newly-established voter registration address of 821 Hepplewhite Court, Fuquay-Varina, NC as proof of residency to the Wake County Board of Elections personnel and to induce the Director of the Wake County Board of Elections to certify that Gunther was a resident of District 10F when Gunther was not in fact a resident of District 10F, Gunther engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c) and failed to comply with the applicable provisions of the Code of Judicial Conduct in violation of Rule 8.2(b);
- e. By falsely stating his address was 821 Hepplewhite Court, Fuquay-Varina, NC to DMV and obtaining from DMV a driver's license that falsely listed his address as 821 Hepplewhite Court, Fuquay-Varina, NC, Gunther engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c) and engaged in a criminal

act (including violation of N.C. Gen. Stat. § 20-30) that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b); and

- f. By changing his address for items including his concealed handgun permit and vehicle registration to the Fuquay-Varina address to further the appearance that he resided at the Fuquay-Varina address when that was not his true residence, Gunther engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c).

Based on the foregoing Findings of Fact and Conclusions of Law, the stipulated facts, and upon the consent of the parties, the Hearing Panel hereby finds by clear, cogent and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1 – 55 above are reincorporated as if set forth herein.
2. A cornerstone of client trust in an attorney is that the attorney will act with integrity. Failure to do so erodes the confidence clients place in attorneys who handle their affairs and harms the profession.
3. The residency requirement for candidates in elections was designed to deter abuses of the election process such as precinct shopping, and to ensure that elected officials sincerely represent the residents of a particular district. Attempting to get elected in a district in which the candidate does not reside undermines this fundamental goal of the electoral process and frustrates the purposes for which residency was included as a requirement for district court judges in North Carolina's Constitution (N.C. Const. Art. IV, § 10).
4. Defendant's misconduct received public attention, causing significant harm by bringing the legal profession into disrepute and significantly undermining the public's trust in the integrity of the profession.
5. Defendant fully cooperated with the State Bar's investigation and provided timely and fully responsive responses to all State Bar inquiries during the grievance investigation.
6. Defendant was forthright with the State Bar and admitted he had not paid rent to his daughter for the Fuquay-Varina property.
7. Defendant has accepted responsibility for his actions and expresses remorse for his conduct.
8. When an election protest regarding Defendant's qualifications to run for the office of District Court Judge in Wake County District 10-F was filed with the Wake County Board of Elections based upon Defendant's residency, Defendant admitted he had not fully abandoned his

Cary residence as required under the applicable authorities to have established residency at the Fuquay-Varina address and did not contest the protest. Defendant was found to be ineligible to be a candidate in Wake County District 10-F and ineligible to be certified as the duly elected District Court Judge from Judicial District 10-F.

9. Defendant has no prior discipline.

10. The Hearing Panel finds by clear, cogent, and convincing evidence the facts contained in the conclusions set out below of the applicable factors regarding discipline from those listed in 27 N.C. Admin. Code 1B.0116(f).

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

CONCLUSIONS REGARDING DISCIPLINE

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

2. The Hearing Panel considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f).

3. The Hearing Panel concludes that the following factors from 27 N.C. Admin. Code 1B.0116(f)(1), which are to be considered in imposing suspension or disbarment, are present and warrant suspension of Defendant's license in this case:

- a. Factor (B), Intent of Defendant to commit acts where the harm or potential harm is foreseeable;
- b. Factor (C), Circumstances reflecting Defendant's lack of honesty, trustworthiness, or integrity;
- c. Factor (E), Negative impact of Defendant's actions on public's perception of the profession;
- d. Factor (H), Effect of Defendant's conduct on third parties; and
- e. Factor (I), Acts of dishonesty, misrepresentation, deceit, or fabrication.

4. The Hearing Panel considered the factors listed in 27 N.C. Admin. Code 1B.0116(f)(2), which are factors warranting consideration of disbarment, and concluded that, although some factors are present, the circumstances of this case do not warrant disbarment in order to protect the public.

5. The Hearing Panel concludes that the following factors from 27 N.C. Admin. Code 1B.0116(f)(3), which are to be considered in all cases, are present in this case:

- a. Factor (A), Absence of prior discipline;
- b. Factor (C), Dishonest or selfish motive;
- c. Factor (D), Timely make a good faith effort to make restitution and to rectify consequences of misconduct;
- d. Factor (F), A pattern of misconduct;
- e. Factor (G), Multiple offenses;
- f. Factor (J), Interim rehabilitation;
- g. Factor (K), Full and free disclosure to the Hearing Panel and a cooperative attitude toward the proceedings;
- h. Factor (P), Remorse; and
- i. Factor (S), Degree of experience in the practice of law.

6. The Hearing Panel has considered all of the disciplinary options available to it, including issuance of lesser sanctions such as an admonition, reprimand, or censure, and finds that any discipline less than a suspension would not adequately protect the public in light of the significant harm caused by Defendant's conduct to the public and the profession. Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses Defendant committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar of this State.

Based on the foregoing Findings of Fact, Conclusions of Law, additional Findings of Fact and Conclusions of Law Regarding Discipline, and with the consent of the parties, the Hearing Panel hereby enters the following

ORDER OF DISCIPLINE

1. Defendant, Timothy A. Gunther, is hereby suspended from the practice of law for two years. The effective date of this Order is 30 days from service of this Order upon Defendant pursuant to 27 N.C. Admin. Code 1B.0128(c).

2. Defendant shall surrender his law license and bar card to the Clerk of the DHC no later than 30 days from service of this order upon him.

3. Defendant is taxed with the administrative fees and costs of this proceeding. Defendant 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 him of the statement of costs by the Secretary.

4. Within 15 days of the effective date of this Order, Defendant shall provide the Office of Counsel and the Membership Department of the State Bar with an address and telephone number at which clients seeking return of files can communicate with Defendant and obtain such files. Defendant must keep this information current with the Membership Department of the State Bar, providing updated information to the State Bar within 15 days of any change.

5. Defendant shall promptly return client files in his possession, custody, or control to clients upon request, within 5 days of receipt of such request. Defendant will be deemed to have received any such request 3 days after the date such request is sent to Defendant if the request is sent to the address Defendant provided the Membership Department of the State Bar pursuant to the preceding paragraph.

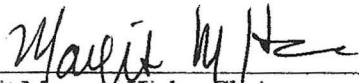
6. Defendant shall disburse to the proper recipients all identified client funds in any trust account he maintained.

7. Defendant shall timely comply with Rule 1.15-2(r) and Chapter 116B of the General Statutes regarding abandoned funds in Defendant's trust accounts.

8. Defendant shall comply with all provisions of 27 N.C. Admin. Code 1B.0128 as set out therein.

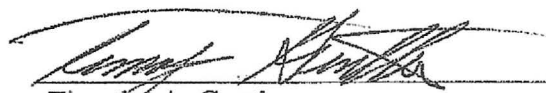
9. If Defendant fails to fully comply with 27 N.C. Admin. Code 1B.0128, Defendant shall reimburse the State Bar for any and all expenses incurred by the State Bar in winding down Defendant's practice. Such expenses may include, but are not limited to, storage facility fees, rent payments, moving expenses, charges for secure disposal of client files, postage or other mailing expenses and compensation paid to any appointed trustee and/or the trustee's assistant for time and travel associated with the trusteeship. The State Bar shall send an invoice of wind-down expenses to Defendant at Defendant's last known address of record with the State Bar. Defendant shall not be eligible for reinstatement from suspension until he has reimbursed the State Bar for any and all wind-down expenses incurred.

Signed by the Chair with the consent of the other Hearing Panel members, this the 26 day of September, 2022.



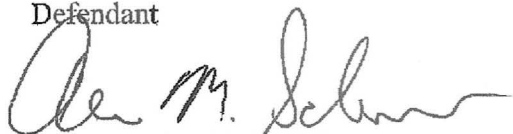
Margit Monaco Hicks, Chair
Disciplinary Hearing Panel

WE CONSENT:



Timothy A. Gunther
Defendant

September 23, 2022
Date



Alan M. Schneider
Attorney for Defendant


September 23, 2022
Date



Jennifer A. Porter, Deputy Counsel
Attorney for Plaintiff

September 23, 2022

Date



Thomas L. Crosby, Deputy Counsel
Attorney for Plaintiff

September 23, 2022

Date