

STATE OF NORTH CAROLINA
WAKE COUNTY

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

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

CHRISTOPHER H. RAHILLY, Attorney,
Defendant

ORDER OF DISCIPLINE

THIS MATTER was heard on 19 September 2014 by a hearing panel of the Disciplinary Hearing Commission composed of Barbara B. Weyher, Chair, Beverly T. Beal, and Michael S. Edwards pursuant to 27 N.C.A.C. 1B § .0114 of the Rules and Regulations of the North Carolina State Bar. Carmen Hoyme Bannon represented Plaintiff, the North Carolina State Bar. Defendant, Christopher H. Rahilly, represented himself.

Based upon the pleadings, stipulations, and evidence presented at the hearing, the hearing panel hereby finds by clear, cogent, and convincing evidence the following

FINDINGS OF FACT

1. Plaintiff, the North Carolina 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, Christopher H. Rahilly, was admitted to the North Carolina State Bar in 2009 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 Elizabeth City, Pasquotank County, North Carolina.
4. Defendant was properly served with process and received due notice of the hearing in this matter.
5. Rahilly's law practice consisted primarily of representing clients in domestic cases, including divorce, child custody, and adoption.

6. Rahilly represented Client A¹ in a child custody case in the summer of 2012.

7. Rahilly was acquainted with Client A prior to the representation, but they had not had any sexual contact.

8. During the representation, Rahilly sent Client A text messages containing photographs he had taken of himself, including full length nudes and graphic pictures of his erect penis.

9. While he was representing Client A, Rahilly kissed Client A during an office meeting that was ostensibly about her custody case.

10. Beginning in September 2012, Rahilly represented Client B in a custody matter and in connection with a domestic violence protective order. Rahilly and Client B—who was 23 years old at the time—did not know each other prior to the representation.

11. During the representation, Rahilly sent Client B text messages containing photographs he had taken of himself, including full length nudes and graphic pictures of his erect penis.

12. Rahilly asked Client B to send him sexually explicit pictures of herself.

13. Rahilly also sent Client B text messages with sexually explicit written content, including but not limited to:

- a. Messages about when they would be able to “play”;
- b. Comments about how Client B should “do some yoga” because she was going to “need to be flexible”;
- c. Inquiring about the “craziest place [Client B had] had sex”;
- d. Describing a dream he had in which he and Client B had sexual intercourse and he watched Client B perform oral sex on another man.

14. In late November 2012, Rahilly sent Client B a series of text messages in which he proposed that when Client B came to Rahilly’s office to retrieve her tape recorder, they could have sex. During this exchange, Rahilly informed Client B that he had had a vasectomy, so she could “ride bareback.”

15. Soon thereafter, Rahilly and Client B met in his office after hours and had sexual intercourse.

¹ To protect the privacy of the clients referenced herein, no identifying information is included in the pleadings and orders in this case. The identity of the individuals referred to herein as “Client A,” “Client B,” and “Client C” was made part of the record in a written stipulation filed under seal.

16. After they had intercourse, Rahilly continued to represent Client B in her custody case.

17. In or about May 2011, Rahilly began representing Client C in a child custody case. Rahilly and Client C did not know each other prior to the representation.

18. Soon after the representation began, Rahilly began sending Client C text messages containing sexual innuendo and requests for Client C to send him explicit pictures of herself.

19. During the representation, Rahilly repeatedly sent Client C text messages containing photographs he had taken of himself, including many graphic pictures of his erect penis and at least one full-length nude.

20. During the representation, Rahilly hugged Client C at least once, and on another occasion Client C sat on his lap.

21. During the time Rahilly represented Client C, he was employed as a salaried associate in a law firm, and was compensated through the firm's payroll.

22. All legal fees Rahilly earned while he was employed as an associate attorney were property of the law firm.

23. Rahilly worked on Client C's case during regular business hours and entered his billable hours in Client C's case into the firm's billing system.

24. As an associate, Rahilly did not have authority to "write off" or forgive a client's indebtedness to the firm.

25. Without the knowledge or authorization of any of the firm's partners, Rahilly wrote off approximately \$4,500.00 in legal fees to which the firm was entitled for his work on Client C's case.

26. Rahilly's unauthorized write off of Client C's fees deprived the firm of approximately \$4,500.00.

27. The photographs referenced in paragraphs 8, 11, and 19 above, which Rahilly took of himself and disseminated to his clients, were obscene within the definition of N.C. Gen. Stat. § 14-190.1(c).

28. It is a violation of North Carolina criminal statute (§ 14-190.5) to take an obscene photograph of oneself for purposes of dissemination.

29. It is also a violation of criminal statute (§ 14-190.1(a)) to disseminate obscene materials.

30. A lawyer's act of taking obscene photographs of himself for the purpose of disseminating those photographs to his clients reflects adversely on the lawyer's professional fitness.

31. Pursuant to a subpoena issued by the North Carolina State Bar's Grievance Committee, Rahilly appeared at the State Bar on 17 September 2013 and was interviewed by an Investigator and Deputy Counsel regarding allegations that he had sexual relationships with clients.

32. During the 17 September 2013 interview, Rahilly acknowledged "sexting" with some of his former clients, but stated that he knew it would be inappropriate to send explicit pictures and messages to current clients. Rahilly maintained that he never sent any such content to a client until after the representation concluded.

33. During the 17 September 2013 interview, Rahilly specifically denied having physical contact of any kind with Client A, Client B, and Client C.

34. At the time he made the statements to State Bar Office of Counsel staff described in paragraphs 32 and 33, above, Rahilly knew that those statements were false.

35. In response to a follow-up letter from the State Bar regarding the grievance investigation, Rahilly executed an affidavit dated 16 October 2013, in which he swore to the truth of the following statements:

- a. "I never had any physical contact with [Client A] of any kind."
- b. "I have never had any physical contact with [Client B]. [Client B]'s mother was present for virtually every meeting I can recall with [Client B] with the exception of the meeting with her husband."
- c. "I have never had any physical contact with [Client C] of any kind."

36. Rahilly knew, at the time he executed the 16 October 2013 affidavit, that the statements set forth in paragraph 35 above were false.

Based on the record and the foregoing Findings of Fact, the hearing panel makes the following:

CONCLUSIONS OF LAW

1. All parties are properly before the hearing panel and this tribunal has jurisdiction over Defendant, Christopher H. Rahilly, and the subject matter of this proceeding.

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) and (b)(3) in that Rahilly violated the Rules of Professional Conduct in effect at the time of the conduct and violated § 84-28(b)(3) as follows:

- (a) By sending sexually explicit messages and images to Client B and Client C and requesting that the clients reciprocate, Rahilly attempted to have sexual relations with his clients in violation of Rule 8.4(a) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- (b) By having intercourse with Client B, Rahilly engaged in sexual relations with a client in violation of Rule 1.19(a) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- (c) By writing off Client C's fees without the knowledge or authorization of the partners, thereby depriving the firm of funds to which it was entitled, Rahilly engaged in conduct involving dishonesty, deceit, or misrepresentation in violation of Rule 8.4(c);
- (d) By taking obscene pictures of himself for the purpose of disseminating those photographs to his clients, Rahilly engaged in criminal conduct reflecting adversely on his fitness as a lawyer in violation of Rule 8.4(b);
- (e) By making false statements during the September 2013 interview at the State Bar, Rahilly knowingly made false statements of material fact in connection with a disciplinary matter in violation of Rule 8.1(a) and engaged in conduct involving dishonesty, deceit, and misrepresentation in violation of Rule 8.4(c);
- (f) By making false statements under oath in the October 2013 affidavit, Rahilly knowingly made false statements of material fact in connection with a disciplinary matter in violation of Rule 8.1(a), and engaged in conduct involving dishonesty, deceit, and misrepresentation in violation of Rule 8.4(c); and
- (g) By making false statements in the September 2013 interview and the October 2013 affidavit, Rahilly knowingly misrepresented facts and circumstances surrounding allegations of misconduct issued by the State Bar in violation of N.C. Gen. Stat. 84-28(b)(3).

Based upon the foregoing Findings of Fact and Conclusions of Law, and the additional evidence regarding discipline presented at the hearing, the hearing panel hereby finds by clear, cogent, and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1 through 36 above are reincorporated as if fully set forth herein.
2. Defendant's decisions to repeatedly take sexually explicit photographs of himself and transmit them to his clients evidence a lack of judgment and integrity.
3. Litigants in domestic cases are experiencing significant turmoil. They frequently have concerns about their financial futures, living arrangements, and the welfare of their children. As a result, they are often distressed, anxious, and not necessarily capable of making

dispassionate and well-informed decisions. This makes litigants in domestic cases a particularly vulnerable segment of the population.

4. The clients with whom Defendant engaged in inappropriate sexual behavior were particularly vulnerable in that they were young women, with young children, who were relying on Defendant to protect their interests in child custody proceedings.

5. Client B and Client C each testified that she believed Defendant was romantically interested in her, and was unaware that Defendant was living with his girlfriend and/or fiancée at the time of the events described above.

6. Defendant engaged in a pattern of manipulating his vulnerable clients by using the attorney-client relationship as a foundation for sexual overtures which gratified his own prurient interests. By compromising the fiduciary relationship in this way, Defendant elevated his own interests above the interests of his clients.

7. Clients are entitled to attorneys they can trust to act with commitment and dedication to their interests. Defendant's attention to his clients' legal matters was diverted by his pursuit of sexual relationships with them.

8. Defendant violated the trust inherent in the attorney-client relationship by elevating his sexual desires above the best interests of his clients.

9. A lawyer's exploitation of his clients for personal sexual gratification is an egregious breach of fiduciary duty, reflecting the lawyer's lack of trustworthiness and integrity. By engaging in repeated instances of exploitative conduct with multiple clients, Defendant has shown himself to be untrustworthy.

10. At the time Defendant engaged in sexual misconduct with his clients, it was clearly foreseeable that his actions would undermine the fiduciary relationship and create a conflict of interest.

11. Pursuant to N.C. Gen. Stat. § 14-190.1(a), it is a Class I felony to knowingly and intentionally disseminate obscene material. Defendant knowingly and intentionally delivered obscene photographs to his clients.

12. Local newspapers in the Elizabeth City area published several articles about Defendant's misconduct. Defendant's misconduct thereby sullied the reputation of lawyers and brought the legal profession into disrepute. Defendant's actions tend to foster disrespect for lawyers, thereby negatively impacting public perception of the profession.

13. Client B and Client C testified that as a result of their experiences with Defendant, they will be more cautious about trusting lawyers in the future. Defendant's conduct has had a negative impact on his clients' perception of the profession.

14. Defendant did not take any action to remedy or rectify the false statements he made in the September 2013 interview with the State Bar. Instead, he made additional false statements under oath in the October 2013 affidavit.

15. Self-regulation of the legal profession depends upon the cooperation and participation of lawyers in the self-regulatory process. When a lawyer submits false evidence in the disciplinary process it impedes the system of self-regulation.

16. Defendant's false statements to the State Bar's Office of Counsel and Grievance Committee interfered with the State Bar's ability to regulate attorneys and thus undermined the privilege of lawyers in this state to remain self-regulating.

17. Defendant voluntarily submitted to a psychological evaluation and has been participating in psychological counseling during the pendency of these proceedings. Defendant's psychologist—who testified as an expert in the field of clinical psychology—indicated that Defendant experienced significant distress resulting from a break up with a girlfriend in 2011,² which may have contributed to his inappropriate behavior with female clients.

18. Defendant has no prior professional discipline, but he did receive a Letter of Warning from the Grievance Committee of the North Carolina State Bar in November 2013.

19. Five attorneys and one district court judge attested via affidavit to Defendant's good character and indicated that the misconduct described herein was inconsistent with their knowledge of Defendant's conduct as a lawyer.

Based upon the foregoing Findings of Fact, Conclusions of Law, and additional Findings of Fact Regarding Discipline, and upon consideration of the factors set forth in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(w), the hearing panel hereby enters the following additional

CONCLUSIONS OF LAW REGARDING DISCIPLINE

1. The hearing panel considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w) of the Discipline and Disciplinary Rules of the North Carolina State Bar.

2. The hearing panel concludes that the following factors from § .0114(w)(1), which are to be considered in imposing suspension or disbarment, are present in this case:

- (a) Intent of the defendant to commit acts where the harm or potential harm was foreseeable;
- (b) Circumstances reflecting the defendant's lack of honesty, trustworthiness, or integrity;
- (c) Elevation of the defendant's own interests above that of the client;
- (d) Negative impact of the defendant's actions on clients' and/or the public's perception of the profession;

² For clarification, Rahilly began a romantic relationship with another woman soon after this break-up. The girlfriend/fiancée referenced in paragraph 5, above, is the relationship which began soon after the break-up discussed by Rahilly's therapist.

3. The hearing panel concludes that the following factors from § .0114(w)(2), which require consideration of disbarment, are present in this case:

- (a) Acts of dishonesty, misrepresentation, deceit, or fabrication;
- (b) Impulsive acts of dishonesty, misrepresentation, deceit, or fabrication without timely remedial efforts; and
- (c) Commission of a felony;

4. The hearing panel concludes that the following factors from § .0114(w)(3), which are to be considered in all cases, are present in this case:

- (a) Absence of prior disciplinary offenses;
- (b) Dishonest or selfish motive;
- (c) Failure to make timely good faith efforts to rectify the consequences of his conduct;
- (d) Pattern of misconduct;
- (e) Multiple offenses;
- (f) Effect of personal or emotional problems on the conduct in question;
- (g) Submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- (h) Character or reputation;
- (i) Vulnerability of the victims;
- (j) The issuance of a Letter of Warning to Defendant within three years immediately preceding the filing of the complaint;
- (k) As an additional relevant factor, the significant harm Defendant's actions caused to the legal profession and the self-regulatory process.

5. The hearing panel has considered admonition, reprimand, and censure as potential discipline but finds that admonition, reprimand, or censure would not be sufficient discipline because of the gravity of the harm to the administration of justice and the potential harm to the public in the present case. Furthermore, the panel finds that any sanction less than suspension would fail to acknowledge the seriousness of the offenses committed by Defendant, 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 in this State.

6. The panel considered disbarment but determined, in light of all relevant facts and circumstances, that disbarment is not necessary to protect the public. The hearing panel finds and

concludes that the public will be adequately protected by a five-year suspension of Defendant's license to practice law.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Additional Findings and Conclusions Regarding Discipline, the hearing panel enters the following

ORDER OF DISCIPLINE

1. Defendant's license to practice law in the State of North Carolina is hereby suspended for five years, beginning 30 days from the date of service of this order upon Defendant.

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. As provided in § .0124(d), 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. The administrative fees and costs of this action, including deposition costs and digital forensic expert costs, are taxed to Defendant. Defendant must pay the costs of this action within 30 days of service upon him of the statement of costs by the Secretary.

5. At the conclusion of the five year active suspension of his license, Defendant may apply to be reinstated to the practice of law by filing a petition with the Secretary of the North Carolina State Bar demonstrating compliance with the general provisions for reinstatement set forth in 27 N.C. Admin. Code Chapter 1, Subchapter B § .0125(b) and demonstrating the following by clear, cogent, and convincing evidence:

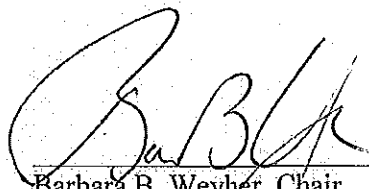
- (a) That Defendant has been continuously in treatment with a psychologist or psychiatrist who specializes in treating sexual offenders in the professions and who has been approved in advance by the North Carolina State Bar Office of Counsel and that he has complied with all current (from the date of this order) and future treatment recommendations of his treating psychologist/psychiatrist until such time as a modality of treatment is no longer necessary as determined by his treating clinician;
- (b) That from the date this Order is entered through the date any petition is filed, Defendant has complied with all recommendations of his treating psychologist/psychiatrist regarding medications;
- (c) That Defendant: (1) does not currently have any mental, psychological, behavioral, cognitive, or emotional condition or disorder, behavioral or cognitive tendency, characteristic, personality trait, circumstance, or proclivity which currently makes Defendant prone to or inclined toward inappropriate sexual behavior; (2) does not currently pose a sexual threat to females with whom he

comes in contact professionally, including female clients and/or female witnesses; and (3) should be allowed to have unsupervised contact with females with whom Defendant comes in contact professionally including female clients and/or witnesses;

- (d) That within six months prior to filing a petition, Defendant has submitted to comprehensive evaluations, at Defendant's sole expense, by a psychologist or psychiatrist who specializes in treating sexual offenders in the professions and who has been approved in advance by the Office of Counsel, and one additional psychologist or psychiatrist who has been approved in advance by the Office of Counsel of the North Carolina State Bar;
- (e) That both of the evaluating clinicians have certified under oath, based on their independent comprehensive evaluations of Defendant, that in their professional opinion: (1) Defendant does not currently have any mental, psychological, behavioral, cognitive, or emotional condition or disorder, behavioral or cognitive tendency, characteristic, personality trait, circumstance, or proclivity which makes Defendant currently prone to or inclined toward inappropriate sexual behavior; and (2) Defendant does not currently pose a sexual threat to females with whom Defendant comes in contact with professionally, including female clients and/or witnesses;
- (f) That Defendant has attached to his reinstatement petition the sworn statements referred to in paragraph 5(e) from the two evaluating clinicians along with releases or authorizations signed by Defendant instructing the evaluating clinicians to discuss their evaluations of Defendant with, and release any corresponding records to, a representative of the Office of Counsel;
- (g) That Defendant has had no contact, direct or indirect, with Client B, Client C, or any member of their families;
- (h) That Defendant has kept the North Carolina State Bar Membership Department advised of his current business and home addresses and notified the Bar of any change in address within ten days of such change;
- (i) That Defendant has responded to all communications from the North Carolina State Bar within thirty days of receipt or by the deadline stated in the communication, whichever is sooner, and has participated in good faith in the State Bar's fee dispute resolution process for any petition received after the effective date of this Order;
- (j) That Defendant has not violated the Rules of Professional Conduct or the laws of the United States or any state or local government during his suspension other than minor traffic violations;

- (k) That Defendant paid the costs of this action within 30 days after service of the statement of costs;
- (l) That Defendant properly wound down his law practice and complied with the requirements of §.0124 of the North Carolina State Bar Discipline and Disability Rules; and
- (m) That Defendant has otherwise complied with the requirements of 27 N.C.A.C. 1B §.0125(b).

Signed by the Chair with the consent of the other hearing panel members, this the 27th day of October, 2014.



Barbara B. Weyher, Chair
Disciplinary Hearing Panel