

NORTH CAROLINA

WAKE COUNTY



BEFORE THE  
 DISCIPLINARY HEARING COMMISSION  
 OF THE  
 NORTH CAROLINA STATE BAR  
 21 DHC 26

THE NORTH CAROLINA STATE BAR,  
 Plaintiff  
 v.  
 PERRY MASTROMICHALIS, Attorney,  
 Defendant

CONSENT ORDER  
 OF  
 DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Margaret M. Hunt, Chair, and members, Irving L. Joyner and Valencia Applewhite. G. Patrick Murphy and B. Tessa Hale represented Plaintiff, the North Carolina State Bar. Amy Richardson and Lauren Snyder represented Defendant, Perry Mastromichalis. Defendant waives a formal hearing in this matter. The parties stipulate and agree to the findings of fact and conclusions of law recited in this order, and 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 and conclusions herein.

Based on the pleadings and the stipulated facts, and with the consent of the parties, the Hearing Panel hereby 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, Perry Mastromichalis (“Defendant”) was licensed to practice law in North Carolina on September 12, 1986 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 the State of North Carolina and maintained a law office in Raleigh, Wake County, North Carolina.
4. P.J., whom Defendant claimed was a friend, died on October 3, 2018.
5. Defendant claims that prior to her death, P.J. asked him to handle her estate.
6. No formal document addressing P.J.’s estate was executed by P.J.

7. Defendant claims that before she died, P.J. gave him the keys to her 2016 Chevrolet Trax SUV (“SUV”), that was titled in her name, and asked him to maintain it so it could be given to her son.

8. After P.J.’s death and continuing through on or about October 2019, Defendant maintained possession of P.J.’s SUV.

9. Beginning at the time of P.J.’s death and continuing through on or about October 1, 2019, Defendant drove the SUV at times during his daily activities.

10. As of January 2019, Defendant knew that there was a lien on the SUV for which payments were not being made.

11. In March 2019, Defendant knew the automobile insurance on the SUV was expired.

12. On or about March 25, 2019, Defendant went to B.B., an Allstate insurance agent and friend, to obtain automobile insurance for the SUV.

13. Defendant and B.B. had done business together for many years.

14. Defendant had obtained automobile insurance coverage and/or continued existing automobile insurance coverage through B.B. for other clients of Defendant during Defendant’s business relationship with B.B.

15. Allstate had issued a prior automobile insurance policy on the SUV that lapsed for non-payment.

16. At Defendant’s request, B.B. wrote an automobile insurance policy in P.J.’s name for the SUV.

17. Before writing the policy, B.B. collected the unpaid premium for the lapsed policy from Defendant.

18. Defendant printed P.J.’s name as her signature on the policy application to obtain insurance coverage for the SUV (“SUV policy”). Defendant used his business address as the address on the SUV policy.

19. Defendant set up payments for the SUV policy.

20. At the time Defendant printed P.J.’s name to the insurance policy application, Defendant knew that no estate had been opened for P.J.

21. At the time Defendant printed P.J.’s name to the insurance policy application, Defendant did not have legal authority to sign P.J.’s name on an application for insurance on the SUV.

22. Prior to signing P.J.'s name to the insurance policy application, Defendant did not disclose to B.B. that P.J. was deceased.

23. At the time Defendant printed P.J.'s name to the insurance policy application, he knew P.J. was deceased, he did not have legal authority to sign P.J.'s name to the application, the SUV was titled in P.J.'s name, and he was seeking to have Allstate issue a policy of insurance in P.J.'s name.

24. By printing P.J.'s name to the insurance policy application without having legal authority to sign P.J.'s name, Defendant committed the crime of misdemeanor common law forgery.

25. On or about October 1, 2019, UR LLC, a repossession company, attempted to repossess the SUV. The person attempting repossession of the SUV, claimed that during the repossession attempt, the Defendant allegedly caused injury to her person and property. Witnesses reported that no injury occurred.

26. During Allstate's investigation of a claim based on the October 1, 2019 incident, investigators discovered that the policy providing coverage to the SUV was issued to P.J. after her death.

27. Allstate denied coverage based on the insurance contract being invalid.

28. On or about November 9, 2020, Defendant pleaded guilty pursuant to *Alford* to the crime of misdemeanor common law forgery in Wake County case, 20 CR 209066. Defendant was sentenced to 12 months supervised probation with conditions. Defendant reported his *Alford* plea to the State Bar.

29. On or about December 16, 2020, the State Bar sent a Letter of Notice to Defendant inquiring about his conduct that resulted in his *Alford* plea to misdemeanor common law forgery in Wake County case, 20 CR 209066.

30. In his response to the disciplinary matter, Defendant provided, among other items, a written response and an affidavit of R.A., whom Defendant stated was with him when Defendant obtained the SUV policy from B.B.

31. In his written response, Defendant stated: "While with my insurance agent, I informed him at the time that [P.J.] was deceased and that I was attempting to handle her estate but was having difficulty obtaining the needed documents."

32. Defendant's statement in his response that he told B.B. that P.J. was deceased was false.

33. Defendant's statement in his response that he told B.B. that P.J. was deceased was a material fact to the State Bar's disciplinary inquiry.

34. With his response, Defendant provided the State Bar an affidavit of R.A. stating, in part, "Mr. Mastromichalis told [B.B.] he was there to renew insurance coverage on [P.J.'s] vehicle. Mr. Mastromichalis informed [B.B.] that [P.J.] was deceased and asked [B.B.] (sic) he was able to renew her insurance policy. [B.B.] asked how she died and Mr. Mastromichalis replied 'from cancer'".

35. R.A.'s affidavit further states, in part, "I heard Mr. Mastromichalis specifically ask [B.B.] if the coverage he requested could be put on the vehicle for [P.J.'s] car even though she was deceased. [B.B.] replied 'yes'".

36. R.A.'s affidavit was drafted at the direction of and under the supervision of Defendant. Defendant was not present when R.A. signed the affidavit.

37. When a State Bar investigator interviewed R.A., R.A. denied the statements contained in paragraphs 36 and 37 of his affidavit. R.A. stated the paragraphs were wrong, he never said what is contained in the paragraphs, and he did not know P.J. was deceased.

38. Defendant knew R.A.'s affidavit contained false information when Defendant submitted it to the State Bar.

39. The information in R.A.'s affidavit was material to the State Bar's disciplinary investigation.

Based upon the foregoing Findings of Fact and with the consent of the parties, the Hearing Panel makes the following:

### CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the DHC has jurisdiction over Defendant, Perry Mastromichalis, and over the subject matter of this proceeding.
2. Defendant's conduct, as set out in the stipulated Findings of Fact above, constitutes grounds for discipline as follows:
  - (a) Pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:
    - i. By printing P.J.'s name to the insurance policy application to obtain insurance coverage on the SUV, knowing the SUV was titled in P.J.'s name and knowing he did not have authority to do so, Defendant committed misdemeanor common law forgery, an act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rule 8.4(b), and 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); and

- ii. By maintaining that he told B.B. that P.J. was deceased and by submitting R.A.'s affidavit with his response, Defendant submitted a false statement of material fact in connection with a disciplinary matter in violation of Rule 8.1(b), and 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 consent of the parties, the Hearing Panel also finds by clear, cogent, and convincing evidence the following:

#### **ADDITIONAL FINDINGS REGARDING DISCIPLINE**

1. The findings of fact and conclusions of law above are reincorporated as if set forth herein.
2. Defendant was licensed in North Carolina in 1986 and has substantial experience in the practice of law. At the time of his conduct, Defendant knew or should have known that his actions would result in significant harm or potential harm.
3. P.J. entrusted her SUV to Defendant's care and control. By operating the SUV knowing there was a lien on the SUV for which payments were not being made and obtaining the SUV policy under the circumstances noted above, Defendant put the entrusted property at substantial risk.
4. Defendant's conduct was investigated by Allstate, the North Carolina Department of Insurance Criminal Investigations Division, and the State Bar resulting in the expenditure of valuable time and resources.
5. It is harmful to the legal profession when a member of the State Bar engages in a criminal offense showing unfitness.
6. Defendant was previously disciplined in North Carolina. In 2006, Defendant received a reprimand for failing to make a full disclosure of material fact in his written response to the Bar and failing to timely respond to lawful demands for information from a disciplinary authority in violation of Rule 8.1(b). In 2008, Defendant neglected a client matter, failed to attend a hearing on a motion to compel discovery, and failed to comply with an order of the court in violation of Rules 1.3, 1.4(a)(1)(2) and 8.4(d).

Based upon the Findings of Fact, Conclusions of Law and Additional Findings Regarding Discipline, and with the consent of the parties, the Hearing Panel also enters the following:

#### **CONCLUSIONS REGARDING DISCIPLINE**

1. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f)(1) of the Discipline and Disability Rules of the North Carolina State Bar and concludes that the following factors that warrant suspension or disbarment are present:
  - (A) intent of the Defendant to commit acts where the harm or potential harm is foreseeable;

- (C) circumstances reflecting on the Defendant's lack of honesty or trustworthiness;
- (D) elevation of Defendant's interest above that of the client;
- (F) negative impact of Defendant's actions on the client's or public's perception of the profession; and
- (I) acts of misrepresentation.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f)(2) of the Discipline and Disability Rules of the North Carolina State Bar and concludes the following factors are applicable in this matter:

- (A) acts of misrepresentation.

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

- (A) prior disciplinary offenses in this State;
- (B) remoteness of prior offenses;
- (C) dishonest or selfish motive;
- (F) pattern of misconduct;
- (G) multiple offenses;
- (N) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- (S) significant experience in the practice of law; and
- (U) imposition of other penalties.

4. The Hearing Panel has considered all forms of discipline available but concludes that discipline less than an active suspension would not be sufficient, would fail to acknowledge the seriousness of the violations committed by Defendant, would not sufficiently protect the public and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar in this State.

Based upon the foregoing Findings of Fact, Conclusions of Law, Additional Findings Regarding Discipline and Conclusions Regarding Discipline, and based upon the consent of the parties, the Hearing Panel enters the following

#### **ORDER OF DISCIPLINE**

1. Defendant, Perry Mastromichalis, is hereby suspended from the practice of law for four years, effective six months from service of this order upon Defendant through his attorneys.

2. Defendant shall surrender his law license and membership card to the Secretary of the North Carolina State Bar no later than thirty days from the effective date of this order.

3. Defendant shall comply with all requirements of 27 N.C. Admin. Code 1B.0128, including the wind-down provisions contained therein by the effective date of this order.

4. Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within ten days of the effective date of this Order, certifying he has complied with the provisions of 27 N.C. Admin. Code 1B.0128.

5. Within ten days of the effective date of this Order, Defendant shall provide the State Bar with an address and telephone number at which clients seeking return of their files can communicate with Defendant and obtain such files, and Defendant shall promptly return all files to clients upon request. Defendant shall promptly refund any unearned or excessive fees due to clients in accordance with Rules 1.5 and 1.16 of the Rules of Professional Conduct.

6. Defendant shall respond to all communications from the State Bar within thirty days of receipt or by the deadline stated in the communication, whichever is sooner.

7. Defendant shall keep the North Carolina State Bar Membership Department advised of Defendant's current physical address, telephone number and e-mail address, and notify the Bar of any change within ten days of such change during Defendant's suspension.

8. Defendant shall remain current in payment of all Membership dues, fees, and costs, including all Client Security Fund assessments and other charges or surcharges the State Bar is authorized to collect from Defendant, and including all judicial district dues, fees and assessments during Defendant's suspension.

9. Defendant shall timely comply with all State Bar continuing legal education requirements and pay all fees and costs assessed by the applicable deadline during Defendant's suspension.

10. Defendant shall not violate the Rules of Professional Conduct, the laws of the United States or the laws of any state or local government during Defendant's suspension.

11. Defendant is taxed with the costs and administrative fees of this action as assessed by the Secretary. Defendant shall pay the costs and administrative fees within ninety days of service of the statement of costs and administrative fees upon him.

12. Two years from the effective date of this Order, Defendant may apply for a stay of the remainder of the suspension upon the filing of a petition with the DHC at least thirty days before any proposed effective date of the stay and demonstrating by clear, cogent and convincing evidence the following:

- a) Defendant timely complied with paragraphs 2 – 11 of this section of the Order;

- b) Defendant has complied with the provisions for reinstatement after suspension listed in 27 N.C. Admin. Code 1B.0129(b) of the North Carolina State Bar Discipline & Disability Rules;
- c) Defendant is current in payment of all Membership dues, fees, and costs, including all Client Security Fund assessments and other charges or surcharges the State Bar is authorized to collect from Defendant, and including all judicial district dues, fees and assessments;
- d) There is no deficit in Defendant's completion of CLE hours, in reporting such hours or in payment of any fees associated with attendance at CLE programs;
- e) Defendant has not violated the Rules of Professional Conduct, the laws of the United States or the laws of any state or local government during Defendant's suspension; and
- f) Defendant properly wound down Defendant's law practice and complied with the requirements of 27 N.C. Admin. Code 1B.0128.

13. If Defendant is not granted a stay of Defendant's suspension, or if some part of the suspension is stayed and thereafter the stay is lifted, Defendant must comply with the requirements of paragraphs 12 (a) through 12(f) above before being reinstated to the practice of law, and must provide in any petition for reinstatement clear, cogent and convincing evidence demonstrating Defendant's compliance therewith.

14. If Defendant successfully petitions for a stay of the suspension of Defendant's law license, such stay will continue in force only as long as Defendant complies with the following conditions:

- a) Defendant shall keep the North Carolina State Bar Membership Department advised of Defendant's current physical business address, telephone number and e-mail address, and shall notify the Bar of any change within ten days of such change;
- b) Defendant shall accept all certified mail from the State Bar sent to the address on record with the Membership Department of the North Carolina State Bar;
- c) Defendant shall provide full and complete responses to all letters of notice and requests for information from the North Carolina State Bar within thirty days of receipt of the communication or by the deadline stated in the communication, whichever is sooner;
- d) Defendant shall timely comply with all State Bar continuing legal education requirements and pay all fees and costs assessed by the applicable deadline;
- e) Defendant shall pay all membership dues, fees, costs and assessments, including all Client Security Fund assessments and other charges or surcharges the State Bar is authorized to collect from him, including all judicial district dues and assessments, by the applicable deadline; and

f) Defendant shall not violate the Rules of Professional Conduct, the laws of the United States or the laws of any state or local government during the period of the stay.

15. If Defendant fails to comply with any of the conditions of the stayed suspension provided in paragraphs 14(a) through 14(f) above, the stay of the suspension may be lifted as provided in 27 N.C. Admin. Code 1B.0118.

16. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code 1B.0118 throughout the suspension, and any stay thereof, and until all conditions of this Order have been satisfied.

Signed by the Disciplinary Hearing Panel Chair with the consent of the other hearing panel members, this the 15<sup>th</sup> day of June, 2022.

Margaret M. Hunt  
Margaret M. Hunt, Chair  
Disciplinary Hearing Panel

G. Patrick Murphy  
G. Patrick Murphy

Bessie T Hale  
B. Tessa Hale

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