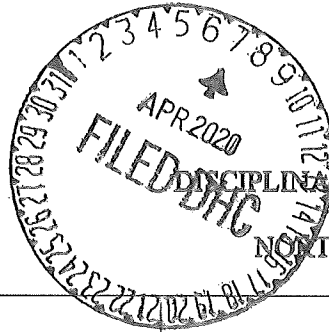


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
19 DHC 24

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

EMILY C. MOORE TYLER, Attorney,

Defendant

CONSENT ORDER OF  
DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Donald C. Prentiss, Chair, and members Maya Madura Engle and Brandon Gosey, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0115(i). Plaintiff, The North Carolina State Bar, was represented by Mary D. Winstead. Defendant, Emily C. Moore Tyler, was represented by Douglas J. Brocker. Plaintiff and Defendant stipulate and agree to the findings of fact and conclusions of law in this order and to the discipline imposed. Defendant freely and voluntarily stipulates to the findings of fact and consents to the conclusions of law and entry of this order. Defendant freely and voluntarily waives her right to appeal this Consent Order of Discipline.

Based upon the pleadings in this matter and the consent of the parties, the Hearing Panel hereby enters 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, Emily C. Moore Tyler, was admitted to the North Carolina State Bar in August 2009 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.

*NCSB v. Emily C. Moore Tyler*, 19 DHC 24

Consent Order

Page 1 of 10

4. On October 18, 2018, Defendant filed a complaint for absolute divorce on behalf of A.F., Wake County file no. 18CVD12848.

5. The complaint bore a verification and a notary public's jurat certificate.

6. The jurat certificate read: Sworn to (or affirmed) and subscribed before me this day by [A.F.], and  I have personal knowledge of the identity of the principal(s),  I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a \_\_\_\_\_  A credible witness has sworn to the identity of the principals(s).

7. None of the boxes in the jurat certificate was checked.

8. On November 28, 2018, Defendant filed on behalf of A.F. a Motion for Summary Judgment asking the court to enter a decree of absolute divorce as sought in the complaint.

9. On December 21, 2018, Defendant appeared in Wake County District Court before Judge Christine Walczyk for a scheduled hearing on the Motion for Summary Judgment.

10. The opposing party was not present in court on December 21<sup>st</sup>.

11. Judge Walczyk brought to Defendant's attention the fact that no box on the jurat certificate of the verification of the complaint was checked.

12. Judge Walczyk informed Defendant that she did not think the language reciting how the notary identified the individual verifying the complaint was necessary, but that including that language without checking a box rendered the verification improper.

13. Defendant inquired whether her paralegal needed to "come down here and fix it."

14. Judge Walczyk informed Defendant that she did not think it could be fixed and that her paralegal could not "come and sign it after ..." because the document had already been filed.

15. Judge Walczyk informed Defendant that "it's a void if the verification isn't filed with the complaint."

16. Judge Walczyk further stated to Defendant, "I think the verification is like the most important thing."

17. A proper verification filed with the complaint is essential to a divorce complaint and the failure to comply with that requirement constitutes a fatal defect.

18. Judge Walczyk declined to grant the Motion for Summary Judgment because no box was checked on the jurat certificate of the verification of the complaint.

19. Later that morning, Defendant appeared again in front of Judge Walczyk requesting a continuance of A.F.'s case to the following Friday.

20. Judge Walczyk told Defendant that she would not be the presiding judge in that courtroom the following Friday and that Defendant would need to check with an assistant clerk about setting the case that day.

21. A short time later, Defendant went to the file access room of the clerk's office which was on another floor of the courthouse and requested to see the A.F. file.

22. Defendant was provided the court file and then proceeded to check the box indicating, "I have personal knowledge of the identity of the principal(s)" on the notary jurat on the filed complaint.

23. Defendant did not indicate on the pleading that the box was checked after the complaint was filed and thus made it appear that the box was checked when the complaint was filed.

24. After Defendant checked the box, she spoke with an assistant clerk about putting the case on the calendar the following Friday.

25. Defendant told the assistant clerk that the hearing had been continued because the identity box on the notary acknowledgement was not checked.

26. Defendant told the assistant clerk that she was going to have her paralegal check the box.

27. The assistant clerk told Defendant not to do that because the document was an original court document and could not be altered.

28. Defendant did not tell the assistant clerk that she had already checked the box.

29. On December 28, 2018, Defendant appeared in Wake County District Court before Judge Sam Hamadani for a hearing on A.F.'s Motion for Summary Judgment.

30. Judge Hamadani, referring to a note on the file, asked Defendant who had checked the box on the jurat certificate.

31. Defendant falsely asserted to Judge Hamadani that her paralegal must have checked the box.

32. Judge Hamadani said, "So it was Kellie Orr [Defendant's paralegal] who checked the box?"

33. Defendant replied in the affirmative.

34. When asked by Judge Hamadani if she had told her paralegal to check the box, Defendant denied having done so.

35. Because of the issue with the jurat, Judge Hamadani declined to grant the Motion for Summary Judgment.

36. That same day, Defendant sent the following email to the judges' assistant and asked that it be forwarded to Judges Walczyk and Hamadani: "It was discovered this morning that one of the boxes on the complaint verification has now somehow been checked & it wasn't last week. I am not sure how this happened. It was my paralegal who notarized (or rather attempted to) my client's signature & when I told her she forgot to check a box she was upset & felt very bad. She did some filing at the courthouse last Friday afternoon. She is out on vacation this week so I am going to talk to her just as soon as I can to get to the bottom of this. I will report back."

37. Defendant's representation that she was not sure how this happened was false.

38. After the judges' assistant informed Defendant that the judges would not read the email, Defendant continued the deception by emailing the assistant: "What happened is concerning & I just wanted them to know ASAP I'm looking into it."

39. On January 4, 2019, Judges Walczyk and Hamadani called Defendant to inform her that they were obligated to report the matter to the State Bar.

40. During that telephone conversation, Defendant asked Judges Walczyk and Hamadani if they wanted to hear her side of it and falsely represented to the judges that her paralegal checked the box without being instructed to do so by Defendant.

Based upon the consent of the parties 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 Disciplinary Hearing Commission has jurisdiction over Defendant and the subject matter of this proceeding.

2. Defendant'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) in that she violated one or more of the Rules of Professional Conduct in effect at the time of her actions as follows:

- (a) By checking the box on the notary jurat on a filed pleading after being told by the court that the jurat on the filed complaint could not be corrected after the complaint was filed, Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- (b) By falsely representing to Judge Hamadani in open court that her paralegal must have checked the box, Defendant knowingly made a false statement of material fact to a tribunal in violation of Rule 3.3(a)(1), engaged in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the

lawyer's fitness as a lawyer in violation of Rule 8.4(c), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);

- (c) By sending the judges' assistant an email intended for the judges in which she falsely represented that she wasn't sure how this happened, Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer 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
- (d) By falsely representing to Judges Walczyk and Hamadani during a telephone conversation that Defendant's paralegal must have checked the box, Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

Based upon the foregoing Findings of Fact and Conclusions of Law and the consent of the parties, the Hearing Panel also enters the following:

#### ADDITIONAL FINDINGS REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1-40 above are reincorporated as if set forth herein.
2. In the ten years that Defendant has practiced domestic law, she has had no prior discipline.
3. Defendant had assured her client, A.F., that his divorce would be completed in 2018, and her actions precluded A.F. from obtaining a divorce in 2018 as expected.
4. Defendant refunded her attorney fee to the client without him requesting a refund.
5. Attorneys have special duties as officers of the court to refrain from conduct that undermines the integrity of the adjudicative process. Courts must be able to trust that attorneys who have access to court files will preserve the integrity of documents in court files.
6. An attorney's honesty with the court is a bedrock of the system of justice. The orderly and efficient administration of justice is undermined when attorneys are not forthright and truthful with the court. When attorneys are dishonest with the court, there is significant harm to the legal profession, the public's perception of the profession, and the administration of justice, as well as the potential for significant harm to clients.

7. Defendant's false claim that her paralegal had altered the verification necessitated Wake County employees expending many hours retrieving and examining courthouse video from December 21<sup>st</sup>.

8. It was foreseeable that altering a court document and then lying about it could cause significant harm to the administration of justice and erode the ability of the court, court officials, and other attorneys to trust Defendant's representations in the future.

9. The acts of dishonesty set forth in this order are the only such reports the State Bar has received regarding Defendant's dishonesty with the court.

10. At the time of the misconduct, Defendant was suffering from, taking medication for, and being treated for, several medical conditions, including chronic pain syndrome, cervicoccipital neuralgia, cervical spondylosis, and muscle spasms.

11. At the time of the misconduct, Defendant was experiencing significant stress in her personal life.

12. Defendant falsely represented in her response to the letter of notice that she had no prior grievances when in fact she had two prior grievances to which she had responded that had been dismissed.

13. In response to the State Bar's request during the grievance process for all correspondence involving this client, Defendant failed to produce all emails.

14. In February 2020, the Dispute Resolution Commission issued a public admonishment to Defendant for her lack of candor in failing to disclose a pending grievance on her 2016-2017 mediator renewal application, failing to report another grievance within 30 days of the grievance being dismissed, and failing to timely report the grievance giving rise to the complaint in this action.

15. The Hearing Panel has considered all the different forms of discipline available to it, including admonition, reprimand, censure, suspension, and disbarment, in considering the appropriate discipline to impose in this case.

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

#### ADDITIONAL CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel carefully considered all the different forms of discipline available to it and has considered all the factors enumerated in 27 N.C. Admin. Code 1B.0116(f).

2. The Hearing Panel concludes that the following factors from Rule .0116(f)(1) warrant consideration of suspension of Defendant's license:

- a) intent of the defendant to commit acts where the harm or potential harm is foreseeable;
- b) circumstances reflecting the defendant's lack of honesty, trustworthiness, or integrity;
- c) negative impact of defendant's actions on client's or public's perception of the profession;
- d) negative impact of the defendant's actions on the administration of justice;
- e) impairment of the client's ability to achieve the goals of the representation;
- f) effect of defendant's conduct on third parties; and
- g) acts of dishonesty, misrepresentation, deceit, or fabrication.

3. The Hearing Panel considered all the factors enumerated in Rule .0116(f)(2) and concludes that although Defendant engaged in acts of dishonesty, misrepresentation, deceit, or fabrication, disbarment is not necessary to protect the public.

4. The Hearing Panel considered all the factors enumerated in Rule .0116(f)(3) and concludes the following factors are applicable:

- a) absence of prior disciplinary offenses in this state or any other jurisdiction;
- b) dishonest or selfish motive;
- c) a pattern of misconduct;
- d) multiple offenses;
- e) effect of any personal or emotional problems on the conduct in question;
- f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process; and
- g) degree of experience in the practice of law.

5. The Hearing Panel has considered admonition, reprimand and censure as potential discipline but finds that any sanction less than suspension would fail to acknowledge the seriousness of the offenses committed by Defendant.

6. In light of Defendant's repeated acts of dishonesty and the significant harm to the legal profession and the administration of justice resulting from Defendant's conduct, the Hearing Panel concludes that no discipline short of suspension of Defendant's license will adequately acknowledge the seriousness of the offenses Defendant committed and send the proper message to attorneys and the public regarding the conduct expected of members of the bar of this State.

7. Defendant should be taxed with the administrative fees and costs of this action.

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

ORDER OF DISCIPLINE

1. Defendant's law license is hereby suspended for five years, effective 30 days after service of this Order upon Defendant.

2. Defendant shall surrender her law license and permanent membership card to the Secretary of the North Carolina State Bar no later than 30 days following the effective date of this Order. If Defendant no longer has her license and/or membership card, she shall so state in the affidavit referred to in paragraph 3 below.

3. Defendant shall comply with the wind-down provisions contained in Rule .0128 of the North Carolina State Bar Discipline and Disability Rules, 27 N.C. Admin. Code 1B.0128. As provided in Rule .0128(d), Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within 10 days of the effective date of this Order, certifying that she has complied with the wind down rule.

4. Within 30 days after service of this Order, Defendant shall provide the State Bar's Office of Counsel with a physical address and telephone number at which clients seeking return of files can communicate with Defendant and obtain their files.

5. Defendant shall promptly return client files in her possession, custody, or control to clients within five days after receiving a client's request for the file. Defendant will be deemed to have received a client's request for his or her file three days after the date the request is sent if the request is sent to the address Defendant provides to the State Bar pursuant to paragraph 4 above.

6. Within 30 days of the effective date of this Order, Defendant shall provide documentation to the Office of Counsel demonstrating that she has disbursed any funds remaining in her attorney trust account to the rightful owners and has initiated the escheatment process for any funds in the trust account required to be escheated.

7. Defendant shall pay the administrative fees and costs of this proceeding, including deposition costs, as assessed by the Secretary of the State Bar within 30 days of service upon her of the statement of administrative fees and costs.

8. At the conclusion of the suspension, Defendant may petition for reinstatement to active practice by filing a verified petition with the Secretary of the North Carolina State Bar. Defendant may file a petition for reinstatement up to 30 days prior to the end of the suspension but shall not be reinstated prior to the end of the suspension period. In addition to complying with the general provisions for reinstatement listed in 27 N.C. Admin. Code 1B.0129(b) him, to be eligible for reinstatement Defendant must demonstrate by clear, cogent, and convincing evidence that during the period of suspension she complied with the following conditions:

- a) The requirements of paragraphs 2 through 7 of this section of the Order of Discipline;
- b) Defendant kept the North Carolina State Bar membership department advised of her current physical home address and telephone numbers, and notified the membership department within ten days of any change in contact information;
- c) Defendant accepted all certified mail from the North Carolina State Bar and responded to all letters of notice and requests for information from the North Carolina State Bar by the deadline stated in the communication;
- d) Defendant timely complied with the State Bar membership and continuing legal education requirements, and paid any fees and costs assessed by the State Bar and the Client Security Fund by the applicable deadline;
- e) Defendant participated fully and timely in the State Bar's fee dispute resolution program when notified of any petitions for resolution of disputed fees; and
- f) Defendant has not violated the Rules of Professional Conduct or any state or federal laws other than minor traffic violations during the period of suspension.

Signed by the undersigned Hearing Panel Chair with the consent of the other Hearing Panel members.

This the 7 day of April, 2020.

  
Donald C. Prentiss, Chair  
Disciplinary Hearing Panel

Agreed and consented to by:

  
Douglas J. Brooker  
*Attorney for Defendant*

  
Emily C. Moore Tyler  
*Defendant*

  
Mary D. Winstead  
*Attorney for Plaintiff*