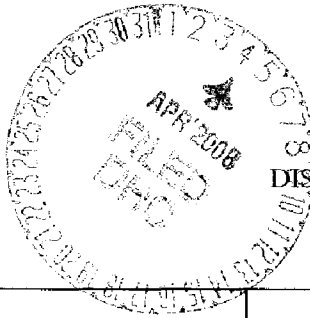


NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
07 DHC 10

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

SHONNA R. ALEXANDER, Attorney,

Defendant

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

This matter was heard on 14 March 2008 before a hearing committee of the Disciplinary Hearing Commission composed of M. Ann Reed, Chair, and members C. Colon Willoughby, Jr. and Donald G. Willhoit. Carmen K. Hoyme represented Plaintiff, the North Carolina State Bar. Defendant, Shonna R. Alexander, appeared on her own behalf. Based upon the pleadings and admissions pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(f), 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 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, Shonna R. Alexander ("Alexander" or "Defendant"), was admitted to the North Carolina State Bar in 1999, 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, Alexander was engaged in the practice of law in the State of North Carolina and maintained a law office in Winston-Salem, Forsyth County, North Carolina.
4. Alexander was properly served with process, a hearing in this matter was set, and the matter came before the hearing committee with due notice to all parties.

5. Defendant failed to provide discovery in this action and failed to comply with this Committee's 28 November 2007 Order Compelling Discovery Responses.

6. On 21 December 2007, Plaintiff filed a Motion for Order of Sanctions, and on 22 January 2008, the Disciplinary Hearing Commission entered an Order of Sanctions against Defendant.

7. The 22 January 2008 Order of Sanctions provided that Defendant's responsive pleading filed 1 October 2007 was stricken from the record.

8. Upon Plaintiff's motion, default was entered against Defendant by the Secretary of the State Bar on 12 February 2008.

9. On 12 February 2008, Plaintiff filed a Motion for Default Judgment. On 26 February 2008, Default Judgment was entered by the Chair with the consent of the other Committee members.

10. The Default Judgment entered findings of fact and conclusions of law and reserved as the sole issue for hearing what discipline, if any, should be imposed. The remaining findings of fact in this order recite the findings of fact found by Default Judgment.

11. On or about 12 June 2005, Kevin D. Allen ("Allen") retained Alexander to represent him on various traffic matters, including but not limited to several charges for driving while license revoked.

12. On or about 17 June 2005, Allen paid Alexander \$600.00 for representation in various traffic cases, including but not limited to case number 05CR16281 and case number 05CR17657.

13. Allen's first court appearance for driving while license revoked (DWLR) in case number 05CR16281 was scheduled for 16 June 2005.

14. On 16 June 2005, Alexander appeared on Allen's behalf at the hearing in case number 05CR16281 and requested a continuance. The case was continued until 1 July 2005.

15. Alexander did not appear on Allen's behalf at the 1 July 2005 hearing in case number 05CR16281.

16. Because Alexander did not appear at the 1 July 2005 hearing, Allen was charged with failure to appear, and an Order for Arrest was issued in case number 05CR16281.

17. Allen's first court appearance for DWLR in case number 05CR17657 was scheduled for 27 June 2005.

18. Alexander did not appear on Allen's behalf at the 27 June 2005 hearing in case number 05CR17657.

19. Because Alexander did not appear at the 27 June 2005 hearing, Allen was charged with failure to appear, and an Order for Arrest was issued in case number 05CR17657.

20. On or about 18 July 2005, a sheriff's deputy came to Allen's home to serve the Orders for Arrest for failure to appear in case numbers 05CR16281 and 05CR17657.

21. Allen then contacted Alexander, who said she had forgotten his court dates, but that she would meet him at the magistrate's office.

22. When Allen was brought before the magistrate, Alexander explained that the Orders for Arrest had issued because of her failure to appear on Allen's behalf.

23. The Orders for Arrest in case numbers 05CR16281 and 05CR17657 were withdrawn, and the cases were rescheduled for 20 September 2005.

24. On or about 12 September 2005, Allen paid Alexander an additional \$600.00 to file a motion for appropriate relief (MAR) on his behalf, in an effort to have his driving privileges reinstated.

25. Alexander never filed the MAR on Allen's behalf.

26. Allen attended the 20 September 2005 hearing of case numbers 05CR16281 and 05CR17657.

27. Alexander failed to appear on Allen's behalf at the 20 September 2005 hearing.

28. Because Alexander was not present, Allen requested that the cases be continued, and a continuance was granted until 25 October 2005.

29. Allen made telephone calls and left repeated voicemails for Alexander, inquiring about the status of his case and Alexander's failure to appear in court on his behalf.

30. Alexander did not return Allen's telephone messages or otherwise respond to Allen's inquiries.

31. Alexander failed to appear on Allen's behalf at the 25 October 2005 hearing of case numbers 05CR16281 and 05CR17657.

32. Because Alexander did not appear at the 25 October 2005 hearing, Allen was charged with failure to appear, and another Order for Arrest was issued.

33. In early 2006, Allen encountered Alexander at a shopping mall and asked her why she had failed to represent him and failed to return his telephone calls.

34. Alexander told Allen that she would "take care of everything" if he came to her office the following Monday morning.

35. When Allen went to Alexander's office the following Monday morning, Alexander was not there.

36. On 13 April 2006, Allen filed a Petition for Resolution of Disputed Fee ("fee dispute") with the North Carolina State Bar. Allen's fee dispute was assigned file number 06FD0241.

37. The State Bar sent a notice of Allen's fee dispute to Alexander's Winston Salem office on or about 13 April 2006. Alexander received this letter by certified mail on 24 April 2006.

38. Alexander was required to respond within fifteen days of receipt of the notice of fee dispute, as specified in the notice. She failed to respond to the notice within that time period.

39. Alexander's response to Allen's fee dispute was received by the State Bar on 23 May 2006.

40. In Alexander's response to the fee dispute, she stated that the MAR was drafted and she was prepared to proceed in representing him.

41. On or about 23 May 2006, the State Bar fee dispute mediator relayed to Allen Alexander's offer to resolve his traffic matters. Allen agreed to Alexander's offer and the mediator left a voice message for Alexander indicating Allen had accepted her offer to continue the representation.

42. The State Bar Fee dispute mediator left additional messages for Alexander on 24 May 2006, 30 May 2006, 2 June 2006, and 6 June 2006. In each message, the mediator asked Alexander to call back.

43. Alexander did not return any of these five calls from the State Bar regarding Allen's fee dispute.

44. On 7 June 2006, Allen attended a scheduled hearing of case numbers 05CR16281 and 05CR17657.

45. Alexander failed to appear on Allen's behalf at the 7 June 2006 hearing.

46. Allen paged Alexander twice and received no response. When he again attempted to page Alexander, her pager was disconnected.

47. Because his attorney was not present, Allen's case was continued until 5 July 2006.

48. Also on 7 June 2006, the State Bar Councilor for Alexander's district left a voice message for Alexander asking her to contact the State Bar.

49. After Alexander failed to appear at Allen's hearing, Allen went to Alexander's office. Another tenant in the building informed Allen that Alexander had not been in her office recently.

50. On 12 June 2006, the State Bar opened a grievance file against Alexander for failure to participate in good faith in the fee dispute resolution process concerning Allen's fee dispute. This grievance was assigned file number 06G0639.

51. The State Bar issued a letter of notice to Alexander on or about 16 June 2006, advising her that a grievance had been filed against her. The letter of notice was returned marked "unclaimed." The State Bar sent the letter of notice to Alexander again on 6 July 2006. Again, it was returned marked "unclaimed."

52. The State Bar sent the letter of notice to Alexander a third time on or about 1 August 2006. Alexander received the letter of notice regarding the Allen matter by certified mail on 3 August 2006.

53. Alexander was required to respond within fifteen days of receipt of the letter of notice. She failed to respond.

54. On or about 12 September 2006, the State Bar sent Alexander a follow-up letter that noted her failure to respond to the letter of notice. The letter stated that Alexander was required to respond by 27 September 2006. She failed to respond.

55. On or about 11 October 2006, the State Bar Councilor for Alexander's district left a message for Alexander regarding her lack of response to the grievance. Despite these additional reminders, Alexander failed to respond to the letter of notice in the Allen matter.

56. On or about 12 July 2005, Robert Lee Saunders ("Saunders") retained Alexander to represent him in a child custody and visitation matter.

57. Saunders paid Alexander \$300.00 on or about 12 July 2005, and an additional \$145.00 on or about 30 August 2005.

58. Alexander told Saunders she could "get him into court within forty-five days."

59. From September 2005 through March 2006, Saunders attempted to contact Alexander by pager, telephone, and letter.

60. Alexander did not respond to Saunders' inquiries regarding the status of his case.

61. By letter dated 14 March 2006, Saunders terminated the representation and demanded a refund of the \$445.00 he had paid to Alexander.

62. Alexander did not respond to Saunders' 14 March 2006 letter and did not refund any fees to Saunders.

63. On 24 March 2006, Saunders filed a Petition for Resolution of Disputed Fee ("fee dispute") with the North Carolina State Bar. Saunders' fee dispute was assigned file number 06FD0201.

64. The State Bar fee dispute mediator left a telephone message for Alexander on or about 25 March 2006, advising her that a fee dispute had been filed and that her response was required. Alexander did not respond to this message.

65. The State Bar sent a notice of Saunders' fee dispute to Alexander's Winston Salem office on or about 24 March 2006. The notice was returned marked "unclaimed." The State Bar sent the notice of fee dispute to Alexander again on 26 April 2006. Again, it was returned marked "unclaimed."

66. On or about 1 June 2006, the State Bar delivered a copy of the notice of fee dispute to the Forsyth County Sheriff for service upon Alexander.

67. By letter to the State Bar dated 6 July 2006, the Forsyth County Sheriff's Office indicated that, although they left written notices on Alexander's office door and left voicemail messages, Alexander had not been served with the notice of fee dispute. The letter stated that Alexander "is avoiding service and is ignoring all attempts to be served."

68. On 6 July 2006, the State Bar opened a grievance file against Alexander for failure to participate in the fee dispute resolution process concerning Saunders' fee dispute. This grievance was assigned file number 06G0737.

69. The State Bar issued a letter of notice to Alexander on or about 14 July 2006, advising her that a grievance had been filed against her. Alexander received the letter of notice regarding the Saunders matter by certified mail on 3 August 2006.

70. Alexander was required to respond within fifteen days of receipt of the letter of notice. She failed to respond.

71. On or about 12 September 2006, the State Bar sent Alexander a follow-up letter that noted her failure to respond to the letter of notice. Alexander was required to respond to the follow-up letter by 27 September 2006. She failed to respond.

72. On or about 11 October 2006, the State Bar Councilor for Alexander's district left a message for Alexander regarding her lack of response to the grievance.

Despite these additional reminders, Alexander failed to respond to the letter of notice in the Saunders matter.

As previously found in the Default Judgment and now recited herein, based on the foregoing Findings of Fact the Committee enters the following

CONCLUSIONS OF LAW

1. All the parties are properly before the Hearing Committee and the Committee has jurisdiction over Defendant, Shonna R. Alexander, 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) and (3) as follows:

- (a) By failing to provide the legal services Allen and Saunders hired her to perform, Alexander failed to act with reasonable diligence and promptness in representing her clients in violation of Rule 1.3;
- (b) By failing to respond to inquiries from Allen and Saunders about their cases, Alexander failed to keep her clients 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 collecting fees from Allen and Saunders and then failing to provide the legal representation for which they paid the fees, Alexander collected clearly excessive fees in violation of Rule 1.5(a);
- (d) By failing to promptly refund unearned fees upon termination of the representation by Saunders, Alexander failed to protect a client's interests 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);
- (e) By failing to respond to the State Bar regarding Allen's fee dispute, Alexander failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f); and
- (f) By failing to respond to the State Bar's letters of notice and follow-up letters regarding grievance file numbers 06G0639 and 06G0737, Alexander failed to respond to lawful inquiries of a disciplinary authority in violation of Rule 8.1(b) and N.C. Gen. Stat. § 84-28(b)(3).

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the evidence and arguments presented at the hearing concerning appropriate discipline, the

Hearing Committee hereby finds by clear, cogent, and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. Alexander's misconduct is aggravated by the following factors:
 - a. Pattern of misconduct;
 - b. Multiple offenses;
 - c. Bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency; and
 - d. Indifference to making restitution.
2. Alexander's misconduct is mitigated by the following factors:
 - a. Absence of a prior disciplinary record;
 - b. Personal or emotional problems; and
 - c. Physical or mental disability or impairment.
3. Defendant has engaged in conduct that has caused significant harm to her clients, in that:
 - a. She accepted fees from Saunders and did not provide the legal services for which the fee was paid, resulting in delay in resolving Saunders' legal matter.
 - b. She accepted fees from Allen and did not provide the legal services for which the fee was paid. As a result, the relief that Allen sought was considerably delayed. Allen suffered additional financial harm as a result of Defendant's conduct, in that he was required to pay a \$1,000.00 bond and had to pay another lawyer \$1,350.00 to help him resolve his legal matters.
4. Defendant's failure to participate in the fee dispute resolution process and failure to respond to letters of notice from the State Bar regarding grievances results in potential significant harm to the profession and to the public. The legal profession is entrusted with the privilege of self-regulation. The State Bar can only regulate the profession if its members respond to inquiries of the State Bar and otherwise participate in this self-regulation. Defendant's failure to participate in the self-regulation of the profession shows an unacceptable disregard for the regulatory authority of the State Bar. Defendant's failure to participate in the profession's self-regulation impedes effective self-regulation and jeopardizes the privilege of the profession to remain self-regulating.

5. Defendant's conduct caused significant harm and potential harm to clients, to the profession, and to members of the public.

6. This DHC Hearing 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 Defendant to the public, to Defendant's clients, and to the profession.

7. An Order imposing discipline short of a suspension of Defendant's law license would fail to acknowledge the seriousness of the offenses, would be inconsistent with other orders of discipline entered by this body in similar cases, and would send the wrong message to attorneys regarding the conduct expected of members of the Bar.

Based upon the foregoing factors and with the consent of the parties, the Hearing Committee hereby enters the following

ORDER OF DISCIPLINE

1. The license of Defendant, Shonna R. Alexander, is hereby suspended for three years.

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

3. Alexander shall comply with the wind down provisions contained in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the North Carolina State Bar Discipline and Disability Rules, including but not limited to distributing any client property, including funds held for clients in her trust account, to her former clients or initiating appropriate escheat procedures. Defendant shall file an affidavit certifying she has complied with the wind down rule with the Secretary of the North Carolina State Bar within 10 days of the effective date of this order.

4. After serving one year of the active suspension of her license, Defendant may apply for a stay of the remaining period of suspension upon filing a petition with the Secretary of the North Carolina State Bar demonstrating by clear, cogent, and convincing evidence that, in addition to complying with the general provisions for reinstatement listed in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0125(b) of the North Carolina State Bar Discipline & Disability Rules, Alexander has complied with the following conditions:

- a. Not violated the laws of any state or of the United States;
- b. Not violated any provision of the Rules of Professional Conduct;

- c. Paid the costs of this proceeding as assessed by the Secretary of the North Carolina State Bar within 30 days of notice of the costs being mailed to her at her address of record;
- d. Responded to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in each communication or within 30 days of receipt, whichever is earlier;
- e. Participated fully and timely in the fee dispute resolution program when notified that a petition for resolution of disputed fee has been received by the State Bar and paid any refund found appropriate by the mediator;
- f. 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 CLE notices to members who are suspended, so it is Defendant's obligation to contact the appropriate department on a timely basis, ascertain her CLE obligations during her suspension, and timely satisfy those obligations;*
- g. Within three months prior to the filing of the petition, been examined, at her own expense, by a board certified psychiatrist approved by the North Carolina State Bar and obtained a written report from that psychiatrist setting forth: (a) the findings of the examination; and (b) the psychiatrist's opinion as to whether Defendant has any physical or mental condition that could adversely affect her ability to practice law;
- h. Prior to or at the time of filing her petition, provided a copy of the psychiatrist's report described in paragraph (e) to the State Bar, and executed a written release authorizing the examining psychiatrist to provide medical records to, and communicate with, the Office of Counsel of the North Carolina State Bar regarding the evaluation and report;
- i. Refunded the \$1,200.00 in fees paid to her by Kevin D. Allen; and
- j. Refunded the \$445.00 in fees paid to her by Robert L. Saunders.

5. If Defendant successfully seeks a stay of the suspension of her law license, such stay will continue in force only as long as she complies with the following conditions:

- a. Respond to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in each communication or within 30 days of receipt, whichever is earlier;
- b. Advise the State Bar's Membership Department in writing of all changes to her home and/or business address within 10 days of the change;
- c. Participate fully and timely in the fee dispute resolution program when notified that a petition for resolution of disputed fee has been received by the State Bar;
- d. Pay all Membership dues and Client Security Fund assessments and complied with all CLE requirements on a timely basis;
- e. Not violate the laws of any state or of the United States;
- f. Not violate any provision of the Rules of Professional Conduct.

6. If an order staying any period of this suspension is entered and Defendant fails to comply with any one or more of the conditions referenced in Paragraph 5, then the stay of the suspension of her law license may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

7. If Defendant does not seek a stay of the active portion of the suspension of her law license or if some part of the suspension is stayed and thereafter the stay is revoked, Defendant must comply with the conditions set out in paragraphs 4 (a) – (j) above and the provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0125 before seeking reinstatement of her license to practice law, and must provide in her application for reinstatement clear, cogent, and convincing evidence showing her compliance therewith.

8. 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 any stayed suspension.

Signed by the Chair with the consent of the other Hearing Committee members,
this the 3rd day of April, 2008.



M. Ann Reed, Chair
Disciplinary Hearing Committee