

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

2019 JUL 31 AM 11: 5 SUPERIOR COURT DIVISION

WAKE COUNTY

18-CVS-5645

WAKE CO., C.S.C.

THE NORTH CAROLINA STATE BAR,

Petitioner

v.

ALAN G. PHILLIPS, Attorney,

Respondent

ORDER OF DISBARMENT

THIS MATTER, which was initiated by the Honorable Superior Court Judge Stephan Futrell's 31 May 2019 Order to Show Cause regarding the conduct of Attorney Alan G. Phillips ("Phillips" or "Respondent"), was heard on 25 June 2019 before the Honorable Wake County Superior Court Judge Vince M. Rozier. Phillips was present and appeared *pro se*.

Based upon the pleadings, the evidence admitted during the pendency of this case, and arguments made at the hearings in this above-captioned matter, the Court hereby finds by clear, cogent, and convincing evidence the following

FINDINGS OF FACT

1. Phillips practices law in Asheville, Buncombe County, North Carolina 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 inherent authority of the Court, the Rules and Regulations of the North Carolina State Bar, and the Rules of Professional Conduct.

2. On 7 May 2018, the North Carolina State Bar ("State Bar") filed a Petition for an Injunction and to Enforce the Subpoena in the above-captioned matter.

3. On or around 11 July 2018, Respondent filed an Answer to the State Bar's Petition.

4. On 31 August 2018, the State Bar served Respondent with its Discovery Requests.

5. On or around 10 September 2018, Respondent moved this Court for an extension of time to respond to the State Bar's Discovery Requests "for the reason that Defendant [sic] has not had sufficient time to prepare a response."

6. On or about 7 November 2018, the State Bar received Respondent's "responses" to its Discovery Requests.

7. In these “responses,” Respondent refused to respond to any of the State Bar’s Discovery Requests.

8. On 8 November 2018, pursuant to Wake County Civil Superior Court Local Rule 5.4, the State Bar sent Respondent a letter via e-mail and by hard-copy mail in a good faith effort to address the deficiencies in Respondent’s discovery responses. State Bar Counsel’s letter detailed the deficiencies with Respondent’s discovery responses, requested that the parties meet and confer on or before 14 November 2018, and requested that Respondent respond to the State Bar’s Discovery Requests no later than 19 November 2018.

9. Respondent failed to respond to the State Bar’s 8 November 2018 letter and continued in his refusal to respond to the State Bar’s Discovery Requests.

10. On 20 November 2018, the State Bar sent an email to Respondent requesting again that the parties meet and confer to make “diligent attempts to resolve differences,” pursuant to Wake County Civil Superior Court Local Rule 5.4.

11. Respondent still refused to respond to the State Bar’s attempts to meet and confer.

12. Respondent provided only one reason for his refusal to respond to the State Bar’s Discovery Requests: That “due to [the State Bar’s] conflict of interest in this action, Respondent OBJECTS” to the State Bar’s Discovery Requests.

13. Respondent claimed that, because of this “conflict of interest,” the State Bar’s Discovery Requests constituted unreasonable annoyance, embarrassment, oppression and undue burden and expense within the meaning of Rule 26(c) of the North Carolina Rules of Civil Procedure.

14. The State Bar filed a Motion to Compel on 29 November 2018, and a hearing on that Motion was held before this Court on 7 February 2019.

15. This Court held that there was no conflict of interest in this matter in its 12 February 2019 Order to Compel, noting that “Respondent’s objections to the State Bar’s discovery are without merit and constitute no good faith basis to refusing to answer the” discovery requests.

16. In its 12 February 2019 Order to Compel, this Court ordered Respondent to deliver complete and full answers to the discovery requests within thirty days. The Court ordered that “[s]uch responses shall not be qualified or conditioned upon objection or any other avoidance.”

17. Respondent did not comply with this Court’s 12 February 2019 Order to Compel, but, instead, on or about 7 March 2019, Respondent filed the following motions: (a) “Motion in the Cause (2)”; (b) “Motion in the Cause (3)”; (c) Motion to Stay; (d) Motion to Stay Pending Appeal; (e) Motion for Judgment on the Pleadings; (f) Motion for Declaratory Judgment; and (g) Motion for Leave to Amend. These motions sought, *inter alia*, to stay the proceedings in this action.

18. In Respondent's various 7 March 2019 motions, Respondent repeated claims that had already been heard and deemed "without merit" by the Court: to wit, that the State Bar had engaged in misconduct and thus that there was a conflict of interest in this matter.

19. On 21 March 2019, the State Bar filed a Motion to Hold Respondent in Civil Contempt for willfully violating this Court's 12 February 2019 Order to Compel.

20. On or around 5 April 2019, Respondent published a "tweet" on his Twitter account with a link to an article he had drafted and posted online.

21. In this article, Respondent claimed that the Court's 12 February 2019 Order to Compel was "blatantly illegal" and a "judicial cover-up of State Bar corruption."

22. Respondent also noted the following in this article: "The judge also ordered Phillips to provide discovery (documents, answers to questions, etc.). Phillips refused, because the entire proceeding has been unlawful from the start, and the Bar will simply make up more facts and law to use against him. So, Phillips is in contempt of court for violating the court's order. Potential penalties include *going to jail*." (parenthetical and emphasis in original).

23. On or around 22 April 2019, Respondent moved to continue the hearing on the State Bar's Motion to Hold Respondent in Civil Contempt, falsely claiming that he had not received notice of the State Bar's calendar request¹ and that the State Bar's motion was not ripe because Respondent had appealed the Court's 12 February 2019 Order to Compel. The Court rejected these arguments and ordered that the hearing on the State Bar's Motion to Hold Respondent in Civil Contempt would be held as scheduled on 29 April 2019.

24. Prior to the hearing on the State Bar's Motion to Hold Respondent in Civil Contempt, Respondent's various motions were heard by the Court on 25 April 2019. At this hearing, Respondent again repeated the arguments that the Court had already rejected and deemed to be "without merit," *i.e.* that the State Bar had a conflict of interest and had engaged in misconduct. When examined under oath in open court on 25 April 2019, Phillips admitted, expressly and tacitly, that he had no objective evidence to support his claims, instead relying on supposition and unfounded speculation.

25. On 25 April 2019, this Court, *inter alia*, denied Respondent's Motion to Stay and Motion to Stay Pending Appeal and stated from the bench that Respondent was still required to comply with his discovery obligations and the Court's 12 February 2019 Order to Compel.

26. Respondent did not comply with this Court's 12 February 2019 Order to Compel.

27. At the first hearing on the State Bar's Motion to Hold Respondent in Civil Contempt on 29 April 2019, Respondent admitted in open court that he was, in fact, in contempt of court and that he had willfully not complied with the Court's 12 February 2019 Order to Compel. As a result, Respondent was imprisoned for contempt for 48 hours on 29 April 2019 and then released and given 8 days out of the custody of the Wake County Sherriff to purge his contempt, with a review hearing set for 9 May 2019.

¹ Respondent acknowledged in open court that he had, in fact, received notice of the State Bar's calendar request.

28. Respondent did not comply with the Order to Compel by 9 May 2019.

29. Upon return to Court on 9 May 2019, the Court found that Respondent still had not purged his contempt by complying with the Court's 12 February 2019 Order to Compel and that Respondent's noncompliance was willful. As a result, Respondent was imprisoned for contempt for an additional 48 hours on 9 May 2019 and then released and given 8 days out of the custody of the Wake County Sherriff to purge his contempt, with a review hearing set for the week of 20 May 2019.

30. Respondent did not comply with the 12 February 2019 Order to Compel by 21 May 2019.

31. Upon return to Court on 21 May 2019, the Court found that Respondent still had not purged his contempt by complying with the Court's 12 February 2019 Order to Compel and that Respondent's noncompliance was willful.

32. On 21 May 2019, the Court also found that Respondent had "announced to the media and on the internet on more than one occasion that he does not intend to fully respond to Petitioner's Discovery Requests nor does he intend to comply with the Court's 12 February 2019 Order."

33. As a result of, *inter alia*, Respondent's continued proffering of meritless assertions, his continued willful failure to abide by discovery rules, his willful refusal to follow direct orders of the Court, and his various statements to the media indicating disrespect for the Court, Respondent was ordered on 21 May 2019, by Order entered 31 May 2019, to Show Cause why he should not be disciplined by the Court in its inherent authority. The hearing on this Order to Show Cause was set for the week of 24 June 2019.

34. And as a result of his willful continuing contempt, Respondent was imprisoned for contempt for an additional 30 days on 21 May 2019 and then released and given 4 days out of the custody of the Wake County Sherriff to purge his contempt, with a return hearing set for the week of 24 June 2019.

35. Respondent did not comply with the 12 February 2019 Order to Compel by 24 June 2019.

36. Upon return to Court on 25 June 2019, the Court found that Respondent fully understood his discovery obligations pursuant to the rules and this Court's 12 February 2019 Order but had willfully not purged his contempt by complying with the Court's 12 February 2019 Order to Compel. Respondent made no effort to produce discovery to the State Bar prior to the 25 June 2019 hearing. As a result, Respondent was imprisoned for contempt for an additional 45 days on 25 June 2019.

37. The Court also found by clear, cogent and convincing evidence that Respondent had engaged in professional misconduct, as detailed below.

38. The proceedings, filings, exhibits, and orders in *North Carolina State Bar v. Alan G. Phillips*, Wake County file no. 18-CVS-5645 are incorporated herein by reference.

Based on the foregoing Findings of Fact, the Court enters the following:

CONCLUSIONS OF LAW

1. All of the parties are properly before the Court and the Court has jurisdiction over Phillips and the subject matter.

2. Phillips's conduct, as set forth in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2), N.C. Gen. Stat. § 5A-23, N.C. Gen. Stat. § 5A-21, N.C. Gen. Stat. § 84-36, and the Court's inherent authority to regulate the conduct of lawyers in that Phillips violated the North Carolina Rules of Professional Conduct as follows:

- a) By repeatedly making assertions that the Court already found lacked any cognizable basis in fact or law, Phillips violated Rule 3.1, which prohibits a lawyer from asserting an issue in a proceeding unless the assertion has a non-frivolous basis in law and fact;
- b) By refusing to participate in efforts to resolve a discovery dispute as required by Local Rule 5.4 and by refusing to comply with an order of this Court, Phillips violated Rule 3.4(c), which prohibits a lawyer from knowingly disobeying an obligation under the rules of a tribunal;
- c) By failing to timely and completely respond to the State Bar's discovery requests, Phillips violated Rule 3.4(d)(2), which prohibits a lawyer from failing to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party;
- d) By refusing to produce documents and files in his possession that were responsive to the State Bar's requests for production of documents and subject to this Court's 12 February 2019 Order to Compel, Phillips violated Rule 3.4(d)(3), which prohibits a lawyer from failing to disclose evidence or information the lawyer knew, or reasonably should have known, was subject to disclosure under applicable law, rules of procedure, or court opinions;
- e) By publicly stating without factual basis that the proceedings conducted before this Court are unlawful, that an order of this Court is illegal, and that a judge in this case is covering up corruption, Phillips violated Rule 8.2(a), which prohibits a lawyer from making a statement that the lawyer knows to be false or with reckless disregard to its truth or falsity concerning the qualifications or integrity of a judge; and
- f) By publicly broadcasting disrespect for the Court and the rule of law by announcing his refusal to comply with a court order, by repeating unfounded arguments the Court had already rejected, and by needlessly consuming the time and resources of the Court

addressing his ongoing contempt, Phillips violated Rule 8.4(d), which prohibits conduct prejudicial to the administration of justice.

3. Judicial authority to discipline attorneys is well-established in North Carolina common law and “is not dependent upon statutory authority. It arises because of a court’s inherent authority to take disciplinary action against attorneys licensed before it; an authority which extends even to matters which are not pending in the particular court exercising the authority. This power is based upon the relationship of the attorney to the court and the authority which the court has over its own officers to prevent them from, or punish them for, acts of dishonesty or impropriety calculated to bring contempt upon the administration of justice.” *In re Nw. Bonding Co.*, 16 N.C. App. 272, 275 (1972).

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

FINDINGS OF FACT REGARDING DISCIPLINE

1. Phillips has refused to acknowledge the wrongful nature of his conduct.
2. Phillips has refused to show genuine remorse for his actions.
3. Phillips, by his own admission in open court and through his own exhibits, has previously received a Letter of Warning from the Grievance Committee of the North Carolina State Bar for violating the Rules of Professional Conduct.
4. Phillips’s misconduct caused harm to the public, the perception of the profession, and the administration of justice.
5. Phillips knowingly prioritized his own beliefs over his obligations as an officer of the Court, and his own preferences over his obligation as a citizen to comply with the rule of law.

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

CONCLUSIONS REGARDING DISCIPLINE

1. The North Carolina Supreme Court has held that disbarment is appropriate when an “attorney’s misconduct constitutes a threat so serious that the protection of the public demands that the offending attorney’s license and practice be taken away.” *North Carolina State Bar v. Talford*, 356 N.C. 626, 637, 576 S.E.2d 305, 313 (2003) (internal quotation marks omitted). Suspension or disbarment is appropriate where there is evidence that an attorney’s actions resulted in “significant harm or potential significant harm to the clients, the public, the administration of justice, or the legal profession, and lesser discipline is insufficient to adequately protect the public.” 27 N.C. Admin. Code, Chapter 1B, § .0116(f)(1).
2. When attorneys show disregard for the dignity of the Court and demonstrate undignified and discourteous conduct that is degrading to the Court and that breeds disrespect for

the Court and the legal profession, the public is harmed. The public suffers when the participants in the justice system do not treat each other with respect and when attorneys do not display candor toward the Court. One of the principal roles of the justice system is to enforce the rule of law and achieve justice for the public; accomplishing this goal is significantly impeded when the attorneys participating in the justice system are not forthright with the Court and show the Court disrespect.

3. Self-regulation of the legal profession depends upon the cooperation and participation of lawyers in the self-regulatory process. Respondent's persistent refusal to meaningfully participate in the self-regulatory process harmed the legal profession by interfering with the State Bar's ability to regulate its members and undermining the profession's privilege to remain self-regulating.

4. Societal order depends in large measure on respect for the rule of law and deference to the decisions of our courts. To maintain this respect and deference, litigants, witnesses, jurors, and the general public must have faith in the integrity and impartiality of our system of justice. Respondent's baseless public attacks on the judicial process were designed to undermine public faith in the court system.

5. By openly flouting the directives of this Court, Respondent jeopardized the public's faith in the integrity of the judicial process and the legal profession. Respondent's conduct foreseeably caused significant potential harm to public perception of the legal profession by diminishing the public's expectation that attorneys will conduct themselves with dignity and adhere to the Rules of Professional Conduct.

6. Attorneys as officers of the court have a duty to avoid conduct that undermines the integrity of the adjudicative process. Respondent's repeated incarceration for contempt of court reflects a disregard for the rule of law and has the potential to cause significant harm to the standing of the legal profession in the eyes of the public. When lawyers violate the law, it brings disrepute upon the legal profession and undermines public confidence in lawyers.

7. Respondent has not acknowledged most of his violations of the Rules of Professional Conduct and shows little insight regarding the impropriety of his actions. On the contrary, he has characterized his open refusal to comply with the Court's order as "following his conscience."

8. When attorneys disrespect the Court, it sullies the perception of the profession in the eyes of the public; this is particularly the case when such misconduct occurs in public settings, as it did in this case: Respondent's public accusations against the Court, which show disregard for the dignity of the Court, are undignified and discourteous, degrade the Court, and that breed disrespect for the Court and the legal profession, were made publicly, available for all to view online. Respondent, in fact, took further steps to broadcast his statements, giving multiple interviews to the press regarding his willful refusal to comply with this Court's Order and "tweeting" out his accusations against the Court for his followers to see.

9. Whenever attorneys refuse to acknowledge the wrongful nature of their conduct and refuse to show remorse for their actions, it demonstrates, at best, a lack of appreciation for the

bounds of professional conduct on the part of the attorney and highlights the strong likelihood that the attorney will engage in the behavior again in the future. This is unsurprising: if an attorney does not believe he has done anything improper, there is nothing to stop him from acting in such a manner in the future.

10. This likelihood for recidivism creates a danger to the public, the profession, and the administration of justice, and this danger must be eliminated by prohibiting Phillips from continuing to practice law.

11. Accordingly, given Phillips's lack of remorse, his repeated refusal to obey direct orders of the Court, his refusal to acknowledge the wrongful nature of his conduct, and the lack of confidence Phillips inspires that this will not reoccur, it is evident that Phillips is a danger to the public and that, if he is permitted to continue to practice law, it is likely that the public will be harmed again.

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

ORDER OF DISCIPLINE

1. Alan G. Phillips is hereby DISBARRED from the practice of law, effective 1 July 2019.

2. Phillips shall comply with the provisions of 27 N.C. Admin. Code 1B, § .0128 and shall surrender his law license and permanent membership card to the Secretary of the North Carolina State Bar no later than 12 August 2019.

3. No later than 12 August 2019, Phillips shall provide the State Bar with a physical address and telephone number at which clients seeking return of files can communicate with Phillips and obtain such files.


4. Phillips shall promptly return client files to clients upon request, within five days of receipt of such request. Phillips will be deemed to have received any such request three days after the date such request is sent to Phillips at the address Phillips provided the State Bar pursuant to the preceding paragraph.

5. Phillips shall not petition for reinstatement of his law license until the expiration of at least five years from the date of entry of this order. Such petition must be made to Wake County Superior Court, with a copy properly served on the Secretary of the North Carolina State Bar, who may assign an attorney at the State Bar to present evidence at any hearing on the petition in concurrence with or opposition thereto.

6. Phillips's law license shall not be reinstated until he has demonstrated to the satisfaction of the Court that he has complied with the provisions of 27 N.C. Admin. Code 1B, § .0129 and has, pursuant to 27 N.C. Admin. Code 1B, § .0129(a)(3)(H), complied with this Court's

12 February 2019 Order to Compel, irrespective of any subsequent dismissal of the above-captioned proceeding.

SO ORDERED this the 30 day of July, 2019.



Vince M. Rozier
Superior Court Judge Presiding