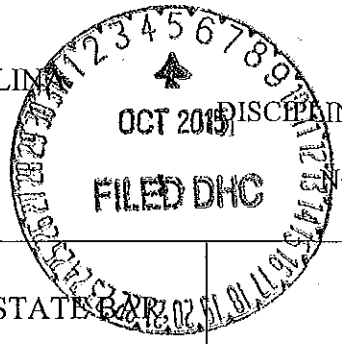


STATE OF NORTH CAROLINA WAKE COUNTY	BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR 15 DHC 14
THE NORTH CAROLINA STATE BAR, Plaintiff v. JEFFREY R. BAKER, Attorney, Defendant	CONSENT ORDER

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Donald C. Prentiss, Chair, and members William O. King and Percy L. Taylor, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff was represented by Carmen Hoyme Bannon and Maria J. Brown. Defendant, Jeffrey R. Baker ("Baker"), was represented by Douglas J. Brocker and Crystal S. Carlisle. 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. Baker 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, Jeffrey R. Baker, was admitted to the North Carolina State Bar in August 1982 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 Wilmington, New Hanover County, North Carolina.

5. In or about April 2013, Defendant began representing Janet and Richard Long in a matter involving their minor grandchild (hereinafter "Child").

6. At the outset of the representation, the Longs told Defendant that the New Hanover County Department of Social Services (hereinafter "DSS") had allowed Child's parents to elect Child's placement with a temporary caregiver, and that both the Longs and Child's parents desired that the Longs be Child's caregivers.

7. Upon review of a document related to DSS's involvement in the matter, Defendant concluded that a voluntary arrangement with DSS would not guarantee that the Longs could serve as Child's caregivers. Defendant did not convey this conclusion to his clients.

8. The Longs told Defendant that they did not want to pursue any course of action requiring them to make any allegations regarding Child's parents' unfitness to have care and custody of Child.

9. Defendant was aware that in order for a nonparent to obtain custody under North Carolina law, there must be a showing that the child's parents acted in a manner inconsistent with their constitutionally-protected parental status.

10. Defendant did not adequately explain to the Longs that any custody complaint filed on their behalf which did not include the requisite allegations of parental unfitness would be facially deficient and subject to dismissal.

11. Defendant drafted a custody complaint for the Longs, intentionally omitting any allegation that Child's parents acted in a manner inconsistent with their constitutionally-protected parental status.

12. On or about 10 April 2013, Defendant met with the Longs and provided them with the draft complaint for custody of Child and a consent order to be signed by Child's parents.

13. The Longs reviewed the complaint and requested that Defendant make certain modifications prior to filing, including correcting grammatical errors and changing inaccurate references to the sex of Child to reflect that Child is female.

14. While the Longs were in his office, Defendant had them sign a verification form because it was to be attached to the corrected complaint at filing.

15. The Longs told Defendant that they were unsure whether they wanted to proceed with the complaint. They asked him to make the corrections they had discussed but wait to file until they had made up their minds about proceeding.

16. N.C. Gen. Stat. § 50A-209 requires all parties to custody proceedings to state under oath the child's current address, where and with whom the child has lived in the preceding five years, and the names and addresses of any non-party who has physical custody of the child. This information is customarily provided to the court in a document entitled "Affidavit as to Status of Minor Child."

17. At Defendant's direction, the Longs completed an Affidavit as to Status of Minor Child form, and provided the form to Defendant. Defendant did not have the Longs sign the Affidavit form they provided to him.

18. On or about 15 April 2013, Mr. Long spoke with Defendant by telephone and indicated they wanted to proceed by filing the complaint. Defendant informed Mr. Long that he

would file the complaint on 22 April 2013. Based on the conversation with Defendant, the Longs expected to have Child in their care by the end of the following week.

19. Defendant filed the custody complaint and consent order on behalf of the Longs on 26 April 2013.

20. Prior to filing, Defendant had not corrected the complaint as the Longs had requested. For instance, the filed complaint still contained numerous grammatical errors and language referring to Child as "he."

21. Defendant did not attach to the filed complaint the Affidavit as to Status of Minor Child that the Longs had provided to him. Attached to the filed complaint was an unsigned Affidavit form that had been filled out by Defendant. This form did not include complete, accurate information regarding where and with whom Child had lived in the preceding five years.

22. Although Defendant had the Longs sign a verification, he did not attach that verification to the complaint he filed.

23. Defendant personally signed the names "Richard Long" and "Janet Long" on the verification attached to the filed complaint and notarized his own signature of the Longs' names.

24. Defendant did not get permission from both of the Longs to sign their names to the verification.

25. On 8 May 2013, Child's paternal grandparents and their daughter, Child's aunt (hereinafter "the Houles"), filed an action for custody of Child.

26. Prior to the filing of this complaint, Defendant had spoken with counsel for the Houles and agreed to file a voluntary dismissal of the Longs' custody complaint.

27. Defendant did not communicate with the Longs about filing a voluntary dismissal of their complaint before he represented to the Houles' counsel that he would do so.

28. On 9 May 2013, Defendant met with Ms. Long.

29. When Defendant met with Ms. Long on 9 May 2013, he did not tell her that he had agreed to dismiss their action voluntarily.

30. When Defendant met with Ms. Long on 9 May 2013, he told her that the Houles had filed a separate suit, the court would not enter the proposed consent order, the matter would have to be litigated and that he required an additional $1,000.00 to proceed with litigation.

31. On 10 May 2013, Defendant filed a voluntary dismissal of the Longs' case.

32. Unbeknownst to Defendant, the court had already entered an order dismissing the Longs' complaint because the allegations therein were insufficient to authorize the court to grant custody of Child to the Longs, even with the consent of Child's parents.

33. When the Longs discovered that the court had ordered dismissal of their complaint, Mr. Long called Defendant and asked for an explanation.

34. Defendant did not provide the Longs an adequate explanation for the court's dismissal of their custody complaint.

35. On 13 February 2013, Sussie and Michael Clark (hereinafter "the Clarks") retained Defendant to represent them in connection with the administration of Sussie's father's estate.

36. On 3 May 2013, the Clarks sent Defendant a text message expressing dissatisfaction with Defendant's communication with them and perceived delay in his taking action on their behalf.

37. Defendant responded by notifying the Clarks of a meeting with the Columbus County Clerk of Special Proceedings at 10 o'clock a.m. on 8 May 2013.

38. In a text message to Defendant on 4 May 2013, the Clarks told him that they had learned that they did not need to have an appointment to meet with the Clerk and that the paperwork they were going to file need not be filed by a lawyer. In that same message, the Clarks also asked for clarification of a prior message from Defendant and for an opportunity to speak with him on 6 May 2013 to "clear up any misunderstandings."

39. Defendant's 4 May 2013 reply to the Clarks indicated that there was nothing to clarify and directed them to come and pick up their file at noon on 6 May 2013. Defendant's message did not state that he was terminating his representation of the Clarks.

40. When the Clarks arrived at Defendant's office at noon on 6 May 2013, the office was locked.

41. Defendant had taped the Clarks' file to the outside of his office door with a note reading "gone to court." Defendant's office door is close to the sidewalk, facing a busy public roadway. The Clarks' file contained the decedent's original will and original titles to vehicles.

42. On 6 May 2013, the Clarks sent text messages to Defendant (1) inquiring why he wanted them to come and get the file and (2) indicating that they were waiting outside his locked office at noon on 6 May 2013 expecting to meet with him.

43. Defendant did not respond to either of these messages.

44. On 8 May 2013, prior to the scheduled time for the meeting at the Clerk's office, the Clarks sent Defendant a text message requesting confirmation that he would attend the meeting with the Clerk.

45. The Clarks did not hear from Defendant before the meeting was to start.

46. The Clarks went to the Columbus County Clerk of Special Proceedings at 10 a.m. on 8 May 2013, but Defendant was not present.

47. At 10:30 a.m. on 8 May 2013, Defendant sent a text message to the Clarks indicating that their criticism of Defendant and their assertion that they could do the paperwork themselves had "pretty much terminated any relationship w [sic] had . . . ."

48. Prior to 8 May 2013, Defendant had not expressly stated that he believed his representation of the Clarks had concluded.

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 convey his conclusion regarding the futility of a voluntary agreement with DSS, and by failing to adequately explain that the complaint would be subject to dismissal if drafted as the Longs desired, Defendant failed to reasonably consult with his clients about the means by which his clients' objectives were to be accomplished in violation of Rule 1.4(a)(2);

(b) In his conversations with the Longs on or about 15 April 2013 regarding when they would have custody of Child, Defendant communicated about his services in a manner that created an unjustified expectation about the results he could achieve in violation of Rule 7.1(a)(2);

(c) By filing a custody complaint on behalf of a non-parent that he knew did not contain legally sufficient allegations to justify the relief sought, and was not accompanied by a properly executed Affidavit as to Status of Minor Child, Defendant brought a proceeding that lacked basis in law and/or fact in violation of Rule 3.1;

(d) By failing to correct errors in the complaint that were specifically brought to his attention and by failing to include a complete, signed Affidavit as to Status of Minor Child with the filed complaint, Defendant failed to act with reasonable diligence in representing a client in violation of Rule 1.3;

(e) By signing the Longs' names on the verification without obtaining permission from both of them, notarizing his own signature of the Longs' names, and filing the false verification with the court, Defendant engaged in conduct involving dishonesty, deceit, or 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);

(f) By failing to consult with the Longs prior to agreeing to voluntarily dismiss their complaint, by failing to inform the Longs of his agreement to dismiss their complaint, and by failing to respond adequately to Mr. Long's inquiry regarding the dismissal of their complaint, Defendant violated Rule 1.4(a)(2), (a)(3), (a)(4), and (b);

(g) By filing a voluntary dismissal of the Longs' complaint without their authorization, Defendant failed to abide by the clients' decisions concerning the objectives of the representation after reasonable consultation in violation of Rule 1.2(a);

(h) By taping the Clarks' client file to the outside of his office door where it was accessible to the public, Defendant intentionally failed to safeguard information acquired during the professional relationship with a client in violation of Rule 1.6(a) and/or failed to take reasonably practicable steps to protect a client's interest upon termination of the representation in violation of Rule 1.16(d); and

(i) By failing to explicitly state that he was terminating the representation and failing respond to the Clarks' text messages after 4 May 2013 and before 10 a.m. on 8 May 2013, Defendant failed to keep his clients reasonably informed about the status of the matter in violation of Rule 1.4(a)(3), failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4), and failed upon termination of the representation to take reasonably practicable steps to protect a client's interest in violation of Rule 1.16(d).

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 – 48 above are reincorporated as if set forth herein.

2. Defendant has been practicing law for 33 years and has no prior professional discipline.

3. Defendant provided evidence of his good character, honesty and truthfulness.

4. Defendant's personal or emotional problems had an effect on the conduct in question. Specifically, around the time of the actions in this matter, Defendant's father and brother died and he became the primary caretaker for his mother, who is in failing health and requires significant care. All these family-related circumstances combined to take a considerable amount of Defendant's time, attention, concentration and focus during this time period. These factors in turn resulted in Defendant not handling these client matters in compliance with the Rules and his own professional standards. The mental and emotional toll of these personal and family circumstances also resulted in Defendant exercising extremely poor judgment in a number of instances set forth herein.

5. A lawyer's act of submitting a falsely notarized document to the court undermines the integrity of the judicial process and thus is harmful to the administration of justice.

6. Defendant was the first attorney the Longs had ever hired, and their experience with Defendant has led them to conclude that attorneys cannot necessarily be trusted.

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 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 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) Defendant committed acts or omissions where the harm or potential harm was foreseeable;

(E) Defendant's actions had a negative impact on his clients' perception of the profession;

(F) Defendant's actions had a negative impact on the administration of justice;

(I) Defendant engaged in an act of misrepresentation by notarizing his signature of his clients' names on the verification form and filing it with the court.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(2) and concludes that although Defendant engaged in an impulsive act of misrepresentation without timely remedial efforts, disbarment is not warranted in this case.

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) Defendant's lack of prior disciplinary offenses;

(G) Multiple offenses;

(H) Effect of any personal or emotional problems on the conduct in question;

(K) Full and free disclosure to the hearing panel and cooperative attitude toward the proceedings;

(Q) Good character and reputation;

(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 client and the administration of justice.

5. The Hearing Panel also has considered the disbarment factors under 27 N.C.A.C. 1B § .0114(w)(2), and 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 present in this case 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 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 conclusions regarding discipline, and with the consent of the parties, the Hearing Panel enters the following:

ORDER OF DISCIPLINE.

1. Defendant, Jeffrey R. Baker, is hereby suspended from the practice of law for one year, effective 30 days from service of this order upon Defendant.

2. Defendant shall submit his 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 he 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. At the conclusion of the one year active suspension of his license, Defendant may apply to be reinstated to the practice of law by filing a petition with the Secretary of the North Carolina State Bar demonstrating compliance with the general provisions for reinstatement set forth in 27 N.C. Admin. Code Chapter 1, Subchapter B § .0125(b) and demonstrating the following by clear, cogent, and convincing evidence:

(a) That Defendant has kept the North Carolina State Bar Membership Department advised of his current business and home addresses and notified the Bar of any change in address within ten days of such change;

(b) That Defendant has responded to all communications from the North Carolina State Bar within thirty days of receipt or by the deadline stated in the communication, and has participated in good faith in the State Bar's fee dispute resolution process for any petition received after the effective date of this Order;

(c) That Defendant has not violated the Rules of Professional Conduct or the laws of the United States or any state or local government during his suspension other than minor traffic violations;

(d) That Defendant paid the costs of this action within 30 days after service of the statement of costs;

(e) That Defendant properly wound down his law practice and complied with the requirements of §.0124 of the North Carolina State Bar Discipline and Disability Rules; and

(f) That Defendant has otherwise complied with the requirements of 27 N.C.A.C. 1B §.0125(b).

6. Defendant may file a petition seeking reinstatement and setting forth the above requirements up to 30 days prior to the end of the suspension period but shall not be reinstated prior to the end of the suspension period.

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

This the 1st day of October, 2015.

Donald C. Prentiss, Chair
Disciplinary Hearing Panel

Agreed and consented to by:

Maria J. Brown/Carmen H. Bannon
Attorneys for Plaintiff

Jeffrey R. Baker
Defendant

Douglas J. Brooker/Crystal S. Carlisle
Attorneys for Defendant