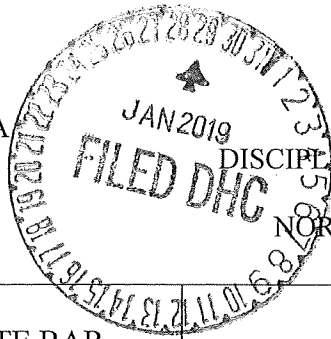


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
18 DHC 35

THE NORTH CAROLINA STATE BAR,  
Plaintiff

v.

RICHARD E. BATTS, Attorney,  
Defendant

CONSENT ORDER OF DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Beverly T. Beal, Chair, and members, Shannon R. Joseph and Michael S. Edwards, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0115(i). Plaintiff was represented by Alex G. Nicely. Defendant, Richard E. Batts, appeared *pro se*. 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 upon the pleadings in this matter, the parties' stipulations of fact, facts developed during the pending litigation, and with the consent of the parties, the Hearing Panel hereby enters the following:

**FINDINGS OF FACT**

1. Plaintiff, the North Carolina State Bar (hereafter "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, Richard E. Batts (hereafter "Defendant" or "Batts"), was admitted to the North Carolina State Bar on March 28, 1981 and is an attorney at law licensed to practice in North Carolina; 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. During the relevant period referred to herein, Batts was actively engaged in the practice of law in Edgecombe and Nash Counties, North Carolina.

4. Batts was properly served with the summons and complaint in this matter.

5. In or about October 2013, Sandra Knight ("Knight") retained Defendant to represent her in a personal injury matter.

6. On or about October 9, 2014, Defendant filed a lawsuit on Knight's behalf in *Sandra Murphy Knight v. The Pantry, Inc., d/b/a Kangaroo Express* in Edgecombe County, File Number 14-CVS-831 (hereinafter "the civil action").

7. Attorney J.J. (hereinafter "opposing counsel") represented The Pantry, Inc. (hereinafter "Pantry"), the opposing party in the civil action.

8. On or about October 30, 2014, opposing counsel served Defendant with Pantry's First Set of Interrogatories and Requests for Production of Documents (hereinafter "Pantry's initial discovery requests").

9. Defendant failed to provide a timely response to Pantry's initial discovery requests.

10. On or about November 5, 2014, the Court ordered that the civil action be referred to a mediated settlement conference and further ordered that the mediated settlement conference be completed before April 6, 2015.

11. The Civil Superior Court Rules for Wilson, Nash, and Edgecombe Counties mandate that the parties and attorneys in a civil action attend a mediated settlement conference. 7 Jud. Dist. Super Civil Calendar Rule 4.5.

12. The Civil Superior Court Rules for Wilson, Nash, and Edgecombe Counties mandate that the parties in a civil action designate a mediator to conduct the mediated settlement conference. 7 Jud. Dist. Super Civil Calendar Rule 4.3

13. By correspondence dated December 2, 2014, opposing counsel attempted to communicate with Defendant concerning the selection and appointment of a mediator in the civil action.

14. Defendant did not timely respond to opposing counsel's December 2, 2014 correspondence and did not timely communicate with opposing counsel regarding the selection and appointment of a mediator in the civil action.

15. In a letter dated December 22, 2014, opposing counsel asked Defendant to provide the overdue responses to Pantry's initial discovery requests.

16. Defendant failed to timely respond to opposing counsel's December 22, 2014 letter regarding Pantry's initial discovery requests.

17. On January 13, 2015, opposing counsel filed a Motion to Compel responses to Pantry's initial discovery requests.

18. On or about January 20, 2015, the Court appointed M.E. (hereinafter "the mediator") to serve as mediator in the civil action.

19. In an effort to schedule a mediation date for the civil action, the mediator attempted to contact the Defendant, both by telephone and by email.

20. Defendant failed to timely respond to the mediator's efforts to communicate with him and otherwise failed to participate in the initial mediation scheduling process.

21. On March 23, 2015, the mediator moved for an extension of time within which to complete the mediated settlement conference.

22. In the mediator's March 23, 2015 motion, the mediator indicated: "I have telephoned and emailed [Defendant] with available mediation dates, but have had no contact from [Defendant]."

23. On March 24, 2015, the Court signed an Order extending the deadline for completion of the mediated settlement conference to July 6, 2015.

24. Between the dates of April 22, 2015 to May 8, 2015, Defendant participated in multiple email exchanges which resulted in the scheduling of mediation for 9:00 AM, June 26, 2015 at the Nash County Courthouse, Nashville, North Carolina.

25. On April 21, 2015, Defendant appeared in Edgecombe County Civil Superior Court to address Pantry's Motion to Compel.

26. During the April 21, 2015 hearing, the Court ordered Defendant to provide complete responses to any outstanding discovery requests within 21 days and further ordered that the parties come to an agreement on the scheduling of depositions.

27. After the April 21, 2015 hearing, Defendant tentatively agreed to make Knight available for deposition at Defendant's law office on June 2, 2015 at 9:00 a.m.

28. On or about April 24, 2015, opposing counsel served Defendant with a Notice of Deposition and provided Defendant formal notice that Knight's deposition would take place on June 2, 2015 at 9:00 a.m. at Defendant's law office.

29. Defendant failed to properly inform Knight of the duly-noticed deposition prior to the June 2, 2015 deposition date.

30. On or about May 13, 2015, Defendant and Knight provided partial responses to Pantry's initial discovery requests.

31. The responses provided by Defendant and Knight were incomplete, thus in violation of the court's order.

32. In a letter to Defendant dated May 29, 2015, opposing counsel requested additional information and documentation to supplement Defendant's incomplete discovery responses.

33. Defendant and Knight did not timely respond to opposing counsel's May 29, 2015 letter.

34. On the morning of June 2, 2015, the date of the noticed deposition, Defendant informed opposing counsel that Knight was out of town and was unable to be physically present at the deposition.

35. Defendant did not provide opposing counsel with any advance notice that Knight would not appear for the duly-noticed deposition.

36. At no time prior to June 2, 2015 did Defendant object to the date, time or location of the duly-noticed deposition.

37. On June 2, 2015, in the presence of J.J. and stenographer, Defendant got Knight on the telephone and she was prepared to be deposed over the telephone.

38. There was no specific requirement in the Notice of Deposition provided by J.J. that precluded deposition of Knight by telephone.

39. On June 2, 2015, while J.J. was in Defendant's office for the deposition, due to Knight's absence, Defendant offered to drive Knight to Charlotte and pay to have the deposition at J.J.'s office.

40. On June 6, 2015, Defendant faxed to J.J. an Authorization for the Release of Medical Information signed by Knight for the purpose of providing J.J. the authority to obtain medical records that were not available to Defendant.

41. On or about June 11, 2015, opposing counsel filed a Motion to Dismiss and Motion to Show Cause on behalf of Pantry.

42. On or about June 15, 2015, Defendant filed an amended response to Pantry's initial discovery requests.

43. On or about November 9, 2015, the Honorable Alma L. Hinton entered an order dismissing without prejudice Knight's complaint, finding that Defendant and Knight failed to timely and completely respond to written discovery, failed to participate in discovery in accordance with the Rules of Civil Procedure, failed to appear for a duly-noticed deposition, failed to participate in mediation scheduling efforts, and failed to comply with prior written and oral orders of the court.

44. Defendant specifically requested the Court order that any dismissal of Knight's complaint be without prejudice, to enable Knight to refile the complaint in one year, and said request was granted. Consequently, Judge Hinton also ordered that as a condition precedent to refiling the action, Knight must reimburse the opposing party for costs incurred in the amount of \$2,000.00 plus any additional costs recoverable pursuant to Rule 41(a) of the North Carolina Rules of Civil Procedure.

45. Defendant obtained an offer to consider paying an amount to settle the slip and fall claim and Defendant was given the amount of \$4,000.00, minus the ordered attorney fee of \$2,000.00.

46. Defendant presented the settlement amount to Knight after Court on October 26, 2015 and same was refused as being insufficient.

47. On November 10, 2015, Defendant obtained an Affidavit of Knight's income and expenses, and on November 19, 2015, filed Rule 59(a)(7)(e), N.C. Civ. Proc., to Alter or Amend Judgment, which requested a striking of the ordered attorney fee and costs.

48. On March 8, 2016, Defendant unsuccessfully argued the striking of the ordered attorney fee and costs imposed upon Knight.

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, Richard E. Batts, 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 pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

- a) By failing to produce his client for a duly-noticed deposition, and by failing to comply with written and oral court orders regarding discovery responses and depositions, Defendant failed to act with reasonable diligence and promptness in representing his client in violation of Rule 1.3, failed to make reasonably diligent efforts to comply with discovery requests by an opposing party in violation of Rule 3.4(d)(2), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- b) By failing to participate in and respond to initial mediation scheduling efforts, Defendant failed to make reasonable efforts to expedite litigation consistent with the interests of his client in violation of Rule 3.2, and disobeyed an obligation under the rules of a tribunal in violation of Rule 3.4(c); and
- c) By failing to inform his client of a scheduled deposition in her case, Defendant failed to act with reasonable diligence and promptness in representing his client in violation of Rule 1.3, failed to reasonably consult with his client about the means by which the client's objectives were to be accomplished in violation of Rule 1.4(a)(2), failed to keep the client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3), and failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in violation of Rule 1.4(b).

Based upon the consent of the parties, the Hearing Panel also finds by clear, cogent, and convincing evidence the following:

### **ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE**

1. The findings of fact and conclusions of law above are reincorporated as if set forth herein.

2. Batts' conduct violated multiple provisions of the Rules of Professional Conduct and caused potential harm to a client.

3. There is no evidence that Batts intended to harm his client or that he exhibited a dishonest or selfish motive.

4. There is no evidence of a pattern of similar misconduct by Batts.

5. Batts provided a full and free disclosure to both the North Carolina State Bar and the Hearing Panel, and Batts has fully cooperated throughout the proceedings.

6. Batts has no prior disciplinary record concerning his license to practice law.

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

#### **CONCLUSIONS REGARDING DISCIPLINE**

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

2. 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 no factors are present that would warrant suspension of Defendant's license.

3. 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 that no factors are present that would warrant disbarment.

4. 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) Defendant's lack of prior disciplinary offenses;
- (b) The absence of a dishonest or selfish motive;
- (c) The absence of a pattern of misconduct; and
- (d) Defendant's full and free disclosure to the Hearing Panel and cooperative attitude toward the proceedings.

5. The Hearing Panel has considered issuing an admonition but concludes that such discipline would not be sufficient discipline because Defendant violated multiple provisions of the Rules of Professional Conduct and Defendant's conduct caused harm to a client. The Hearing Panel also considered a censure and suspension, but concludes that, given all the factors set forth in paragraph three above, the conduct was an aberration and is unlikely to be repeated.

6. The Hearing Panel finds and concludes that under the circumstances of this case, the public will be adequately protected by reprimanding Defendant not to continue or repeat such conduct.

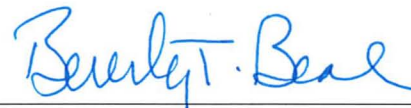
Based upon the foregoing Findings of Fact, Conclusions of Law, Additional Findings of Fact Regarding Discipline and Conclusions of Law Regarding Discipline, and based upon the consent of the parties, the Hearing Panel enters the following:

### **ORDER OF DISCIPLINE**

1. Defendant, Richard E. Batts, is hereby reprimanded by the Disciplinary Hearing Commission for his professional misconduct.

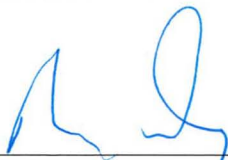
2. Defendant is taxed with the costs and administrative fees of this action. Defendant shall pay the costs and administrative fees of this proceeding as assessed by the Secretary within 30 days of service of the statement of costs and administrative fees upon him.

Signed by the Disciplinary Hearing Panel Chair with the consent of the other hearing panel members, this the 29<sup>th</sup> day of January, 2019.



Beverly T. Beal, Chair  
Disciplinary Hearing Panel

CONSENTED TO BY:



Alex G. Nicely, Deputy Counsel  
Attorney for the North Carolina State Bar



Richard E. Batts  
Defendant