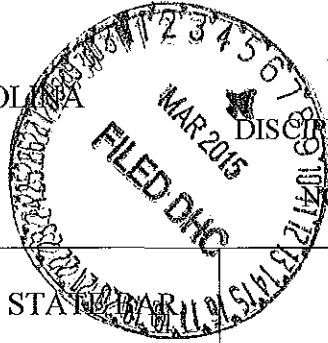


STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
14 DHC 9

THE NORTH CAROLINA STATE BAR
Plaintiff

v.

KEITH R. HENRY, Attorney,
Defendant

CONSENT ORDER OF
DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Fred M. Morelock, Chair, and members Renny W. Deese and Randy A. Moreau, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff was represented by Barry S. McNeill, Deputy Counsel. Defendant, Keith R. 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. Defendant has freely and voluntarily stipulated to the following findings of fact and consents to the conclusions of law and entry of the order of discipline. Defendant 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 enters 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, Keith R. Henry ("Henry" or "Defendant"), was admitted to the North Carolina State Bar on August 18, 1989, 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 of the relevant periods referred to herein, Henry was engaged in the practice of law in the State of North Carolina and practiced in Asheville, Buncombe County, North Carolina.

4. Beginning in 1992 through 2011, Southern Financial Services of North Carolina, Inc. ("SFSNC"), a business in Asheville, North Carolina, marketed estate and tax planning services to potential clients, including potential clients in states adjoining North Carolina.

5. In January 1993, SFSNC initially retained Henry as its staff attorney, paying him a monthly retainer for his legal services to SFSNC and SFSNC's clients, but subsequently ceased utilizing the designation of Henry as its "staff attorney."

6. In correspondence dated February 9, 1993 to the chairperson of the State Bar's Unauthorized Practice Committee, Mr. J. W. ("Bill") Bailey, the President of SFSNC, represented that SFSNC had "retained a full-time staff attorney to represent Southern Financial Services in North Carolina as of January 1, 1993," and identified Henry as "the staff attorney for Southern Financial Services."

7. In correspondence dated February 9, 1993 to the chairperson of the State Bar's Unauthorized Practice Committee, Henry identified himself as "the Staff Attorney for Southern Financial Services."

8. In its marketing of its services and communications with its clients referenced in Paragraph 4 above, SFSNC identified Henry as its staff attorney who would prepare the legal documents.

9. SFSNC paid Henry a monthly retainer to prepare legal documents and provide legal services to SFSNC's clients.

10. SFSNC paid Henry additional compensation for meetings with its clients and preparation of case-specific documents not normally included in SFSNC's service fees.

11. Katherine B. Smith ("Smith") and her husband, South Carolina residents, were clients of SFSNC.

12. Henry was not licensed to practice law in South Carolina.

13. In June 1997, Henry, at the recommendation and referral of SFSNC, performed legal services for Smith establishing a living trust for Smith and her husband.

14. Like other SFSNC clients who were marketed such services as the preparation of a living trust, Smith and her husband paid SFSNC a fee for the preparation of the living trust referenced in Paragraph 13 above; SFSNC, in turn, paid Henry for his preparation of the living trust and any related legal documents.

15. Each year after the trust was established for Smith and her husband, Smith made a payment to SFSNC for an annual update service related to the living trust referenced in Paragraph 13 above.

16. Under the annual update service agreement between SFSNC and SFSNC's clients (including Smith) who made yearly payments to SFSNC for such services, Henry

provided document review to insure the integrity of the clients' existing legal documents and amended their legal documents when necessary or requested by the clients.

17. From 1993 until early 2011, Henry prepared legal documents for SFSNC's clients, including clients like the Smiths who were not residents of North Carolina, and these legal documents were filed and/or utilized in these other states as if they had been prepared by an attorney who was properly licensed in those states; Henry was not licensed to practice law in those states.

18. SFSNC and its staff maintained custody of the files of its clients, like Smith, and Henry exercised no control over such files even when he performed legal services for SFSNC's clients.

19. Henry utilized SFSNC's staff for administrative support of the legal services he provided to SFSNC's clients.

20. Henry never advised Smith or SFSNC's other clients of his monthly retainer arrangement or additional compensation agreement with SFSNC referenced in Paragraphs 9 and 10 above, and none of SFSNC's clients consented in writing to any potential conflict of interest created by Henry's association with SFSNC.

21. In October 2010, pursuant to her annual update service agreement with SFSNC, Smith sent a letter requesting a meeting with Henry because she had several questions and needed to execute a new trust-related affidavit.

22. When Smith failed to receive a response from Henry, Smith called Henry's office on December 1, 2010.

23. Smith called SFSNC two more times before Henry returned her telephone call on January 19, 2011.

24. In February 2011, federal authorities indicted SFSNC's founder on criminal charges and later seized SFSNC's files, business records, and assets.

25. Henry promised to return Smith's file if he could gain access to it, but he was unable to do so because of the federal criminal investigation referenced in Paragraph 24 above.

26. Henry failed to follow up the communication with Smith to let her know that he had been unable to gain access to her file.

27. After Henry failed to communicate with Smith, Smith unsuccessfully continued to try to contact Henry by telephone.

28. Smith sent a certified letter to Henry's office on February 14, 2011, but the letter was returned and marked, "refused-unable to forward."

29. Following the arrest of SFSNC's founder and the closing of SFSNC's offices, Henry closed his own office and ceased practicing law in late 2011.

30. Neither the federal criminal investigation referenced in Paragraph 24 above nor the State Bar's investigation implicated Henry in connection with the federal criminal charges against SFSNC's founder.

31. On June 14, 2011, the State Bar served Henry with a Letter of Notice concerning the grievance filed by Smith in No. 11G0649.

32. Pursuant to 27 N.C. Admin. Code, Ch. 1, Subchapter B, Rule .0112(c) of the Discipline and Disability Rules of The North Carolina State Bar, Henry was required to respond to the Letter of Notice referenced in Paragraph 31 above within 15 days of service.

33. Henry did not respond to the Letter of Notice referenced in Paragraph 31 above within 15 days of service, and did not contact the State Bar's staff counsel to request an extension of time for doing so.

34. By letter to Henry dated July 6, 2011, the State Bar's staff counsel reminded Henry that he had failed to respond to the Letter of Notice referenced in Paragraph 31 above, and that pursuant to N.C. Gen. Stat. § 84-28(b)(3), the failure to answer any formal inquiry or complaint issued by or in the name of the State Bar is, in and of itself, a ground for imposing discipline.

35. In the July 6, 2011 letter referenced in Paragraph 34 above, the State Bar's staff counsel encouraged Henry to respond to the Letter of Notice no later than July 18, 2011.

36. Henry filed a response to the Letter of Notice referenced in Paragraph 31 above on July 15, 2011.

37. In his response to the State Bar referenced in Paragraph 36 above, Henry provided no explanation of why he had failed to timely respond to the Letter of Notice referenced in Paragraph 31 above.

38. In the response to the State Bar referenced in Paragraph 36 above, Henry denied that he had ever been an employee or staff attorney for SFSNC.

39. Henry's statement to the State Bar referenced in Paragraph 38 above was false and Henry knew the statement was false at the time he made it.

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) and (b)(3) as follows:

- a) By receiving a portion of the fee paid by Smith and other SFSNC clients to SFSNC through his monthly retainer paid by SFSNC to Defendant, Defendant shared legal fees with a non-lawyer in violation of Rule 5.4(a) and accepted compensation for representing clients from a third party without satisfying the conditions of Rule 1.8(f);
- b) By failing to obtain Smith's and other SFSNC clients' informed consent to the potential conflict of interest created by his ongoing relationship with SFSNC, Defendant violated Rule 1.7(a);
- c) By failing to respond to and communicate with Smith, Defendant failed to promptly comply with a client's reasonable requests for information in violation of Rule 1.4(a)(4);
- d) By permitting SFSNC, an outside entity over which he had no supervision or control, to maintain his client files, and by relying on SFSNC's employees for administrative support, Defendant permitted an entity that paid him to render legal services for another to direct his professional judgment in violation of Rule 5.4(c), and failed to act competently to protect confidential information in violation of Rules 1.1 and 1.6;
- e) By providing legal services to Smith and her husband, SFSNC clients who lived in South Carolina, and to other SFSNC clients in states other than North Carolina where he was not licensed to practice law, Defendant engaged in the unauthorized practice of law in violation of Rule 5.5(a) and knowingly assisted SFSNC in the unauthorized practice of law in violation of Rule 8.4(a), and by holding himself out as authorized to provide legal services to a client, or clients, in other states, Defendant made misleading communications about his services in violation of Rule 7.1(a);
- f) By not timely responding to the Letter of Notice concerning the grievance by Smith, Defendant knowingly failed to respond as required to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b) and N.C. Gen. Stat. § 84-28(b)(3); and,
- g) By falsely stating in his response to the Letter of Notice that he had never been a staff attorney for SFSNC, Defendant knowingly made a false statement of material fact in connection with a disciplinary matter in violation of Rule 8.1(a) and N.C. Gen. Stat. § 84-28(b)(3), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

Upon the consent of the parties, the Hearing Panel also enters the following:

Findings of Fact Regarding Discipline

1. Defendant's affiliation and relationship with SFSNC created potential significant harm to clients, who did not have the benefit of a true attorney-client relationship.
2. Defendant received a reprimand in 2006 for signing his clients' names to a deed and falsely notarizing their signatures.
3. Defendant was not cooperative with the State Bar's investigation.
4. Defendant responded to the State Bar's inquiries, though not always in a timely manner.
5. Defendant has expressed remorse for his conduct.
6. Defendant did not engage in the conduct described in the Findings of Fact above with any selfish motive.
7. Defendant has a favorable reputation among his peers and colleagues.
8. 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.

Based on the 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.A.C. 1B §.0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors warrant consideration of suspension of Defendant's license:

- (B) Intent of Defendant to commit acts where the harm or potential harm is foreseeable;
- (E) Defendant's actions potentially had a negative impact on the public's perception of the legal profession;
- (F) Defendant's actions had negative impact on the administration of justice; and,
- (I) Defendant committed acts of misrepresentation.

2. The Hearing Panel has 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 the following factor warrants consideration of disbarment:

(A) Defendant committed acts of misrepresentation.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 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) Defendant's prior disciplinary offense;

(C) Absence of a selfish motive;

(G) Defendant engaged in multiple offenses;

(P) Defendant's remorse;

(Q) Defendant's good character and reputation; and

(S) Defendant's degree of experience in the practice of law

4. 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 misconduct at issue and the harm or potential harm Defendant's misconduct caused to the public, the administration of justice, and the legal profession.

5. The Hearing Panel also has considered the sole disbarment factor found under 27 N.C.A.C. 1B §.0114(w)(2), but concludes that disbarment is not necessary to protect the public in this case.

6. The Hearing Panel finds that an order imposing discipline short of suspension of Defendant's law license would not adequately protect the public, the legal profession, or the administration of justice for the following reasons:

a) The factors under 27 N.C.A.C. 1B §.0114(w)(1) and (w)(3) that are established by the evidence are of a nature that support imposition of suspension as the appropriate discipline; and,

b) Entry of less serious discipline would fail to acknowledge the seriousness of the offenses Defendant committed and would send the wrong message to other attorneys and the public regarding the conduct expected of members of the Bar in this State.

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, Keith R. Henry, is hereby suspended from the practice of law for two years, effective 30 days from service of this order upon Defendant.

2. At the conclusion of the two-year suspension, Defendant may petition for reinstatement to active practice. In petitioning for reinstatement, Defendant must demonstrate by clear, cogent, and convincing evidence that he complied with each of the following conditions:

- a) Submitted his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days from the effective date of his suspension;
- b) Complied with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the N.C. State Bar Discipline & Disability Rules on a timely basis;
- c) Defendant shall timely submit his annual Continuing Legal Education ("CLE") report form to the CLE Department of the North Carolina State Bar each year of the suspension and contemporaneously send a copy of the CLE report form to the Office of Counsel of the State Bar to document compliance with the above condition. "Timely" means by the date specified by the CLE department as the date by which members must submit their annual report forms to avoid assessment of a \$75.00 late filing penalty. Defendant must ensure the Office of Counsel receives a copy of his annual CLE report form no later than 15 days after it is due to the CLE department of the State Bar each year;
- d) Defendant shall pay all Membership dues and Client Security Fund assessments and comply with all CLE requirements on a timely basis;
- e) Defendant shall keep current his address of record with the North Carolina State Bar, 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;
- f) Defendant shall not violate any of the Rules of Professional Conduct in effect during the period of the suspension;
- g) Defendant shall not violate any laws of the State of North Carolina or of the United States during the period of the suspension; and
- h) Defendant shall pay all costs and administrative fees of this proceeding as assessed by the Secretary within thirty (30) days after service of the notice of costs on him.

3. Defendant is taxed with the administrative fees and costs of this action as assessed by the Secretary, which shall be paid within ninety (90) days of service of the notice of costs upon Defendant.

4. 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 suspension.

Signed by the undersigned Hearing Panel Chair with the consent of the other Hearing Panel members.

This the 6th day of ~~February~~ ^{March} 2015.

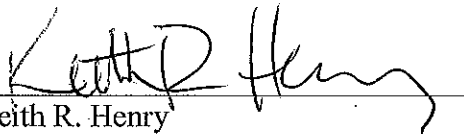


Fred M. Morelock, Chair
Disciplinary Hearing Panel

Agreed and consented to by:



Barry S. McNeill
Attorney for Plaintiff



Keith R. Henry
Defendant *pro se*