

STATE OF NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

WAKE COUNTY

2017 NOV 22 P 2:12

17 CVS 5625

THE NORTH CAROLINA STATE BAR,

Petitioner

v.

CHARLES R. GURLEY, Attorney,

Respondent

ORDER OF
PRELIMINARY INJUNCTION

This matter was heard by the undersigned on 22 November 2017 in Wake County Superior Court after an Order to Show Cause was served upon Charles R. Gurley notifying him of the issue to be considered and the time and place of the hearing. Maria J. Brown, Deputy Counsel of the North Carolina State Bar, appeared on behalf of the North Carolina State Bar. Gurley appeared and was represented by B. Geoffrey Hulse. Based upon the the record, the evidence presented at the hearing, the arguments of counsel, and the relevant authority, the Court makes the following

FINDINGS OF FACT.

1. The previous findings of fact in prior orders of the Court in this matter are incorporated by reference as if fully set out herein.

2. Since the State Bar's receipt of notice on 2 November 2016 that a check for \$50.00 was presented against insufficient funds ("NSF") in Gurley's trust account, the State Bar has attempted to obtain from Gurley information and records regarding the NSF and Gurley's trust account more generally.

3. Gurley's failure to respond to the State Bar's inquiries and directives regarding the NSF in November and December 2016 resulted in the opening of a grievance file, 17G0002.

4. On 2 February 2017, the State Bar sent Gurley by certified mail a Letter of Notice in 17G0002. The Letter of Notice directed Gurley to provide, in addition to his narrative explanation regarding the NSF, bank and trust account records relating to the NSF.

5. The Letter of Notice was delivered to Gurley on 6 February 2017, and Gurley was to respond within 15 days of receipt of the Letter of Notice.

6. Gurley did not respond to the Letter of Notice in 17G0002.
7. On 20 March 2017, Gurley was personally served with a subpoena commanding him to appear at the State Bar on 10 a.m. on 23 March 2017, submit to examination, and produce the trust account records relating to the NSF that Gurley had been required to produce pursuant to the Letter of Notice.
8. Gurley did not appear pursuant to the subpoena. Gurley did produce via email a limited amount of the documentation he was required to produce.
9. Gurley's continued failure to produce to the State Bar trust account records and client files related to 17G0002 ultimately resulted in the issuance by this Court of a Temporary Restraining Order, Order of Preliminary Injunction, Judgment of Contempt and Order for Arrest, and Order Denying Motion to Stay.
10. On 30 March 2017, Gurley was served with Letters of Notice in grievance file numbers 17G0084, 17G0086, and 17G0236. Gurley was to respond to these Letters of Notice within 15 days of receipt.
11. Gurley has not provided a response to any of the Letters of Notice referenced in the prior paragraph.
12. On 7 June 2017, Gurley was served with a Letter of Notice in grievance file number 17G0541.
13. Gurley provided an incomplete response to the Letter of Notice on 16 June 2017.
14. On 26 June 2017, Gurley was served with a Letter of Notice in grievance file number 17G0580. Gurley was to respond to the Letter of Notice within 15 days of receipt.
15. Gurley has not provided a response to the Letter of Notice in 17G0580.
16. Gurley's failure to respond to the Letters of Notice in 17G0084, 17G0086, 17G0236, and 17G0580 and to provide a complete response to the Letter of Notice in 17G0541 resulted in the issuance of a subpoena on 6 September 2017 commanding him to appear at the State Bar on 10 a.m. on 19 September 2017 and produce documents and respond to examination.
17. The subpoena was served on Gurley on 8 September 2017.
18. Gurley failed to appear pursuant to the subpoena.
19. Grievance file number 17G0580 involves allegations that Gurley misappropriated a \$50,000.00 personal injury settlement from his client C.S.

20. The State Bar is in possession of evidence showing that, in February and March 2017, Gurley and his staff told C.S. on multiple occasions that Gurley had C.S.'s \$50,000 settlement in his trust account.

21. The State Bar is in possession of evidence showing that, in February and March 2017, Gurley and/or his staff offered various reasons why the funds could not be disbursed to C.S., including that Gurley needed permission from the judge to disburse the funds.

22. The State Bar is in possession of evidence showing that, on 30 March 2017, Gurley told C.S. that he had to turn the matter over to "the mediator" and that C.S. could expect to hear from the mediator once he'd had an opportunity to review the case.

23. The State Bar is in possession of evidence showing that on 21 April 2017, Gurley represented to C.S. that he had given the settlement proceeds to the mediator.

24. The State Bar is in possession of evidence showing that, since 1 January 2014, Gurley has only made one deposit into his trust account of at least \$50,000.00: a \$55,000.00 deposit made on behalf of client D.H. on 16 May 2016.

25. The State Bar has not been able to find any record of any court proceeding filed on behalf of C.S.

26. The State Bar has not been able to ascertain whether any settlement check has ever been issued on behalf of C.S.; if so, whether the check has been negotiated; and if so, what became of the funds.

27. The State Bar's demands of information from Gurley, as described above, are lawful.

28. Gurley's refusal to provide information to the State Bar hinders its efforts to investigate allegations of Gurley's misconduct and therefore to fulfill its mission of protecting the public.

29. In particular, Gurley's refusal to provide information to the State Bar in 17G0580 has prevented the State Bar from meaningfully investigating the allegations of serious misconduct at issue in that matter.

30. As described above, Gurley is engaged in an ongoing pattern of misconduct which includes knowingly disobeying obligations under the rules of a tribunal in violation of Rule 3.4(c), knowingly failing to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b), and engaging in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

31. A need for prompt action exists to protect the public and the administration of justice from continuing misconduct by Gurley, particularly where his refusal to comply with the State Bar's lawful demands for information thwarts the agency's ability to act for the protection of the public.

32. Gurley received notice of these proceedings.

33. Gurley has not produced all of the records necessary to purge himself of the contempt order of the Court.

Based upon the foregoing, the Court makes the following

CONCLUSIONS OF LAW.

1. This Court has personal jurisdiction over Respondent and jurisdiction over the subject matter of this action.

2. Gurley remains in contempt of the Court.

3. The courts of this State have inherent authority to regulate the conduct of lawyers. *See Beard v. State Bar*, 320 N.C. 126, 129 (1987); *In re Hunoval*, 294 N.C. 740, 744 (1977); *In re Burton*, 257 N.C. 534, 542-43 (1962); *Couch v. Private Diagnostic Clinic*, 146 N.C. App. 658, 665 (2001).

4. Gurley should be enjoined from engaging in the practice of law as defined in N.C. Gen. Stat. § 84-2.1 from the date of entry of this Order until a subsequent hearing in this matter to be held on December 15, 2017.

5. For the protection of Gurley's clients and the administration of justice, a trustee should be appointed to protect the interests of Gurley's clients while he is prohibited from practicing law.

6. Gurley should be required to cooperate with the trustee, the State Bar, and his attorney to assist the State Bar in completing its investigation of the matters covered by the Judgment of Contempt and the matters brought to the Court's attention today.

7. Gurley should be enjoined from entering the premises of his law office without the appointed trustee and/or State Bar personnel.

8. Gurley should be released from custody of the Wayne County Sheriff on November 23, 2017, not earlier than 7:00 a.m.

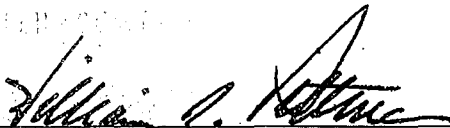
THEREFORE, IT IS HEREBY ORDERED:

1. Charles R. Gurley is hereby enjoined from engaging in the practice of law as defined in N.C. Gen. Stat. § 84-2.1 until a subsequent hearing is held in this matter on December 15, 2017.

2. A trustee or trustees shall be appointed to protect the interests of Gurley's clients while he is prohibited from practicing law.

3. Gurley shall not enter the premises of his law office unless accompanied by the trustee(s) and/or State Bar personnel.
4. Gurley shall comply in all respects with all requests for information from the Office of Counsel of the North Carolina State Bar.
5. Gurley shall cooperate in all respects with the appointed trustee(s) to protect the interests of his clients while he is prohibited from practicing law.
6. Gurley shall cooperate in all respects with the trustee(s), the State Bar, and his attorney to assist the State Bar in completing its investigation of its pending grievances.
7. Gurley shall be released from custody of the Wayne County Sheriff on November 23, 2017, not earlier than 7:00 am.
8. Gurley remains in contempt of court until this injunction is lifted. If he fails to cooperate in any respect with the trustee or State Bar, he shall be returned immediately to the custody of the Sheriff of Wayne County.
9. This Order of Preliminary Injunction shall remain in effect until further order of this Court.

It is so ordered this the 22nd day of November, 2017.



William R. Pittman
Superior Court/Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was served on all parties by serving counsel as indicated below by U.S. Mail, postage prepaid, addressed as follows, with a courtesy copy sent via email on November 22, 2017:

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This the 22nd day of November, 2017.



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