

STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
22 DHC 4

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

JAMES LANDIVAR, Attorney,

Defendant

CONSENT ORDER
OF DISCIPLINE

This matter came before a hearing panel of the Disciplinary Hearing Commission composed of Margaret M. Hunt, Chair, Brian O. Beverly, and Heath R. Jenkins. Savannah B. Perry and Jennifer A. Porter represented Plaintiff, the North Carolina State Bar. Defendant, James Landivar, was represented by F. Lane Williamson. Defendant waives a formal hearing in this matter. 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 the entry of this order, Defendant knowingly, freely and voluntarily waives his right to appeal this consent order or to challenge in any way the sufficiency of the findings.

Based on the foregoing and on the consent of the parties, the Hearing Panel hereby makes by clear, cogent and convincing evidence the following:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar (“Plaintiff” or “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, James Landivar (“Defendant” or “Landivar”), was admitted to the North Carolina State Bar in May 2018 and is an Attorney at Law 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 relevant period referred to herein, Defendant was engaged in the practice of law in Charlotte, Mecklenburg 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 an attorney with Carolina Legal Services (“CLS”).
6. CLS provided debt-relief services to North Carolina consumers that included debt-adjusting, which is acting as an intermediary for consideration between a debtor and his or her creditors for the purpose of settling the debtor’s debts.
7. N.C. Gen. Stat. § 14-424 prohibits the business or practice of debt adjusting except as provided in N.C. Gen. Stat. § 14-426.
8. One of the provisions of N.C. Gen. Stat. §14-426 provides an exception for an attorney-at law licensed to practice in North Carolina who is not employed by a debt adjuster.
9. CLS was not otherwise authorized to engage in the business or practice of debt adjusting pursuant to N.C. Gen. Stat. §§ 14-424 and 14-426.
10. CLS could only permissibly provide debt adjusting services to North Carolina consumers through a North Carolina lawyer or by a nonlawyer under the proper and direct supervision of the North Carolina lawyer (these services hereinafter referred to as “legal services”).
11. CLS represented to its North Carolina clients that the legal services provided by CLS would be performed by a group of professionals, including attorneys, paralegals, negotiators, assistants, and others, and that attorneys would directly supervise the activities they did not directly perform.
12. As an attorney with CLS, Defendant was assigned clients of CLS.
13. Defendant provided only limited legal services to his clients, including, but not limited to, initial consultations, quarterly reviews, and exit interviews.
14. CLS had working relationships with out-of-state companies that provided most of the legal services to its North Carolina consumers.
15. North Carolina consumers that contacted CLS as prospective clients discussed their matters with nonlawyers employed by one or more of these out-of-state companies.
16. Nonlawyers employed by these out-of-state companies explained the CLS program to CLS’s prospective clients and walked them through the process of signing contracts with CLS, without the involvement of Defendant or another North Carolina lawyer.
17. Nonlawyers employed by these out-of-state companies remained the primary point of contact for CLS clients throughout the representation.

18. Before clients were assigned to an attorney at CLS, nonlawyers employed by these out-of-state companies established the amount each client would pay into the program each month and the breakdown of how each such payment would be applied. A portion of each client's monthly payment was paid to CLS as payment for legal services.

19. Nonlawyers employed by these out-of-state companies also answered questions posed by CLS clients throughout CLS's representation of the clients, including questions about how to handle their legal situations, when and how to file pleadings in some cases, and when and to what extent to stop paying their bills.

20. Nonlawyers employed by these out-of-state companies negotiated on behalf of CLS clients the resolution of debts with law firms and creditors on behalf of CLS clients.

21. Defendant knew that the nonlawyers engaged by these out-of-state companies provided most of CLS's services to its North Carolina consumers, including services that could only permissibly be performed in North Carolina by a North Carolina lawyer, either by the lawyer or by a nonlawyer under the proper and direct supervision of the lawyer.

22. Defendant did not adequately or directly supervise the legal services and advice provided to his clients by nonlawyers employed by these out-of-state companies.

23. CLS's claim to Defendant's clients that an attorney would directly supervise others in the provision of legal services not directly provided by the attorney was false.

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, James Landivar, and the subject matter of this proceeding.

2. Defendant was properly served with the summons and complaint in this case.

3. 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 as follows:

a. By failing to directly communicate with clients concerning the client's goals, the means by which to accomplish those goals, and the client's questions arising during the representation, Defendant failed to reasonably consult with his clients about the means by which the clients' objectives would be accomplished in violation of Rule 1.4(a)(1) and failed to explain a matter to the extent reasonably necessary to permit the clients to make informed decisions regarding the representation in violation of Rule 1.4(b);

b. By failing to adequately or directly supervise the nonlawyer employees of out-of-state companies that provided legal services and advice to his clients, thereby engaging in the unauthorized practice of law, Defendant failed to take reasonable efforts to ensure that his nonlawyer assistants were acting in accordance with Defendant's professional obligations in violation of Rule 5.3(a);

c. By permitting nonlawyers to provide legal services to North Carolina residents, thereby aiding others in the unauthorized practice of law, which is, pursuant to N.C. Gen. Stat. § 84-8, a criminal act in North Carolina, Defendant assisted other persons in the unauthorized practice of law in violation of Rule 5.5(f) and engaged in a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects in violation of Rule 8.4(b);

d. By aiding CLS in debt adjusting, which is, pursuant to N.C. Gen. Stat. § 14-424, a criminal act in North Carolina, Defendant engaged in a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects in violation of Rule 8.4(b); and

e. By knowingly permitting CLS to falsely claim to clients assigned to Defendant that attorneys would directly supervise the activities they did not directly perform, when, in fact, Defendant did not directly supervise the provision of the legal services provided to his clients by nonlawyers or otherwise ensure a North Carolina attorney was directly supervising such activities, Defendant permitted false or misleading statements about his services to be made in violation of Rule 8.4(a) and 7.1(a) and engaged in conduct involving dishonesty 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 and the consent of the parties, the Hearing Panel makes by clear, cogent and convincing evidence the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Defendant has substantial experience in the practice of law; he was licensed in Massachusetts in 2007, New York in 2008, and North Carolina in 2018.

2. Defendant was not involved in the operation or management of CLS.

3. The clients CLS targeted and served were particularly vulnerable to scams due to their financial situations.

4. Defendant knew or should have known of the significant harm caused to his CLS clients and of the potential for significant harm to his CLS clients but failed to properly investigate the services provided by the nonlawyer employees of these out-of-state entities and to protect the interests of his clients.

5. Defendant's conduct, including aiding nonlawyers and out-of-state entities in the unauthorized practice of law and debt adjusting, caused significant harm to many CLS clients and the potential for significant harm to the public, the legal profession, and the administration of justice. Such conduct brings the legal profession into disrepute and undermines public confidence in the integrity of the profession.

6. Members of the public posed complaints in various online forums about CLS's practices, which have undermined the confidence of many North Carolina consumers in the trustworthiness and honesty of lawyers.

7. Defendant stopped working with CLS and distanced himself from the firm shortly after the State Bar notified him of its grievance investigation into his involvement with CLS. However, upon his departure from CLS, Defendant began working at another debt resolution company.

8. Defendant cooperated with and actively participated in this disciplinary proceeding.

9. Defendant has no prior discipline.

Based on the foregoing Findings of Fact, Conclusions of Law, Findings of Fact Regarding Discipline, and the consent of the parties, 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 determined the following factors are applicable in this matter:

- a) intent of the defendant to commit acts where the harm or potential harm is foreseeable;
- b) negative impact of defendant's actions on client's or public's perception of the profession;
- c) negative impact of the defendant's actions on the administration of justice;
- d) impairment of the client's ability to achieve the goals of the representation;
and
- e) effect of defendant's conduct on third parties.

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) The absence of any prior disciplinary offenses in this state or any other jurisdiction;
- b) full and free disclosure to the hearing panel or cooperative attitude toward the proceedings;
- c) vulnerability of victim; and
- d) degree of experience in the practice of law;

5. A censure, reprimand, or admonition would be insufficient discipline because of the gravity of the harm and potential harm to the client, the profession, and the public.

6. The public will be adequately protected by suspension of Defendant's license stayed upon Defendant's compliance with conditions designed to minimize the risk of harm and ensure continued compliance with the Rules of Professional Conduct.

7. The Hearing Panel determines that discipline short of stayed suspension would not adequately protect the public, the legal profession or the administration of justice for the following reasons:

- (a) The factors under Rule .0116(f)(1) are of a nature that support imposition of a stayed suspension as the appropriate discipline; and
- (b) 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 to the public regarding the conduct expected of members of the Bar of this state.

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

ORDER OF DISCIPLINE

1. The law license of Defendant, James Landivar, is hereby suspended for

two years effective thirty days from service of this Order upon Defendant pursuant to 27 N.C. Admin. Code 1B.0128(c).

2. Defendant is taxed with the administrative fees and costs of this action as assessed by the Secretary of the North Carolina State Bar which shall be paid within thirty days of service of the statement of costs upon Defendant.

3. The period of suspension is hereby stayed for two years as long as Defendant complies and continues to comply with the following conditions:

- a) Within thirty days after entry of this Order, Defendant shall arrange for an active member of the North Carolina State Bar to serve as his law practice monitor. Defendant's monitor shall be an attorney in good standing who practices law in the judicial district in which Defendant practices law and who has been approved in advance by the State Bar Office of Counsel.
- b) Defendant shall pay the costs and/or fees, if any, charged by the monitor for the monitor's supervision. Within five days of the date Defendant reaches an agreement with the monitor to provide the monitoring services, Defendant shall supply the North Carolina State Bar Office of Counsel with a letter from the monitoring attorney confirming his or her agreement to perform the duties listed below for the duration of the stay of this suspension;
- c) Defendant shall make appropriate arrangements for an alternate monitor if the monitoring attorney is not approved by the Office of Counsel or cannot serve or is unwilling to serve through the duration of the stay of this suspension;
- d) The monitor shall meet with Defendant each month. At each meeting, Defendant and the monitor must review each of Defendant's pending cases, identifying the goals and anticipated course of the representation, any deadlines and/or scheduled court dates, and Defendant's communication with his clients. Defendant and the monitor must discuss the role of any nonlawyer assistants in each case. Defendant and the monitor must review Defendant's fee structures in each case and any provision of legal services in conjunction with any corporate entity with specific review to ensure Defendant is not assisting in the unauthorized practice of law. Defendant and the monitor must also review at least one case in detail in each area of law in which Defendant is practicing, with discussion including but not limited to identification of applicable statutory and regulatory authorities, identification of potential legal issues, and plan of representation. Defendant shall come to each meeting prepared to discuss these topics and shall provide to the monitor in advance of the meeting all information needed to ensure the monitor's meaningful participation in the meeting;

- e) Defendant shall ensure that the monitor submits quarterly written reports of these monthly meetings to the North Carolina State Bar Office of Counsel; such reports are due January 15, April 15, July 15, and October 15 as such dates occur through the duration of the stay of this suspension;
- f) Defendant shall remain current in payment of all State Bar membership dues, fees, and costs, including all Client Security Fund assessments and other charges or surcharges that the State Bar is authorized to collect from him, to include all judicial district dues, fees, and assessments incurred during the length of Defendant's suspension. Defendant shall provide proof of any such payment to the State Bar Office of Counsel within ten days of the payment;
- g) Defendant shall pay all costs and administrative fees of this proceeding as assessed by the Secretary within thirty days of service of the statement of costs upon him;
- h) Defendant shall timely comply with his State Bar Continuing Legal Education requirements and pay all Continuing Legal Education fees and costs assessed by the applicable deadline. Defendant shall provide proof of the same to the State Bar Office of Counsel within ten calendar days of completing the courses;
- i) Defendant shall complete an additional eight hours of CLE courses each year of the stay, at least four of which must be on ethics and two of which must be devoted to the topic of trust account management; these courses are in addition to the normal CLE requirements required of Defendant by the immediately preceding paragraph. Defendant shall provide proof that he completed these additional courses to the State Bar Office of Counsel within ten calendar days of completing the courses;
- j) Defendant shall provide full and complete responses to all communications from the State Bar, including communications from the Attorney Client Assistance Program ("ACAP"), within thirty days of Defendant's receipt or by the deadline stated in the communication, whichever is sooner, and shall participate in good faith in the State Bar's fee dispute resolution process for any petition filed with ACAP;
- k) Defendant shall promptly accept service of all certified mail sent to him by the State Bar at the address on record with the State Bar Membership Department;
- l) Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or of any state or local government (other than minor

traffic offenses) during the stayed suspension; and

- m) Defendant shall keep the State Bar Membership Department advised of his current physical business and home addresses (not post-office box or drawer addresses), telephone number(s), and email address(es). Defendant shall notify the State Bar of any change in address within ten days of such change.

4. If Defendant fails to comply with any of the conditions of the stayed suspension provided in paragraph 3(a) through (m), the stay of the suspension may be lifted and the suspension activated as provided in 27 N.C. Admin. Code 1B.0118(a).

5. If the stay of suspension is lifted and the suspension is activated for any reason, and if Defendant fails to fully comply with 27 N.C. Admin. Code 1B.0128, Defendant shall reimburse the North Carolina State Bar for any 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 the appointed trustee and/or the trustee's assistant(s) for time and travel associated with the trusteeship. The State Bar shall send an invoice of the expenses incurred by the State Bar in winding down Defendant's practice to Defendant at the address on file with the State Bar Membership Department. Defendant shall not be eligible for reinstatement until he has reimbursed the State Bar for any and all wind-down expenses incurred.

6. If the stay of the suspension is lifted and the suspension is activated for any reason, upon application for another stay or for reinstatement, as permitted and applicable under the pertinent order(s) and rules, Defendant shall demonstrate by clear, cogent, and convincing evidence compliance with the requirements of the applicable rule as well as with the following requirements:

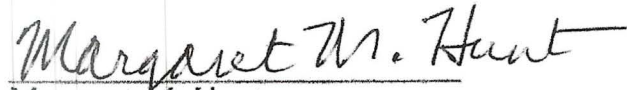
- (a) That Defendant submitted his law license and membership card to the Secretary of the North Carolina State Bar within thirty days of the date of the order lifting the stay and/or activating the suspension of his law license;
- (b) That Defendant properly wound down his law practice and complied with the provisions of 27 N.C. Admin. Code 1B.0128 following entry of the order lifting the stay and/or activating the suspension of his law license;
- (c) That Defendant paid all administrative fees and costs assessed against him in this proceeding as reflected on the statement of costs served upon him by the Secretary of the North Carolina State Bar and all administrative fees and costs of the proceeding that resulted in activation of the suspension as assessed by the Secretary by the date of the filing of his petition for reinstatement;

- (d) That within fifteen days of the effective date of the order lifting the stay and/or activating the suspension of his law license, Defendant provided the State Bar Office of Counsel with an address and telephone number at which clients seeking return of files could communicate with Defendant and obtain such files;
- (e) That Defendant provided within ten days client files to all clients who made a request for return of their files;
- (f) That Defendant kept the North Carolina State Bar Membership Department advised of his current physical business address (not post-office box or drawer addresses), telephone number(s), and e-mail address(es) and notified the State Bar Membership Department of any change in address within ten days of such change;
- (g) That Defendant accepted all certified mail from the State Bar sent to the address on record with the State Bar Membership Department;
- (h) That Defendant provided full and complete responses to and all requested documentation in response to all communications from the North Carolina State Bar, including letters of notice, requests for information, and communications from the Attorney Client Assistance Program, within fifteen days of receipt of such communication or by the deadline stated in the communication, whichever is sooner, and participated in good faith in the State Bar's fee dispute resolution program for any petition that was pending at the time of the entry of this Order or of which he received notice after entry of the Order;
- (i) That, at the time of his petition for reinstatement, Defendant is current in payment of all North Carolina State Bar membership dues, fees and costs, including all Client Security Fund assessments and other charges or surcharges the State Bar is authorized to collect from him, including all judicial district dues, fees, and assessments;
- (j) That, at the time of his petition for reinstatement, there is no deficit in Defendant's completion of mandatory CLE hours, in reporting of such hours, or in payment of any fees and costs associated with attendance at CLE programs; and
- (k) That Defendant did not violate the Rules of Professional Conduct of North Carolina or of any other jurisdiction in which he is licensed to practice law or the laws of the United States or of any state or local government, other than minor traffic violations, during his suspension; and

- (l) That Defendant reimbursed the State Bar for any wind-down expenses incurred by the State Bar.

5. Unless Defendant's obligations under this Order are modified by further order of the Disciplinary Hearing Commission (DHC), Defendant's obligations under this Order end two years from the effective date of this Order, provided there are no pending motions to activate the suspension of his law license alleging lack of compliance with the conditions of the stay of the suspension. Pursuant to 27 N.C. Admin. Code 1B.0118, the DHC retains jurisdiction until all conditions of the stay of the suspension have been met. If a motion or show cause proceeding alleging lack of compliance with the conditions for the stay of the suspension is pending when the period of the stay of the suspension would otherwise have terminated, the DHC retains the jurisdiction and may lift the stay of the suspension and activate the two-year suspension in whole or in part if it finds that any of the conditions of the stay have not been met. The stay of the suspension and Defendant's obligation to comply with the conditions for the stay will continue until resolution of any such pending motion or show cause proceeding.

Signed by the undersigned Chair with the knowledge and consent of the other members of the Hearing Panel, this is the 26th day of February, 2022.


Margaret M. Hunt
Hearing Panel Chair

CONSENTED TO:



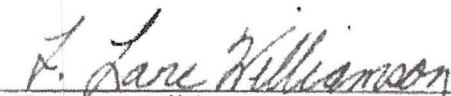
Savannah Perry, Deputy Counsel
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James Landivar, Defendant



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