

STATE OF NORTH CAROLINA

WAKE COUNTY



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

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

THOMAS A. TATE, Attorney,

Defendant

CONSENT
ORDER

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Fred M. Morelock, Chair, and members David W. Long and Randy A. Moreau, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff was represented by Maria J. Brown. Defendant, Thomas A. Tate (“Tate”), 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. Tate consents to entry of this order of discipline and freely and voluntarily waives any and all right to appeal the entry of this order.

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, 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, Thomas A. Tate, was admitted to the North Carolina State Bar in August 2012 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. Defendant was properly served with process, and the matter came before the Hearing Panel with due notice to all parties.

4. During the relevant period referred to herein, Defendant was engaged in the practice of law in Charlotte, Mecklenburg County, North Carolina.

5. In May 2014, W.S.W. met with Defendant regarding denial of her short-term disability claim.

6. Defendant told W.S.W. he would represent her and accepted documents from her related to the claim, including the denial letter and her medical and insurance records.

7. When W.S.W. asked Defendant how much he would charge for the representation, Defendant told W.S.W. that if he charged her anything at all, his fee would be minimal.

8. Defendant did not provide any additional details about the basis or rate of his fee and failed to provide a representation agreement after promising to do so.

9. After contacting W.S.W.'s insurance company, Defendant stopped performing work on W.S.W.'s case.

10. Defendant thereafter initiated no communication with W.S.W. and failed to respond to W.S.W.'s queries about the status of the case.

11. In December 2014, W.S.W. requested that Defendant return her documents.

12. Defendant represented to W.S.W. that he had recently mailed her documents, that she should receive them any day, and that he would bring them to her in Raleigh if she did not receive them.

13. Defendant's statement about mailing the documents was false. He had not recently mailed the documents to W.S.W.

14. In February and March 2015, W.S.W. e-mailed Defendant again to ask for her file.

15. Defendant did not respond to W.S.W.'s requests and did not return W.S.W.'s documents.

16. In March 2015, W.S.W. contacted the North Carolina State Bar's Attorney-Client Assistance Program ("ACAP").

17. On 25 March 2015, ACAP public liaison Sandra Saxton spoke with Defendant by telephone. During that conversation, Defendant indicated he would mail W.S.W.'s file to her later that day.

18. Defendant did not send W.S.W. her file.

Based on the foregoing Findings of Fact and with the consent of the parties, 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 Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:
 - (a) By failing to provide W.S.W. with any information about his fee beyond an oral statement that the fee would be minimal if anything at all, Defendant failed to communicate to a new client, before or within a reasonable time after commencing the representation, the basis or rate of his fee and the expenses for which the client will be responsible in violation of Rule 1.5(b);
 - (b) By ceasing work on W.S.W.'s case after contacting the insurance company, Defendant failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;
 - (c) By ceasing communication with W.S.W. and failing to respond to W.S.W.'s requests for information, Defendant failed to reasonably consult with his client about the means by which his client's objectives were to be accomplished in violation of Rule 1.4(a)(2), failed to keep his client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3), and failed to comply promptly with reasonable requests for information in violation of Rule 1.4(a)(4);
 - (d) By failing to return W.S.W.'s documents to her, Defendant failed to take reasonably practicable steps upon termination of the representation to protect a client's interests in violation of Rule 1.16(d); and
 - (e) By representing falsely to W.S.W. that he had recently mailed her documents to her, Defendant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c).

Based on the foregoing Findings of Fact and Conclusions of Law, and with the consent of the parties, the Hearing Panel also enters the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1 – 18 above are reincorporated as if set forth herein.
2. Defendant practiced law for two years and has no prior professional discipline.

3. There is an absence of any evidence that Defendant intended to harm his client.

4. Defendant's conduct caused significant harm to W.S.W. in that she could not pursue an appeal of the denial of her claim without spending additional time and money to obtain copies of her medical and insurance records. W.S.W. faced extra difficulty obtaining records from her insurance company because Defendant had not informed them that he no longer represented her.

Based on the Findings of Fact and Conclusions of Law above, the additional Findings of Fact Regarding Discipline, and the consent of the parties, 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 that, while the following factors are present, they do not warrant suspension of Defendant's license:

(G) Impairment of the client's ability to achieve the goals of the representation; and

(I) An act of dishonesty, misrepresentation, deceit, or fabrication.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(2) and concludes that, while the following factor is present, disbarment is not warranted:

(A) An act of dishonesty, misrepresentation, deceit, or fabrication.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(3) and concludes the following factors are applicable in this matter:

(A) Absence of prior disciplinary offenses;

(C) Absence of selfish motive; and

(K) Cooperative attitude toward the proceedings.

4. The Hearing Panel has considered the gravity of the misconduct at issue and the significance of the harm Defendant's misconduct caused to his client and concludes that issuing a censure is sufficient discipline.

Based upon the foregoing findings of fact and conclusions of law and the findings of fact and conclusions regarding discipline, and with the consent of the parties, the Hearing Panel enters the following:

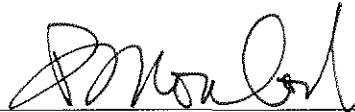
ORDER OF DISCIPLINE

1. Defendant, Thomas A. Tate, is hereby censured.

2. Defendant is taxed with administrative fees and costs of this action as assessed by the Secretary. Defendant shall pay the administrative fees and costs within thirty (30) days of service of the notice of costs upon Defendant.

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

This the 17th day of October, 2016.

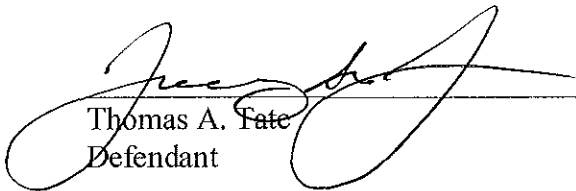


Fred M. Morelock, Chair
Disciplinary Hearing Panel

Agreed and consented to by:



Maria J. Brown
Attorney for Plaintiff



Thomas A. Tate
Defendant