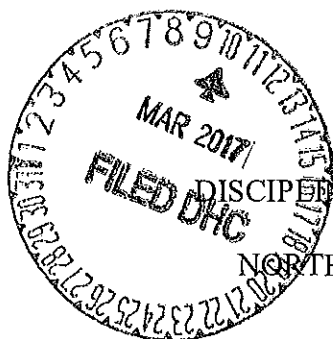


NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
16 DHC 31

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

DEREK ROSS FLETCHER, 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, Irvin W. Hankins, III and Jane B. Weathers. The North Carolina State Bar was represented by A. Root Edmonson and the Defendant, Derek Ross Fletcher, was represented by Deanna Brocker. Defendant waives a formal hearing in this matter and both parties stipulate and consent to the entry of this order and to the discipline imposed. Defendant waives any right to appeal this consent order or to challenge in any way the sufficiency of the findings.

Based upon the consent of the parties, the Hearing Panel 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, Derek Ross Fletcher ("Fletcher"), was admitted to the North Carolina State Bar in June 2010, 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. Except for an administrative suspension as more fully set out herein, 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 in Mecklenburg County, North Carolina.
4. Before May 23, 2014, Fletcher was mailed a Notice to Show Cause (Notice) by certified mail that would have notified him that, if he failed to take the required Continuing

Legal Education (CLE) that he was short for calendar year 2013 by the Administrative Committee's July 2014 meeting, he would be suspended by the committee at that meeting.

5. Although someone signed the return receipt for the certified mail containing the Notice, the recipient was not an employee of Fletcher's law office and there is no evidence that Fletcher was made aware of the Notice or his impending suspension.

6. Fletcher took no action to remedy his 2013 CLE deficit or to pay the necessary late fees in 2014.

7. On or about October 28, 2014, an Order of Administrative Suspension was mailed to Fletcher by certified mail. The return receipt for that mailing was returned unsigned.

8. On December 2, 2014, a copy of the Order of Administrative Suspension was mailed to Fletcher by regular mail at the last address he reported to the State Bar. Fletcher did not keep the Bar informed of his current address and therefore did not receive the Order.

9. Pursuant to the rules of the Administrative Committee, the Order of Administrative Suspension became effective on December 1, 2014 with a period to wind down existing cases through December 31, 2014. Fletcher was not to take on any new matters after December 1, 2014.

10. On or about December 6, 2014, Leslie Harty ("Harty") met with Fletcher regarding representation in a foreclosure matter.

11. Harty paid Fletcher a consultation fee of \$350.00 on that date.

12. Fletcher quoted Harty a \$10,000.00 retainer to handle the entire matter.

13. Harty told Fletcher she would have to think it over and discuss the retainer amount with her husband prior to retaining him.

14. Fletcher also quoted Harty a \$750.00 fee to review her documents.

15. On December 19, 2014, Harty mailed Fletcher a check for \$750.00 to do the review.

16. Thereafter, Harty checked Fletcher's credentials via the NC State Bar's website and discovered Fletcher's administrative suspension.

17. Harty called and emailed Fletcher's office and requested a refund.

18. By email on December 31, 2014, Fletcher responded, "Thank you for bringing this matter to my attention. I'm currently in touch with the North Carolina State Bar. I've put your case on hold since you've brought this matter to my attention."

19. Fletcher failed to give Harty advice or counsel regarding any review he may have made of her documents and failed to make a refund to Harty.

20. Unable to obtain a refund from Fletcher, Harty contacted the State Bar and filed a petition for fee dispute resolution.

21. A notice of Harty's fee dispute was mailed to Fletcher's last known address with the Bar, but the fee dispute coordinator could not reach Fletcher by phone. Fletcher did not keep the Bar informed of his current address and therefore did not receive the Petition.

22. Because Fletcher made no response to Harty's fee dispute, the matter was turned over to the State Bar's Grievance Department and a Letter of Notice was personally served upon Fletcher. Fletcher was required to respond to the Letter of Notice within fifteen days.

23. Fletcher failed to respond to the Letter of Notice relating to Harty's grievance.

24. On or about September 28, 2013, Sean Rockett ("Rockett") was arrested in Fairbanks, Alaska and charged with a DUI.

25. On the advice of his Alaska attorney, Rockett took a plea to the DUI, paid all court fines, and spent a weekend in jail in Alaska.

26. After he was released, Rockett was advised by his Alaska attorney that there may be different laws in North Carolina regarding the DUI so he should seek legal advice from a North Carolina attorney.

27. On or about December 10, 2013, Rockett retained Fletcher for assistance in obtaining a limited driving privilege.

28. Fletcher quoted a \$2,000.00 nonrefundable, flat fee to consult with Rockett's Alaska attorney and get the limited driving privilege. Rockett paid Fletcher the fee.

29. Over the course of two years, Fletcher failed to clearly explain the status of the matter and failed to complete the tasks he agreed to undertake to represent Rockett.

30. Even though Fletcher failed to provide Rockett the legal services for which he was paid, Fletcher failed to make a refund to Rockett.

31. Rockett filed a grievance against Fletcher. Fletcher was personally served with a Letter of Notice in Rockett's grievance. Fletcher was required to respond within fifteen days.

32. Fletcher failed to respond to the Letter of Notice relating to Rockett's grievance.

33. Prior to December 31, 2014, Shelley Brandt ("Brandt") retained Fletcher to represent her father, Herman Christie ("Christie"), on felony criminal charges.

34. On and after December 31, 2014, Brandt paid Fletcher \$7,350 for him to represent Christie.

35. Fletcher did not know that his license was administratively suspended when he accepted representation of Christie, but he had been aware of the suspension prior to receiving payment from Brandt.

36. Fletcher made arrangements to take his needed CLE, which he completed in February 2015.

37. On March 18, 2015, Fletcher filed a motion to reduce Christie's bond.

38. Fletcher got substitute counsel to take over the representation of Christie until he could be reinstated from his administrative suspension. Substitute counsel, with Christie's consent, appeared in court for Christie. Substitute counsel reported to Christie a plea offer that Christie was not happy with. Christie no longer wanted substitute counsel to represent him.

39. Fletcher did not petition for reinstatement after taking his CLE in February 2015.

40. Although Fletcher failed to conclude Christie's case as Brandt had paid him to do, Fletcher failed to make a refund to Brandt.

41. Brandt filed a petition for fee dispute resolution.

42. A notice of Brandt's fee dispute was mailed to Fletcher's last known address with the Bar, but the fee dispute coordinator could not reach Fletcher by phone. Fletcher did not keep the Bar informed of his current address and therefore did not receive the Petition

43. Because Fletcher made no response to Brandt's fee dispute, the matter was turned over to the State Bar's Grievance Department and a Letter of Notice was personally served upon Fletcher. Fletcher was required to respond to the Letter of Notice within fifteen days.

44. Fletcher failed to respond to the Letter of Notice relating to Brandt's grievance.

BASED UPON the foregoing Findings of Fact, the panel makes the following:

CONCLUSIONS OF LAW

1. All parties are properly before this panel of the Disciplinary Hearing Commission and the Disciplinary Hearing Commission and this panel have jurisdiction over Fletcher and the subject matter.

2. Fletcher's conduct, as set out above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28 (b)(2) in that Fletcher violated the Rules of Professional Conduct in effect at the time as follows:

- a. By accepting Harty as a new client during the wind down for his administrative suspension, Fletcher practiced in a jurisdiction where doing so violated the regulation of the profession in that jurisdiction in violation of Rules 5.5(a);
- b. By failing to provide legal services for the \$750.00 fee paid by Harty or make a refund, Fletcher failed to take reasonable steps to protect his client's interest in violation of Rule 1.16(d);

- c. By failing to respond to a Letter of Notice from the State Bar with which he had been served upon him in the Harty matter, Fletcher knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b);
- d. By failing to get Rockett a limited driving privilege, Fletcher failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;
- e. By failing to reasonably communicate to clearly explain the status of Rockett's matter to him, Fletcher violated Rules 1.4(a) and (b);
- f. By failing to provide legal services for the fee paid or make a refund to Rockett, Fletcher failed to take reasonable steps to protect his client's interest in violation of Rule 1.16(d);
- g. By failing to respond to the Rockett grievance, Fletcher violated Rule 8.1(b).
- h. By filing a bond motion for Christie in March 2015 while he was suspended, Fletcher practiced in a jurisdiction where doing so violated the regulation of the profession in that jurisdiction in violation of Rules 5.5(a);
- i. By failing to complete the necessary legal services for Christie that Brandt had paid the \$7,350.00 fee for or make a refund, Fletcher failed to take reasonable steps to protect his client's interest in violation of Rule 1.16(d);
- j. By failing to respond to the Brandt grievance relating to his representation of Christie, Fletcher violated Rule 8.1(b).

3. Fletcher's conduct, as set out above, also constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28 (b)(3) in that Fletcher failed to answer formal inquiries issued by the North Carolina State Bar in the Harty, Rockett and Brandt disciplinary matters.

Based upon the foregoing Findings of Fact and Conclusions of Law, the hearing panel hereby finds by clear, cogent, and convincing evidence the following additional:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Paragraphs 1-44 of the Findings of Fact above are incorporated in these Findings of Fact Regarding Discipline as if set forth herein.

2. Fletcher knew that he had not fulfilled his 2013 CLE requirements and knew that his failure to fulfill those requirements could lead to an administrative suspension. Fletcher made no effort to satisfy his 2013 CLE requirements until after Harty notified him that the State Bar listed him as having been suspended on its website.

3. After being notified by Harty of his CLE suspension, Fletcher took the CLE necessary to satisfy his deficit before the end of February 2015. However, Fletcher did not file a petition to be reinstated from his suspension.

4. Fletcher took a fee from Brandt after he knew that his law license was suspended and knew that he was prohibited by law from providing the legal services for which he accepted the fee without first being reinstated from his administrative suspension. Although, Fletcher arranged for substitute counsel to represent Christie until he could get reinstated, Christie refused further services from substitute counsel prior to his case being resolved.

5. Fletcher failed to provide the legal services for Harty, Rockett and Brandt for which he had been paid.

6. Fletcher failed to refund any of the fees paid to him by Harty, Rockett and Brandt, As a result, Harty and Brandt (and one other Fletcher client) filed Client Security Fund (CSF) claims against Fletcher. Although attempts were made to serve Fletcher with the CSF claims and copies of the claims were mailed to his last address of record by regular mail, Fletcher failed to respond to the claims. The Client Security Fund paid the three applicants a total of \$9,350.00.

7. Fletcher failed to respond to Letters of Notice issued to him in the grievances regarding the Hardy, Rockett and Brandt matters.

8. Self-regulation of the legal profession depends upon the cooperation and participation of lawyers in the self-regulatory process. Fletcher's failure to participate in the self-regulatory process interfered with the North Carolina State Bar's ability to regulate its members and undermined the profession's privilege to remain self-regulating.

9. Fletcher's disciplinary violations and his failure to participate in the self-regulatory process were caused, in part, by a serious substance abuse problem. To address that problem, Fletcher voluntarily entered into a residential treatment center in Charlotte, NC on May 10, 2015 and remained in residential treatment for several months. Fletcher voluntarily entered into a recovery contract with the Lawyer Assistance Program (LAP) on January 6, 2017.

10. Fletcher's failure to make refunds to the clients was related to both his inability to communicate from the residential treatment center and from financial problems related to his substance abuse and not from his unwillingness to do so. His failure to communicate with clients and in some instances, to respond to the State Bar in these matters, was caused at least, in part, by his substance abuse and an inability to communicate with anyone while in the residential treatment facility.

11. Fletcher caused significant harm to Harty, Rockett, Brandt, and Christie and to the public's perception of the legal profession.

12. Fletcher has received no prior professional discipline in North Carolina.

13. Except as may be set out herein, Fletcher has not practiced law in North Carolina since becoming aware of his administrative suspension.

Based upon the Findings of Fact, Conclusions of Law, and Additional Findings Regarding Discipline, 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.A.C. 1B § .0114(w) (1), (2) and (3) of the Rules and Regulations of the North Carolina State Bar and finds the following factors are applicable in this matter:

General Factors from 27 N.C.A.C. 1B §.0114(w) (3):

- a. No prior professional discipline in North Carolina;
- b. Failure to make restitution;
- c. Pattern of misconduct;
- d. Multiple offenses;
- e. Fletcher's substance abuse and mental health affected the conduct in question;
- f. Remorse;
- g. Voluntary treatment for substance abuse and interim rehabilitation; and
- h. Fletcher has already served over two years of administrative suspension.

Suspension and Disbarment Factors from 27 N.C.A.C. 1B §.0114(w) (1):

- a. Impairment of Fletcher's clients' ability to achieve the goals of the representation;
- b. Fletcher's lack of responsiveness to notices sent to his last mailing address caused the Client Security Fund to have to make payments to his clients to rectify the consequences of his conduct; and
- c. Multiple instances of failure to participate in the legal profession's self-regulation process.

Disbarment Factors from 27 N.C.A.C. 1B §.0114(w) (2):

- a. The hearing panel has carefully considered all of the factors enumerated in Rule .0114(w)(2) and concludes that none of the factors requiring consideration of disbarment are present in this case.
2. 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 Fletcher.
3. The Hearing Panel concludes that a suspension of Defendant's license, stayed upon compliance with conditions, is the only discipline that:
 - a. will adequately protect the public;
 - b. acknowledges the seriousness of the offenses Defendant committed; and
 - c. sends a proper message to attorneys and the public regarding 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, the hearing panel enters the following

ORDER OF DISCIPLINE

1. Derek Ross Fletcher is hereby suspended from the practice of law in North Carolina for one year, effective 30 days from the date of service of this order upon him.
2. The one year suspension is stayed for a period of three years as long as Fletcher complies, and continues to comply during the period of the stay, with the following conditions:
 - a. Fletcher must petition for and be granted reinstatement from his administrative suspension.
 - b. Fletcher must reimburse \$9,350.00 to the Client Security Fund or sign a confession of judgment to the Fund for that amount.
 - c. Fletcher shall abstain from the consumption of any alcohol during the period of stay;
 - d. Fletcher shall abstain from the consumption of any controlled substance other than medications as prescribed by his treating physician;
 - e. Fletcher shall comply with all requirements of his LAP recovery contract and comply with all treatment recommendations made pursuant to that contract. Fletcher must sign a release directing the LAP program to report

to the Office of Counsel any violations of the recovery contract or its treatment recommendations.

- f. Fletcher shall provide the Office of Counsel with his current street address (not at P.O. Box) and phone number, and will advise the State Bar in writing of any changes in his contact information within 10 days of such change(s);
- g. Fletcher shall respond to all letters of notice and requests for information from the State Bar by the deadlines stated in the communication;
- h. Fletcher shall timely pay all State Bar membership dues and Client Security Fund assessments;
- i. Fletcher shall timely comply with his State Bar CLE requirements and will pay all fees and costs assessed by the applicable deadline;
- j. Fletcher shall not violate any federal or state laws, other than minor traffic violations;
- k. Fletcher shall not violate any provision of the North Carolina Rules of Professional Conduct; and
- l. Fletcher shall pay the costs and administrative fees of this proceeding within 90 days of service of the statement of costs upon him by the Secretary of the State Bar.

3. Fletcher is taxed with the administrative fees and costs of this action as assessed by the Secretary, which shall be paid within 90 days of service of the notice of costs upon Fletcher.

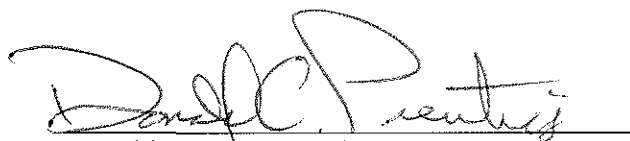
4. If the stay of the suspension is lifted at any time and the suspension of Fletcher's law license is activated for any reason, before seeking reinstatement of his license to practice law, Fletcher must show by clear, cogent and convincing evidence that he has complied with each of the following conditions:

- a. Demonstrated that at the time of his application for reinstatement he is not suffering from any addiction, disability or condition that would impair his current ability to competently engage in the practice of law;
- b. Demonstrated that he has abstained from all alcohol and illicit drug use or consumption and has not taken any prescription drugs or controlled substances other than as authorized by his treating physician for at least one year preceding the filing of his petition for reinstatement. This requirement will apply regardless of when the stay is lifted and regardless of whether enforcement of this provision extends the period of suspension of Fletcher's law license beyond the three year stay period set out herein;

- c. Provided the Office of Counsel with releases authorizing and instructing his medical, psychological and mental health care providers to provide to the Office of Counsel all medical records relating to his evaluation, prognosis, care or treatment, including substance abuse and mental health evaluations, and authorizing and instructing such providers to respond to requests for information by the Office of Counsel; and
- d. Paid all outstanding membership fees, Client Security Fund assessments and costs assessed by the DHC or the State Bar and complied with all continuing legal education requirements imposed by the State Bar.

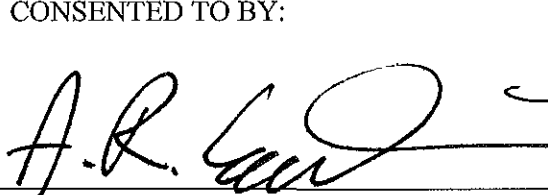
5. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C.A.C. 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout any period of stayed suspension.

Signed by the undersigned Chair of the hearing panel with the full knowledge and consent of the other panel members, this the 28 day of February 2017.

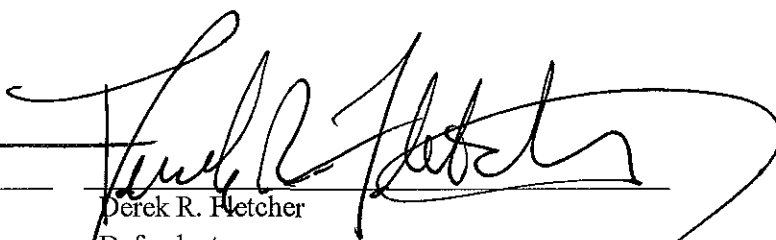


Donald C. Prentiss, Chair
Disciplinary Hearing Panel

CONSENTED TO BY:



A. Root Edmonson
Attorney for Plaintiff



Derek R. Fletcher
Defendant



Deanna Brocker
Attorney for Defendant