

STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
18 DHC 49

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

DENNIS H. SULLIVAN, JR., Attorney,
Sullivan

ORDER OF DISCIPLINE

THIS MATTER was heard by a Hearing Panel of the Disciplinary Hearing Commission composed of Donald C. Prentiss, Chair, and members Stephanie N. Davis and Cindy L. Marrelli pursuant to 27 N.C. Admin. Code 1B.0115(g). Plaintiff was represented by Savannah B. Perry and Margaret T. Cloutier. Defendant Dennis H. Sullivan, Jr. appeared *pro se*.

Sullivan failed to file a responsive pleading in this matter and, on 13 March 2019, the Hearing Panel entered a Default Order Making Findings of Fact and Conclusions of Law, pursuant to which the allegations in the Plaintiff's complaint were deemed admitted and concluding as a matter of law that Sullivan violated the Rules of Professional Conduct as set forth in the complaint.

Based upon the pleadings in this matter and the Default Order Making Findings of Fact and Conclusions of Law entered by the Hearing Panel, the Hearing Panel makes 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, Dennis H. Sullivan, Jr. ("Sullivan"), was admitted to the North Carolina State Bar in 1994 and was, until 18 March 2017, 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. On 20 April 2012, Sullivan consented to a stayed suspension of his license to practice law in the State of North Carolina.
4. On 12 January 2017, Sullivan consented to lift the stay and activate the suspension. The stay was lifted and the suspension was activated effective 18 March 2017.

5. Prior to 18 March 2017, Sullivan was engaged in the practice of law in the State of North Carolina and maintained a law office in Wilmington, New Hanover County, North Carolina.

6. On 16 September 2016, the Disciplinary Hearing Commission (“the DHC”) issued an order directing Sullivan to appear and show cause why an order should not be entered activating the previously stayed suspension of his license to practice law in North Carolina.

7. On 5 December 2016, H.P. hired Sullivan to represent her in a criminal case.

8. H.P. paid Sullivan a \$5,000.00 flat fee.

9. Sullivan was in communication with the State Bar about his violations of the conditions of his stayed suspension after issuance the DHC’s 16 September 2016 order and therefore knew or should have known at the time he was hired to represent H.P. he would be unable to represent her through completion of her case.

10. Effective 18 March 2017, the stay of the suspension of Sullivan’s license to practice law in North Carolina was lifted and the suspension was activated pursuant to a consent order dated 12 January 2017.

11. Sullivan did not notify H.P. that his law license was suspended until 17 March 2017 when he sent H.P. a letter by certified mail notifying her of his inability to further act as her attorney.

12. In the 17 March 2017 letter, Sullivan stated he would itemize the time spent on her case and contact H.P. to discuss a partial refund of Sullivan’s fee.

13. Sullivan did not contact H.P. to discuss a partial refund.

14. On 11 April 2017, H.P. sent Sullivan a text message requesting an itemized accounting and partial refund.

15. Sullivan did not respond to H.P.’s 11 April 2017 text message.

16. On 15 April 2017, H.P. again sent Sullivan a text message requesting an itemized accounting and partial refund.

17. Sullivan did not respond to H.P.’s 15 April 2017 text message.

18. On 24 April 2017, H.P. filed a petition for fee dispute resolution with the N.C. State Bar Fee Dispute Resolution Program, file number 17FD0219.

19. On 27 April 2017, the State Bar sent Sullivan a Notice of Mandatory Fee Dispute Resolution (“the notice”) in file number 17FD0219 by certified mail to the address Sullivan provided the State Bar which was listed in the State Bar Membership database.

20. On 9 May 2017, Sullivan signed the certified mail receipt for the notice.
21. Sullivan was required to respond to the notice within fifteen days of receipt.
22. Sullivan did not respond to the notice.
23. On 8 June 2017, the State Bar's Facilitator of the Fee Dispute Resolution Program attempted to contact Sullivan via telephone. Sullivan's telephone number was disconnected.
24. Sullivan has not contacted H.P. or returned any portion of the \$5,000.00 fee despite not completing the representation.
25. The State Bar opened a grievance against Sullivan, file number 17G0591.
26. On 20 November 2017, Sullivan signed the certified mail receipt for the State Bar's Letter of Notice.
27. Sullivan was required to submit a written, signed response to the Letter of Notice within fifteen days of receipt.
28. Sullivan did not respond to the Letter of Notice.
29. In or around June 2016, W.C. hired Sullivan to represent her as the Appellee in an appeal filed by Kelly J. Thomas, Commissioner of the North Carolina Division of Motor Vehicles ("the DMV"), file No. COA16-712.
30. W.C. paid Sullivan a \$3,500.00 flat fee.
31. Sullivan was required to file a brief on or before 12 December 2016.
32. Sullivan did not file a brief at any time.
33. Sullivan did not notify W.C. that his license was suspended until 17 March 2017 when he sent W.C. a letter by certified mail notifying her of his inability to further act as her attorney.
34. Sullivan's 13 March 2017 letter stated W.C. "may need to seek new counsel" but did not indicate Sullivan had not filed a brief in COA16-712 that had been due 12 December 2016.
35. Sullivan did not return any portion of the \$3,500.00 fee despite not completing the representation.
36. On 2 May 2017, the Court of Appeals issued its opinion in favor of the DMV.
37. On 18 May 2017, the DMV notified W.C. that her driving privilege was scheduled for a one-year suspension effective 28 May 2017.

38. When she received the DMV's 18 May 2017 letter, W.C. did not know the Court of Appeals had ruled without the benefit of an argument on her behalf.

39. The State Bar opened a grievance against Sullivan, file number 17G0694.

40. On 4 December 2017, Sullivan signed the certified mail receipt for the State Bar's Letter of Notice.

41. Sullivan was required to submit a written, signed response to the Letter of Notice within fifteen days of receipt.

42. Sullivan did not respond to the Letter of Notice.

Based upon the pleadings, the Default Order Making Findings of Fact and Conclusions of Law, and the foregoing Findings of Fact, the Disciplinary Hearing Panel makes the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and this tribunal has jurisdiction over Defendant, Dennis H. Sullivan, Jr., and the subject matter of this proceeding.

2. Sullivan'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 ceasing communication with H.P. and failing to respond to H.P.'s text messages, Sullivan failed to keep his client reasonably informed about the status of the matter 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);
- (b) By failing to promptly notify H.P. of his inability to continue representing her, Sullivan failed to consult with his client about a relevant limitation on his ability to handle the matter in violation of Rule 1.4(a)(5);
- (c) By failing to respond to the Notice of Mandatory Fee Dispute Resolution in 17FD0219, Sullivan failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f)(2);
- (d) By failing to return the unearned portion of H.P.'s fee when he was unable to complete the representation, Sullivan collected a clearly excessive fee in violation of Rule 1.5(a) and failed to take reasonably practicable steps upon termination of the representation to protect his client's interests in violation of Rule 1.16(d);
- (e) By failing to timely respond to the Letter of Notice in 17G0591, Sullivan knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b);

- (f) By failing to notify H.P. of the likelihood he would be unable to represent her through completion of her case when he knew or should have known of his inability to do so, Sullivan engaged in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on his fitness as a lawyer in violation of Rule 8.4(c);
- (g) By failing to file a brief in COA16-712, Sullivan failed to act with reasonable diligence and promptness in representing his client in violation of Rule 1.3;
- (h) By failing to notify W.C. that no brief had been filed on her behalf, Sullivan failed to reasonably consult with his client about the means by which her objectives were to be accomplished in violation of Rule 1.4(a)(2) and failed to keep his client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3);
- (i) By failing to promptly notify W.C. of his inability to continue representing her, Sullivan failed to consult with his client about a relevant limitation on his ability to handle the matter in violation of Rule 1.4(a)(5);
- (j) By failing to return the unearned portion of W.C.'s fee after he neglected to file a brief of her behalf and failed to complete the representation, Sullivan collected a clearly excessive fee in violation of Rule 1.5(a) and failed to take reasonably practicable steps upon termination of the representation to protect his client's interests in violation of Rule 1.16(d);
- (k) By failing to timely respond to the Letter of Notice in 17G0649, Sullivan knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b); and
- (l) By failing to alert W.C. of his failure to file a brief on her behalf in his 13 March 2017 letter, Sullivan engaged in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on his fitness as a lawyer in violation of Rule 8.4(c).

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. Sullivan was licensed in North Carolina in 1994 and has substantial experience in the practice of law.
2. Sullivan knew or should have known at the time he was hired to represent H.P. that he would be unable to represent her through completion of her case. Sullivan accepted

H.P.'s case to generate legal fees to support himself and his law firm, selfishly placing his own interests above those of his client.

3. H.P. and W.C. were particularly vulnerable in that they did not understand how to handle their cases without an attorney and used the limited financial resources available to them, including, in H.P.'s case, funds borrowed from her father, to retain Sullivan.

4. Because Sullivan did not file a brief in COA16-712, the Court of Appeals ruled without the benefit of an argument on W.C.'s behalf, which affected the administration of justice in W.C.'s case and caused her significant harm.

5. Sullivan did not acknowledge the wrongfulness of his conduct or participate in the disciplinary process until he appeared at the hearing on the appropriate discipline to be imposed.

6. Sullivan failed to make restitution until he appeared at the hearing and paid partial restitution to H.P. and W.C. in the following amounts:

(a) \$2,627.50 to H. P., and

(b) \$3,000.00 to W.C.

7. Sullivan's misconduct harmed the standing of the legal profession by undermining trust and confidence in lawyers and the legal system. H.P. and W.C.'s perceptions of the legal profession have been negatively impacted by Sullivan's misconduct. Sullivan's local newspaper also reported on the activation of Sullivan's previously stayed suspension which lessened the public's perception of the legal profession.

8. Sullivan has been the subject of two previous orders of discipline. In 2012, a hearing panel found that Sullivan violated Rules 8.4(b) and (c) by knowingly failing to file his state and federal income tax returns from 2005 to 2009 and willfully failing to pay the associated income tax liability. The panel imposed a three-year suspension stayed for five years subject to special conditions. Sullivan failed to comply with the conditions for that stay by, among other things, failing to comply with federal tax laws. Sullivan consented to lift the stay in 2017. Although Sullivan has been given several chances to demonstrate that he will abide by the Rules of Professional Conduct, he has continued to violate the Rules of Professional Conduct since 2012.

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel carefully considered all of the different forms of discipline available to it. In addition, the Hearing Panel considered all of the factors enumerated in 27 N.C.A.C. 1B § .0116(f)(1) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are applicable in this matter:

(a) Intent of Sullivan to commit acts where the harm or potential harm is foreseeable;

(b) Circumstances reflecting Sullivan's lack of honesty, trustworthiness, or integrity;

- (c) Elevation of Sullivan's own interest above that of the client;
- (d) Negative impact of Sullivan's actions on the administration of justice;
- (e) Impairment of the client's ability to achieve the goals of the representation;
- (f) Effect of Sullivan's conduct on third parties;
- (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 considered all of the factors enumerated in 27 N.C.A.C. 1B § .0116(f)(2) of the Rules and Regulations of the North Carolina State Bar and concludes that the following factor is applicable in this matter:

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

3. The Hearing Panel considered all of the factors enumerated in 27 N.C.A.C. 1B § .0116(f)(3) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are applicable in this matter:

- (a) Prior disciplinary offenses in this state;
- (b) Indifference to making timely restitution;
- (c) A pattern of misconduct;
- (d) Multiple offenses;
- (e) Refusal to acknowledge wrongful nature of conduct;
- (f) Vulnerability of victim;
- (g) Degree of experience in the practice of law; and
- (h) Recent or ongoing nature of prior discipline.

4. Sullivan's dishonest conduct and neglect caused actual significant harm to his clients. In total, H.P. and W.C. paid Sullivan \$8,500.00 for legal services that Sullivan promised to perform but failed to complete. Sullivan's dishonesty caused W.C. to lose the opportunity to present an argument to the Court of Appeals in defense of her driving privileges.

5. Disbarment is the only sanction that can adequately protect the public for the following reasons:


- (a) An order of discipline less than disbarment would fail to acknowledge the seriousness of the offenses that Sullivan committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar in North Carolina.
- (b) The protection of the public requires that Sullivan not be permitted to resume the practice of law unless and until he demonstrates that he has reformed, that he understands his obligations to his clients, the public, the courts, and the legal profession, and that reinstatement would not injure the standing of the legal profession. Disbarred attorneys must show reformation, among other things, before they may resume the practice of law, whereas no such showing of reformation is required of attorneys whose licenses are suspended for a term certain.

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

ORDER OF DISCIPLINE

1. Dennis H. Sullivan, Jr., is hereby DISBARRED from the practice of law.
2. Sullivan shall surrender his law license and membership card to the Secretary of the State Bar no later than 30 days from service of this order upon him if he has not already done so in connection with his prior order of discipline.
3. Sullivan shall pay the costs of this proceeding as assessed by the Secretary of the North Carolina State Bar no later than 30 days from service of this order upon Sullivan.
4. Sullivan shall comply with all provisions of 27 N.C.A.C. 1B § .0128 of the North Carolina State Bar Discipline & Disability Rules.

Signed by the Chair with the consent of the other Hearing Panel members, this the 16 day of May, 2019.


Donald C. Prentiss, Chair
Disciplinary Hearing Panel