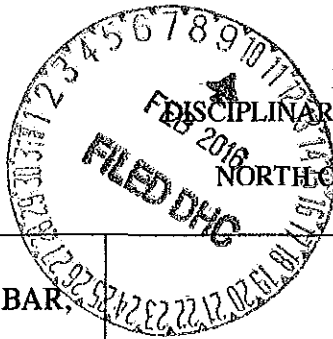


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
15 DHC 41

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

KATHERINE HEATH PEKMAN,
Attorney,

Defendant

CONSENT
ORDER

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Barbara B. Weyher, Chair, and members R. Lee Farmer and Randy Moreau, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff, the North Carolina State Bar, was represented by Maria J. Brown and Margaret T. Cloutier. Defendant, Katherine Heath Pekman, was represented by Deanna S. Brocker. Defendant waives a formal hearing in this matter, and both parties stipulate and consent to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Defendant consents to entry of this order of discipline and freely and voluntarily waives any and all right to appeal the entry of this order or to challenge in any way the sufficiency of the findings.

Based upon the pleadings in this matter, the parties' stipulations of fact, 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, 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, Katherine Heath Pekman ("Defendant" or "Pekman"), was admitted to the North Carolina State Bar in 2011 and is an Attorney at Law 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. Defendant was properly served with process, and the matter came before the Hearing Panel with due notice to all parties.

4. During the relevant period referred to herein, Defendant was engaged in the practice of law in Hickory, Catawba County, North Carolina.

5. In August 2013, R.M. hired Pekman to represent her in an alimony/child support enforcement action and made a \$2,500.00 advance payment for legal services.

6. In November 2013, Pekman stopped performing work on R.M.'s case.

7. After 3 December 2013, Pekman initiated no communication with R.M. and failed to respond to R.M.'s telephone and e-mail queries about the status of the case.

8. Pekman failed to return the \$1,510.00 balance of unearned fees Pekman was holding in trust for R.M.'s benefit.

9. On 6 March 2014, R.M. filed with the State Bar a Petition for Resolution of Disputed Fee ("fee dispute") concerning Pekman's representation of her.

10. On 6 March 2014, the State Bar mailed notice of the fee dispute to Pekman. The letter containing notice of the fee dispute was sent by certified mail to the address for Pekman on file with the State Bar's membership department.

11. The letter containing notice of the fee dispute was returned as unclaimed.

12. Pekman's failure to participate in the fee dispute resolution process resulted in the opening of State Bar Grievance File No. 14G0383 on 24 April 2014.

13. The State Bar served Pekman with a Letter of Notice in No. 14G0383 on 26 August 2014.

14. The Letter of Notice informed Pekman that she was required to submit a written response within fifteen days of her receipt of the Letter of Notice.

15. Pekman failed to respond to the Letter of Notice within fifteen days.

16. On 22 September 2014, the State Bar sent Pekman a letter notifying her that the State Bar had not received a response to the Letter of Notice and instructing her to respond by 1 October 2014.

17. Pekman failed to respond to the Letter of Notice by 1 October 2014.

18. On 9 January 2015, Pekman provided a response to the Letter of Notice.

19. On 19 November 2015, Pekman refunded the entire fee R.M. had paid and provided an accounting of the disbursement of R.M.'s entrusted funds.

20. Between December 2013 and November 2015, Pekman did not provide R.M. any accounting of the unearned portion of the fee she was holding in trust for R.M.'s benefit.

Based on the foregoing Findings of Fact and with the consent of the parties, the Hearing Panel 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 conduct, as set out in the Findings of Fact above, constitutes grounds for discipline as follows:

- A. Pursuant to N.C. Gen. Stat. § 84-28(b)(2), for violation of the following Rules of Professional Conduct in effect at the time of the conduct:
 - a. By failing to perform any work on R.M.'s case after November 2013, Defendant failed to exercise reasonable diligence in representing a client in violation of Rule 1.3;
 - b. By ceasing communication with R.M. and failing to respond to R.M.'s requests for information, Defendant failed to keep her 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);
 - c. By failing to refund the unearned portion of R.M.'s fee until 19 November 2015, Defendant failed to provide prompt payment to the client of entrusted property belonging to the client and to which the client was entitled in violation of Rule 1.15-2(m) and failed to take reasonably practicable steps upon termination of the representation to protect a client's interests in violation of Rule 1.16(d);
 - d. By failing, during the period of time between December 2013 and November 2015, to provide any accounting to R.M. of the unearned fee Defendant held in trust for R.M., Defendant failed to provide an accounting of fiduciary funds to the beneficial owner of those funds at least annually in violation of Rule 1.15-3(f); and
 - e. By failing to provide a timely response to the Letter of Notice in this matter, Defendant knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b).
- B. Pursuant to N.C. Gen. Stat. § 84-28(b)(3), for failure to answer the formal inquiry issued by the North Carolina State Bar in a disciplinary matter.

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

FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1 – 20 above are reincorporated as if set forth herein.
2. Defendant has been practicing law for three years and has no prior professional discipline.
3. During the time period relevant to this matter, Defendant was experiencing unaddressed emotional problems that contributed to Defendant's violations of the Rules of Professional Conduct. Defendant has since sought counseling to address these issues.
4. Defendant's neglect of R.M.'s matter, her failure to communicate with R.M., and her failure to complete the matter for which she had been retained caused significant harm to R.M. and R.M.'s ability to resolve her legal matter. Defendant's conduct caused R.M. significant

confusion and frustration and impaired R.M.'s ability to achieve the goal of her representation by causing unnecessary delay in R.M.'s case.

5. R.M. was a vulnerable victim of Defendant's misconduct. R.M. was unfamiliar with the legal process and had limited financial resources. R.M. had paid Defendant and relied upon Defendant to protect or pursue R.M.'s legal rights.

6. Defendant's repeated failure to respond to State Bar inquiries and otherwise participate in the grievance process caused significant potential harm to the profession. Such conduct interferes with the State Bar's ability to regulate its members and undermines the profession's privilege to remain self-regulating.

7. There is an absence of any evidence that Defendant intended to harm her client or that she exhibited a dishonest or selfish motive.

8. Defendant has acknowledged her conduct violated the Rules of Professional Conduct and is remorseful for her actions.

Based on the Findings of Fact and Conclusions of Law above, the additional Findings of Fact Regarding Discipline, and the consent of the parties, the Hearing Panel makes the following:

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has carefully considered all of the different forms of discipline available to it. In addition, the Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors warrant consideration of suspension of Defendant's license:

- (a) Negative impact of defendant's actions on client's or public's perception of the profession;
- (b) Impairment of the client's ability to achieve the goals of the representation;
- (c) Multiple instances of failure to participate in the legal profession's self-regulation process.

2. The Hearing Panel concludes that none of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(2) of the Rules and Regulations of the North Carolina State Bar are present in this case.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(3) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are applicable in this matter:

- (a) Defendant's lack of prior disciplinary offenses;
- (b) Absence of dishonest or selfish motive;
- (c) Effect of any personal or emotional problems on the conduct in question;
- (d) Remorse;
- (e) Vulnerability of victim;
- (f) Defendant's limited experience in the practice of law.

4. The Hearing Panel has considered lesser alternatives and finds that a censure, reprimand, or admonition would be insufficient discipline because of the significant harm to Defendant's client and the significant potential harm to the legal profession caused by Defendant's conduct.

5. Although Defendant's conduct is serious enough to warrant more than a censure, it does not warrant an active suspension of her license.

6. A stayed suspension of Defendant's law license is warranted because entry of an order imposing less severe discipline would fail to acknowledge the seriousness of the misconduct and would send the wrong message to attorneys and the public about the conduct expected of members of the Bar of this State.

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

ORDER OF DISCIPLINE.

1. The law license of Defendant, Katherine H. Pekman, is hereby suspended for one (1) year effective from the date this Order of Discipline is served upon her. The period of suspension is stayed for three (3) years as long as Defendant complies and continues to comply with the following conditions:

(a) Defendant shall comply with all treatment recommendations of the evaluating psychologist as well as any treatment provider(s), including recommendations from the Lawyer Assistance Program. For the duration of the stay of her suspension, Defendant shall direct her treatment provider(s) to provide the Office of Counsel with semi-annual written reports concerning Defendant's condition, Defendant's compliance with the treatment plan, and Defendant's progress resulting from treatment. Such reports shall be received by the Office of Counsel every June 1 and December 1. Defendant shall also comply with any and all requests from the Office of Counsel seeking updates on the status of her ongoing treatment within fifteen (15) days of receipt of such requests. If Defendant changes treatment providers during the stayed period of her suspension, Defendant shall sign an authorization form consenting to the release of any medical records and information related to Defendant's treatment to the Office of Counsel, and Defendant shall not revoke that release. Defendant shall simultaneously provide a copy of such signed authorization to the Office of Counsel and her new treatment provider(s). Within thirty (30) days of starting treatment with the new provider(s), Defendant shall direct such new treatment provider(s) to provide the Office of Counsel with a written report detailing Defendant's treatment plan, as well as the semi-annual written reports described above. All expenses of such treatment and reports shall be borne by Defendant;

(b) Defendant shall arrange for an active member of the North Carolina State Bar to serve as her law practice monitor. Defendant's practice monitor shall be an attorney in good standing who practices law in the judicial district in which Defendant proposes to practice law and who has been approved by the Office of Counsel. The monitor shall agree to supervise all client matters and will make reasonable efforts to ensure that Defendant handles all client matters in a timely

fashion, including promptly responding to her clients and diligently pursuing her clients' matters. Defendant shall agree to meet once every two (2) weeks with her monitoring attorney, report the status of all current client matters to the monitoring attorney, cooperate with the monitoring attorney, and provide any information the monitoring attorney deems reasonably necessary to ensure that Defendant is properly and timely handling all client matters. The monitoring attorney shall submit written quarterly reports of this supervision to the Office of Counsel, such reports due on the following dates as they occur during any stay of this suspension: January 15, April 15, July 15, and October 15. Defendant bears the responsibility of ensuring the monitoring attorney sends a written report each quarter to the Office of Counsel as described above. This monitoring shall occur for the duration of any stay of this suspension. Defendant shall pay the cost, if any, charged by the monitoring attorney for this supervision. Defendant must make the arrangements for this monitoring attorney and supply the Office of Counsel with a letter from the monitoring attorney confirming his or her agreement to perform all of the duties listed above;

- (c) Defendant shall cooperate with the Office of Counsel and make appropriate arrangements for an alternate monitoring attorney if needed during any stay of this suspension;
- (d) Defendant shall keep the North Carolina State Bar Membership Department advised of her current contact information, including her current business and home addresses (not a P.O. Box) as well as her current telephone number(s), and shall notify the Bar of any change in address or telephone number within ten (10) days of such change;
- (e) Defendant shall promptly accept service of all certified mail from the State Bar and shall respond to all letters of notice and requests for information from the State Bar, including communications from the Attorney Client Assistance Program, by the deadline stated in the communication or, in the absence of a stated deadline, within fifteen (15) days of receipt;
- (f) Defendant shall timely comply with all State Bar membership and Continuing Legal Education requirements, and Defendant shall pay all fees and costs assessed by the State Bar by the applicable deadline;
- (g) Defendant shall participate fully and timely in the State Bar's fee dispute resolution process for any petition of which she receives notice after the effective date of this Order;
- (h) Defendant shall timely pay the costs and administrative fees of this action as described below; and
- (i) Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or of any state or local government during her suspension.

2. If Defendant fails to comply with any of the conditions of the stayed suspension provided in paragraph 1(a) – (i) above, the stay of the suspension may be lifted as provided in 27 N.C. Admin. Code 1B § .0114(x).

3. If the stay granted herein is lifted or the suspension of Defendant's license is activated for any reason, before seeking reinstatement of her license to practice law, Defendant must show by clear, cogent, and convincing evidence that she has complied with each of the following conditions:

- (a) Defendant submitted her license and membership card to the Secretary of the North Carolina State Bar within thirty days after the date of the order lifting the stay and/or activating the suspension of her law license;
- (b) Defendant complied with all provisions of 27 N.C. Admin. Code 1B § .0124 of the State Bar Discipline and Disability Rules following the order lifting the stay and/or activating the suspension of her law license;
- (c) Defendant kept the North Carolina State Bar Membership Department advised of her current business and home addresses, as well as her current telephone number, and notified the Bar of any change in address or telephone number within ten (10) days of such change;
- (d) Defendant responded to all communications from the North Carolina State Bar, including communications from the Attorney Client Assistance Program, by the deadline stated in the communication or, in the absence of a stated deadline, within fifteen (15) days of receipt and participated in good faith in the State Bar's fee dispute resolution process for any petition of which she receives notice after the effective date of this Order;
- (e) Defendant promptly accepted all certified mail sent to her by the State Bar;
- (f) That at the time of her petition for reinstatement, 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 her, and including all judicial district dues, fees, and assessments;
- (g) That at the time of her petition for reinstatement, there is no deficit in Defendant's completion of mandatory Continuing Legal Education (CLE) hours, in reporting of such hours, or in payment of any fees associated with attendance at CLE programs;
- (h) Defendant did not violate the Rules of Professional Conduct or the laws of the United States or of any state or local government during her suspension;
- (i) Defendant paid the administrative fees and costs of this proceeding as reflected on the statement of costs served upon her by the Secretary of the State Bar;
- (j) Defendant provided to the Office of Counsel written or documentary evidence establishing that Defendant is not then suffering from any mental or physical condition that significantly impairs her professional judgment, performance, or competence as an attorney and which meets all of the following criteria: (1) dated no earlier than one month prior to the date of Defendant's petition for reinstatement, (2) signed by a provider from whom Defendant has been receiving ongoing treatment or a licensed psychologist who has conducted a comprehensive psychological evaluation of Defendant, and (3) accompanied by sufficient

releases to permit the Office of Counsel to make direct, meaningful inquiry of the treatment provider or evaluator; and

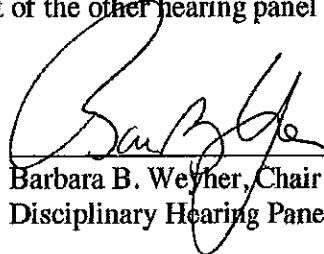
- (k) Defendant complied with any other conditions deemed necessary for reinstatement imposed by the Hearing Panel pursuant to the order lifting the stay of the suspension of Defendant's law license.

4. Defendant is taxed with the administrative fees and costs of this action as assessed by the Secretary which Defendant shall pay within forty-five (45) days of service of the notice of costs upon Defendant.

5. Nothing in this Order shall prohibit the State Bar from investigating and, if necessary, pursuing disciplinary action against Defendant for additional misconduct that may be discovered or reported which occurred during the same time period as the conduct addressed in this Order.

6. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout any period of stayed suspension.


Signed by the Chair with the consent of the other hearing panel members, this the 10th day of February, 2016.


Barbara B. Weyher, Chair
Disciplinary Hearing Panel


CONSENTED TO BY:



Maria J. Brown/Margaret T. Cloutier
Attorneys for Plaintiff



Katherine H. Pekman
Defendant



Deanna S. Brocker
Attorney for Defendant