



STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
20 DHC 23

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

KATHERINE HEATH PEKMAN, Attorney,

Defendant

ORDER OF DISCIPLINE

THIS MATTER was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of the Chair, Stephanie N. Davis, and members James A. Davis and Holly Audette upon Plaintiff's Motion for Order of Discipline based on Default Order. Elizabeth S. Foley and Jennifer A. Porter represented Plaintiff, the North Carolina State Bar. Defendant Katherine Heath Pekman (hereinafter Defendant or Pekman) was not represented, did not make an appearance in this matter, and did not file any written submissions in response to Plaintiff's Motion for Order of Discipline. After review of the pleadings herein and pursuant to 27 N.C. Admin. Code 1B.0115(g), the Hearing Panel determines it is appropriate to grant Plaintiff's Motion for Order of Discipline.

THEREFORE, based on the pleadings and the admissions established by Defendant's default pursuant to 27 N.C. Admin. Code 1B.0115(f), the Hearing Panel 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, Katherine Heath Pekman, was admitted to the North Carolina State Bar in 2011, and is 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 Rules of Professional Conduct. Pekman's law license is currently suspended.

3. During the relevant periods referred to herein until April 2019, Pekman was engaged in the practice of law in the State of North Carolina and maintained a law office in in Hickory, Catawba County, North Carolina.

4. By DHC order entered in February 2019 and effective in April 2019 in 15 DHC 41, the one-year suspension previously imposed in that case was activated for failure to comply with the conditions under which it had been stayed.

5. The Complaint in this action was filed on 19 October 2020.

6. Pekman was served with the Summons and Complaint on 27 October 2020.

7. Pekman failed to file an answer or any responsive pleading by the deadline established by 27 N.C. Admin. Code 1B.0115(c).

8. Upon Plaintiff's motion, default was entered against Pekman by the Secretary of the State Bar on 24 May 2021.

9. Plaintiff filed a Motion for Order of Discipline on 21 October 2021 and served the motion on that date by electronic mail (e-mail) and by depositing a copy of the same in the U.S. Mail in a postage prepaid envelope addressed to Defendant's address of record.

10. Pekman was properly served with process in this matter and this matter came before the Hearing Panel with due notice to all parties.

Client E.B.

11. On 16 July 2018, E.B. retained Defendant to represent her regarding a motion to modify custody and made an advance payment of \$2,000.00 for Defendant's legal services.

12. After July 2018, Defendant stopped performing work on E.B.'s case.

13. After 30 July 2018, Defendant initiated no communication with E.B. and failed to respond to E.B.'s queries about the status of the case.

14. Before Defendant ceased work on E.B.'s matter, she billed approximately \$90.00 against the funds she was holding in trust for E.B.

15. Defendant failed to respond to E.B.'s November 2018 request for a refund of the balance of unearned fees Defendant held in trust for E.B.

16. Defendant failed to return the balance of unearned fees Defendant was holding in trust for E.B.

17. On 20 December 2018, E.B. filed with the State Bar a Petition for Resolution of Disputed Fee ("fee dispute") concerning Defendant's representation of her.

18. On 27 December 2018, the State Bar mailed a Notification of Mandatory Fee Dispute Resolution via certified mail to the address for Defendant on file with the State Bar.

19. The letter containing notice of E.B.'s fee dispute was returned with notation that it was unclaimed.

Client M.B.

20. On 23 May 2018, M.B. retained Defendant to represent her in divorce proceedings and made a \$3,000.00 advance payment for Defendant's legal services.

21. After 1 August 2018, Defendant stopped performing work on M.B.'s case.

22. After 7 August 2018, Defendant initiated no communication with M.B. and failed to respond to M.B.'s queries about the status of the case.

23. Before Defendant ceased work on M.B.'s case, she had billed approximately \$1,485.00 against the funds she was holding in trust for M.B.

24. After M.B. retained new counsel to handle her divorce proceedings, Defendant failed to respond to M.B.'s requests for a refund of the balance of unearned fees Defendant held in trust for M.B.

25. Defendant failed to return the balance of unearned fees Defendant was holding in trust for M.B.

26. On 13 November 2018, M.B. filed with the State Bar a Petition for Resolution of Disputed Fee ("fee dispute") concerning Defendant's representation of her.

27. On 20 November 2018, the State Bar mailed a Notification of Mandatory Fee Dispute Resolution via certified mail to the address for Defendant on file with the State Bar's membership department.

28. The letter containing notice of M.B.'s fee dispute was returned with notation that it was not deliverable as addressed.

Client D.C.

29. On 17 November 2017, D.C. retained Defendant to draft and negotiate a separation agreement and made a \$1,500.00 advance payment for Defendant's legal services.

30. At some point after the representation began, Defendant stopped performing work on D.C.'s case and responding to D.C.'s queries about the status of the case.

31. Before Defendant ceased work on D.C.'s matter, she had billed approximately \$428.00 against the funds she was holding in trust for D.C.

32. Defendant failed to return the balance of unearned fees Defendant was holding in trust for D.C.

33. On 8 February 2018, D.C. filed with the State Bar a Petition for Resolution of Disputed Fee (“fee dispute”) concerning Defendant’s representation of her.

34. The letter containing notice of D.C.’s fee dispute was returned to the State Bar after the U.S. Post Office attempted to deliver it to Defendant on three different occasions.

Client D.M.

35. In July 2018, D.M. retained Defendant to prepare and file a divorce action and paid Defendant \$912.00, funds which included advance payment of legal fees and anticipated costs.

36. At some point after the representation commenced and before Defendant had filed D.M.’s divorce action, she stopped performing work on D.M.’s case.

37. After August 2018, Defendant initiated no communication with D.M. and failed to respond to D.M.’s queries about the status of the case.

38. Before Defendant ceased work on D.M.’s matter, she billed approximately \$139.00 against the funds she was holding in trust for D.M.

39. Defendant failed to return the balance of funds she was holding in trust for D.M.

40. On 18 December 2018, D.M. filed with the State Bar a Petition for Resolution of Disputed Fee (“fee dispute”) concerning Defendant’s representation of him.

41. On 19 December 2018, the State Bar mailed a Notification of Mandatory Fee Dispute Resolution via certified mail to the address for Defendant on file with the State Bar’s membership department.

42. The letter containing notice of D.M.’s fee dispute was returned with notation that it was unclaimed.

Clients E.B., M.B., D.C., and D.M.

43. On 25 January 2019, Defendant was personally served with the letters of notice in the fee disputes filed by E.B., M.B., D.C., and D.M.

44. Although Defendant asked for and was granted an extension of time to respond to each of these fee disputes, she did not respond to any of them.

45. Defendant failed to participate in the fee dispute resolution process with respect to E.B., M.B., D.C., and D.M.

Client H.H.

46. On 16 August 2018, H.H. retained Defendant to represent her in separation proceedings and made a \$3,200.00 advance payment for legal services.
47. Defendant did not perform the services she agreed to provide to H.H.
48. After October 2018, Defendant initiated no communication with H.H. and failed to respond to H.H.'s queries about the status of the case.
49. Before Defendant ceased work on H.H.'s matter, she billed approximately \$290.00 against the funds she was holding in trust for H.H.
50. Defendant failed to return the balance of unearned fees she was holding in trust for H.H.
51. On 20 February 2019, H.H. filed with the State Bar a Petition for Resolution of Disputed Fee ("fee dispute") concerning Defendant's representation of her.
52. On 21 February 2019, the State Bar mailed a Notification of Mandatory Fee Dispute Resolution via certified mail to the address for Defendant on file with the State Bar's membership department.
53. The letter containing notice of H.H.'s fee dispute was returned with notation that it was unclaimed.

Clients E.B., M.B., D.C., D.M., and H.H.

54. As a result of Defendant's failure to participate in the fee dispute resolution process with respect to E.B., M.B., D.C., and D.M. and the return of the letter containing notice of H.H.'s fee dispute, the State Bar opened grievance files numbered 19G0386 through 19G0390 on 12 April 2019.
55. On 24 May 2019, the State Bar served Defendant with the Letters of Notice in grievances 19G0386 through 19G0390.
56. Each Letter of Notice informed Defendant that she was required to submit a written response within fifteen days of her receipt of the Letter of Notice.
57. Defendant failed to respond to the Letters of Notice in grievances 19G0386 through 19G0390 within fifteen days.
58. On 24 June 2019, the State Bar sent Defendant letters notifying her that the State Bar had not received responses to the Letters of Notice in grievances 19G0386 through 19G0390 and instructing her to respond by 1 July 2019.

59. Defendant failed to respond to the Letters of Notice in grievances 19G0386 through 19G0390.

Client J.V.H.

60. In April 2018, J.V.H. retained Defendant to represent him in divorce proceedings and made a \$1,500.00 advance payment for legal services.

61. Although Defendant prepared a divorce complaint for J.V.H., she failed to file the complaint or have the complaint and summons served and thus did not perform the services for which J.V.H. retained her.

62. After the latter part of 2018, Defendant initiated no communication with J.V.H. and failed to respond to J.V.H.'s queries about the status of the case.

63. Before Defendant ceased work on J.V.H.'s matter, she billed approximately \$816.70 against the funds she was holding in trust for J.V.H.

64. Defendant failed to return the balance of unearned fees she was holding in trust for J.V.H.

65. On 20 May 2019, J.V.H. filed with the State Bar a Petition for Resolution of Disputed Fee ("fee dispute") concerning Defendant's representation of him.

66. On 21 May 2019, the State Bar mailed a Notification of Mandatory Fee Dispute Resolution via certified mail to the address for Defendant on file with the State Bar's membership department.

67. The letter containing notice of J.V.H.'s fee dispute was returned with notations that it was undeliverable and could not be forwarded.

68. The return to the State Bar of the letter containing notice of J.V.H.'s fee dispute resulted in the State Bar opening grievance 19G0820 on 15 August 2019.

69. The State Bar served Defendant with a Letter of Notice in grievance 19G0820 on 9 September 2019.

70. The Letter of Notice informed Defendant that she was required to submit a written response within fifteen days of her receipt of the Letter of Notice.

71. Defendant failed to respond to the Letter of Notice in grievance 19G0820 within fifteen days.

72. On 1 November 2019, the State Bar sent Defendant a letter notifying her that the State Bar had not received a response to the Letter of Notice in grievance 19G0820 and instructing her to respond by 8 November 2019.

73. Defendant failed to respond to the Letter of Notice in grievance 19G0820.

Based upon the pleadings, Defendant's default, and the foregoing Findings of Fact, 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 has failed to file any responsive pleading in this matter and a proper entry of default has been entered by the Secretary of the State Bar.

3. 27 N.C. Admin. Code 1B.0115(f) provides that allegations contained in the complaint will be deemed admitted if the defendant fails to file an answer. The allegations of Plaintiff's complaint are deemed admitted.

4. Defendant's conduct, as set forth in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(3) for failure to answer the formal inquiry issued by the North Carolina State Bar in a disciplinary matter, and pursuant to N.C. Gen. Stat. § 84-28(b)(2) for violation of the following Rules of Professional Conduct in effect at the time of the conduct:

- (a) By failing to complete work on the cases of E.B., M.B., D.C., D.M., H.H., and J.V.H., Defendant failed to exercise reasonable diligence in representing her clients in violation of Rule 1.3;
- (b) By ceasing communication with E.B., M.B., D.C., D.M., H.H., and J.V.H. and failing to respond to requests for information from E.B., M.B., D.C., D.M., H.H., and J.V.H., Defendant failed to keep her clients reasonably informed about the status of their matters in violation of Rule 1.4(a)(3) and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- (c) By failing to respond to the fee disputes filed by E.B., M.B., D.C., and D.M., Defendant failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f)(2);
- (d) By failing to refund the unearned portion of the advance fees paid by E.B., M.B., D.C., D.M., H.H., and J.V.H., Defendant failed to provide prompt payment to her clients of entrusted property belonging to them and to which they were entitled in violation of Rule 1.15-2(n) and failed to take reasonably practicable steps upon termination of the representation to protect her clients' interests in violation of Rule 1.16(d); and

- (e) By failing to provide a timely response to the Letters of Notice in grievances 19G036 through 19G0390 and 19G0820, Defendant knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b).

5. 27 N.C. Admin. Code 1B.0115(g)(2)(B) provides that, upon entry of Defendant's default by the Secretary, counsel for the State Bar may then apply to the hearing panel for a default order imposing discipline. This provision states, "Upon such motion, the hearing panel shall enter an order making findings of fact and conclusions of law as established by the facts deemed admitted by the default. If such facts provide sufficient basis, the hearing panel shall enter an order imposing the discipline deemed to be appropriate." The hearing panel may, but is not required, to hear additional evidence before entering an order of discipline. 27 N.C. Admin. Code 1B.0115(g)(2)(B).

6. The facts established through the default provide sufficient basis for the Hearing Panel to enter an order of discipline in this case.

7. Additional evidence is not necessary to determine the appropriate discipline in this case.

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Panel hereby finds by clear, cogent and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1 – 73 above are reincorporated as if set forth herein.

2. Defendant received a one-year suspension in case 15 DHC 41, imposed but stayed in 2016 and activated in 2019, for accepting an advance payment for legal services, ceasing work on the case, failing to communicate with the client and failing to respond to client inquiries, failing to timely refund the unearned fees held in trust for the client, not accepting service of the notice of petition for fee dispute, and failing to timely respond to the letter of notice sent in the resulting grievance.

3. E.B., M.B., D.C., D.M., H.H. and J.V.H. were vulnerable clients. The legal matters for which E.B., M.B., D.C., D.M., H.H. and J.V.H. retained Defendant were family law matters, involving emotional and time-sensitive issues of child custody, separation, and divorce. Defendant's cessation of work on these cases, her cessation of communication with these clients, and her failure to refund the unearned fees she held for these clients frustrated and delayed these clients' abilities to take timely and necessary action in these significant family matters.

4. Defendant's failure to refund the unearned fees to E.B., M.B., D.C., D.M., H.H. and J.V.H., her failure to provide E.B.'s and M.B.'s unearned fees to them when they requested refunds, and her refusal to make herself available to the clients or the State Bar such that the funds

could be obtained from her has resulted in these funds remaining in Defendant's possession and has deprived E.B., M.B., D.C., D.M., H.H. and J.V.H. of their funds.

5. Defendant placed her own personal interests over those of her clients.

6. Defendant, by collecting advance fees and failing to perform the work for which she was retained, has shown herself to be untrustworthy. Clients are entitled to representation by attorneys they can trust to accomplish their goals.

7. Defendant's taking of client money and failing to perform the work for which she was retained caused potential significant harm to the standing of the legal profession in the eyes of the public in that such conduct by attorneys erodes the trust of the public in the profession. Confidence in the legal profession is a building block for public trust in the legal system as a whole.

8. The State Bar's Fee Dispute Resolution Program provides clients a readily accessible and free process by which to attempt resolution of fee issues. Defendant's failure to participate in the State Bar's Fee Dispute Resolution Program caused significant harm to E.B., M.B., D.C., D.M., H.H. and J.V.H. in that she denied her clients this free option to try to resolve fee issues with her and recover their funds from her. Defendant's failure to participate in the State Bar's Fee Dispute Resolution Program also caused significant harm to the administration of justice in that she prevented the Program from serving its intended function for the benefit of the clients, and to the profession by undermining trust in the State Bar's ability to assist clients with this service.

9. Defendant's repeated failures to respond to the multiple inquiries of the State Bar demonstrate her refusal to participate in the profession's self-regulatory process. By refusing to respond to the grievance inquiries of the State Bar, Defendant caused significant harm to the administration of justice by impeding the State Bar's investigation of those grievance matters and interfering with the Bar's ability to regulate its members, and caused potential significant harm to the profession's privilege to remain self-regulating.

10. Defendant has been licensed since 2011. With her degree of experience, Defendant should have known better than to engage in these acts that have led to the discipline imposed in this order.

11. The Hearing Panel finds by clear, cogent, and convincing evidence any additional facts that may be contained in the conclusions regarding discipline set out below.

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

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel carefully considered all of the different forms of discipline available to it.

2. The Hearing Panel considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f)(1), (2) and (3) and determined that the following factors are applicable:

27 N.C. Admin. Code 1B.0116(f)(1)

- a. Factor (B), Intent of Defendant to commit acts where the harm or potential harm is foreseeable;
- b. Factor (C), Circumstances reflecting Defendant's lack of honesty, trustworthiness, or integrity;
- c. Factor (D), Elevation of Defendant's own interest above those of her clients;
- d. Factor (E), Negative impact of Defendant's actions on client's or public's perception of the profession;
- e. Factor (F), Negative impact of the Defendant's actions on the administration of justice;
- f. Factor (G), Impairment of the client's ability to achieve the goals of the representation;
- g. Factor (I), Acts of dishonesty, misrepresentation, deceit, or fabrication, by failing to refund fees she did not earn and for which she had not provided any meaningful legal services, constituting dishonest acts toward each respective client; and
- h. Factor (J), Multiple instances of failure to participate in the legal profession's self-regulation process.

27 N.C. Admin. Code 1B.0116(f)(2)

- a. Factor (A), Acts of dishonesty, misrepresentation, deceit, or fabrication, by refusing to refund fees she had not earned and for which she had not provided any meaningful legal services, constituting dishonest acts toward each respective client; and
- b. Factor (C), Conversion of unearned fees belonging to clients E.B. and M.B., by failing to return their funds to them when they requested their funds.

27 N.C. Admin. Code 1B.0116(f)(3)

- a. Factor (A), Prior disciplinary offenses;
- b. Factor (E), Indifference to making restitution;
- c. Factor (F), Pattern of misconduct;

- d. Factor (G), Multiple offenses;
- e. Factor (K), Absence of full and free disclosure to the Hearing Panel;
- f. Factor (M), Bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency;
- g. Factor (O), Refusal to acknowledge wrongful nature of conduct;
- h. Factor (R), Vulnerability of the victims; and
- i. Factor (S), Defendant's experience in the practice of law.

3. The factors present under 27 N.C. Admin. Code 1B.0116(f) support imposition of disbarment in this case.

4. Defendant caused significant harm and potential significant harm to Defendant's clients, the public, the administration of justice, and the profession, as set out in detail above.

5. Defendant has engaged in a pervasive pattern of misconduct and has failed to conform her conduct to the Rules of Professional Conduct despite prior discipline. Only the most serious discipline can adequately protect the public from future transgressions by Defendant.

6. The Hearing Panel has considered lesser alternatives and finds that suspension of Defendant's license or a public censure, reprimand, or admonition would not be sufficient discipline because of the gravity of the actual and potential harm to her clients, the public, the administration of justice, and the legal profession caused by Defendant's conduct, and the threat of potential significant harm Defendant poses to the public.

7. The Hearing Panel considered all lesser sanctions and finds that discipline short of disbarment would not adequately protect the public for the following reasons:

- a. Entry of an order imposing 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 of this State;
- b. Defendant was previously disciplined for the same conduct at issue in this case and failed to reform her conduct in response to that discipline;
- c. For the public to have confidence in the State Bar's regulation of the profession, lawyers who continuously engage in improper conduct, including neglect of client matters, refusal to refund unearned fees, and refusal to participate in the profession's self-regulatory process, must be removed from the practice of law; and
- d. The protection of the public and the legal profession requires that Defendant not be permitted to resume the practice of law until she demonstrates the following: that

she has reformed; that she understands her obligations to her clients, the public, and the legal profession; and that permitting her to practice law will not be detrimental to the public or the integrity and standing of the legal profession or the administration of justice. Disbarred lawyers are required to make such a showing before they may resume practicing law.

Based on the foregoing Findings of Fact, Conclusions of Law, and additional Findings of Fact and Conclusions of Law Regarding Discipline, the Hearing Panel hereby enters the following

ORDER OF DISCIPLINE

1. Defendant, Katherine Heath Pekman, is hereby DISBARRED from the practice of law.
2. Defendant shall surrender her North Carolina law 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 pay the fees and the costs of this proceeding as assessed by the Secretary of the North Carolina State Bar. Defendant must pay the fees and costs within 30 days of service upon her of the statement of fees and costs by the Secretary.
4. Defendant shall comply with all provisions of 27 N.C. Admin. Code IB.0128.
5. Within 15 days of the effective date of this Order, Defendant shall provide the State Bar with an address and telephone number at which clients seeking return of files and return of unearned fees or other funds held in trust can communicate with Defendant and obtain such files and funds. This address must be a physical address at which Defendant maintains a consistent presence and receives mail. Defendant must keep this information current with the State Bar, providing updated information to the State Bar within 15 days of any change.
6. Defendant shall promptly return client files and funds in her possession, custody, or control to clients upon request, within 5 days of receipt of such request. Defendant will be deemed to have received any such request 3 days after the date such request is sent to Defendant, if the request is sent to the address Defendant provided the State Bar pursuant to the preceding paragraph or to Defendant's address of record with the State Bar if Defendant fails to provide another address pursuant to the preceding paragraph.
7. Within 30 days of the effective date of this order, Defendant shall disburse all funds held in any and all attorney trust account to the appropriate recipients.
8. Defendant must show that she properly disbursed all funds in any and all attorney trust accounts to the appropriate recipients and that she reimbursed the Client Security Fund for all funds paid to her clients as a condition precedent to any restoration of her law license and reinstatement to active membership status from the disbarment imposed in this order.

Signed by the Chair with the consent of the other Hearing Panel members, this the
9th day of November, 2021.

Stephanie Davis
Stephanie Davis, Chair
Disciplinary Hearing Panel