

STATE OF NORTH CAROLINA

WAKE COUNTY

THE NORTH CAROLINA STATE BAR



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
16 DHC 33

Plaintiff

v.

NICHOLAS S. ACKERMAN, Attorney,

Defendant

CONSENT ORDER

Defendant, Nicholas S. Ackerman, was ordered to appear and show cause why the stay of the suspension imposed by the Order of Discipline entered in this case on 26 January 2017 should not be lifted and the suspension activated. This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Beverly T. Beal, Chair, N. Hunter Wyche, Jr., and Randy Moreau pursuant to 27 N.C. Admin. Code 1B § .0118 (formerly codified at .0114(x)). Plaintiff, the North Carolina State Bar, was represented by Maria J. Brown. Defendant appeared *pro se*. 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 order and to the disposition imposed. By consenting to the entry of this order, Defendant waives any right to appeal this consent order or to challenge in any way the sufficiency of the findings.

Based upon the pleadings and the consent of the parties, the Hearing Panel hereby finds by the greater weight of the evidence the following

FINDINGS OF FACT

1. On 26 January 2017, the DHC entered a consent order of discipline finding that Defendant violated the Rules of Professional Conduct by failing to keep his client reasonably informed about the status of their matter, failing to comply promptly with a client's reasonable requests for information, and failing to participate in good faith in the State Bar's fee dispute resolution process.

2. The 26 January 2017 Consent Order of Discipline suspended Ackerman's license to practice law for one year and stayed the suspension for two years on condition that Ackerman comply with the requirements specified in the order.

3. By its terms, the Consent Order of Discipline was effective as of the date it was served on Ackerman. Ackerman was served with the order on 30 January 2017.

4. The Order of Discipline provided that, in order to remain eligible for a stay of the suspension, Ackerman was required, among other things, to:

- (a) Arrange for an active member of the North Carolina State Bar to serve as his law practice monitor and obtain the approval of the Office of Counsel for his selection of law practice monitor;
- (b) Meet once every month with his monitoring attorney;
- (c) Ensure that the monitoring attorney sends a written report of the supervision to the Office of Counsel each quarter, due on January 15, April 15, July 15, and October 15;
- (d) Supply the Office of Counsel with a letter from the monitoring attorney confirming his or her agreement to perform all of the duties set out in the Consent Order of Discipline;
- (e) Timely comply with all State Bar membership and CLE requirements;
- (f) Respond to all communications from the North Carolina State Bar within 30 days of receipt or by the deadline stated in the communication, whichever is sooner; and
- (g) Pay the costs and administrative fees of this disciplinary action within thirty days of service of the notice of costs upon him.

5. Ackerman did not obtain the approval of the Office of Counsel for his selection of law practice monitor, Ms. Anne Littlejohn.

6. Ackerman did not supply the Office of Counsel with a letter from Littlejohn confirming her agreement to perform all of the duties set out in the Consent Order of Discipline.

7. Ackerman was required to begin meeting with Littlejohn in February 2017.

8. Ackerman met with Littlejohn for the first time in June 2017.

9. Prior to 17 August 2017, Littlejohn was unaware that submitting quarterly reports of her monitoring of Ackerman was one of the duties encompassed by her role as monitoring attorney.

10. On 25 August 2017, the State Bar received a quarterly monitoring report signed by Littlejohn and dated 11 August 2017.

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11. On 28 March 2017, the State Bar's CLE Department sent Ackerman an invoice for \$35.00 in fees for CLE he completed in 2016. The invoice provided that the amount specified was due upon receipt. Ackerman did not pay the invoice or otherwise respond to this communication from the CLE Department within 30 days.

12. On 7 July 2017, the State Bar's CLE Department sent Ackerman another invoice for the \$35.00 he owed. The invoice again provided that this amount was due upon receipt. Ackerman did not pay the invoice or otherwise respond to this communication from the CLE Department within 30 days.

13. Ackerman paid the \$35.00 CLE invoice on 23 August 2017.

14. On 21 February 2017, Ackerman was served with the notice of costs of this disciplinary action.

15. Ackerman has not paid the costs and administrative fees of this disciplinary action.

Based upon 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, Nicholas S. Ackerman, and over the subject matter of this proceeding.

2. Ackerman failed to comply with the conditions of the stay of his suspension as follows:

- a. By failing to obtain the approval of the Office of Counsel for his selection of law practice monitor;
- b. By failing to meet once every month with his monitoring attorney;
- c. By failing to ensure that the monitoring attorney sent a written report of the supervision to the Office of Counsel by April 15 and July 15;
- d. By failing to supply the Office of Counsel with a letter from the monitoring attorney confirming her agreement to perform all of the duties set out in the Consent Order of Discipline;
- e. By failing to timely comply with all State Bar CLE requirements;

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- f. By failing to respond to all communications from the North Carolina State Bar within 30 days of receipt or by the deadline stated in the communication, whichever is sooner; and
- g. By failing to pay the costs and administrative fees of this disciplinary action within thirty days of service of the notice of costs upon him.

3. These violations warrant lifting the stay and activating of a portion of Ackerman's suspension.

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

ORDER

1. The stay of Defendant's suspension is lifted and the suspension previously imposed is activated. This order and the suspension imposed herein are effective 30 days after service of this order upon Defendant.

2. All costs and administrative fees of this action are taxed to Defendant. Defendant must pay the costs of this action within 30 days of service upon him of the statement of costs by the Secretary.

3. Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following the date that this Order is served upon him. Defendant shall comply with the wind down provisions contained in Rule .0128 of the North Carolina State Bar Discipline and Disability Rules.

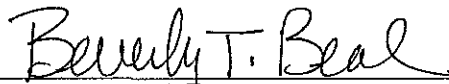
4. After no less than six months of active suspension, Defendant may apply to have the remainder of the one-year suspension stayed for the remainder of the two-year stay by petitioning for reinstatement as described in paragraph 3 on page 6 of the Order of Discipline. In applying for the stay, Defendant must comply with the requirements of Rule .0129(b) of the North Carolina State Bar Discipline and Disability Rules and the requirements for reinstatement contained in paragraph 3 (and its subparagraphs) on page 6 of the Order of Discipline and with the following additional condition:

- a. With his petition, Defendant must provide a written agreement executed by the monitor required by the Order of Discipline, agreeing to serve as monitor, to meet with Defendant as required in the Order of Discipline, and agreeing to provide written reports as required in the Order of Discipline.

5. If any portion of the one-year suspension is stayed, Defendant's active status for the remainder of the two-year stay period shall be subject to, and contingent upon compliance with, the terms of the stayed suspension set forth in paragraph 1 and its subparagraphs on pages 4-5 of the Order of Discipline.

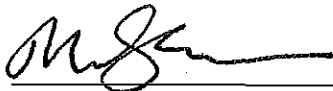
6. If Defendant is not reinstated to active status prior to the expiration of the one year suspension period, then, before Defendant may be reinstated to active status, he must satisfy the requirements of Rule .0129(b) of the North Carolina State Bar Discipline and Disability Rules and all requirements for reinstatement contained in paragraph 3 and its subparagraphs on page 6 of the Order of Discipline.

Signed by the Chair with the consent of the other Hearing Panel members, this the 31st day of October, 2017.

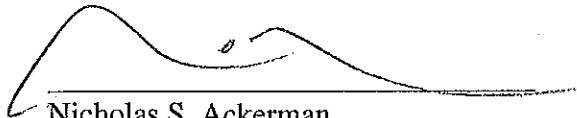


Beverly T. Beal, Chair
Disciplinary Hearing Panel

CONSENTED TO BY:



Maria J. Brown
Deputy Counsel
North Carolina State Bar
Counsel for Plaintiff



Nicholas S. Ackerman
Defendant