

STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
13 DHC 19

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

JOHN DAVID HAUSER, Attorney,

Defendant

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER OF DISCIPLINE

THIS MATTER was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Ronald R. Davis, Chair, Harriet Smalls and Karen B. Ray pursuant to 27 N.C. Admin. Code 1B § .0114 of the Rules and Regulations of the North Carolina State Bar. Plaintiff, the North Carolina State Bar, was represented by Mary D. Winstead. Defendant, John David Hauser, represented himself. Defendant waives a formal hearing in this matter and both parties stipulate and consent to the findings of fact, conclusions of law, and to the discipline imposed. Defendant waives any right to appeal this consent Order or to challenge in any way the sufficiency of the findings.

Based upon the pleadings, the parties' stipulated facts and with 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 ("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 (Chapter 1 of Title 27 of the North Carolina Administrative Code).
2. Defendant, John David Hauser ("Defendant"), was admitted to the North Carolina State Bar in 2000 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 Rules of Professional Conduct.
3. During all or part of the relevant periods referred to herein, Defendant was engaged in the practice of law in the State of North Carolina and maintained a law office in Raleigh, Wake County, North Carolina.

4. The North Carolina Board of Continuing Legal Education (CLE Board) mailed Defendant the annual CLE report form for 2011.
5. Defendant's 2011 annual report form was due to be signed and returned to the State Bar or postmarked by February 29, 2012.
6. Defendant failed to timely return the form.
7. The CLE Board mailed Defendant a second notice on March 14, 2012.
8. On May 10, 2012, the CLE Board issued a Notice to Show Cause to Defendant regarding his failure to return the 2011 Annual Report Form. The Notice to Show Cause required Defendant to submit his signed 2011 Annual Report Form and pay \$209 in fees (\$75 late filing fee and \$125 non-compliance fee) within thirty days of receipt of the Notice.
9. In a cover letter dated May 31, 2012, Defendant informed the CLE Board that he had mailed the original CLE annual report form on February 27, 2012 and enclosed a copy of the form he had purportedly signed and mailed on February 27, 2012.
10. Defendant also enclosed a check for \$209 stating he was "unsure how the Board will treat this set of circumstances."
11. The CLE report form that Defendant enclosed with his May 31, 2012 letter and which he represented to be a copy of the original report form that he had returned by the February 29, 2012 deadline, was actually the second notice which had not been mailed to Defendant until March 14, 2012.

Based upon the foregoing Findings of Fact, the panel enters the following

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the panel has jurisdiction over Defendant, John David Hauser, and the subject matter of this proceeding.
2. Hauser'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 submitting to the CLE Board an annual report form signed and dated February 27, 2012 and representing that this form was a copy of the original he had returned by the February 29, 2012 deadline when in fact the report form he submitted had not been mailed to him until March 14, 2012, Defendant attempted to mislead the Board and to avoid paying the late fees, and in so doing, Defendant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c).

Based upon the consent of the parties, the Hearing Panel also finds by clear, cogent, and convincing evidence the following

ADDITIONAL FINDINGS REGARDING DISCIPLINE

1. Defendant has substantial experience in the practice of law.
2. Defendant has been cooperative during the State Bar's investigation of this matter.
3. Defendant accepts responsibility for his conduct and has expressed genuine remorse.
4. Defendant has not previously been disciplined for violating the Rules of Professional Conduct.
5. It is vital to the integrity of the State Bar's CLE Program that attorneys be honest and accurate in all aspects of their CLE reporting.

Based upon the Findings of Fact, Conclusions of Law, and Additional Findings Regarding Discipline, the Hearing Panel also enters the following

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has carefully considered all of the different forms of discipline available to it. In addition, the Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0114(w)(3) of the Rules and Regulations of the North Carolina State Bar and finds the following factors are applicable in this matter:
 - a. Defendant has practiced law since 2000 and does not have a record of prior disciplinary offenses;
 - b. Dishonest motive;
 - c. Defendant has made full and free disclosure to the Hearing Panel or has demonstrated a cooperative attitude toward the proceedings;
 - d. Acknowledgement of the wrongful nature of the conduct;
 - e. Defendant is extremely remorseful for his conduct and for the impact of his conduct on the profession and the public's perception of the profession;
 - f. Defendant has substantial experience in the practice of law; and
 - g. Defendant has submitted letters from his pastor and other attorneys which indicate that Defendant demonstrates integrity in the practice of law and in his personal dealings.

2. The Hearing Panel has carefully considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and finds the following factors warranting consideration of suspension of Defendant's license:

- a. Circumstances reflecting the Defendant's lack of honesty, trustworthiness, or integrity; and
- b. Defendant's actions had a potential negative impact on the legal profession and on the public's perception of the legal profession.

3. The Hearing Panel has also carefully considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(2) of the Rules and Regulations of the North Carolina State Bar and concludes that the only factor present in this instance that would warrant consideration of disbarment is factor (B): Defendant's impulsive acts of dishonesty, misrepresentation, deceit, or fabrication without timely remedial efforts.

4. The Hearing Panel has considered all other forms of discipline available and concludes that any sanction less than suspension would fail to acknowledge the seriousness of the offenses committed by Defendant, the potential significant harm to the public and the legal profession, would not adequately protect the public, and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar.

5. The Hearing Panel finds and concludes that the public will be adequately protected by imposing a period of active suspension which is stayed upon Defendant's compliance with conditions designed to ensure protection of the public and to ensure Defendant's compliance with the Rules of Professional Conduct.

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

ORDER OF DISCIPLINE

1. The license of Defendant, John David Hauser, is hereby suspended for one year. This period of active suspension is stayed for one year upon Defendant's compliance with the following conditions:

- a. Defendant must complete four hours of continuing legal education that are accredited by the North Carolina State Bar CLE Department as professional responsibility or professionalism education in addition to the two hours of professional responsibility or professionalism education Defendant must complete to fulfill his annual CLE requirements;
- b. Defendant must pay the costs and administrative fees of this action as described in paragraph 5 below;

- c. Defendant shall provide the North Carolina State Bar with a physical mailing address which shall not be a post office box address and keep his address of record with the North Carolina State Bar current. Defendant shall accept all certified mail from the North Carolina State Bar and respond to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication or within fifteen (15) days of receipt, whichever is later;
- d. Defendant shall timely comply with his State Bar membership and continuing legal education requirements and pay all fees and costs assessed by the applicable deadline;
- e. Defendant shall participate fully and timely in the fee dispute program when notified of any petitions for resolution of disputed fees;
- f. Defendant shall not violate the laws of any state or of the United States; and
- g. Defendant shall not violate any provision of the Rules of Professional Conduct.

2. If Defendant fails to comply with any one or more of the conditions stated in Paragraph 1 above, then the stay of the suspension of his law license may be lifted as provided in 27 N.C. Admin. Code 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules. If the stay granted herein is lifted or the suspension of Defendant's license is activated for any reason, before a subsequent stay of the suspension can be entered Defendant must show by clear, cogent, and convincing evidence that he has complied with the general provisions for reinstatement listed in 27 N.C. Admin. Code 1B § .0125 of the North Carolina State Bar Discipline & Disability Rules and the conditions set out in Paragraphs 1 (a) – (g) above for any subsequent stay of the suspension.

3. If Defendant does not seek a stay of any active period of suspension as provided in Paragraph 2 above, Defendant must provide in his application for reinstatement clear, cogent, and convincing evidence of the following:

- a. Compliance with the general provisions for reinstatement listed in 27 N.C. Admin. Code 1B § .0125 of the North Carolina State Bar Discipline & Disability Rules; and
- b. Compliance with the conditions set out in Paragraphs 1 (a) – (g) above.

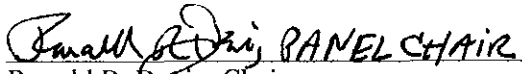
4. Unless Defendant's obligations under this Order are modified by further order of the DHC, Defendant's obligations under this Order end one year from the effective date of the Order provided there are no motions or show cause proceedings pending alleging lack of compliance with the conditions of the stay of the suspension. Pursuant to § .0114(x) of the North Carolina Discipline and Disability Rules, 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 ability to lift the stay of the suspension and activate the one 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.

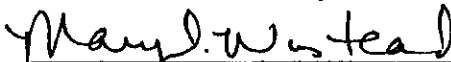
5. All costs and administrative fees of this action are taxed to Defendant. Defendant must pay the costs of this action within 120 days of service upon his of the statement of costs by the Secretary.

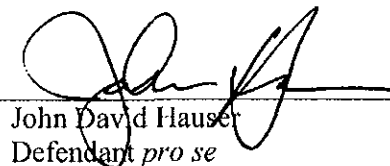
6. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules until all conditions of the stayed suspension are satisfied.

Signed by the Chair with the consent of the other Hearing Panel members, this the 30th day of OCTOBER, 2013.


Ronald R. Davis, Chair
Disciplinary Hearing Panel

CONSENTED TO BY:


Mary D. Winstead
Deputy Counsel
North Carolina State Bar
Counsel for Plaintiff


John David Hauser
Defendant *pro se*