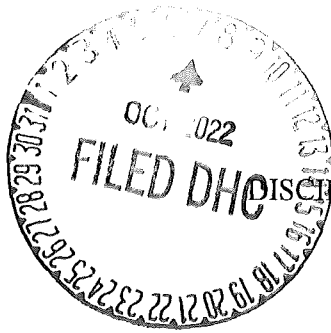


NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
20 DHC 17R

THE NORTH CAROLINA STATE BAR,	)	
	)	
Plaintiff	)	ORDER DENYING
v.	)	VERIFIED MOTION FOR
	)	STAY
DANIEL S. RUFTY, Attorney	)	
	)	
Defendant	)	

THIS MATTER coming before a Panel of the Disciplinary Hearing Commission for consideration of Defendant Daniel S. Rufty’s Verified Motion for Stay filed pursuant to the provisions of the Consent Order of Discipline in this matter dated 8 April 2021 and 27 N.C. Admin. Code 1B §.0118. The Verified Motion for Stay was heard on 1 September 2022. Daniel S. Rufty was present and represented by Attorney Bo B. Caudill. The North Carolina State Bar was represented by Deputy Counsel Savannah B. Perry and Attorney Joshua T. Walthall. The Panel consisted of Chair Margit Monaco Hicks, and members William A. Oden, and Heath R. Jenkins.

Based upon the record and the evidence presented the Panel makes, by clear, cogent, and convincing evidence, the following:

FINDINGS OF FACT

1. In a Consent Order of Discipline filed 8 April 2021, a hearing panel of the Disciplinary Hearing Commission suspended Daniel S. Rufty (“Rufty”) from the practice of law for five years effective thirty days from the date the Order was served on Rufty.
2. Rufty was served with the 8 April 2021 Consent Order of Discipline on 12 April 2021 and the effective date of the Order was 12 May 2021.
3. The 8 April 2021 Consent Order of Discipline provided that Rufty may apply for a stay of any remaining period of suspension after serving no less than six months of the active suspension and upon compliance with conditions stated in the Order.
4. On 26 April 2022, Rufty filed a Verified Motion to Stay Suspension.

5. The Office of Counsel for the North Carolina State Bar filed an Objection to Verified Motion for Stay on 24 May 2022.

6. The 8 April 2021 Consent Order of Discipline required that to be eligible for a stay of the remaining period of suspension Rufty must establish by clear, cogent, and convincing evidence compliance with the following conditions:

- (a) That Rufty paid the administrative fees and costs of this proceeding, including the costs of the State Bar's deposition of Rufty, the court reporters' appearance fees, and the State Bar's expense of obtaining the deposition transcript, and any other expenses;
- (b) That Rufty surrendered his law license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this Order upon him;
- (c) That Rufty complied with the wind down provisions of 27 N.C.A.C. 1B § .0128 of the State Bar Rules;
- (d) That Rufty kept the North Carolina 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) and notified the State Bar of any changes within ten days of such change;
- (e) That Rufty accepted all certified mail from the State Bar sent to the address on record with the State Bar Membership Department;
- (f) That Rufty provided full and complete responses to all communications from the State Bar, including communications from the Attorney Client Assistance Program ("ACAP"), within thirty days of Rufty's receipt of the 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 process for any petition filed with ACAP;
- (g) That Rufty remained current in payment of all 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 incurred during the length of Rufty's suspension to the date of his filing a motion in the cause; Rufty provided proof of such payment to the North Carolina State Bar Office of Counsel within ten days of the date of payment;
- (h) That Rufty did 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 violations, during the active suspension;

- (i) That Rufty fully and promptly cooperated with all government or regulatory or licensing agencies investigating CLS or any entity, law firm, third party, lawyer, or individual formerly or presently related to or in any way connected to CLS (“CLS related persons or entities”). “Fully and promptly cooperated” includes, at minimum, executing affidavits truthfully swearing to all facts and circumstances relating to his own acts and practices and relating to the acts and practices of CLS related persons or entities; submitting to interviews and depositions at the request of any such agency and truthfully and fully answering all questions posed to him during such interviews and depositions regarding his own acts and practices and regarding the acts and practices of all CLS related persons and entities; permitting the North Carolina State Bar Office of Counsel to share any and all documents related to his own acts and practices of CLS related persons or related entities; and
- (j) That Rufty entered into a contract with a practice monitor as described in the 8 April 2021 Consent Order of Discipline.

7. By the terms of the 8 April 2021 Consent Order of Discipline, the burden of proof is on Rufty to show by clear, cogent, and convincing evidence that he complied with the provisions set forth in the Order.

8. As of 26 April 2022, when Rufty filed the Verified Motion to Stay Suspension, Rufty had not paid all 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.

9. Up to and including the date of the hearing in this matter, Rufty owed an administrative fee in the amount of \$350.00 taxed to him upon the issuance of a Censure by the Grievance Committee of the North Carolina State Bar in August 2021.

10. Rule .0128(a) provides that suspended members of the North Carolina State Bar will, among other things, “take reasonable steps to avoid foreseeable prejudice to the rights of his or her clients, including promptly delivering all file materials and property to which the clients are entitled to the clients or the clients’ substituted attorney.” This obligation mirrors that of Rule 1.16(d) of the Rules of Professional Conduct, which provides: Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred.

11. The 8 April 2021 Consent Order of Discipline found that Rufty had charged clients illegal and excessive fees. However, as of the date of the hearing in this matter, Rufty had not taken steps to return these fees in compliance with Rule .0128(a) and Rule of Professional Conduct 1.16(d).

12. Thus, Rufty has not returned all unearned and clearly excessive fees to his clients.

13. Rule .0128(d) expressly requires the suspended lawyer to file with the Secretary an affidavit showing that he fully complied with the provisions of the Order and with the provisions of Rule .0128.

14. As of the date of the hearing in this matter, Rufty had not filed an affidavit in compliance with Rule .0128(d).

15. At the hearing on 1 September 2022, at the close of Rufty's evidence, the North Carolina State Bar made a request to deny Rufty's Verified Motion for Stay on the grounds that Rufty had failed to carry his burden of showing by clear, cogent, and convincing evidence that Rufty had satisfied all of the conditions for a stay of the suspension set forth in the 8 April 2021 Consent Order of Discipline.

Based on the foregoing Findings of Fact, the Hearing Panel makes, by clear, cogent, and convincing evidence, the following:

#### CONCLUSIONS OF LAW

1. All parties are properly before the Disciplinary Hearing Commission and the Disciplinary Hearing Commission has jurisdiction over Defendant, Daniel S. Rufty, and the subject matter of this proceeding.

2. Rufty has not shown by clear, cogent, and convincing evidence that he has complied with the conditions required to apply for a stay of the remaining portion of the suspension set forth in the 8 April 2021 Consent Order of Discipline.

3. Rufty does not presently qualify for a stay of the suspension entered against him in the 8 April 2021 Consent Order of Discipline.

WHEREFORE, in light of the above Findings of Fact and Conclusions of Law, the Hearing Panel hereby enters the following:

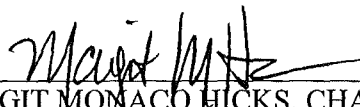
#### ORDER

It is hereby ordered that:

- (a) The State Bar's request to deny Defendant's Verified Motion for Stay is GRANTED and Defendant's Verified Motion for Stay is DENIED;

- (b) Defendant is taxed with the costs and administrative fees of this matter, which Defendant shall pay within 180 days of service upon him of the statement of costs by the Secretary; and
- (c) Defendant may submit a petition for a stay of the remaining years of his suspension once he has complied with all of the conditions set forth in the 8 April 2021 Consent Order of Discipline, including, without limitation, those conditions Defendant failed to show compliance with at the hearing on 1 September 2022, and the requirement that Defendant pay within 180 days of service the costs and administrative fees of this matter; it remains Defendant's burden to show that he has complied with all of the conditions set forth in the 8 April 2021 Consent Order of Discipline by clear, cogent, and convincing evidence.

Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Panel, this 7 day of October, 2022.

  
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MARGIT MONACO HICKS, CHAIR  
HEARING PANEL