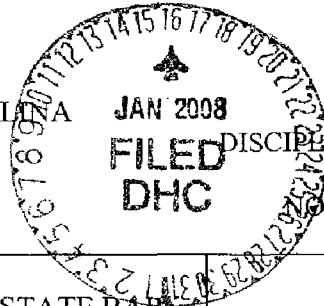


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
07DHC19

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

PAUL E. HEMPHILL, Attorney,

Defendant

CONSENT ORDER

This matter was considered by a hearing committee of the Disciplinary Hearing Commission composed of T. Richard Kane, Chair, M. H. Hood Ellis and Johnny A. Freeman. Robert A. Crabill represented the Plaintiff, the North Carolina State Bar. The Defendant, Paul E. Hemphill, represented himself. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Defendant freely and voluntarily waives any and all right to appeal the entry of this consent order of discipline. Based upon the stipulations of fact and the consent of the parties, the hearing committee 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 North Carolina General Statutes, and the rules and regulations of the North Carolina State Bar (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, Paul E. Hemphill ("Hemphill" or "defendant"), was admitted to the North Carolina State Bar in 1975, 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 all or part of the relevant periods referred to herein, Hemphill was engaged in the practice of law in the state of North Carolina and maintained a law office in Charlotte, Mecklenburg County, North Carolina.

4. Beginning in 2003, Marjorie Lewis ("Lewis") retained defendant to handle a personal injury case for her.

5. Throughout the course of the representation, Lewis would repeatedly call defendant to try and determine what activity, if any, was taking place on her behalf.

6. During early 2005, Lewis called defendant each week for over two months and yet received no response from defendant.

7. On March 9, 2005, Lewis wrote defendant informing him that she had not been able to get in touch with him for months and asking him to please give her case to someone else if he did not have time to help her or take her matter seriously.

8. In her March 9, 2005 letter to defendant, Lewis urged defendant to get in touch with her as soon as possible and let her know what was happening with her case.

9. Lewis did not receive any response from defendant after she sent her letter on March 9, 2005.

10. Lewis never received any documents from defendant regarding her case and was never made aware of whether defendant was doing any work on her behalf at all.

11. On the rare occasions when Lewis was able to reach defendant on the telephone he could never provide her with any information other than to tell her that "things are going along."

12. Having no response from defendant, Lewis contacted the State Bar Client Assistance Program on June 21, 2005 for help due to her inability to communicate with defendant regarding the status of her case.

13. The State Bar Client Assistance Program attempted to contact defendant on June 21, June 22, and June 23, 2005 but did not have any success in reaching defendant.

14. On July 5, 2005 Lewis filed a grievance with the North Carolina State Bar. This grievance was assigned file number 05G0734.

15. Defendant received a certified letter from the State Bar Client Assistance Program on July 8, 2005 and finally contacted the Client Assistance Program on July 14, 2005.

16. Defendant informed the State Bar Client Assistance Program that he would write Lewis regarding the status of her case no later than July 15, 2005.

17. On information and belief, defendant never sent Lewis any letter updating the status of her case.

18. Defendant received a Letter of Notice and Substance of Grievance from the State Bar on September 21, 2005.

19. The Letter of Notice informed defendant that he had fifteen days to submit his response to the Letter of Notice. On October 17, 2005, the State Bar Office of Counsel wrote defendant reminding him that he had not yet responded to the Letter of Notice and telling him that he needed to respond by October 24, 2005.

20. On November 1, 2005, defendant did file a response to the Letter of Notice with the State Bar.

21. In his response to the Letter of Notice, defendant stated that the personal injury case of Ms. Lewis was still pending and properly before the court.

22. In his response to the Letter of Notice, defendant did not deny that for a two month period he did not have any contact with Ms. Lewis. He stated that he did talk to her in late June or early July 2005 and provided her additional information about her case.

23. In his response to the Letter of Notice, defendant stated that he provided Ms. Lewis with additional phone numbers where he could be reached including his cell phone number and he stated that he did not anticipate the communication problems would occur again.

24. Lewis continued to have problems communicating with defendant even after his assurances to the Grievance Committee that these problems would not occur again.

25. Lewis had no contact with defendant from October 2005 until at least March 2006 with the exception of one telephone conversation around Christmas time 2005.

26. On March 2, 2006 Deputy Counsel for the State Bar again wrote a letter to defendant asking him to provide specific information regarding Lewis' lawsuit, including its status with the court, whether discovery had been conducted, whether settlement negotiations had been engaged in, and any other information relative to the status of the lawsuit. Deputy Counsel also asked defendant to indicate what contact if any he had with Ms. Lewis during the course of his representation.

27. Deputy Counsel for the State Bar requested in the March 2, 2006 correspondence to defendant that defendant respond to these questions by March 15, 2006.

28. Defendant finally responded to the March 2, 2006 letter on May 22, 2006. In this May 22, 2006 letter, defendant responded that the case regarding Ms. Lewis was not prosecuted aggressively by defendant. Defendant asserted that things had changed and in addition to corresponding with Ms. Lewis, defendant was seeking a resolution of her claim.

29. On March 19, 2007, the lawsuit filed by defendant on behalf of Lewis was dismissed with prejudice by the Mecklenburg County Superior Court due to defendant's failure to use due diligence in attempting to obtain service on the adverse party to the lawsuit.

30. In May 2005, Roddrick Dunlap ("Dunlap") retained defendant to represent him with regards to filing a complaint for visitation with his minor child.

31. On May 12, 2005, defendant submitted the complaint that he had prepared on behalf of Dunlap to Dunlap for Dunlap's signature on the verification page.

32. Dunlap received the proposed complaint and did in fact sign the verification page on June 16, 2005 and promptly returned the signed document back to defendant.

35. For the next two months, Dunlap contacted defendant to inquire about the status of the filing of the complaint. Defendant would tell Dunlap that the complaint would be filed imminently and on some occasions even told Dunlap that the papers had been mailed to the adverse party in the case.

36. Dunlap informed defendant in July that the adverse party would be moving in four weeks and that it was imperative that the papers be sent to her.

37. Defendant informed Dunlap that he would get the papers out immediately.

38. Defendant never did send the papers to the adverse party on Dunlap's behalf.

39. On August 13, 2005, Dunlap informed defendant that Dunlap desired defendant to discontinue working on this visitation case due to defendant's failure to timely deliver the work he promised back in May as well as defendant's unprofessionalism exemplified by his neglect and unresponsiveness to Dunlap.

40. In a letter from Dunlap to defendant mailed and faxed on August 16, 2005 Dunlap did also ask for a refund of \$880.00 from the \$1,000.00 fee that he had paid to defendant.

41. In the August 16, 2005 letter Dunlap acknowledged that defendant had earned the \$120.00 fee agreed to for a separate case involving a restraining order.

42. Defendant did not respond to Dunlap's August 16, 2005 letter.

43. Dunlap thereafter filed a Petition for Resolution of Disputed Fee ("fee dispute") with the North Carolina State Bar on September 16, 2005. This matter was assigned file number 05FD0533.

44. The fee dispute matter was referred to the Mecklenburg County Bar Fee Dispute Resolution Committee and assigned to a mediator on October 3, 2005.

45. In late October 2005, the mediator successfully mediated the fee dispute and defendant agreed to refund \$700.00 to Dunlap.

46. On October 27, 2005 the mediator faxed and mailed defendant a settlement agreement and release reflecting this agreement.

47. The mediator never heard back from defendant despite many attempts to contact defendant by telephone.

48. When the mediator was finally able to speak to defendant, defendant assured the mediator that defendant would mail a check by November 18, 2005.

49. The mediator wrote another letter to defendant on November 17, 2005 reiterating that he was expecting a check by the next day. This letter also reminded defendant that his refusal to send a check would be a violation of the Revised Rules of Professional Conduct for not handling the fee dispute matter in good faith.

50. The mediator never received defendant's check nor did defendant ever contact him again.

51. After defendant refused to send the check he had agreed to send in the fee dispute matter, the State Bar opened a grievance file on February 9, 2006. This file was assigned file number 06G0152.

52. On March 13, 2006, the State Bar sent a Letter of Notice and Substance of Grievance to defendant and this Letter of Notice was served personally on defendant on April 19, 2006.

53. Defendant responded to the Letter of Notice on May 4, 2006 and did submit a money order made out to Dunlap in the amount of \$700.00 as previously agreed.

54. Defendant's response received May 4, 2006 did not address the issues regarding neglect and lack of communication and lack of participation in good faith in the fee dispute program.

55. Deputy Counsel to the State Bar wrote defendant on May 8, 2006 asking him to address these further issues by May 23, 2006.

56. Defendant did not respond to the May 8, 2006 letter.

CONCLUSIONS OF LAW

1. All the parties are properly before the hearing committee and the committee has jurisdiction over the Defendant, Paul E. Hemphill, and the subject matter.

2. Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-28(b)(2) as follows:

- a) By failing to provide the legal services Lewis hired him to perform, defendant failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;
- b) By failing to respond to Lewis' inquiries about her case, defendant failed to keep his client reasonably informed in violation of Rule 1.4(a)(3) and failed to comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- c) By failing to provide the legal services Dunlap hired him to perform, defendant failed to act with reasonable diligence and promptness in representing the client in violation of Rule 1.3;
- d) By failing to respond to Dunlap's inquiries about his case, defendant failed to keep his client reasonably informed in violation of Rule 1.4(a)(3) and failed to comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- e) By collecting a fee from Dunlap and then failing to provide the legal representation for which Dunlap paid the fee, defendant collected a clearly excessive fee in violation of Rule 1.5(a);
- f) By failing to promptly refund the unearned fees upon termination of the representation by Dunlap, defendant failed to protect a client's interest upon termination of the representation in violation

of Rule 1.16(d) and failed to promptly deliver to a client funds belonging to the client in violation of Rule 1.15-2(m); and

- g) By failing to follow through on the agreed settlement in the fee dispute matter and by failing to respond to messages and letters from the fee dispute mediator, defendant failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f).

Based upon the stipulations of fact and the consent of the parties, the hearing committee hereby finds by clear, cogent, and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. Hemphill's misconduct is aggravated by the following factors:
 - a) Prior disciplinary offenses, to wit; an admonition in 1997, two reprimands in 1998, a censure in 1998, a 12 month stayed suspension in 2003 and an activation of 30 days of the 2003 12 month suspension in 2004;
 - b) Pattern of misconduct in this matter;
 - c) Multiple offenses in this matter; and
 - d) Substantial experience in the practice of law.
2. The Defendant's misconduct is mitigated by the following factors:
 - a) Absence of a dishonest or selfish motive.
3. The aggravating factors outweigh the mitigating factors.
4. Defendant has engaged in conduct that has caused significant harm to his clients and the administration of justice. Further, Defendant's failure to respond to the fee mediation process on a timely basis had the potential to cause significant harm to the standing of the legal profession in the eyes of the public because it shows disdain for his obligations as an attorney. The Defendant has not shown an ability to conform his conduct to the requirements of the Rules of Professional Conduct concerning neglect and communication.
5. The conduct of Defendant caused actual harm to the standing of the legal profession, undermining his clients' trust and confidence in lawyers and the legal system.

6. Defendant's failure to respond to the fee mediation process on a timely basis interfered with the State Bar's ability to regulate attorneys and undermined the privilege of lawyers in this State to remain self-regulating.

7. This DHC Committee has considered lesser alternatives and finds that a public censure or reprimand would not be sufficient discipline because of the gravity of the harm caused by the conduct of the Defendant to the public and to the administration of justice.

8. This DHC Committee finds Defendant's conduct caused significant harm and significant potential harm to clients and to the administration of justice, to the profession, and to members of the public, and that a more severe discipline is necessary to protect the public.

9. For those reasons, this DHC Committee believes and so finds that an Order calling for a discipline short of a suspension of Defendant's law license would not be appropriate.

Based upon the foregoing factors and with the consent of the parties, the hearing committee hereby enters the following

ORDER OF DISCIPLINE

1. Defendant, Paul E. Hemphill, is hereby suspended from the practice of law in North Carolina for five years.

2. Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon Defendant.

3. Defendant shall comply with the wind down provisions contained in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124(b) of the North Carolina State Bar Discipline & Disability Rules. Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within 10 days of the effective date of this order, certifying he has complied with the wind down rule.

4. All costs of this action are taxed to Defendant. Defendant must pay the costs within 30 days of service of the statement of costs by the Secretary.

5. After serving two years of the active suspension of his license, Defendant may apply to have the remainder of the suspension stayed by filing a petition with the Secretary of the North Carolina State Bar demonstrating the following by clear, cogent, and convincing evidence:

- a. That he properly wound down his law practice and complied with the terms of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the State Bar Discipline & Disability Rules;
- b. That he paid the costs of this proceeding within 30 days of service of the statement of costs upon him;
- c. That he has kept the North Carolina State Bar Membership Department advised of his current business and home address;
- d. That he has responded to all communications from the North Carolina State Bar received after the effective date of this order within 30 days of receipt or by the deadline stated in the communication, whichever is sooner; this includes communications from the Attorney Client Assistance Program of the State Bar as well as formal notices from the State Bar;
- e. That he has not violated the Revised Rules of Professional Conduct or the laws of the United States or any state; and
- f. That he paid all Membership dues and Client Security Fund assessments and complied with all Continuing Legal Education (CLE) requirements on a timely basis as if still in practice during the suspension. The State Bar does not send membership and CLE notices to members who are suspended so it is Defendant's obligation to contact the appropriate departments on a timely basis, ascertain his financial and CLE obligations during his suspension and to timely satisfy those obligations.
- g. In addition to the regular CLE requirements of the State Bar, Defendant completed an additional eight hours of CLE instruction in law office management and provided documentation of completion to the State Bar.

6. The procedures of 27 N.C. Admin. Code Chapter 1, Subchapter B, Section .0125(b) shall govern Defendant's petition for a stay of the remainder of the suspension of his law license.

7. If the Secretary finds that Defendant has proven compliance with the conditions of this order by clear, cogent, and convincing evidence, the Secretary shall put into effect the stay of the remaining period of suspension provided for in this Order by reinstating Defendant to active status subject to the terms, conditions, and requirements of this Order of Discipline, with Defendant's active status contingent upon continued compliance with the terms of this Order. Such stay will continue in force only as long as Defendant continues to comply with all conditions in this Order. The Disciplinary Hearing Commission will retain jurisdiction of the matter until all conditions of the Order are satisfied, under 27 N.C. Admin. Code Chapter 1, Subchapter B, Section .0114(x).

8. If Defendant successfully seeks a stay of the suspension of his law license, such stay will continue in force only as long as he continues to comply with the following conditions:

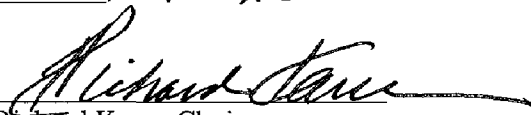
- a. The conditions set out in paragraphs 5 (c) – (g) of the Order of Discipline section of this Order; and
- b. Defendant shall promptly and timely respond to his clients, including returning telephone calls from all clients regardless of whether the clients have paid Defendant.

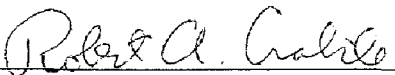
9. If an order staying any period of this suspension is entered and the Defendant fails to comply with any of the conditions referenced in Paragraph 8 of the Order of Discipline section of this Order, then the stay of the suspension of his law license may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

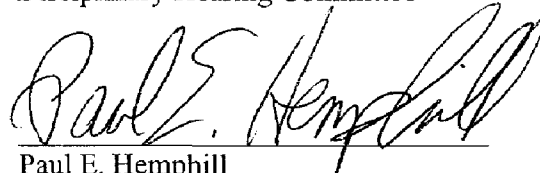
10. If Defendant does not seek a stay of the active portion of the suspension of his law license or if some part of the suspension is stayed and thereafter the stay is revoked, Defendant must prove each of the matters set out in paragraphs 5 (a) – (g) of the Order of Discipline section of this Order by clear, cogent, and convincing evidence before seeking reinstatement of his license to practice law.

11. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of the stayed suspension.

Signed by the Chair with the consent of the other hearing committee members, this the 16th day of JANUARY, 2007.8. TRK


T. Richard Kane, Chair
Disciplinary Hearing Committee


Robert A. Crabill
Attorney for Plaintiff


Paul E. Hemphill
Defendant