

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
15 DHC 18

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
v.)
VICTOR H. MORGAN, JR., Attorney,)
Defendant)

ORDER OF DISCIPLINE

This matter was heard by a Hearing Panel of the Disciplinary Hearing Commission composed of Barbara B. Weyher, Chair, and members Walter E. Brock, Jr. and Patti Head pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff was represented by Deputy Counsel Margaret T. Cloutier. Defendant made no appearance, but was properly served with process and was duly notified of the hearing in this matter.

Morgan failed to file a responsive pleading in this matter and on October 28, 2015 the Hearing Panel entered an Order Pursuant to Default against Morgan in which the allegations in the Plaintiff's complaint were deemed admitted and concluding as a matter of law that Morgan violated the rules set forth in the complaint.

Based upon the pleadings in this matter and the Order Pursuant to Default entered by the Hearing Panel, the Hearing Panel 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, Victor H. Morgan, Jr. (hereinafter "Morgan" or "Defendant"), was admitted to the North Carolina State Bar on August 21, 1983 and is, and was at all times referred to herein, an Attorney at Law licensed to practice in North Carolina, 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. Morgan actively engaged in the practice of law in the State of North Carolina and maintained a law office in Jacksonville, Onslow County, North Carolina until June 15, 2013. Morgan's license was suspended for three years effective June 15, 2013 by Order of Discipline entered May 21, 2013 by the Disciplinary Hearing Commission.

4. J. Morton engaged Morgan to represent him in a civil matter in November 2012.

5. Morton paid Morgan \$750.00 for attorney's fees and \$250.00 for court costs when he engaged Morgan in November 2012.

6. Morgan terminated his representation of Morton when Morgan's license was suspended in June 2013 without having completed work on Morton's case.

7. Morgan filed a civil action on Morton's behalf but failed to complete the matter before Morgan terminated his representation.

8. Morgan did not refund unearned fees and undisbursed court costs to Morton after terminating his representation.

9. On February 12, 2014, Morton filed a Petition for Resolution of Disputed Fee with the North Carolina State Bar's Fee Dispute Resolution Program.

10. Notice of Morton's fee dispute petition was served on Morgan on March 7, 2014. The notice informed Morgan of his obligation to respond to the petition in writing within 15 days of service of the notice upon Morgan.

11. Morgan did not respond to the petition within the required 15-day period and did not request an extension of time in which to respond.

12. On or about April 17, 2014 the State Bar opened a grievance file against Morgan regarding his conduct in Morton's case.

13. Morgan was served with a Letter of Notice relating to the grievance on May 29, 2014. The Letter of Notice informed Morgan that he was required to respond in writing to the grievance within 15 days of service of the Letter of Notice upon Morgan.

14. Morgan did not respond to the grievance in writing.

15. T. Woods engaged Morgan to represent her concerning a personal injury claim stemming from an automobile accident that occurred on November 21, 2006.

16. Morgan did not file a lawsuit against the at-fault party before the expiration of the statute of limitations to preserve Woods' claim.

17. Morgan also represented Woods in an action for equitable distribution against Woods' ex-husband.

18. Morgan did not file the proper documentation with the U.S. Civil Service Retirement system to obtain Woods' share of her ex-husband's pension benefits as ordered by the court in October 2011.

19. Although Morgan contacted Woods by telephone in July 2013 to inform her that Morgan was terminating his representation of her and was sending her files to her, Woods never received her files from Morgan.

20. Woods has since made several efforts to contact Morgan by phone and mail. Morgan has not responded to Woods and has not returned her files to her.

21. On or about July 26, 2013, the State Bar opened a grievance file against Morgan regarding his conduct in Woods' case.

22. Morgan was served with a Letter of Notice relating to the grievance on May 29, 2014. The Letter of Notice informed Morgan that he was required to respond in writing to the grievance within 15 days of service of the Letter of Notice upon Morgan.

23. Morgan did not respond to the grievance in writing.

24. P. Coffin engaged Morgan to represent him in a traffic matter in early 2013.

25. Coffin paid Morgan \$300.00 for attorney's fees and \$150.00 for court costs when he engaged Morgan.

26. Morgan terminated his representation of Coffin when Morgan's license was suspended in June 2013 without resolving Coffin's traffic matter.

27. Morgan did not refund unearned fees and undisbursed court costs to Coffin after terminating his representation.

28. On October 25, 2013, Coffin filed a Petition for Resolution of Disputed Fee with the North Carolina State Bar's Fee Dispute Resolution Program based on Morgan's handling of his traffic matters.

29. Notice of Coffin's fee dispute petition was served on Morgan on November 13, 2013. The notice informed Morgan of his obligation to respond to the petition in writing within 15 days of service of the notice upon Morgan.

30. Morgan did not respond to the petition within the required 15-day period and did not request an extension of time in which to respond.

31. On or about January 9, 2014 the State Bar opened a grievance file against Morgan regarding his conduct in Coffin's case.

32. Morgan was served with a Letter of Notice relating to the grievance on May 29, 2014. The Letter of Notice informed Morgan that he was required to respond in writing to the grievance within 15 days of service of the Letter of Notice upon Morgan.

33. Morgan did not respond to the grievance in writing.

34. P. Howe engaged Morgan to represent her son in a traffic matter in February 2013.

35. Howe paid Morgan \$300.00 for attorney's fees when she engaged Morgan.

26. Morgan terminated his representation of Howe's son when his license was suspended in June 2013 without resolving Howe's son's traffic matters.

37. Morgan did not refund any unearned fees to Howe after terminating his representation.

38. On November 19, 2013, Howe filed a Petition for Resolution of Disputed Fee with the North Carolina State Bar's Fee Dispute Resolution Program based on Morgan's handling of her son's traffic matter.

39. Notice of Howe's fee dispute petition was served on Morgan on December 23, 2013. The notice informed Morgan of his obligation to respond to the petition in writing within 15 days of service of the notice upon Morgan.

40. Morgan did not respond to the petition within the required 15-day period and did not request an extension of time in which to respond.

41. On or about January 30, 2014 the State Bar opened a grievance file against Morgan regarding his conduct in Howe's son's case.

42. Morgan was served with a Letter of Notice relating to the grievance on May 29, 2014. The Letter of Notice informed Morgan that he was required to respond in writing to the grievance within 15 days of service of the Letter of Notice upon Morgan.

43. Morgan did not respond to the grievance in writing.

44. C. Mature and his wife engaged Morgan in August 2010 to represent them in a consensual custody matter regarding their grandchild.

45. Mature paid Morgan \$750.00 for attorney's fees when he engaged Morgan.

46. Morgan promptly prepared and filed a complaint and summons and served the child's parents.

47. Thereafter, Mature tried several times to contact Morgan about getting a consent order prepared and entered. Morgan did not return Mature's calls.

48. The parties met at Morgan's office on October 12, 2010, at which time the child's father indicated he had changed his mind about consenting to the grandparents having custody.

49. Mature requested that Morgan proceed with only the consent of the mother and Morgan stated he would prepare the new paperwork within a couple of days.

50. Morgan did not prepare the new documentation.

51. Over the next month Mature tried several times to contact Morgan but Morgan did not respond to Mature's calls and visits.

52. When Mature did finally contact Morgan, Morgan told him that he would obtain a court date after January 1, 2011.

53. Mature tried multiple times to contact Morgan in 2011 but Morgan did not return his calls.

54. Mature finally reached Morgan in mid-2011. Mature told Morgan he no longer needed a custody order and requested a partial refund of fees.

55. Morgan did not refund any portion of the \$750.00 attorneys fees Mature paid to Morgan to obtain a custody order.

56. On October 5, 2012, Mature filed a Petition for Resolution of Disputed Fee with the North Carolina State Bar's Fee Dispute Resolution Program based on Morgan's handling of Mature's custody matter.

57. Notice of Mature's fee dispute petition was served on Morgan on October 30, 2012. The notice informed Morgan of his obligation to respond to the petition in writing within 15 days of service of the notice upon Morgan.

58. Morgan did not respond to the petition within the required 15-day period and did not request an extension of time in which to respond.

59. On or about January 9, 2013 the State Bar opened a grievance file against Morgan regarding his conduct in Mature's case.

60. Morgan was served with a Letter of Notice relating to the grievance on April 24, 2013. The Letter of Notice informed Morgan that he was required to respond in writing to the grievance within 15 days of service of the Letter of Notice upon Morgan.

61. Morgan did not respond to the grievance in writing.

62. Morgan signed a Consent Order of Preliminary Injunction, which order was entered by the court on October 3, 2011. The injunction order prohibited Morgan from, among other things, accepting or receiving any funds from clients or third parties in any fiduciary capacity.

63. In or about November 2012, Morgan's client J. Morton paid Morgan \$250.00 to be held in trust by Morgan until such time as the funds were needed to pay the court costs in Morton's case.

64. In or about early 2013, Morgan's client P. Coffin paid Morgan \$150.00 to be held in trust by Morgan until such time as the funds were needed to pay the court costs in Coffin's case.

65. The funds paid by Morton and Coffin for court costs were accepted and received by Morgan in a fiduciary capacity in violation of the Temporary Restraining Order and/or the Consent Order of Preliminary Injunction.

66. Morgan did not inform Morton or Coffin that he was prohibited by the Consent Order of Preliminary Injunction from accepting or receiving funds they entrusted to him in a fiduciary capacity.

67. Morgan did not deposit the funds delivered to him by Morton and Coffin in a general trust account or otherwise hold the funds in trust.

Based upon the pleadings, the Order Pursuant to 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 Morgan and the subject matter of this proceeding.

2. Morgan'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 file a lawsuit against the at-fault driver before the expiration of the statute of limitations to preserve Woods' claim, by failing to file the proper documentation to obtain Woods' share of her ex-husband's pension benefits, by failing to resolve Coffin's traffic matter after collecting \$300.00 in fees, by failing to resolve Howe's son's traffic matter after collecting \$300.00 in fees, by failing to prepare the revised documents for Mature after collecting \$750.00 in fees, and by failing to pursue Mature's case in 2011, Morgan failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 and collected a clearly excessive fee in violation of Rule 1.5(a);

(b) By failing to refund unearned fees and undisbursed court costs paid by Morton, by failing to return Woods' files to her, by failing to refund unearned fees and undisbursed court costs paid by Coffin, by failing to refund unearned fees paid by Howe, and by failing to return the unearned portion of fees collected from Mature, Morgan failed to take steps to the extent reasonably practicable to protect a client's interests upon termination of representation in violation of Rule 1.16(d);

(c) By failing to respond to Woods' calls and letters, and by failing to respond to Mature's numerous phone calls and visits, Morgan failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4);

(d) By failing to respond in writing to the notices of petitions for fee dispute resolution served on him regarding Morton, Coffin, Howe and Mature, Morgan did not participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f);

(e) By failing to respond in writing to the notices of grievance served on him regarding Morton, Woods, Coffin, Howe, and Mature, Morgan failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b);

(f) By failing to inform Morton and Coffin that he was prohibited by court order from accepting or receiving the funds they entrusted to him and by accepting and receiving funds in a fiduciary capacity in violation of court order, Morgan engaged in conduct involving dishonesty, fraud, 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); and

(g) By failing to deposit the funds Morton and Coffin entrusted to him for payment of court costs in a general trust account, Morgan failed to identify, hold, and maintain entrusted funds separate from the property of the lawyer in violation of Rule 1.15-2(a) and failed to deposit entrusted funds in a general trust account in violation of Rule 1.15-2(b).

3. Morgan's conduct in failing to answer the formal inquiries issued by the North Carolina State Bar in a disciplinary matter constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(3).

Based upon the foregoing Findings of Fact and Conclusions of Law, and the additional evidence presented at the hearing, the Hearing Panel finds by clear, cogent, and convincing evidence the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Morgan's license was suspended for three years in the May 2013 Order of Discipline for trust account mismanagement and for failing to respond to the State Bar, including failing to respond to the Letter of Notice served on him regarding the misconduct.

2. Morgan received an Admonition by the Grievance Committee on February 14, 2011 for conduct which included failing to respond to the State Bar's request for information.

3. Morgan's repeated failures to respond to multiple inquires from the State Bar demonstrates his refusal to participate in the self-regulatory process. Such conduct interferes with the Bar's ability to regulate its members and undermines the profession's privilege to remain self-regulating.

4. Morgan's receipt of court costs paid by Mr. Morton and Mr. Coffin despite being restrained by a court from handling entrusted funds shows Morgan's unwillingness to submit to a tribunal's authority.

5. One purpose of the injunction entered against Morgan was to prevent the future mishandling of entrusted funds. Morgan's subsequent taking of entrusted funds from Mr. Morton and Mr. Coffin violated both the language and the purpose of the injunction and frustrated the court's effort to protect the public.

6. Morgan's repeated violation of the Rules of Professional Conduct demonstrates his unwillingness to adhere to the rules enacted for the purpose of protecting the public.

7. Ms. Woods paid another attorney to accomplish the work for which she hired Morgan.

8. To date Morgan has made no efforts to refund unearned fees and undisbursed costs to clients Morton, Woods, or Coffin.

9. Morgan's clients were vulnerable victims of his misconduct and were harmed by his conduct. His clients were unfamiliar with the legal process and had limited financial resources. His clients had paid and relied upon Morgan to protect or pursue their legal rights.

10. Clients are entitled to representation by attorneys they can trust to accomplish their goals. A cornerstone of client trust in an attorney is that the attorney will properly protect and maintain the client's interests. Failure to do so erodes the confidence clients place in attorneys who handle their affairs and harms the public and the profession as a whole.

11. Morgan caused significant harm to the profession by repeatedly failing to respond to multiple State Bar inquiries and otherwise failing to participate in the grievance process. Such conduct interferes with the State Bar's ability to regulate its members and undermines the professional's privilege to remain self-regulating.

12. By engaging in various instances of client neglect, collecting excessive fees, failing to communicate with his clients, and failing to respond to the Bar, Morgan committed multiple offenses and displayed a pattern of misconduct. At the time of his conduct, Morgan knew or should have known that his actions could harm his clients and the administration of justice.

13. Morgan's conduct 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 entire legal system.

Based on the Findings of Fact and Conclusions of Law above and the additional Findings of Fact Regarding Discipline, 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 warranting suspension or disbarment are present:

- (a) Intent of Defendant to commit acts where the harm or potential harm is foreseeable;
- (b) Circumstances reflecting Defendant's lack of trustworthiness;
- (c) Elevation of Defendant's own interests above that of his clients;
- (d) Negative impact of Defendant's actions on his client's and the public's perception of the profession;
- (e) Negative impact of Defendant's actions on the administration of justice;
- (f) Impairment of the client's ability to achieve the goals of the representation;
- (g) Acts of dishonesty, misrepresentation, deceit or fabrication; and
- (h) Multiple instances of failure to participate in the legal profession's self-regulation process.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(2) of the Rules and Regulations of the North Carolina State Bar and concludes that the following factor is present in this instance:

- (a) Acts of dishonesty, misrepresentation, deceit or fabrication.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(3) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are applicable in this matter:

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- (a) Prior professional discipline;
 - (b) Indifference to making restitution;
 - (c) A pattern of misconduct;
 - (d) Multiple offenses;
 - (e) Vulnerability of victims; and
 - (f) Extensive experience in the practice of law.

4. The Hearing Panel has considered issuing an admonition, reprimand, censure or suspension but concludes that such discipline would not be sufficient discipline because of the gravity of the harm and potential harm to the clients and the public. The Panel further concludes that such discipline would fail to acknowledge the seriousness of the violations committed by Defendant and send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

5. For these reasons, this Hearing Panel finds that an order imposing discipline short of disbarment would not be adequate or appropriate.

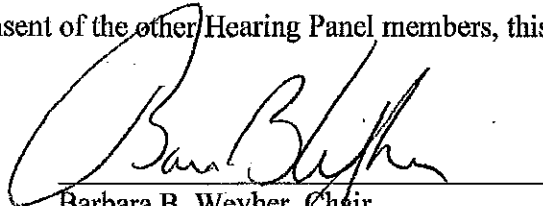
Based upon the foregoing Findings of Fact and Conclusions of Law and the Findings of Fact and Conclusions Regarding Discipline, the Hearing Panel enters the following:

ORDER OF DISCIPLINE

1. Defendant, Victor H. Morgan, Jr., is hereby DISBARRED effective thirty days from the date this Order of Discipline is served on him.
2. Morgan shall surrender his law license and membership card to the Secretary of the North Carolina State Bar no later than thirty days following service of this Order upon him.
3. Morgan shall pay the administrative fees and costs of this proceeding within thirty days of service of the statement of costs upon him by the Secretary of the State Bar.
4. Within thirty days of the effective date of this Order, Morgan will provide the North Carolina State Bar with an address and telephone number at which clients seeking return of files can communicate with him and obtain such files.
5. Morgan shall return client files to clients within five days of receipt of request. Morgan will be deemed to have received any such request three days after the date the request is sent to him if the request is sent to the address Morgan provided the State Bar pursuant to this Order.

6. Morgan shall comply with all provisions of 27 N.C. Admin. Code 1B §.0124 regarding obligations of disbarred attorneys not inconsistent with the terms of this Order.

18 Signed by the Chair with the consent of the other Hearing Panel members, this the day of November, 2015.

A handwritten signature in cursive script, appearing to read "Barbara B. Weyher", written over a horizontal line.

Barbara B. Weyher, Chair
Disciplinary Hearing Panel