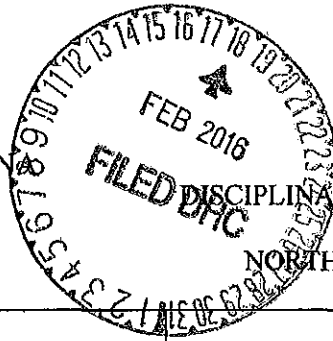


STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
15 DHC 51

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

MICHELLE A. HICKERSON, Attorney,

Defendant

CONSENT ORDER
OF DISCIPLINE

THIS MATTER was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Steven D. Michael, Chair, Shirley L. Fulton, and Patti Head pursuant to 27 N.C. Admin. Code 1B § .0114. Plaintiff, the North Carolina State Bar, was represented by Carmen Hoyme Bannon. Defendant, Michelle A. Hickerson, was represented by Deanna S. Brocker. Defendant waives a formal hearing in this matter and both parties stipulate and consent to the entry of this order and to the discipline imposed. Defendant waives any right to appeal this consent order or to challenge in any way the sufficiency of the findings.

Based upon the consent of the parties, the Hearing Panel 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 promulgated thereunder.
2. Defendant, Michelle A. Hickerson, was admitted to the North Carolina State Bar in March 2010, and is an Attorney at Law subject to the rules, regulations, and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.
3. During the relevant period referred to herein, Hickerson was actively engaged in the practice of law in Chapel Hill, Orange County, North Carolina.
4. Hickerson was properly served with the summons and complaint in this matter.

5. In the fall of 2011, Hickerson met a man named Tom Power, with whom she began an intimate relationship. Both Hickerson and Power were married at the time they began seeing each other. Hickerson was aware that Power was married when their relationship began.

6. Hickerson separated from her husband in February 2012, and Power's wife left him in June 2012. In July 2012, Mrs. Power filed a complaint for divorce and equitable distribution (*Power v. Power*, Wake County file no. 12-CVD-9258). The complaint specifically alleged adultery as the grounds for divorce.

7. In September 2012, Power filed an answer in *Power v. Power* wherein he asserted counterclaims for alimony and post-separation support. In Power's counterclaims, he contended that "at all times throughout the marriage" he had "been a faithful and dutiful husband" and "at no time during the marriage did [he] commit any act of marital misconduct."

8. In October 2012, Mrs. Power subpoenaed Hickerson to appear and be deposed, in an effort to establish Power's infidelity.

9. In the month before she was deposed, Hickerson and Power had many conversations about how Hickerson would testify in the deposition. They discussed the potential consequences of Hickerson admitting to the affair, including the likelihood that Mrs. Power would sue Hickerson for alienation of affection and criminal conversation. Power pressured Hickerson to deny the affair.

10. Hickerson's deposition in *Power v. Power* took place on 2 November 2012. Hickerson gave sworn testimony in the deposition for approximately an hour and forty-five minutes.

11. Hickerson made multiple false statements under oath during the 2 November 2012 deposition, including:

- (a) Making false statements about the frequency, duration, and nature of her interactions with Power prior to his separation from his wife;
- (b) Denying that she had ever had a romantic relationship with Power;
- (c) Testifying that she had never kissed or had sexual relations with Power;
- (d) Stating that she had never met Power at a hotel or been on a trip with him, and denying questions about specific trips and hotel stays;
- (e) Testifying that Power had never spent the night at her house, and that her children had been present each time Power had visited her home;
- (f) Denying that she had ever discussed marital infidelity or extramarital relationships with Power;

- (g) Stating that she was unaware of the specific reasons for Power's separation from his wife;
- (h) Stating that she was unaware whether Power had dated anyone since December 2011; and
- (i) Making false statements about the frequency, duration, and nature of her conversations with Power regarding her anticipated testimony at the deposition.

12. Hickerson made the false statements described in paragraph 11, above, knowingly and purposefully.

13. Hickerson did not take any steps to correct her false deposition testimony while the case of *Power v. Power* was pending.

14. Six months after Hickerson's deposition, Mrs. Power deposed the marital counselor to whom Power had previously admitted his affair with Hickerson. Immediately thereafter, Power dismissed his counterclaims for alimony and post-separation support.

15. In October 2014, Mrs. Power sued Hickerson for alienation of affection and criminal conversation (*Power v. Hickerson*, Wake County file no. 14-CVS-14294).

16. On 8 January 2015, Hickerson, through counsel, filed an answer in *Power v. Hickerson*.

17. In her answer, Hickerson denied that she had sexual intercourse with Power, and that she did so with actual knowledge of his marital status.

18. The allegations that Hickerson had sexual intercourse with Power, and that she did so knowing that he was married, were central to the claims in *Power v. Hickerson*.

19. By denying factual allegations that were both true and material to the claims for relief in *Power v. Hickerson*, Hickerson knowingly made misrepresentations of fact in a pleading filed with the court.

Based upon the foregoing Findings of Fact, and the consent of the parties, the Hearing Panel makes the following

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Disciplinary Hearing Commission has jurisdiction over Defendant, Michelle A. Hickerson, and over 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) as follows:

- (a) By giving false testimony under oath, Defendant engaged in conduct involving dishonesty, deceit and misrepresentation in violation of Rule 8.4(c) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d); and
- (b) By knowingly filing a responsive pleading that denied material facts which she knew to be true, Defendant engaged in conduct involving dishonesty and misrepresentation in violation of Rule 8.4(c) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

Based upon the foregoing Findings of Fact and Conclusions of Law, and the consent of the parties, the Hearing Panel finds by clear, cogent, and convincing evidence the following

ADDITIONAL FINDINGS REGARDING DISCIPLINE

1. Giving false testimony and submitting false information in a pleading tends to impair litigants' ability to promptly and accurately resolve their legal disputes. Accordingly, Defendant's conduct had the potential to cause significant harm to third parties and to the administration of justice. At the time of her conduct, Defendant should have known that her actions could cause such harm.

2. Defendant's conduct had the potential to cause significant harm to the standing of the legal profession in the eyes of the public, in that dishonest conduct by attorneys erodes public trust in the profession.

3. Defendant made the misrepresentations at issue in this case in an effort to avoid negative consequences, including tort liability and discord in her personal relationship with Power.

4. The dishonest conduct at issue in this case is entirely out of character for Defendant, who otherwise has a good professional reputation for honesty and trustworthiness.

5. The conduct of the Defendant would in most circumstances warrant disbarment. However the panel has considered the unique factual circumstances of this matter as set out in this order in determining what level of discipline is appropriate.

6. Tom Power placed enormous pressure on Defendant to give the false deposition testimony described above. Within their romantic relationship, Power was manipulative, controlling and verbally abusive. At the time of her deposition, Defendant was emotionally vulnerable due to the dissolution of her marriage and concerns about her children's well being. Defendant's decision to give false testimony was due at least in part to Power's coercive influence and Defendant's vulnerability.

7. Defendant has no prior professional discipline.

8. Defendant self-reported her misconduct to the State Bar, and has fully cooperated with the State Bar's investigation and in reaching a resolution in these proceedings.

9. From the outset of the State Bar's investigation, Defendant has acknowledged that her conduct violated the Rules of Professional Conduct and expressed remorse for her actions.

Based upon the Findings of Fact, Conclusions of Law, Additional Findings Regarding Discipline, and the consent of the parties, the Hearing Panel makes the following

ADDITIONAL CONCLUSIONS REGARDING 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 Rule .0114(w) of the Discipline and Disability Rules of the State Bar, 27 N.C. Admin. Code 1B § .0114(w)

2. The Hearing Panel concludes the following factors from Rule .0114(w)(1) warrant consideration of suspension of Defendant's license:

- (a) Intent of Defendant to commit acts where the harm or potential harm is foreseeable;
- (b) Negative impact of the Defendant's actions on the administration of the public;
- (c) Effect of Defendant's conduct on third parties; and
- (d) Acts of dishonesty.

3. The Hearing Panel has carefully considered all of the factors enumerated in Rule .0114(w)(2) and concludes that although Defendant engaged in acts of dishonesty, disbarment is not necessary to protect the public.

4. The Hearing Panel has carefully considered all of the factors enumerated in Rule .0114(w)(3) and determines that the following factors are applicable:

- (a) Absence of prior disciplinary offenses;
- (b) Selfish motive;
- (c) Effect of personal or emotional problems on the conduct in question;
- (d) Full and free disclosure to the hearing panel and cooperative attitude toward the proceedings;
- (e) Remorse; and
- (f) Good character or reputation.

5. The Hearing Panel has considered admonition, reprimand and censure as potential discipline but finds that any sanction less than suspension would fail to acknowledge the seriousness of the offenses committed by Defendant.

6. In light of Defendant's dishonest acts and the significant potential harm resulting from Defendant's conduct, the Hearing Panel concludes that a suspension of Defendant's license is the only discipline that:

- (a) will adequately protect the public;
- (b) acknowledges the seriousness of the offenses Defendant committed; and
- (c) sends a proper message to attorneys and the public regarding the conduct expected of members of the Bar of this State.

7. Dishonesty by an attorney in connection with court proceedings is among the most serious types of professional misconduct, and would typically warrant imposition of a lengthy active suspension or disbarment. The following circumstances in this case justify a suspension of shorter duration:

- (a) Defendant's emotional vulnerability within a romantic relationship, which made her particularly susceptible to coercive pressure to behave unethically;
- (b) The dishonest conduct was an aberration, wholly inconsistent with Defendant's reputation as a person of good character;
- (c) The dishonest conduct occurred exclusively in reference to highly personal matters unrelated to Defendant's practice of law;
- (d) It is extremely improbable that the situation in which Defendant engaged in misconduct will recur; and
- (e) Defendant's self-report of her misconduct, acknowledgment of wrongdoing, and expression of remorse all reflect that she is very unlikely to engage in similar acts in the future.

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

ORDER OF DISCIPLINE.

1. Defendant, Michelle A. Hickerson, is hereby suspended from the practice of law for five years, effective 30 days from service of this order upon Defendant.

2. Defendant shall submit her 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 she has complied with the wind down rule.

4. Defendant is taxed with the administrative fees and costs of this action as assessed by the Secretary, which shall be paid within thirty (30) days of service of the notice of costs upon Defendant.

5. One year from the effective date of this Order, Defendant may apply for a stay of the remaining period of suspension imposed by this Order by 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.A.C. 1B § .0125 of the North Carolina State Bar Discipline & Disability Rules, Defendant has complied with the following conditions:

- (a) During the twelve months following the entry of this order, Defendant shall complete fifteen hours of Continuing Legal Education (CLE) courses accredited by the State Bar. At least five of these CLE hours must be on the topics of legal ethics and professional responsibility. No more than six of the fifteen CLE hours may be completed via online courses;
- (b) Within 30 days after the effective date of this order, Defendant shall make arrangements with the Lawyer Assistance Program to undergo an evaluation. Defendant shall comply with the evaluator's recommendations for counseling and treatment. Defendant shall ensure that each provider from whom she receives any recommended treatment during the period of active suspension generates a written report to the State Bar setting forth: (i) a description of Defendant's participation in and compliance with treatment, and (ii) the clinician's recommendations, if any, regarding ongoing treatment. The reports shall be provided to the Office of Counsel prior to or at the time Defendant files any petition for stay or reinstatement;
- (c) Prior to or at the time of filing any petition for reinstatement or stay, Defendant shall provide written releases to the North Carolina State Bar Office of Counsel, authorizing all clinicians from whom she received any recommended treatment during the period of active suspension to communicate with the Office of Counsel and to release to the Office of Counsel records relating to her treatment;
- (d) Defendant shall keep the North Carolina State Bar Membership Department advised of her current business and home addresses and notify the State Bar of any change in address within ten days of such change;
- (e) Defendant shall accept all certified mail from the North Carolina State Bar, respond to all communications from the State Bar by the deadline stated in the communication, and participate in good faith in the State Bar's fee dispute

resolution process for any petition received after the effective date of this Order;

- (f) Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or any state or local government during her suspension, other than minor traffic violations;
- (g) Defendant shall not initiate any contact with Tom Power or respond to any communications from Mr. Power; and
- (h) Defendant shall timely comply with paragraphs 2-4 of this section of the Order of Discipline;

6. Defendant may file a petition for stay up to 30 days prior to the end of the first year of the suspension period, but no stay will be allowed until at least one year from the effective date of this Order.

7. If Defendant successfully seeks a stay of the suspension of her law license pursuant to this Order, any stay will continue in force only as long as Defendant complies with the following conditions:

- (a) Defendant shall comply with all recommendations for ongoing treatment set forth in the clinicians' reports described in paragraph 5(b), above.
- (b) Defendant shall provide a written release to the North Carolina State Bar Office of Counsel, authorizing all providers from whom she is receiving any ongoing treatment to communicate with the Office of Counsel and to release to the Office of Counsel records relating to her compliance with treatment recommendations. Defendant shall not revoke these releases during the period of the stay.
- (c) Defendant shall ensure that all providers from whom she is receiving any ongoing treatment send a quarterly written report to the State Bar confirming that she is complying with treatment recommendations. The reports shall be due each January 30, April 30, July 30, and October 30 during the stayed suspension;
- (d) Defendant shall keep her address of record current with the State Bar and respond to all letters of notice and requests for information from the State Bar by the deadline stated in the communication;
- (e) Defendant shall timely comply with her State Bar membership and continuing legal education requirements and pay all fees and costs assessed by the applicable deadline;
- (f) Defendant shall participate fully and timely in the fee dispute resolution process when notified of any petitions for resolution of disputed fees;

(g) Defendant shall not violate the laws of the United States or any state or local government, other than minor traffic violations; and


(h) Defendant shall not violate any provision of the Rules of Professional Conduct.

8. If Defendant fails to comply with any one or more of the conditions stated in Paragraph 7 above, then the stay of the suspension of her law license may be lifted as provided in 27 N.C.A.C. 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules. If the stay granted herein is lifted or the suspension of Defendant's license is activated for any reason, before a subsequent stay of the suspension can be entered Defendant must show by clear, cogent, and convincing evidence that she has complied with each of the conditions referenced in Paragraph 5.

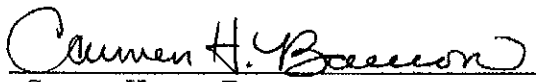
9. If Defendant does not seek a stay of the active suspension of her law license or if some part of the suspension is stayed and thereafter the stay is revoked, Defendant must provide in her application for reinstatement clear, cogent, and convincing evidence of compliance with each of the conditions referenced in paragraph 5.


10. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C.A.C. 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout any period of stayed suspension.


12th Signed by the Chair with the consent of the other Hearing Panel members, this the
day of February, 2016.


Steven D. Michael Chair
Disciplinary Hearing Panel

CONSENTED TO BY:


Carmen Hoyme Bannon
Attorney for Plaintiff


Michelle A. Hickerson
Defendant


Deanna S. Brocker
Attorney for Defendant