

2611



WAKE COUNTY
NORTH CAROLINA

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
98 DHC 26

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

ANNE M. LAMM, Attorney,
Defendant

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

This matter comes before a hearing committee of the Disciplinary Hearing Commission composed of James R. Fox, Esq., Chair, W. Steven Allen, Sr. and Robert B. Frantz. The Plaintiff was represented by Clayton W. Davidson, III, Deputy Counsel. The Defendant, Anne Lamm, appeared *pro se*. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order, and to the discipline imposed. Based upon the consent of the parties, the hearing committee enters the following:

FINDINGS OF FACT

1. The Plaintiff, the North Carolina State Bar (the "State Bar") is a body duly organized under the laws of the State of North Carolina and is the proper body to bring this proceeding under the authority granted to it in Chapter 84 of the General Statutes of North Carolina and the rules and regulations of the State Bar promulgated pursuant thereto (the "State Bar Rules and Regulations").

2. The Defendant, Anne M. Lamm, (the "Defendant") was admitted to the State Bar in or about 1969 and is, and was at all times referred to herein, an attorney at law licensed to

practice in North Carolina subject to the State Bar Rules and Regulations and the Rules of Professional Conduct of North Carolina.

3. During all or a part of the relevant periods referred to herein, Defendant was engaging in the practice of law in the State of North Carolina and maintained a law office in Gastonia, North Carolina.

4. On April 22, 1999, the Disciplinary Hearing Commission entered a Consent Order (the "Prior Consent Order") finding that the Defendant, Anne M. Lamm (hereafter, Lamm), violated the Revised Rules of Professional Conduct by failing to respond in a timely fashion to a letter of notice sent to her by the District 27A Grievance Committee, neglecting two client matters and failing to seek the objectives of her clients.

5. The Prior Consent Order directed that Lamm's law license be suspended for two years and stayed the suspension for two years, on a number of conditions, including that Lamm:

- a. Designate a member of the Gaston County Bar to supervise Lamm's practice during the two-year stay period. The order required Lamm to designate a Supervising Attorney acceptable to the State Bar by May 7, 1999. The order further required Lamm to meet with the Supervising Attorney at least monthly during the stay period to review the status of her caseload. Lamm was required to submit written reports to the State Bar each quarter during the stay period, certifying that Lamm had complied with the terms of the order.
- b. Respond in a timely fashion to all letters of notice, subpoenas and reasonable requests for information from any district grievance committee and the North Carolina State Bar.

3. Lamm consented to the terms and conditions of the order in N.C. State Bar v. Lamm, 98 DHC 26 and signed the order prior to its entry on April 22, 1999.

4. The Prior Consent Order was served upon Lamm's attorney on April 29, 1999.

5. Lamm designated Clarence E. Leatherman, an attorney in Lincolnton, as her supervising attorney. Mr. Leatherman was approved by the N.C. State Bar and the Disciplinary Hearing Commission.

6. Lamm has failed to meet with Leatherman at least monthly, as required by the order.

7. On Jan. 14, 2000, the District 27A Grievance Committee mailed to Lamm in the United States Mail with proper postage affixed and addressed correctly, a notice that a grievance had been filed against Lamm with the District 27A Grievance Committee by Frances Hardee. Hardee complained that Lamm undertook to represent her in a divorce action beginning in Oct. 1998, but had neglected the case and failed to communicate with her about it. The Jan. 14, 2000 letter requested Lamm to file a response with Thomas Hunn (hereafter, Hunn), the investigating member of the local committee, within 30 days from receipt of the letter. The Jan. 14, 2000 letter designated in the motion to show cause as Exhibit. 4, and the complaint were received by the Defendant.

9. On or about January 21, 2000, Hunn mailed a second letter to Lamm in the United States Mail with proper postage affixed and addressed correctly, advising her of the Hardee grievance and asking her to respond. The Jan. 21, 2000 letter attached to the Motion to Show Cause as Exhibit 6 was received by Lamm within a few days after January 21, 2000.

10. On or about March 3, 2000, Hunn sent a third letter to Lamm in the United States Mail with proper postage affixed and addressed correctly reminding Lamm that no response had

been received to Hardee's grievance. The March 3, 2000 letter designated as Exhibit 7 in the motion to show cause was received by Lamm within a few days after March 3, 2000.

11. The Defendant will testify that she provided a response to the grievance that was dated April 6, 2000 which was mailed to J. Thomas Hunn, which the Defendant admits was not submitted within the time frame stated in the notices to her.

Based on the foregoing findings of fact, the hearing committee enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee and the committee has jurisdiction over the defendant and the subject matter of this proceeding.
2. The Defendant violated the terms and conditions of the Consent Order by failing to respond to the request for information from the District Bar Grievance Committee within the time frame stated in the communication and by failing to meet with the Supervising Attorney at least monthly.
3. The suspension stayed by the Consent Order should be activated under the terms and conditions provided in this order.

ORDER

1. The suspension entered in the Consent Order of Discipline filed on April 23, 1999, is hereby activated, and in accordance with the terms of that order, the Defendant, Ann M. Lamm, is hereby suspended from the practice of law for a period of two years. All terms and conditions of the Prior Consent Order remain in effect.
2. The Defendant shall comply with the terms and conditions of to 27 N. C. Admin. Code Subchapter B § .0124 concerning the wind down of her practice, provided, however, that she shall have sixty (60) days from the date of service of this order to wind down the practice.

3. The first year of the two year suspension shall be active. The second year of the two year suspension may be stayed for an additional year upon application of the Defendant under the following terms and conditions:
- a. The Prior Consent Order required that the Defendant become a patient of a psychiatrist approved by the North Carolina State Bar (the "Doctor"). The Defendant shall remain a patient of the Doctor during the term of the active suspension, and prior to seeking reinstatement shall submit a report signed by the psychiatrist indicating that she has complied with the terms and conditions of this order and the course of treatment prescribed by the Doctor, and that in the opinion of the Doctor, the Defendant is not suffering from any physiological or psychological condition that would impair her ability to practice law, including but not limited to any ongoing problem with alcohol or substance abuse. At the time she seeks reinstatement, the Defendant shall submit to any psychological, medical or substance abuse examination deemed reasonably necessary by the Office of Counsel of the North Carolina State Bar to determine her competence. In the event that the Office of Counsel contests the Defendant's competence, the Defendant shall bear the burden of proving by the greater weight of the evidence that she is competent to return to the practice of law.
 - b. During the active period of the suspension, the Defendant shall not violate any State and federal laws, and shall not violate the North Carolina Revised Rules of Professional Conduct or the Rules and Regulations of the North Carolina State Bar.
 - c. During the active term of the stay, the Defendant shall respond to all letters of notices, subpoenas and reasonable requests for information from any district grievance committee and the North Carolina State Bar by the deadline stated in the

communication, or if none is so stated, by the deadline provided by any applicable law or rules.

- d. Prior to reinstatement, the Defendant shall designate a new Supervising Attorney to be approved by the North Carolina State Bar and to perform the functions contained in the Prior Consent Order, and shall conduct the first meeting with the Supervising Attorney prior to the time that she applies for reinstatement in accordance with the terms and conditions of paragraph 4b below. The Defendant shall submit a statement signed by the Supervising Attorney that she has complied with the terms and conditions of this paragraph.
 - e. During the period of her wind down, the Defendant shall handle all client matters promptly, and shall respond to requests for information from clients in a timely fashion.
 - f. The Defendant shall pay all costs assessed in this matter and shall remain current in all Continuing Legal education requirements and pay all membership dues.
4. In the event that the Defendant is reinstated, during the time in which the suspension is stayed, the Defendant shall comply with all terms and conditions of the Prior Consent Order as modified herein, including, but not limited to:
- a. The Defendant shall select a member of the North Carolina State Bar, to be approved by the Office of Counsel of the North Carolina State Bar (the "Supervising Attorney"), to supervise the Defendant's practice during the stay period.
 - b. The Defendant shall meet with the Supervising Attorney at least once a month, which meeting shall occur in the office of the Supervising Attorney during normal business hours and shall be attended by a witness who may be an employee of the Supervising

Attorney. If the Supervising Attorney is male, the witness shall be female. The Defendant shall report to the Supervising Attorney as to the status of all current pending client matters, and shall further cooperate with the Supervising Attorney and shall provide any additional information requested by the Supervising Attorney which the Supervising Attorney feels is reasonably necessary to ensure that the Defendant's case load remains of a manageable size, that the Defendant handles matters promptly, and that the Defendant responds to requests for information from clients and the North Carolina State Bar in a timely fashion. The cost, if any, of retaining the Supervising Attorney shall be borne by the Defendant. In the event that the Defendant is unable to comply with the reasonable requests of the Supervising Attorney to meet with the Supervising Attorney for any reason, the Defendant shall provide written explanation of the failure to attend the scheduled meetings to the North Carolina State Bar within five days of the date of the failure to attend the meeting.

- c. The Defendant, at Defendant's expense, shall remain a patient of the Doctor during the period of the suspension except as otherwise provided in subparagraph d below, and shall comply with the course of treatment prescribed. The Doctor shall continue to determine whether the Defendant is suffering from any psychological condition that would impair her ability to practice law, including but not limited to any ongoing problem with alcohol or substance abuse.
- d. At any point during the period of suspension, the Defendant shall immediately inform the North Carolina State Bar in writing if she ever ceases to be a patient, or otherwise fails to comply with course of treatment prescribed by the Doctor. The Defendant


shall further instruct her Doctor to immediately inform the North Carolina State Bar if she ever ceases to be a patient, or otherwise fails to comply with course of treatment prescribed, shall authorize her doctor to release to the North Carolina State Bar information about her status as a patient upon the request of the North Carolina State Bar, and shall further authorize the Doctor to release to the North Carolina State Bar any and all medical records including but not limited to records detailing the course of treatment, any diagnosis, and the Defendant's prognosis. The Defendant shall submit written reports signed by her Doctor providing full details about her course of treatment, diagnosis and prognosis, and certifying that she remains a patient and is complying with the Doctor's prescribed treatment plan. The reports shall be filed pursuant to the time frames for quarterly certifications contained in the Prior Consent Order. If the Defendant is discharged by the Doctor prior to the end of the suspension period, then the Defendant shall file a report signed by her doctor indicating that no further treatment is required, and that in the opinion of the Doctor that the Defendant should be allowed to continue in the practice of law.

- e. The Defendant shall provide monthly reports to the North Carolina State Bar signed by the Supervising Attorney and the Defendant which certify that the Defendant is in compliance with the terms and conditions of this order. The reports must be received by the Bar on or before the last day of the month of each month that the stay of the suspension remains in effect. The report shall be in the form attached hereto as Exhibit A, or in such other form as may be approved by the Office of Counsel.

- f. The Defendant shall not violate any State or Federal laws and shall not violate the North Carolina Revised Rules of Professional Conduct or the Rules and Regulations of the North Carolina State Bar.
 - g. The Defendant shall respond to all letters of notice, subpoenas and reasonable requests for information from any district grievance committee and the North Carolina State Bar by the deadline stated in the communication, or if none is so stated by the deadline provided by any applicable law or rules.
5. The Disciplinary Hearing Commission retains jurisdiction during the term of this order to enforce this order, and retains jurisdiction to impose any additional conditions on the Defendant's practice of law during the suspension period as may be reasonably necessary for the protection of the public.
6. The Defendant has an interest in keeping confidential those records that are subject to the physician-patient privilege, which interest overrides any interest of the public in obtaining disclosure of those records. That overriding interest cannot be protected by any measure short of sealing the records so produced. The Office of Counsel of the North Carolina State Bar shall keep confidential all Doctor's reports, or other medical records obtained by the Bar pursuant to subparagraph 1h above, and shall not disclose those records to any person other than employees of the North Carolina State Bar, except pursuant to an order of the Disciplinary Hearing Commission, or other court of competent jurisdiction. The Defendant's consent to this order shall not be deemed to be a waiver of the physician patient privilege for any purpose other than for production of documents and information as required by this consent order.

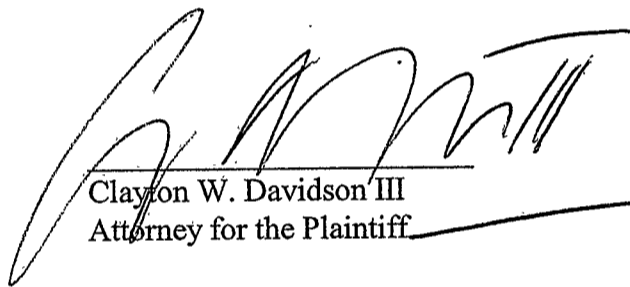
7. The Defendant shall pay all costs of this proceeding permitted by law within thirty days of service of notice of the amount of costs as assessed by the Secretary.

Signed by the undersigned chair with the full knowledge and consent of all other members of the hearing committee this 15th day of September, 2000.


James R. Fox, Chair

CONSENT AND WAIVER

The Parties hereby consent to the terms and conditions of this order, waive all rights to have this consent order reviewed by another panel of the Disciplinary Hearing Commission pursuant to 27 N. C. Admin. Code Subchapter B § .0114(h), consent to go forward with the original panel, and acknowledge that unless the parties are specifically informed that the Hearing Committee has accepted this consent order, that they have an obligation to be present at the hearing at 9:30 a.m. on September 15, 2000.


Clayton W. Davidson III
Attorney for the Plaintiff



Anne M. Lamm
Defendant

EXHIBIT A

REPORTING FORM FOR SUPERVISING ATTORNEY

The Supervising Attorney and the Defendant met in accordance with the terms of the order of the Disciplinary Hearing Commission on the ___ day of _____, 200_.

Initial all of the following which the Defendant and Supervising Attorney believe have been complied with, and provide explanations for each item that has not been complied with in the Comments section:

1. The Defendant reported as to the status of all current pending client matters.

Defendant Supervising Attorney

2. The Defendant has cooperated with the Supervising Attorney provided any information requested by the Supervising Attorney.

Defendant Supervising Attorney

3. The Defendant's case load remains of a manageable size.

Defendant Supervising Attorney

4. The Defendant has handled all client matters promptly.

Defendant Supervising Attorney

5. The Defendant has responded to all requests for information from clients and the North Carolina State Bar in a timely fashion.

Defendant Supervising Attorney

6. The Defendant is in compliance with all of the terms and conditions of the order of the Disciplinary Hearing Commission.

Defendant

Supervising Attorney

COMMENTS:

Submitted this ____ day of _____, 2000

Defendant

Supervising Attorney