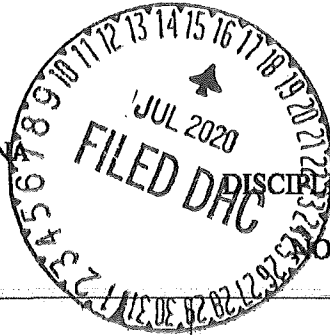


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
19 DHC 11

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

DAVID B. HEFFERON, Attorney,
Defendant

AMENDED
CONSENT ORDER

This matter came before the undersigned Chair of the Disciplinary Hearing Commission on Plaintiff's Motion to Activate Suspension. Carmen Hoyme Bannon and Savannah Perry represented Plaintiff, the North Carolina State Bar. Defendant, David B. Hefferon, was represented by F. Lane Williamson. The parties waive the procedures for formal hearing set forth in 27 N.C. Admin. Code Rule .0118(a). The parties stipulate and agree to all findings of fact and conclusions of law recited in this consent order, and to the entry of this order by the Chair of the Hearing Commission. The parties consent to the discipline imposed by this order. By consenting to the entry of this order, Defendant knowingly, freely and voluntarily waives his right to appeal this consent order or to challenge in any way the sufficiency of the findings.

Based on the foregoing and on the consent of the parties, the undersigned hereby adopts and reincorporates the following Findings of Fact, which a Hearing Panel of the DHC previously found by clear, cogent and convincing evidence:

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, David B. Hefferon, was admitted to the North Carolina State Bar in 2016, 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. During all or part of the relevant periods referred to herein, Defendant was engaged in the practice of law in Charlotte, Mecklenburg County, North Carolina.

4. On 7 April 2017, Defendant consulted with K.T. regarding divorce and child

custody.

5. During the consultation, Defendant learned that K.T.'s then-husband was attempting to gain full custody of their son. Defendant also learned that K.T. was unemployed, homeless, and suffering from mental health problems and substance abuse.

6. Defendant offered to provide K.T. at no cost with occasional legal guidance if she needed it, or answer questions as they arose.

7. On 24 June 2017, Defendant paid for a hotel room for K.T.

8. K.T. had a hearing set for absolute divorce on 25 June 2017.

9. The night of 24 June 2017, Defendant let himself into K.T.'s hotel room in an attempt to meet with her but left the hotel before K.T. arrived.

10. On 26 June 2017, K.T. told Defendant via text message she planned to consult with another lawyer at 2 p.m. the following day.

11. On 27 June 2017, Defendant told K.T., via text message "When you talk to lawyer this afternoon do not mention me or that we've been talking. It may make your case less appealing. I wouldn't want to get hired by someone that was getting legal advice behind the scenes."

12. On 28 June 2017, Defendant again paid for a hotel room for K.T. He paid for K.T. to stay at the hotel from 28 June 2017 to 1 July 2017.

13. K.T. had a hearing set for child custody on 30 June 2017.

14. The night of 28 June 2017, Defendant went to K.T.'s hotel room.

15. Defendant brought a six-pack of beer for himself and a bottle of wine for K.T.

16. While Defendant was in K.T.'s hotel room, he kissed K.T. and touched her breast.

17. Defendant did not have a personal or professional relationship with K.T. before their initial consultation on 7 April 2017.

Based on the foregoing Findings of Fact and with the consent of the parties, the undersigned hereby reincorporates the following Conclusions of Law, which were previously entered by a Hearing Panel of the DHC:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, David B. Hefferon, and the subject matter of this proceeding.

2. Defendant was properly served with the summons and complaint in this case.

3. Defendant'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) in that Defendant violated the Rules of Professional Conduct as follows:

- (a) By having inappropriate contact of a sexual nature with K.T., Defendant had sexual relations with a current client in violation of Rule 1.19(a);
- (b) By paying for hotel rooms for K.T. before her divorce and child custody hearings, Defendant provided financial assistance to a client in violation of Rule 1.8(e); and
- (c) By advising K.T. to withhold information about his involvement in her case when consulting with another lawyer, Defendant engaged in a representation that was materially limited by his own interest in violation of Rule 1.7(a)(2).

Based on the foregoing Findings of Fact and Conclusions of Law and the consent of the parties, the undersigned hereby adopts and reincorporates the following Findings of Fact Regarding Discipline, which a Hearing Panel of the DHC previously found by clear, cogent and convincing evidence:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Defendant's conduct demonstrates that he has an inappropriate perception of what constitutes a proper relationship with female clients and calls into question his trustworthiness in representing female clients.

2. K.T. was particularly vulnerable by virtue of her personal circumstances, and because her domestic case involved child custody.

3. At the time Defendant placed himself in a hotel room with K.T., kissed her, and touched her breast, it was clearly foreseeable that his actions would undermine the fiduciary relationship that he shared with K.T. and create a conflict of interest.

4. Defendant undermined the trust inherent in the attorney-client relationship by elevating his own sexual desires over the interests of K.T.

5. Defendant's actions had a negative impact on K.T.'s perception of Defendant and of the profession, as evidenced by text messages she sent to Defendant:

- (a) "No family lawyer as you should ne [sic] referred to any client . . . Vulnerable n [sic] unsure mothers should run as far away from you as possible[;]" and
- (b) "Not any man . . . whatever there [sic] profession should ever do what you did. Will take time to recover . . ."

6. Defendant submitted a written response to the local grievance committee and testified in a deposition. Defendant's written and deposition responses were inconsistent which reflects negatively on Defendant's trustworthiness and integrity.

7. Self-regulation of the legal profession depends upon the cooperation and participation of lawyers in the self-regulatory process. When a lawyer is not forthcoming in the disciplinary process it impedes the system of self-regulation.

8. Despite the fact that he met K.T. in a professional consultation and agreed to provide her advice about her pending domestic case, Defendant maintained throughout the grievance process that he did not have an attorney-client relationship with her and, thus, did not violate the Rules of Professional Conduct.

9. Defendant later acknowledged the wrongful nature of his conduct only to the extent that he now understands that K.T. was his client.

10. Defendant actively participated in this disciplinary proceeding.

11. Defendant has limited experience in the practice of law and has no prior discipline.

Based on the foregoing Findings of Fact, Conclusions of Law, Findings of Fact Regarding Discipline, and the consent of the parties, the undersigned hereby reincorporates the following Conclusions Regarding Discipline, which were previously entered by a Hearing Panel of the DHC:

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Commission has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension and disbarment.

2. The Hearing Commission has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0116(f)(1) and determined the following factors are applicable in this matter:

- (a) Intent of Defendant to commit acts where the potential harm was foreseeable;
- (b) Circumstances reflecting Defendant's lack of trustworthiness or integrity;
- (c) Elevation of Defendant's own interest above that of the client; and
- (d) Negative impact of Defendant's actions on the client's perception of the profession.

3. The Hearing Commission has considered 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 determines that none of the factors in that subsection are applicable in this matter.

4. The Hearing Commission has 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 determines that the following factors are applicable in this matter:

- (a) No prior disciplinary offenses;
- (b) Selfish motive;
- (c) Cooperative attitude toward the proceedings;
- (d) Vulnerability of victim; and
- (e) Lack of experience in the practice of law.

5. A censure, reprimand, or admonition would be insufficient discipline because of the gravity of the harm and potential harm to the client, the profession, and the public.

6. The public will be adequately protected by suspension of Defendant's license stayed upon Defendant's compliance with conditions designed to minimize the risk of harm and ensure continued compliance with the Rules of Professional Conduct.

7. The Hearing Commission determines that discipline short of suspension would not adequately protect the public, the legal profession or the administration of justice for the following reasons:

- (a) The factors under Rule .0116(f)(1) are of a nature that support imposition of a suspension as the appropriate discipline; and
- (b) Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses Defendant committed and would send the wrong message to attorneys and to the public regarding the conduct expected of members of the Bar of this state.

Based upon the foregoing reincorporated findings and conclusions, the record in this case, and the consent of the parties, the undersigned Chair of the Hearing Commission makes the following Additional Findings of Fact and Conclusions Regarding Discipline:

ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE

1. On 6 April 2020, the Disciplinary Hearing Commission entered a Consent Order of Discipline containing the findings and conclusions reincorporated above and suspending Defendant's license to practice law for one year. The suspension was stayed for two years provided Defendant complied with conditions specified in the order. The DHC retained jurisdiction over this matter until all terms of the stayed suspension were satisfied.

2. During the period between entry of the 6 April 2020 Consent Order of Discipline and the entry of this Amended Consent Order of Discipline, Defendant failed to comply with the conditions of stay of his suspension.

ADDITIONAL CONCLUSIONS REGARDING DISCIPLINE

1. The Commission has carefully considered the different forms of consequences available to address Defendant's non-compliance with the conditions of stay in the 6 April 2020 Consent Order of Discipline.
2. The protection of the public does not require activation of the suspension of Defendant's law license at this time.
3. As Defendant has not, to date, complied with the conditions for stay imposed by the 6 April 2020 Consent Order of Discipline, the two-year period during which his suspension is stayed shall begin anew upon entry of this Amended Consent Order of Discipline.
4. The Commission determines that extending the period of suspension from one year to eighteen months and restarting the two-year period of the stay upon entry of this Amended Consent Order of Discipline are appropriate consequences for Defendant's non-compliance with the conditions set forth in the 6 April 2020 Consent Order of Discipline.

Based on the foregoing Findings of Fact, Conclusions of Law, Findings of Fact Regarding Discipline, Conclusions of Law Regarding Discipline, Additional Findings of Fact and Conclusions Regarding Discipline, and the consent of the parties, the Chair of the Hearing Commission enters the following:

ORDER OF DISCIPLINE

1. The law license of Defendant, David B. Hefferon, is suspended for eighteen months.
2. The suspension is stayed for two years from the filing date of this Amended Consent Order of Discipline as long as Defendant complies and continues to comply with the following conditions:
 - (a) For the first twelve months of the stay, Defendant shall ensure that a third party is present at any time Defendant meets with a female client. For the purposes of this condition, meetings shall include all in-person interactions between Defendant and his female clients, except where such interactions occur in a courtroom during an open session of court or in another public common area of a courthouse. Defendant shall comply with and submit to all measures by the State Bar to monitor and determine compliance with the terms of this condition, including, but not limited to, complying with the following:
 - i. Defendant shall ensure that the third party who is present when Defendant meets with a female client submits to the Office of Counsel an affidavit identifying each client with whom Defendant met. Each affidavit shall include the date and time of each client interaction. Each

affidavit shall be submitted by the fifteenth day of each month during the first twelve months of the stay and shall describe all of Defendant's meetings with female clients in the previous calendar month.

- ii. Defendant shall provide to the Office of Counsel a complete list of all female clients with whom Defendant met or communicated during each calendar month during the first twelve months of the stay, including the address and telephone number for each client. Defendant shall provide this list no later than the fifteenth day of each month during the first twelve months of the stay. The first list is due fifteen days from the entry of this Order; and
 - iii. If Defendant does not meet or communicate with female clients during any month in which he is required to submit the reports described in (ii) above, Defendant shall instead execute and submit to the Office of Counsel by the fifteenth day of each month an affidavit affirming that Defendant did not meet or communicate with any female clients during the previous month.
- (b) Defendant shall undergo an evaluation by a psychiatrist or psychologist approved by the Office of Counsel of the North Carolina State Bar who has expertise in sexual boundary violations in the professions, and will comply with any treatments, programs, plans, and/or counseling recommended by the evaluating clinician to ensure that Defendant can have an appropriate professional relationship with female clients;
 - (c) Defendant shall provide the Office of Counsel of the State Bar with a comprehensive report of the evaluation within thirty days after it is completed and with quarterly reports from any treating clinician who provides treatment recommended by the evaluator. The quarterly reports shall describe the treatment received by Defendant, Defendant's progress, diagnosis, prognosis, and continuing treatment plan. These reports shall be provided to the Office of Counsel of the North Carolina State Bar by Defendant no later than January 15, April 15, July 15, and October 15 of each year during the stay of the suspension;
 - (d) If no specific condition is diagnosed or if no treatment program is prescribed by the evaluating clinician described in paragraph 2(b), then Defendant shall attend and complete once a year throughout the stay of the suspension a diversity training program approved in advance by the Office of Counsel of the North Carolina State Bar that includes a component addressing sexual harassment. Defendant shall attend a different training program during each of the two years of the stay. Defendant must provide written proof of attendance and completion of such diversity training to the Office of Counsel no later than October 15 of each year during the stay of the suspension;
 - (e) Defendant is solely responsible for paying, and shall pay, all costs associated

with the above-described evaluation, treatment, reports, and/or training;

- (f) Defendant shall sign releases or authorizations to all providers providing treatment or evaluation under this Order instructing the provider to discuss the treatment and/or evaluation of Defendant with counsel in the Office of Counsel of the North Carolina State Bar and to release any corresponding notes, test results, and records to the Office of Counsel of the North Carolina State Bar;
- (g) Defendant shall remain current in payment of all membership dues, fees, and costs, including all Client Security Fund assessments and other charges or surcharges that the State Bar is authorized to collect from him, to include all judicial district dues, fees, and assessments;
- (h) Defendant shall pay all costs and administrative fees associated with the 6 April 2020 Consent Order and the additional costs and fees associated with this proceeding as assessed by the Secretary within ninety days of service of the statement of costs upon him;
- (i) Defendant shall timely comply with his State Bar Continuing Legal Education requirements and pay all Continuing Legal Education fees and costs assessed by the applicable deadline;
- (j) Defendant shall respond to all communications from the North Carolina State Bar, including communications from the Attorney Client Assistance Program, within thirty days of receipt or by the deadline stated in the communication, whichever is sooner, and shall participate in good faith in the State Bar's fee dispute resolution process;
- (k) Defendant shall promptly accept service of all certified mail sent to him by the State Bar;
- (l) Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or of any state or local government (other than minor traffic offenses) during the stayed suspension; and
- (m) Defendant shall keep the State Bar Membership Department advised of his current business and home addresses. Defendant shall notify the State Bar of any change in address within ten days of such change.

3. If Defendant fails to comply with any of the conditions of the stayed suspension provided in paragraph 2(a) through (m), the stay of the suspension may be lifted as provided in 27 N.C. Admin. Code 1B § .0118(a) if the North Carolina State Bar Discipline and Disability Rules.

4. If the stay granted herein is revoked or the suspension of Defendant's license is activated for any reason, before seeking reinstatement of his license to practice law, Defendant must show the following:

- (a) That Defendant underwent an evaluation by a psychiatrist or psychologist approved in advance by the Office of Counsel of the North Carolina State Bar who has expertise in sexual boundary violations in the professions, and complied with any treatments, programs, plans, and/or counseling recommended by the evaluating clinician to ensure that Defendant can have an appropriate professional relationship with female clients;
- (b) That Defendant provided the Office of Counsel of the State Bar a comprehensive report of the evaluation described in paragraph 4(a) within thirty days after it was completed and with quarterly reports from any treating clinician who provided treatment recommended by the evaluator. The quarterly reports shall describe the treatment received by Defendant, Defendant's progress, diagnosis, prognosis, and continuing treatment plan. These reports shall be provided to the Office of Counsel of the North Carolina State Bar by Defendant no later than January 15, April 15, July 15, and October 15 of each year following the entry of this Order;
- (c) That, if no specific condition was diagnosed or where no treatment program was prescribed by the evaluating clinician, Defendant attended and completed once a year a diversity training program approved in advance by the Office of Counsel of the North Carolina State Bar that included a component addressing sexual harassment. Defendant shall attend a different training each year. Defendant must provide written proof of attendance and completion of such training to the Office of Counsel no later than October 15 of each year following the entry of this Order;
- (d) That Defendant paid all costs associated with the above-described evaluation, treatment, reports, and/or training;
- (e) That Defendant signed releases or authorizations to all providers providing treatment or evaluation under this Order instructing the provider to discuss the treatment and/or evaluation of Defendant with counsel in the Office of Counsel of the North Carolina State Bar and to release any corresponding notes, test results, and records to the Office of Counsel of the North Carolina State Bar;
- (f) That Defendant remained current in payment of all membership dues, fees, and costs, including all Client Security Fund assessments and other charges or surcharges that the State Bar is authorized to collect from him, to include all judicial district dues, fees, and assessments;
- (g) That Defendant paid all costs and administrative fees associated with the 6 April 2020 Consent Order and the additional costs and fees associated with this proceeding as assessed by the Secretary within ninety days of service of the statement of costs upon him;
- (h) That Defendant timely complied with his State Bar Continuing Legal Education requirements and paid all Continuing Legal Education fees and

costs assessed by the applicable deadline;

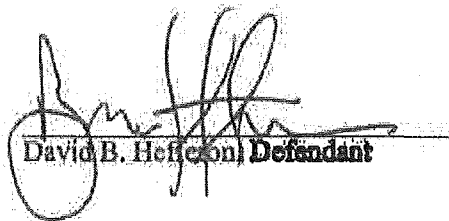
- (j) That Defendant responded to all communications from the North Carolina State Bar, including communications from the Attorney Client Assistance Program, within thirty days of receipt or by the deadline stated in the communication, whichever was sooner, and participated in good faith in the State Bar's fee dispute resolution process;
- (k) That Defendant promptly accepted service of all certified mail sent to him by the State Bar;
- (l) That Defendant did not violate the Rules of Professional Conduct or the laws of the United States or of any state or local government (other than minor traffic offenses) following the entry of this Order;
- (m) That Defendant kept the State Bar Membership Department advised of his current business and home addresses. Defendant shall notify the State Bar of any change in address within ten days of such change; and
- (n) That Defendant complied with all requirements of 27 N.C. Admin. Code 1B § .0129(b) before seeking reinstatement to the practice of law.

Signed by the undersigned Chair of the Hearing Commission, this is the 16 day of July, 2020.


Donald C. Prentiss
Hearing Commission Chair

CONSENTED TO:


Savannah Perry, Deputy Counsel
Counsel for Plaintiff


David B. Heferton, Defendant


Carmen Hoyne Bannan, Deputy Counsel
Counsel for Plaintiff


F. Lane Williamson
Counsel for Defendant