

STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
17 DHC 22

THE NORTH CAROLINA STATE BAR
Plaintiff
v.
ROBERT M. DONLON, Attorney,
Defendant

CONSENT ORDER
OF DISCIPLINE

THIS MATTER was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Fred M. Morelock, Chair, N. Hunter Wyche, Jr., and Christopher R. Bruffey pursuant to 27 N.C. Admin. Code 1B § .0114. Plaintiff, the North Carolina State Bar, was represented by Maria J. Brown. Defendant, Robert M. Donlon, was represented by F. Lane Williamson. 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, Robert M. Donlon, was admitted to the North Carolina State Bar in March 1997, 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 the summons and complaint in this matter.
4. During the relevant period referred to herein, Defendant was actively engaged in the practice of law in Charlotte, Mecklenburg County, North Carolina.

5. In 2014, Dr. Phillip Greene (“Greene”) pursued a professional malpractice claim against Defendant and Donlon Law, PLLC.

6. Greene was represented by Moore and Van Allen, PLLC (“MVA”).

7. In January 2015, Greene voluntarily dismissed the action against Defendant without prejudice.

8. Following the dismissal of the lawsuit, Defendant sent several emails to MVA seeking reimbursement for his legal fees in defending the Greene lawsuit.

9. In May 2015, the MVA attorney of record in the Greene lawsuit, Josh Lanning, informed Defendant that Greene would not pay Defendant’s legal fees.

10. In June 2015, Defendant requested a meeting with MVA’s managing member, Ernie Reigel (“Reigel”), to discuss Greene’s lawsuit and the costs thereof to Defendant.

11. Reigel declined to meet with Defendant.

12. On 3 December 2015, Defendant emailed Reigel and another MVA attorney, Tom Myrick, again requesting a meeting to discuss Greene’s lawsuit.

13. Defendant indicated his intent to file a lawsuit against MVA and against Reigel personally for intentional infliction of emotional distress and malicious prosecution unless Reigel agreed to meet with Defendant.

14. Defendant further indicated that the lawsuit he filed against MVA and Reigel “would be accompanied by a social media campaign explaining everything going on with the lawsuit including explanations of my sarcastic emails to Josh—interesting stuff about [attorney name omitted], [attorney name omitted], and the Czar.”

15. The attorneys whose names are omitted are former MVA members.

16. “The Czar” is a reference to a current MVA equity member.

17. None of these individuals had any connection to the lawsuit Greene filed against Defendant.

18. Later on 3 December 2015, Defendant emailed Reigel again.

19. Defendant stated he would expose the fact that an MVA attorney “forgave his wife for sleeping with a lawyer at his firm as long as the lawyer left the firm” and ensure that the MVA attorney’s children learned “how forgiving their father is.”

20. Defendant stated that the action he was threatening was “just for starters.”

21. The MVA attorney whom Defendant threatened with personal embarrassment, as described in paragraph 19 above, had no connection to the lawsuit Greene filed against Defendant.

22. At 10:27 a.m. on 4 December 2015, Defendant emailed Reigel and continued to threaten to expose alleged wrongdoing of various MVA actors.

23. Defendant stated that his social media campaign against MVA would be operated through the URL “mmm.mvalawless” and that he would mention the firm name at least four times in the disclaimer on his site to ensure his website would appear on the first page of internet searches for Moore & Van Allen.

24. At 10:38 a.m. on 4 December 2015, Defendant indicated in an email to Reigel that he would copy the string of emails he had sent to Reigel and send it to every lawyer at MVA if Reigel did not contact him by 5 p.m.

25. At 11:13 a.m. on 4 December 2015, Defendant sent Reigel a message stating, “Actually, that’s way too much work. I’ll just send it to 5 associates and they will do the rest.”

26. At 5:04 p.m. on 4 December 2015, Defendant forwarded all of his previous emails to five attorneys and members of the staff at MVA with the comment “Please read the email string below and realize how great a lawyer one of your partners is.”

27. At 5:14 p.m. on 4 December 2015, Defendant sent Reigel an email stating, “5:01 email sent to first 5 in alphabetical order. The first amendment is a wonderful thing. And as you scurry to figure out what to do, remember that (1) truth is an absolute defense, and (2) I haven’t asked you for a dime. Now what?”

28. During the time Defendant was sending these emails, he also had several telephone conversations with attorneys at MVA where he indicated he was seeking reimbursement of the legal fees he incurred in defending Greene’s lawsuit.

29. Defendant intended his threats and harassment to intimidate MVA into reimbursing him for the legal fees he incurred in defending Greene’s lawsuit.

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, Robert M. Donlon, 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) in that Defendant violated the Rules of Professional Conduct in effect at the time of his actions as follows: By threatening to expose embarrassing or incriminating information about MVA attorneys in order to intimidate them, Defendant 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. Defendant has a history of alcoholism.
2. Defendant was under the influence of alcohol at the time he engaged in the conduct described above.
3. Defendant sought and is still in treatment for his alcohol abuse.
4. Defendant no longer drinks alcohol and is committed to continued sobriety.
5. Defendant has fully cooperated with the State Bar's investigation and in reaching a resolution in these proceedings.

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) negative impact of the defendant's actions on the administration of justice; and
- (b) effect of defendant's conduct on third parties.

3. The Hearing Panel has carefully considered all of the factors enumerated in Rule .0114(w)(2) and concludes that none of the factors requiring consideration of disbarment are present in this case.

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) Lack of prior disciplinary offenses;
- (b) Selfish motive;
- (c) A pattern of misconduct;
- (d) Effect of physical or mental impairment on the conduct in question;

- (e) Interim rehabilitation; and
- (f) Cooperative attitude toward the proceedings.

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 the significant harm and potential harm resulting from Defendant's misconduct, the Hearing Panel concludes that a suspension of Defendant's license, stayed upon compliance with conditions, 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.

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

ORDER OF DISCIPLINE.

1. Defendant, Robert M. Donlon, is hereby suspended from the practice of law for one year, effective 30 days from service of this order upon Defendant.

2. The one year suspension is stayed for a period of two years as long as Defendant complies, and continues to comply during the period of the stay, with the following conditions:

- (a) Defendant shall abstain from the consumption of any alcohol during the period of stay;
- (b) Defendant shall abstain from the consumption of any controlled substance other than medications as prescribed by his treating physician;
- (c) Defendant shall successfully comply with the monitoring requirements of FirstSource Solutions Professional Health Monitoring Program or other service agreed to by the parties, at Defendant's expense. Such monitoring will include twelve alcohol screens per year. The monitoring agreement will require the monitoring service to report to the North Carolina State Bar any failure of Defendant to take or pay for the test and any positive test result. Defendant will enter into a monitoring program within thirty days of the date of this order.

Defendant will sign all releases or documents to allow such reporting and shall not revoke such release(s) during the period of stay;

- (d) Within 30 days of the date of this order, Defendant shall be evaluated by a clinician approved by the Office of Counsel who specializes in treatment of substance abuse and addiction. The evaluating clinician shall not be a provider from whom Defendant has received or will receive ongoing treatment. Within 30 days of the evaluation, the evaluating clinician shall submit to the Office of Counsel a written report of the results of the evaluation, to include treatment recommendations. Defendant will sign all necessary releases or documents to authorize the evaluating clinician to release the report, and to otherwise respond to requests for information from the Office of Counsel about the evaluation. The costs associated with compliance with this paragraph shall be at Defendant's sole expense;
- (e) Defendant shall comply with all treatment recommendations of the evaluating clinician. The provider(s) from whom Defendant receives the recommended treatment shall provide to the Office of Counsel quarterly reports indicating the nature of the ongoing treatment and Defendant's compliance with treatment. The reports will be due by January 15, April 15, July 15, and October 15 during the period of the stay. It is Defendant's obligation to ensure that the reports are timely submitted. Defendant will sign all necessary releases or documents to authorize the treating clinician(s) to make these reports, and to otherwise respond to requests for information from the Office of Counsel about Defendant's condition and treatment. The costs associated with compliance with this paragraph shall be at Defendant's sole expense;
- (f) Within twelve months after the effective date of this order, Defendant shall attend at least 3 hours of Continuing Legal Education (CLE) on the topic of substance abuse. This requirement shall be in addition to Defendant's standard CLE obligations;
- (g) Defendant shall provide the Office of Counsel with his current street address (not at P.O. Box) and phone number and will advise the State Bar in writing of any changes in his contact information within 10 days of such change(s);
- (h) Defendant shall respond to all letters of notice and requests for information from the State Bar by the deadlines stated in the communication;
- (i) Defendant shall timely pay all State Bar membership dues and Client Security Fund assessments;

- (j) Defendant shall timely comply with his State Bar CLE requirements and will pay all fees and costs assessed by the applicable deadline;
- (k) Defendant shall not violate any federal or state laws, other than minor traffic violations;
- (l) Defendant shall not violate any provision of the North Carolina Rules of Professional Conduct; and
- (m) Defendant shall pay the costs of this proceeding within 30 days of service of the statement of costs upon him by the Secretary of the State Bar.

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

4. If the stay of the suspension is lifted at any time and the suspension of Defendant's law license is activated for any reason, before seeking reinstatement of his license to practice law, Defendant must show by clear, cogent and convincing evidence that he has complied with each of the following conditions:

- (a) Submitted his license and membership card to the Secretary of the State Bar within 30 days after the effective date of the order suspending his law license;
- (b) Complied with all provisions of 27 N.C.A.C. Chapter 1, Subchapter B, Section .0124 of the State Bar Discipline & Disability Rules on a timely basis;
- (c) Demonstrated that at the time of his application for reinstatement he is not suffering from any addiction, disability, or condition that would impair his current ability to competently engage in the practice of law;
- (d) Demonstrated that he has abstained from all alcohol and illicit drug use or consumption and has not taken any prescription drugs or controlled substances other than as authorized by his treating physician for at least one year preceding the filing of his petition for reinstatement. This requirement will apply regardless of when the stay is lifted and regardless of whether enforcement of this provision extends the period of suspension of Donlon's law license beyond the two year stay period set out herein;
- (e) Provided the Office of Counsel with releases authorizing and instructing his medical, psychological, and mental health care providers to provide to the Office of Counsel all medical records relating to his evaluation, prognosis, care or treatment, including substance abuse and mental health evaluations, and authorizing and instructing such providers to respond to requests for information by the Office of Counsel; and

(f) Paid all outstanding membership fees, Client Security Fund assessments and costs assessed by the DHC or the State Bar and complied with all continuing legal education requirements imposed by the State Bar.

5. 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.

29th Signed by the Chair with the consent of the other Hearing Panel members, this the
day of August, 2017.

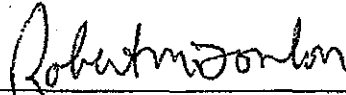


Fred M. Morelock, Chair
Disciplinary Hearing Panel

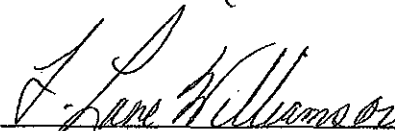
CONSENTED TO BY:



Maria J. Brown
Attorney for Plaintiff



Robert M. Donlon
Defendant



F. Lane Williamson
Attorney for Defendant