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The North Carolina State Bar,)
Plaintiff,)
)
v.)
)
Mark A. Key,)
Defendant.)
)

This matter came on to be heard and was heard before a hearing panel of the Disciplinary Hearing Commission composed of the Chair, Sharon B. Alexander, Robert F. Siler, and Joe Castro on June 25, 2010. The Plaintiff was represented by William N. Farrell, Deputy Counsel. Defendant represented himself. Based upon the pleadings, the stipulated facts and the evidence introduced at the hearing, the hearing panel hereby finds by clear, cogent and convincing evidence the following:

1. Plaintiff, the North Carolina 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 promulgated thereunder.

2. Defendant, Mark A. Key (hereinafter “defendant” or “Key”), was admitted to the North Carolina State Bar on April 11, 1997, and is 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. Key is actively engaged in the practice of law in Wake and Harnett Counties, North Carolina.

4. On November 15 and 16, 2005, following a two day hearing, Wake County Senior Resident Superior Court Judge Donald W. Stephens entered two orders, one of criminal contempt and one of attorney discipline, against Key.

5. In the contempt matter, Wake County Criminal Case file Number 05 CRS 105399, entered on November 16, 2005, Judge Stephens sentenced Key to thirty days in the Wake County jail for criminal contempt of court. This sentence was suspended for 18 months, and Key was placed on unsupervised probation for 18 months on the condition that he not violate any law of this state during the period of probation, that he not speak profanely to any court official who is carrying out a duty of their office, and that he, for a period of one-year, not appear as an attorney in any matter in the District and Superior Courts of Wake County.

6. In the separate order of attorney discipline, Wake County File Number 05 CVS 16088, entered on November 16, 2005, Judge Stephens suspended Key's privilege to appear as counsel in the District and Superior Courts of Wake County for one year commencing on January 1, 2006 and ending on December 31, 2006. During that one-year period Key was prohibited from appearing as counsel on any trial court of the General Court of Justice in the 10th Judicial District.

7. Both the criminal contempt order and the civil attorney discipline order were appealed to the Court of Appeals of North Carolina.

8. Both orders entered by Judge Stephens were affirmed by published opinions of the Court of Appeals filed on April 17, 2007.

9. On April 30, 2007, following the decisions of the Court of Appeals, Key filed a Petition for Writ of Supersedeas and a Petition for Discretionary Review, as well as Motions for Temporary Stay with the Supreme Court of North Carolina to stay the decisions of the Court of Appeals affirming Judge Stephens' orders.

10. Key's Motions for Temporary Stay were allowed in both cases by the Supreme Court on April 30, 2007.

11. By orders dated June 27, 2007 the Supreme Court dissolved the temporary stays entered on April 30, 2007 and denied the Petition for Writ of Supersedeas and Petition for Discretionary Review.

12. On July 18, 2007 Judge Stephens modified his original judgment in the attorney discipline case (05 CVS 16088) as follows:

"For such professional misconduct it is the ruling of this Court that Attorney Mark Key's privilege to appear as counsel in the District and Superior Courts of Wake County is hereby suspended for one year commencing on September 1, 2007 and ending on August 31, 2008. During that one-year period Attorney Key is prohibited from appearing as counsel in any trial court of the General Court of Justice in the 10th Judicial District."

13. The original judgment in the criminal contempt case (05 CRS 105399) was also modified by Judge Stephens on July 18, 2007 as follows:

"For a period of one year, beginning September 1, 2007 through August 31, 2008, the Defendant is not permitted to appear as an attorney in any matter in Wake County District or Superior Court."

14. On September 5, 2007, Key filed a Notice of Appeal in the case of Owens v. Southside Trailer Park, et al, case no. 06 CVS 3287, Wake County Superior Court.

15. On November 8, 2007, Key filed a Notice of Withdrawal of Appeal in the case of Owens v. Southside Trailer Park, et al, case no. 06 CVS 3287, Wake County Superior Court.

16. On or about February 13, 2009, Nicholas A. Stratas, Jr., Attorney for Ericka Owens, made a written request of Key to provide the files of Ericka Owens, a former client of Key who was represented by Key in the civil action described in paragraphs 14 and 15 above.

17. Over the next several months Ms. Owens' new attorney, Mr. Stratas, made oral and written requests to Key to provide Ms. Owens' client files.

18. At Key's request, on or about March 3, 2009, Mr. Stratas sent \$30.00 to Key for expenses in connection with production of the files.

19. Although Key received the \$30.00 and written authorizations signed by Ms. Owens to release her files to Mr. Stratas, Key did not provide the files until June 9, 2009.

20. Key did not provide the files to Mr. Stratas until the North Carolina State Bar instructed him to do so.

Based upon the foregoing Findings of Fact, the Hearing Committee hereby enters the following:

CONCLUSIONS OF LAW

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

2. Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. General Statute § 84-28(b)(2) in that he violated one or more of the Rules of Professional Conduct as follows:

- a. By appearing in Wake County Superior Court by the filing of a Notice of Appeal and a Notice of Withdrawal, during a time when Defendant was prohibited by

orders of the Superior Court from appearing as counsel in any matter in the District and Superior Courts of Wake County, Defendant engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);

- b. By appearing in Wake County Superior Court by the filing of a Notice of Appeal and a Notice of Withdrawal of Appeal, during a time when Defendant was prohibited by orders of the Superior Court from appearing as counsel in any matter in the District and Superior Courts of Wake County, Defendant engaged in the unauthorized practice of law in violation of Rule 5.5(a) of the Rules of Professional Conduct; and
- c. By delaying the return of a client file to the client for approximately four months and only after involvement of the North Carolina State Bar, Defendant engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d) of the Rules of Professional Conduct.

Based upon the foregoing Findings of Fact and Conclusions of Law, and upon the evidence and arguments presented at the hearing concerning appropriate discipline, the Hearing Panel hereby finds the following:

FINDINGS OF FACT AND CONCLUSIONS REGARDING DISCIPLINE

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

- a. Prior disciplinary offenses in both the Superior Court of Wake County and the Disciplinary Hearing Commission;
- b. Multiple offenses;

- c. Refusal to acknowledge the wrongful nature of conduct; and
 - d. Significant experience in the practice of law.
2. Defendant's conduct in the delay of the delivery of Ms. Owens' client file to her new attorney involved potential harm to Ms. Owens as Defendant's former client.
3. Defendant's conduct in violating Judge Stephens' orders caused significant harm to the administration of justice.
4. Defendant did not undertake to deliberately violate Judge Stephens' orders by the filing of the Notice of Appeal, although such filings clearly constituted appearances in violation of Judge Stephens' unambiguous orders.
5. The Hearing Panel has carefully considered all of the different forms of discipline available to it including admonition, reprimand, and censure, in considering the appropriate discipline to impose in this case.
6. The Hearing Panel has considered all lesser forms available to it and finds that censure is the only appropriate discipline in this case for the following reasons:
- a. The general factors under Rule .0114(w) that are established by the evidence in this case are of a nature to support imposition of a censure.
 - b. Entry of an order imposing lesser discipline than censure would fail to acknowledge the seriousness of the offenses committed by Defendant, would fail to acknowledge his prior discipline, would be inconsistent with discipline issued in prior cases involving similar misconduct, and would send the wrong message to Defendant, to other attorneys, and the public regarding the conduct expected of members of the North Carolina State Bar;

- c. The protection of the public and the legal profession requires that Defendant be censured so that he understands his obligations to his clients, the public, and the legal profession.

Based upon the foregoing Findings of Fact, Conclusions of Law and Conclusions

Regarding Discipline, the Hearing Panel enters the following:

ORDER OF DISCIPLINE

1. Defendant, Mark A. Key, is hereby censured.
2. The costs of this action are taxed to Defendant, including the cost of the deposition taken in this case allowed by statute. The deposition costs were necessarily incurred for the prosecution of this proceeding. Defendant will receive a statement of costs from the State Bar and will pay these costs within 30 days of the effective date of this order.

Signed by the undersigned Chair with full knowledge and consent of the other members of the Hearing Committee.

This is the 13 day of July, 2010.



Sharon B. Alexander, Chair
Disciplinary Hearing Committee