



STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
23 DHC 1N

THE NORTH CAROLINA STATE BAR,

Petitioner

v.

EARNEST N. BAILEY, Attorney,

Respondent

ORDER SUSPENDING
RESPONDENT'S LAW LICENSE
FOR NONCOMPLIANCE

THIS MATTER was considered by the Chair of the Disciplinary Hearing Commission pursuant to 27 N.C. Admin. Code 1B.0135. Petitioner, the North Carolina State Bar, was represented by Elizabeth S. Foley. Respondent, Earnest N. Bailey, was not represented, did not make an appearance in this matter, and did not file any response to the Second Amended Order to Show Cause for Grievance Noncompliance served upon him. Based on the filings, the Chair of the Disciplinary Hearing Commission finds by clear, cogent, and convincing evidence the following:

FINDINGS OF FACT

1. Petitioner, the North Carolina State Bar ("State Bar"), is a state agency 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. Respondent, Earnest N. Bailey ("Respondent"), was licensed to practice law in North Carolina in 2011 and is, and was at all times referred to herein, 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.

3. The State Bar's membership database shows the following address for Respondent: P.O. Box 21542, Winston Salem, NC 27120.

4. On May 11, 2022, Petitioner sent Respondent via certified mail the Letters of Notice in grievance file nos. 21G0656, 21G0657, and 22G0251, enclosed in one envelope. The certified mailing was returned to Petitioner on July 19, 2022, as unclaimed.

5. On June 3, 2022, Respondent was personally served with Letters of Notice in the following grievance files: 21G0656, 21G0657, 22G0085, and 22G0251 (the "Letters of Notice").

6. On June 3, 2022, Respondent signed and returned the Acceptance of Service forms for the Letters of Notice.

7. Respondent's responses to the Letters of Notice were due within 15 days of Respondent's receipt of the Letters of Notice.

6. Respondent did not respond to the Letters of Notice within 15 days of Respondent's receipt of the Letters of Notice.

7. Respondent did not request an extension of time to respond to the Letters of Notice.

8. On July 13, 2022, Petitioner sent Respondent an email that included, as an attachment, letters informing Respondent that his responses to the Letters of Notice were past due.

9. Respondent did not respond to Petitioner's July 13, 2022 email.

10. On September 16, 2022, State Bar Councilor Kevin Williams attempted to reach out to Respondent via telephone and email, and requested Respondent call him; however, Respondent did not respond.

11. On October 5, 2022, the Chair of the Grievance Committee of the North Carolina State Bar issued a subpoena to Respondent to produce client files and other documents for grievance file nos. 21G0656, 21G0657, 22G0085, 22G0251, and 22G1028. Additionally, Petitioner issued a Letter of Notice for grievance file no. 22G1028.

12. Petitioner sought to have the Guilford County Sheriff's Office serve Respondent with the subpoena and with the Letter of Notice in grievance file no. 22G1028.

13. The Guilford County Sheriff's Office was unable to serve Respondent with the subpoena or with the Letter of Notice for grievance file no. 22G1028 because Respondent could not be located.

14. Respondent has not responded to Petitioner's Letters of Notice with which he has been served, in grievance file nos. 21G0656, 21G0657, 22G0085, and 22G0251.

15. On January 9, 2023, after Respondent failed to respond to the Letters of Notice in grievance file nos. 21G0656, 21G0657, 22G0085, and 22G0251, Petitioner filed a petition with the Disciplinary Hearing Commission ("DHC") setting forth the efforts made by the State Bar seeking Respondent's compliance and seeking entry of an order directing Respondent to show cause why his law license should not be suspended for noncompliance pursuant to 27 N.C. Admin. Code 1B.0135.

16. The petition was supported by the affidavit of State Bar Investigator Robert Powell.

17. On January 26, 2023, the DHC entered a Second Amended Order (“Order”) directing Respondent to show cause within 14 days of the date of service of the Order upon Respondent why his law license should not be suspended for noncompliance.

18. Respondent was properly served with the Order, pursuant to 27 N.C. Admin. Code 1B.0135(d)(4), on January 26, 2023.

19. The Order warned Respondent that failure to respond to the Order may result in the suspension of his law license.

20. Respondent did not respond to the Order.

21. Respondent has not shown he is in compliance, has not cured his noncompliance with the State Bar, and has not shown good cause for his noncompliance.

Based on the foregoing Findings of Fact, the Chair makes the following

CONCLUSIONS OF LAW

1. All parties are properly before the Chair of the Disciplinary Hearing Commission, and the Disciplinary Hearing Commission has jurisdiction over Respondent, Earnest N. Bailey, and over the subject matter of this proceeding.

2. Pursuant to 27 N.C. Admin. Code 1B.0135(e)(3), if the respondent does not file a response to the order to show cause within 14 days of the date of the service of the order to show cause upon the respondent, the Chair of the DHC may enter an order suspending the respondent’s law license.

3. The State Bar met its burden of proof by establishing by clear, cogent, and convincing evidence that Respondent is noncompliant in grievance file nos. 21G0656, 21G0657, 22G0085, and 22G0251.

4. Respondent failed to meet his burden of proof to establish that he was and is in compliance, that he fully cured all noncompliance, or that there is good cause for his noncompliance. None of these three circumstances have been established in this case.

5. Respondent is noncompliant in grievance file nos. 21G0656, 21G0657, 22G0085, and 22G0251 as defined in 27 N.C. Admin. Code 1B.0135(a).

6. Respondent’s noncompliance is grounds for the suspension of his law license pursuant to 27 N.C. Admin. Code 1B.0135(e)(3) and (g).

Based upon the foregoing Findings of Fact, and Conclusions of Law, the Chair of the Disciplinary Hearing Commission enters the following:

ORDER

1. Respondent, Earnest N. Bailey, is hereby suspended from the practice law.
2. This order shall be effective 30 days after it is served upon Respondent by mailing a copy of the order by regular mail to the following address: 8542 Scoggins Road, Oak Ridge, North Carolina 27310.
3. Respondent shall comply with all the wind-down provisions of 27 N.C. Admin. Code 1B.0128, as provided in 27 N.C. Admin. Code 1B.0135(h).
4. Any petition by Respondent to be reinstated to the practice of law shall be governed by 27 N.C. Admin. Code 1B.0135(i).

This the 15th day of February, 2023.

Stephanie N. Davis

Stephanie N. Davis, Chair
Disciplinary Hearing Commission