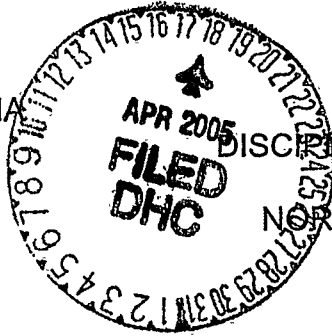


23871

NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
04 DHC 46

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
v.)
VALARIE L. PERKINS, Attorney,)
Defendant)

CONSENT ORDER OF
DISCIPLINE

This matter was heard by a Hearing Committee of the Disciplinary Hearing Commission composed of F. Lane Williamson, Chair, T. Richard Kane, and Johnny A. Freeman. Margaret Cloutier represented plaintiff. Defendant appeared pro se. Defendant has agreed to waive a formal hearing in the above referenced matter. The parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Defendant also stipulates that she waives her right to appeal this consent order or challenge in any way the sufficiency of the findings by consenting to the entry of this order.

Based on the consent of the parties, the Hearing Committee hereby enters 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.
2. Defendant, Valarie L. Perkins, (hereinafter "Perkins" or "Defendant"), was admitted to the North Carolina State Bar in 1997, 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 Revised Rules of Professional Conduct.

3. During the times relevant herein, Perkins was actively engaged in the practice of law in the State of North Carolina and practiced law in the city of Greensboro, Guilford County, North Carolina.

4. On March 31, 2003, Omar Hernández ("Hernández"), a citizen and resident of Texas, was arrested in North Carolina and charged with trafficking in marijuana, a Class G felony. Hernández also received notification from the North Carolina Department of Revenue of an unauthorized substance tax assessment. Hernández was released from custody shortly after his arrest and returned to Texas. During the first week of April 2003, he received a letter from Perkins, soliciting him to employ her to represent him on the criminal drug charges.

5. In the letter, Perkins stated that "[o]ur firm **regularly** handles cases of this type and we want you to retain our firm to represent you in court. Our fee for representing you is \$250.00 if your case can be resolved without a trial." (emphasis appears in the letter). The letter further stated, "You should know that our firm is experienced in handling cases of this type and we want you to retain our law firm to represent you in court." The letter went on to say, "With our firm representing you, you may not have to appear." Perkins' address on the letterhead was 1010 West Lee Street, Greensboro, North Carolina.

6. Hernández drove from Texas and met with a man who identified himself as Perkins' paralegal. Hernández paid the man \$500 and left documents for him to give to Perkins. Following that meeting, Perkins telephoned Hernández and told him that she had received the materials from her paralegal. Perkins agreed to represent Hernández for a total fee of \$5,000. Hernández eventually paid Perkins \$4,575.00 for her legal services.

7. The statement in Perkins' solicitation letter to Hernández that she regularly handled felony drug cases similar to Hernández's cases was false. In addition, the letter did not indicate that the \$250 fee quoted was for cases resolved in District Court only.

8. In September 2003, Hernández returned to Greensboro in an attempt to find and meet with Perkins to get information about the status of his case. He discovered that Perkins' office at the West Lee Street location was no longer in existence, and he was unable to locate Perkins. On September 30, 2003, Hernández hired another lawyer to represent him.

9. In late July or early August 2003, Perkins relocated her office from the West Lee Street address to 425 Spring Garden Street in Greensboro. In October 2003, after Hernández had hired another lawyer, Hernández received a phone call from a woman he believed to be Perkins' employee.

She told Hernandez that Perkins had moved her office to Suite 100, 425 Spring Garden Street, Greensboro, North Carolina 27401.

10. Based on the sworn statement of Hernandez at a deposition taken in this case, there is not clear and convincing evidence that Perkins undertook to represent Hernandez relating to the North Carolina Department of Revenue's assessment of drug taxes against Hernandez. The evidence would tend to show that Perkins appeared on Hernandez's behalf at scheduled court dates and discussed with Hernandez a plea arrangement offered by the assistant district attorney assigned to his case.

11. In December 2003, Hernandez filed a fee dispute petition with the State Bar requesting that Perkins return the funds that he had paid her, and the matter was referred to the Fee Dispute Resolution Committee (Greensboro Division) of the 18th Judicial District Bar for investigation. The 18th Judicial District Bar contacted Perkins by letter. The local attorney in Greensboro assigned to the case spoke to Perkins by telephone about responding to the fee dispute complaint, but the State Bar did not receive a response from Perkins. The local bar returned the matter to the State Bar on March 12, 2004 as unresolved due to Perkins' lack of participation and the matter was referred to the Grievance Committee.

12. Independently of the fee dispute petition, Hernandez filed a grievance against Perkins, and a Letter of Notice was sent to Perkins on February 18, 2004. After no response was received, a follow-up letter was sent to her on March 12, 2004. Perkins also failed to respond to that letter. However, on March 22, 2004, Perkins left a voice mail message with the State Bar in which she stated that she was placing her response to the Letter of Notice in the mail that very day. When no response was received, a subpoena was issued on May 13, 2004, pursuant to 27 NCAC 1B § .0112 (f). The subpoena ordered Perkins to appear at the State Bar offices in Raleigh on June 8, 2004 to answer questions about the Hernandez matter. The return receipt card showed that on a date prior to May 17, 2004, the subpoena was signed for as received by E. Ann McBride, a person in Perkins's office building who regularly received and distributed the mail to Perkins and others in the building. Perkins did not appear as directed on June 8, 2004.

13. On June 9, 2004, the State Bar attempted to contact Perkins by telephone at Perkins' office telephone number (336-691-9100), but a recorded message stated that the phone had been disconnected. Another call was made to the only other phone number for Perkins known to the State Bar, (336-575-3315), resulting in the call being sent to Perkins' voice mail, where a message was left for Perkins to contact the State Bar immediately concerning her failure to appear in response to the subpoena on June 8, 2004, but that call was not returned.

14. On July 18, 2002, Audrey R. Diggs, hired the firm of Perkins & Wright on a contingency fee basis to represent her and her daughter in a tort action for damages and the parties entered into Retainer and Fee Agreements on that date. On October 21, 2003, the contracts were amended to provide that Perkins would be the sole attorney representing Diggs and her daughter.

15. After Perkins became the sole attorney for Diggs and her daughter, Diggs has been unable to find Perkins, communicate with her, obtain any information concerning the status of the cases or retrieve the case files from Perkins.

16. On May 27, 2004, the State Bar sent a Letter of Notice to Perkins concerning the Diggs' cases. The return receipt card shows that the letter was received by E. Ann McBride on May 28, 2004, but Perkins did not respond to the Letter of Notice.

Based on the foregoing Findings of Fact, the Committee enters the following

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Committee, and the Committee has jurisdiction over defendant and the subject matter of this proceeding.

2. Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. §84-28(b)(2) in that she violated one or more of the Revised Rules of Professional Conduct in effect at the time of the actions as follows:

(a) By falsely stating in her solicitation letter to Hernandez that she was experienced in and regularly handled felony drug trafficking cases similar to Hernandez's case, and by not stating clearly that the fee quoted was for resolution of the charges in District Court only, Perkins made false or misleading statements about legal services that she could render for Hernandez in violation of Rule 7.1 (a);

(b) By misrepresenting to Hernandez that she regularly handled felony drug trafficking charges similar to Hernandez's cases, Perkins engaged in conduct involving misrepresentation in violation of Rule 8.4 (c);

(c) By failing to respond to the Fee Dispute Resolution Committee of the 18th Judicial District Bar concerning Hernandez's fee dispute petition, Perkins failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5 (f)(2);

(d) By failing to respond to the State Bar's Letter of Notice and follow-up letters concerning the Letter of Notice and failure to appear and answer questions concerning the Hernandez grievance after being subpoenaed to do so pursuant to 27 NCAC 1B § .0112 (f), Perkins failed to respond to a lawful demand for information from a disciplinary authority in violation of N.C. Gen. Stat. § 84-28 (b)(3) and Rule 8.1 (b);

(e) By failing to communicate with and keep the Diggs informed about the status of their personal injury cases, Perkins failed to keep her clients reasonably informed and failed to comply with their reasonable requests for information about their cases in violation of Rule 1.4 (a) (3) & (4); and

(f) By failing to respond to the State Bar's Letter of Notice concerning the Diggs matter, Perkins failed to respond to a lawful demand for information from a disciplinary authority in violation of N.C. Gen. Stat. § 84-28 (b)(3) and Rule 8.1 (b).

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Committee also enters the following

FINDINGS REGARDING DISCIPLINE

1. Defendant's misconduct is aggravated by the following factors:

(a) Defendant engaged in multiple offenses;

(b) Defendant hindered proceedings of the Bar by failing to make herself available for service of various processes, including the complaint in this action as well as prior efforts to serve administrative documents; and

(c) The Grievance Committee issued two letters of warning to defendant within the three years immediately preceding the filing of this action dealing with failing to notify clients of the closing of her office, failing to return files to client, and failing to timely respond to inquiries of the State Bar.

2. Defendant's misconduct is mitigated by the following factors:

(a) Although defendant had two previous cases that were dismissed with letters of warning, defendant has no prior disciplinary record;

(b) Defendant was experiencing personal problems in late 2003 and most of 2004;

(c) Defendant has expressed remorse for her conduct;

(d) Defendant made full and free disclosure to the hearing committee and has had a cooperative attitude in this DHC action; and

(e) Defendant did not act with a dishonest or selfish motive.

3. The aggravating factors outweigh the mitigating factors.

4. Defendant's conduct in sending a letter to a potential client soliciting his business in serious felony criminal charges in which she falsely asserts a level of experience and regularity in handling such matters and misleads the client as what services are covered by the quoted fee negatively affects the public's perception of the legal profession and damages the public's faith in obtaining competent and honest legal representation. That faith tends to be further eroded when clients are unable to locate the attorneys they hire and find offices abandoned without personal contact from the attorneys concerning their relocation or cessation of practice. In addition, defendant's conduct in failing to respond to letters of notice or other communications from the State Bar interferes with the State Bar's ability to regulate attorneys and undermines the privilege of lawyers in this State to remain self-regulating. However, the Hearing Committee finds and concludes that under the circumstances of this case the public will be adequately protected by a suspension of defendant's license stayed upon the meeting of appropriate conditions. Lesser alternatives such as reprimand or censure would be insufficient to protect the public or remedy the harm caused to the administration of justice and would send the wrong message to other attorneys about the conduct expected of members of the Bar in this State.

5. Defendant closed her law office in March 2004 and has not practiced law since that time. Accordingly, the wind-down provisions of 27 N.C.A.C. 1B §.0124 of the State Bar Discipline and Disability Rules are not a part of this Order.

6. Although defendant is listed in the State Bar membership records as having an active status, defendant is delinquent in the payment of State Bar dues for the years 2002, 2003 and 2004. In addition, defendant has not complied with Continuing Legal Education requirements for 2003 and 2004. Despite attempts made by the Membership Department of the State Bar, an administrative suspension order has not been served on defendant for these lapses.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Findings Regarding Discipline, and upon consent of the parties, the Hearing Committee enters the following

ORDER OF DISCIPLINE

1. The license of defendant, Valarie L. Perkins, is hereby suspended for two years from the date of this Order of Discipline, effective immediately.

2. Defendant shall submit her license and membership card to the Secretary of the North Carolina State Bar no later than 30 days after the date of this Order if the suspension is not stayed within that time.

3. Defendant may seek a stay of the remaining term of active suspension at any time during the period of suspension upon filing a petition with the Disciplinary Hearing Commission of the North Carolina State Bar and demonstrating by clear, cogent and convincing evidence the following:

(a) That defendant paid the costs of this proceeding, which costs shall include all expense incurred by the State Bar for the taking of the depositions of defendant and Omar Hernandez;

(b) That defendant has complied with all State Bar membership and Continuing Legal Education requirements due as of the date of the stay petition, including payment of all delinquent dues, fees, penalties, and completion of hours;

(c) That defendant has not violated any state or federal laws or any provisions of the Revised Rules of Professional Conduct since the entry of this order;

(d) That defendant has responded to all State Bar requests for information received by defendant since the date of this order by the deadline stated in the communication or within 30 days, whichever is earlier, as required by Rule 8.1(b) of the Revised Rules of Professional Conduct and §.0112(c) of the State Bar Discipline and Disability Rules; and

(e) That defendant has kept the North Carolina State Bar Membership Department advised of her current business and home addresses.

4. If Defendant successfully seeks a stay of the suspension of her law license, such stay will continue in force only as long as she continues to comply with the provisions set out in paragraphs 3 (b) through (e) above. The following provisions shall also apply as appropriate:

(a) In the event that, during the stay, 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 tenth day of every third month following the effective date of the stay, by written communication under oath, that defendant has not so engaged in the practice of law during the preceding three months;

(b) 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;

(c) If defendant engages in the private practice of law as contemplated in subparagraph (b) hereof, defendant shall contract with a licensed North Carolina attorney who maintains a private law practice in the judicial district in which defendant maintains her practice to serve as a practice monitor. Defendant will first secure the approval of her proposed practice monitor with the Office of Counsel of the North Carolina State Bar, which approval will not be unreasonably withheld. Defendant will personally meet with her practice monitor at least monthly during the period of stayed suspension. Defendant will keep the monitor apprised of all open and pending client matters and the status of all such matters. By the tenth day of every third month of the period of stayed suspension, defendant will deliver to the Office of Counsel written reports signed by the practice monitor confirming that the meetings are occurring and that the defendant is reporting on the status of defendant's client matters to the practice monitor and that the practice monitor is satisfied with the status of such client matters. Defendant will be solely responsible for all costs associated with the monitoring of her law practice.

(d) if defendant engages in the practice of law in the public sector, as corporate counsel, or any other manner other than the private practice of law, defendant shall contract with a licensed North Carolina attorney similarly situated in the type of practice undertaken by defendant to act as a practice monitor. All other provisions of subparagraph (c) above shall apply.

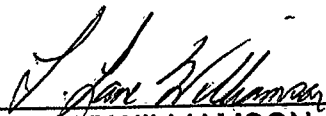
5. If, upon a motion by the State Bar, a hearing committee of the DHC finds that during the period of the stay the defendant has violated any of the conditions in Paragraphs 3(b) through (e) or 4(a) through (b) of this Order of Discipline, the suspension of defendant's license shall be activated as provided in §.0114(x) of the North Carolina Discipline and Disability Rules.

6. 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, prior to seeking reinstatement of her license Defendant must:

(a) Comply with all provisions of State Bar Discipline and Disability Rules, 27 N.C.A.C. §1B .0125(b); and

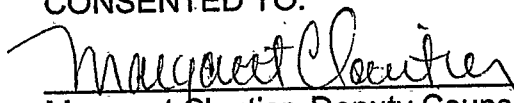
(b) Satisfy all the conditions set forth in Paragraphs 3(a) through (e) of this Order of Discipline.

Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Committee, this 12th day of April, 2005.

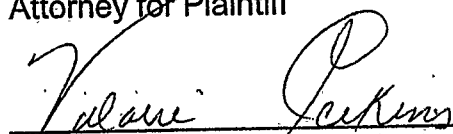


F. LANE WILLIAMSON, CHAIR
HEARING COMMITTEE

CONSENTED TO:



Margaret Cloutier, Deputy Counsel
Attorney for Plaintiff



Valarie L. Perkins, Defendant