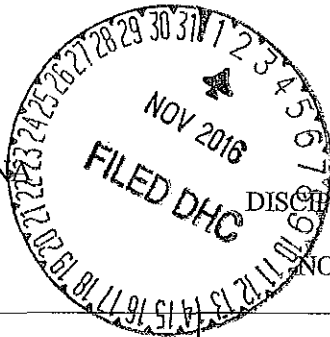


STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
16 DHC 23

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

PETER R. HENRY, Attorney,

Defendant

CONSENT
ORDER OF DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Joshua W. Willey, Chair, and members Allison C. Tomberlin and Christopher R. Bruffey, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, §.0114(h). Plaintiff was represented by Jennifer A. Porter. Defendant, Peter R. Henry ("Henry"), appeared *pro se*. Both Plaintiff and Defendant stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Henry has freely and voluntarily stipulated to the foregoing findings of fact and consents to the conclusions of law and entry of the order of discipline. Henry freely and voluntarily waives any and all right to appeal the entry of this consent order of discipline.

Based upon the pleadings in this matter, the parties' stipulations of fact, and with the consent of the parties, the Hearing Panel 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 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, Peter R. Henry ("Henry"), was admitted to the North Carolina State Bar in 1996, 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. Defendant was properly served with process and the matter came before the Hearing Panel with due notice to all parties.

4. During all or part of the relevant periods referred to herein, Henry was engaged in the practice of law in the State of North Carolina and maintained a law office in Arden, Buncombe County, North Carolina.

5. Defendant has failed to respond to client inquiries and failed to communicate accurate and necessary information to clients, including as follows:

R. Maas

- a. Defendant undertook representation of R. Maas in Mr. Maas's purchase of land from the Rielses in 2012.
- b. Defendant completed the work for the purchase of a seven acre parcel of land but not for a second parcel of one acre.
- c. Mr. Maas e-mailed Defendant regarding the status of the one acre parcel on November 27, 2012, on December 10, 2012, and throughout 2013. Defendant failed to respond to Mr. Maas's inquiries.
- d. Defendant responded to e-mails sent to him by Mr. Maas and Mr. Riels in May 2014. Defendant stated he would check to see if a deed had been recorded and, if not, would send Mr. Riels a deed by e-mail.
- e. Mr. Maas e-mailed Defendant in June and July 2014. Defendant responded once and indicated he had been busy moving but would get the situation with the one acre parcel resolved.
- f. By June 2014, Defendant had moved office locations on two occasions during the time Mr. Maas had been attempting to communicate with him regarding the one acre parcel. On neither occasion did Defendant contemporaneously notify Mr. Maas that he was changing office locations.
- g. Mr. Maas e-mailed Defendant on September 23, 2014 for the status of the one acre parcel. Defendant responded to Mr. Maas's e-mail on September 23, 2014 stating he had sent the deed to the Rielses a few weeks ago, and would record it as soon as it was returned.
- h. Defendant's September 23, 2014 e-mail indicates Defendant had prepared a deed for the one acre parcel that could be recorded once executed by the seller, and that he had prepared and e-mailed it a few weeks prior to September 23, 2014.
- i. Mr. Maas e-mailed Defendant in November and December 2014, and in January 2015. Defendant responded to one e-mail in November 2014, stating the deed had been sent months ago and he assumed the deed had been sent to Mr. Maas. Defendant did not respond to any of Mr. Maas's other e-mails during this time.

- j. In a February 11, 2015 e-mail to Mr. Maas, Mr. Riels, and Mr. Maas's new attorney George Saenger, Defendant said he provided Mr. Maas with the deed that he had prepared in November 2014.
- k. Defendant's February 11, 2015 e-mail indicates Defendant had not prepared the deed for the one acre parcel until November 2014.
- l. On February 11, 2015, Mr. Saenger e-mailed Defendant and asked for the property description to be attached to the deed for the one acre parcel. In response, Defendant stated he did not have the necessary plats and other information to prepare the description.
- m. Contrary to Defendant's assertion to Mr. Maas in Defendant's September 23, 2014 e-mail, Defendant could not have e-mailed the seller with a deed that Defendant could record upon its return since Defendant lacked the necessary information to prepare a property description for the one acre parcel.
- n. Defendant has indicated to the State Bar that the transfer of the one acre parcel was not part of the seven acre transaction for which he represented Mr. Maas. At no time did Defendant indicate to Mr. Maas that his representation of Mr. Maas did not include the transfer of the one acre parcel.
- o. At no time prior to Defendant's e-mail in February 2015 did Defendant tell Mr. Maas that Defendant did not know which acre was being conveyed and could not complete the transaction without a survey.

S. Ronneburger

- p. In June 2013, S. Ronneburger retained Defendant to partition a parcel of real property for her deceased daughter's estate.
- q. Defendant filed a petition for partition for S. Ronneburger in August 2013.
- r. The partition matter has been complicated and delayed due to the actions of the respondent party to the partition as well as those of his son.
- s. S. Ronneburger called Defendant and left messages for him to return her call on multiple occasions from June 2013 through November 2015, to which Defendant failed to respond.
- t. On other occasions during that time period, Defendant would talk with S. Ronneburger and promise to subsequently communicate with her, but would fail to do so.
- u. Defendant failed to communicate to S. Ronneburger about events that occurred in the partition matter.

- v. S. Ronneburger asked Defendant to send her a copy of an order entered in the partition matter in January 2014. Defendant stated he would but failed to do so. S. Ronneburger did not get a copy of the order until she went to Defendant's office personally in June 2014 and asked for a copy of the order.
- w. When S. Ronneburger went to Defendant's office in June 2014, she discovered he had moved his office. Defendant had not notified her he was moving his office location.

6. The State Bar sent Defendant letters of notice concerning his representation of and communication with R. Maas and S. Ronneburger. The letters of notice also raised the concern that Defendant was engaged in a pattern of failing to communicate with clients in light of the number of grievances received in 2015 concerning lack of communication during the same time period of 2013 - 2015. Defendant responded to both letters of notice.

7. In Defendant's October 26, 2015 response to the letter of notice sent concerning R. Maas, Defendant admitted he had not been communicating as he should have with clients. Defendant stated he had made efforts to improve, including contacting clients at least weekly about their matters.

8. In Defendant's December 15, 2015 response to the letter of notice sent concerning S. Ronneburger, Defendant admitted he had been a poor communicator, including with S. Ronneburger. Defendant stated he was endeavoring to communicate with each client every week to two weeks.

9. S. Ronneburger's legal matter was still pending and Defendant's representation of her still ongoing in October and December 2015, when Defendant made the above representations about increasing his communications with clients.

10. As of February 23, 2016, however, Defendant had not communicated with S. Ronneburger since October 2015.

Based upon the consent of the parties and the foregoing stipulated Findings of Fact, the Hearing Panel enters the following:

Conclusions of Law

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant and the subject matter of this proceeding.

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

- (a) By failing to respond to the inquiries of R. Maas and S. Ronneburger and failing to timely provide S. Ronneburger with a copy of the order she requested, Defendant failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4);

- (b) By failing to communicate to R. Maas any position that his representation did not include the transfer of the one acre parcel and/or that he did not have the information necessary to prepare the property description for a deed to transfer the property and instead making statements suggesting he was doing the work necessary for the transfer, Defendant failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in violation of Rule 1.4(b);
- (c) By making inaccurate and misleading statements pertaining to his work and actions on the deed to transfer the one acre parcel from the Rielses to R. Maas, Defendant failed to keep his client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3);
- (d) By making inaccurate and misleading statements that misrepresented his work and actions on the deed to transfer the one acre parcel from the Rielses to R. Maas, Defendant engaged in conduct involving misrepresentation in violation of Rule 8.4(c); and
- (e) By failing to inform S. Ronneburger of events occurring in the partition matter, Respondent failed to keep his client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3).

Upon the stipulation and consent of the parties, the Hearing Panel hereby finds by clear, cogent, and convincing evidence the following additional:

Findings of Fact Regarding Discipline

1. Defendant's failure to properly and accurately communicate with R. Maas unnecessarily delayed the completion of the transfer of the one acre parcel from the Rielses to R. Maas. This delay complicated payment of property tax on the one acre parcel for the Rielses and R. Maas. Additionally, due to Defendant's delay and lack of progress, R. Maas incurred the expense of retaining another attorney to complete the transfer of the one acre parcel.

2. Defendant's failure to communicate with S. Ronneburger exasperated S. Ronneburger and intensified the burden borne by S. Ronneburger as a result of the deaths of her daughter and her husband and the delays and litigation in the estate matter. As a result of Defendant's failure to communicate, S. Ronneburger had to retain new counsel.

3. Prompt and accurate communication with clients is integral for an attorney to establish and maintain the trust of clients, and for clients to participate meaningfully in the representation and in their legal matters.

4. When an attorney fails to communicate promptly and accurately with a client, he betrays that client's trust, potentially impedes accomplishment of the client's goals, and potentially harms the client's perception of the profession as a whole.

5. Defendant's failure to communicate with clients, including R. Maas and S. Ronneburger, was ongoing for several years. Furthermore, Defendant persisted in his lack of communication with clients despite his receipt of a letter of warning regarding his failure to communicate with a client in December 2015 and despite his pledges to the State Bar to improve his communication with clients.

6. Defendant has no prior discipline.

7. The Grievance Committee of the North Carolina State Bar issued Defendant a letter of warning concerning his failure to communicate with a client, which was served upon Defendant in December 2015.

8. There is no evidence of any dishonest or selfish motive on the part of Defendant.

9. Defendant has acknowledged the wrongfulness of his failure to communicate with clients and has indicated his desire to remedy this conduct.

10. After being served with the complaint in this DHC case, Defendant has taken steps to improve his client communications, including making arrangements with another attorney to check his progress, setting aside specific times each week to contact clients, and logging client calls and making notes when he responds.

11. The Hearing Panel has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension, and disbarment, in considering the appropriate discipline to impose in this case.

12. The Hearing Panel finds by clear, cogent, and convincing evidence any additional facts that may be contained in the conclusions regarding discipline set out below.

Based on the consent of the parties and the foregoing stipulated Findings of Fact and Conclusions of Law above and the additional Findings of Fact Regarding Discipline, the Hearing Panel makes the following:

Conclusions With Respect To 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)(1) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors warrant suspension:

a. Intent of Defendant to commit acts where the harm or potential harm is foreseeable, to wit: failing to promptly and accurately communicate with clients resulting in client frustration, lack of knowledge of their legal matters, delay in R. Maas's matter, and ultimately retention of new counsel;

b. Potential negative impact of Defendant's actions on clients' or the public's perception of the profession; and

c. Impairment of client R. Maas's ability to achieve his goal of the transfer of the one acre parcel.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code § 1B.0114(w)(2) of the Rules and Regulations of the North Carolina State Bar and concludes that the factor of acts of misrepresentation is present but does not warrant disbarment in light of the totality of the evidence in this case.

3. 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 concludes the following factors are applicable in this matter:

- a. Absence of prior disciplinary offenses;
- b. Absence of a dishonest or selfish motive;
- c. Multiple offenses;
- d. A pattern of misconduct;
- e. Interim rehabilitation;
- f. Full and free disclosure to the Hearing Panel and cooperative attitude toward the proceedings;
- g. Remorse;
- h. Vulnerability of Defendant's clients;
- i. Degree of experience in the practice of law, to wit: 20 years; and
- j. Issuance of a letter of warning to Defendant within the three years immediately preceding the filing of the complaint.

4. Defendant's failure to properly communicate with clients betrays a vital trust that clients and the public place in attorneys and the legal profession.

5. Defendant's conduct caused significant harm to R. Maas and S. Ronneburger.

6. Defendant's conduct, if continued or tolerated by the Bar, poses significant potential harm to future clients and to the public's perception of the profession.

7. The Hearing Panel has considered issuing an admonition, reprimand or censure but concludes that such discipline would not be sufficient discipline because of the gravity of the potential harm to the clients. The Panel further concludes that such discipline would fail to acknowledge the seriousness of the offenses committed by Defendant and send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

8. This Hearing Panel has considered lesser alternatives and concludes that a stayed suspension is necessary to ensure Defendant continues his recent efforts to properly communicate with clients and complies with necessary conditions to avoid significant harm or the potential for significant harm to clients.

9. For these reasons, this Hearing Panel finds that an order imposing discipline short of a stayed suspension of Defendant's law license would not be appropriate.

Based upon the foregoing Findings of Fact and Conclusions of Law and the Findings of Fact and Conclusion Regarding Discipline, and based upon the consent of the parties, the Hearing Panel enters the following:

Order of Discipline

1. Defendant, Peter R. Henry, is hereby suspended from the practice of law for three years. This suspension is stayed from its inception subject to the conditions stated below.

2. Defendant is taxed with the costs and administrative fees of this action as assessed by the Secretary. Defendant shall be served with a statement of costs and fees. Defendant shall pay the costs within 30 days of service of the statement of costs upon him.

3. The three-year suspension is stayed for a period of three years as long as Defendant complies, and continues to comply during the period of the stay, with the following conditions:

a. Defendant shall establish a set of written client communication procedures for his practice that he will follow to ensure compliance with his obligations under Rule 1.4. No later than 45 days from the effective date of this order, Defendant shall submit these procedures to the Office of Counsel. Defendant shall make any adjustments required by the Office of Counsel to ensure compliance with the Rules of Professional Conduct;

b. Defendant shall have an attorney monitoring whether he is properly communicating with his clients;

1) Within 30 days of the effective date of this order, Defendant shall make monitoring arrangements with an active member in good standing of the North Carolina State Bar who practices law in the county in which Defendant primarily practices;

2) Defendant must submit the name and contact information of the proposed monitor to the Office of Counsel for approval in advance. Approval from

the Office of Counsel is required as part of compliance with the preceding paragraph. Approval will not be unreasonably withheld;

- 3) The selected monitor must agree to so serve. The monitor must agree to do the following: a) assist Defendant with development of the written client communication procedures required above; b) meet monthly with Defendant to review Defendant's communication with clients in all of Defendant's active cases; c) communicate with Defendant during the month regarding his client communications; d) provide the State Bar with a quarterly report regarding the monthly meetings with Defendant, Defendant's client communications and compliance with Defendant's written client communication procedures; and e) be available to coordinate client communication for any client of Defendant's who has any difficulty receiving communication from Defendant during the stayed suspension period;
- 4) Defendant must provide the Office of Counsel with the monitor's written agreement to provide the monitoring services described in the preceding paragraph within 45 days of the effective date of this order;
- 5) The monitor's written quarterly reports are due to the Office of Counsel of the State Bar on the following dates as they occur during the stay of this suspension: January 15, April 15, July 15, and October 15;
- 6) This monitoring must occur for the duration of the stay of this suspension. Defendant will pay the cost, if any, charged by the monitor;
- 7) Defendant shall meet and communicate with the monitor and in all ways cooperate fully with the above described monitoring;
- 8) Defendant shall ensure the Office of Counsel timely receives the monitor's quarterly reports;
- 9) Defendant shall cooperate with the Office of Counsel and make appropriate arrangements for an alternate monitoring attorney if needed during the stay of this suspension;

c. Within 90 days of the effective date of this order, Defendant shall consult with the North Carolina State Bar's Lawyer Assistance Program concerning impediments to timely client communication and techniques for overcoming such impediments. Defendant shall comply with any recommendations of the Lawyer Assistance Program. If Defendant wishes to consult instead with a different organization, Defendant shall obtain approval in advance from the Office of Counsel, and such approval will not be unreasonably withheld.

d. Defendant must enter into a written fee agreement with every client and the fee agreement must state with specificity the legal work Defendant is undertaking to perform;

e. Unless Defendant is on secure leave pursuant to Rule 26 of the General Rules of Practice for the Superior and District Courts, Defendant must personally respond to communications from his clients within 1 business day or direct a member of his staff to provide clients a time when Defendant will respond and in that case, Defendant shall respond within 2 business days and in no event shall Defendant fail to personally respond within 2 business days;

f. In the event Defendant is on secure leave, he must leave messages on all of his voice mail boxes and e-mail accounts informing the caller/correspondent when he will return from secure leave and must return all calls and respond to all e-mails within 2 business days of his stated return;

g. Upon request of any client, Defendant must provide the client with his/her file or any document from the client's file within 2 business days of the request;

h. Defendant shall have paid all costs of this proceeding as assessed by the Secretary within 30 days after service of the notice of costs on him;

i. Defendant shall keep the North Carolina State Bar Membership Department advised of his current physical business address (not a Post Office box), telephone number, and e-mail address and shall notify the Bar of any change in address within ten days of such change;

j. Defendant shall accept all certified mail from the State Bar sent to the address on record with the Membership Department of the North Carolina State Bar;

k. Defendant shall respond to all letters of notice and requests for information from the North Carolina State Bar by the deadline stated therein with full and complete responses and all requested documentation;

l. Defendant will timely comply with the State Bar continuing legal education requirements and will pay all fees and costs assessed by the applicable deadline;

m. Defendant will pay all membership dues, Client Security Fund assessments, and any other related dues, fees, and/or costs by the applicable deadline;

n. Defendant will not violate any of the Rules of Professional Conduct in effect during the period of the stay;

o. Defendant will not violate any laws of the State of North Carolina or of the United States, other than minor traffic violations, during the period of the stay.

4. Unless Defendant's obligations under this Order are modified by further order of the DHC, Defendant's obligations under this Order end three years from the effective date of the Order provided there are no motions or 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 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 three 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 proceeding.

5. If during the stay of the suspension Defendant fails to comply with any one or more of the conditions stated above, then the stay of Defendant's suspension may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

6. If the stay of the suspension is lifted and the suspension is activated for any reason, Defendant may apply for reinstatement after serving the activated suspension, by filing a petition with the Disciplinary Hearing Commission demonstrating compliance by clear, cogent, and convincing evidence with the requirements 27 N.C. Admin. Code § 1B.0125, any requirements in the order activating the suspension, and the following requirements:

a. Defendant 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. Defendant has developed the written client communication procedures described in paragraph 3.a. above and has engaged in the consultation regarding impediments to client communication and techniques to overcome such impediments described in paragraph 3.c. above.

c. Defendant kept the Membership Department of the State Bar informed of his current information for his physical address (not a Post Office box), telephone number, and e-mail address throughout the period of his suspension;

d. Defendant accepted all certified mail from the State Bar sent to the address on record with the Membership Department of the North Carolina State Bar throughout the period of the suspension;

e. Defendant responded to all letters of notice and requests for information from the North Carolina State Bar by the deadline stated therein with full and complete responses and all requested documentation throughout the period of his suspension;

f. Defendant has come into compliance with any outstanding continuing education or membership obligations at the time of the filing of his petition for reinstatement;

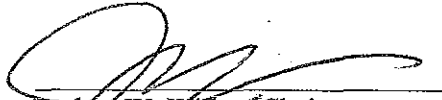
g. Defendant did not violate any of the Rules of Professional Conduct in effect during the period of the suspension;

h. Defendant did not violate any laws of the State of North Carolina or of the United States, other than minor traffic violations, during the period of the suspension; and

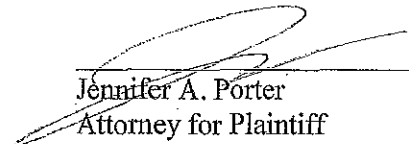
i. Defendant paid all administrative fees and costs of this proceeding as assessed by the Secretary by the date of the filing of his petition for reinstatement.

6. 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.

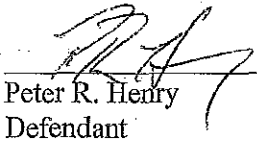
Signed by the Chair with the consent of the other hearing panel members, this the _____ day of November 2 2016.


Joshua W. Willey, Chair
Disciplinary Hearing Panel

Agreed and consented to by:


Jennifer A. Porter
Attorney for Plaintiff

10-31-2016
Date


Peter R. Henry
Defendant

10-19-2016
Date