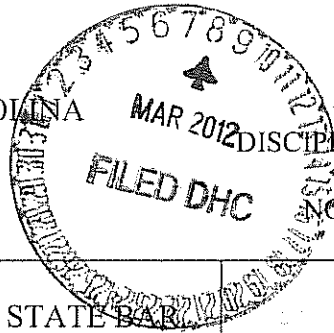


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE

DISCIPLINARY HEARING COMMISSION

OF THE

NORTH CAROLINA STATE BAR

11 DHC 19

THE NORTH CAROLINA STATE BAR

Plaintiff

ORDER OF DISCIPLINE

v.

DEAN H. HUMPHREY, Attorney,

Defendant

This matter was heard on February 10, 2012 before a Hearing Panel of the Disciplinary Hearing Commission composed of the Chair, Theodore C. Edwards, II, and members William M. Claytor and Dr. Charles L. Garrett, Jr. William N. Farrell represented Plaintiff, the North Carolina State Bar. Defendant, Dean H. Humphrey, was present and represented by Alan M. Schneider. Based upon the pleadings, the stipulated facts and the evidence introduced at the hearing, the hearing panel hereby finds by clear, cogent and convincing evidence the following:

FINDINGS OF FACT¹

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, Dean H. Humphrey (hereinafter "Humphrey" or "Defendant"), was admitted to the North Carolina State Bar in 1995, 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, Humphrey was engaged in the practice of law in the State of North Carolina and maintained a law office in Wilmington, New Hanover County, North Carolina.

¹ Defendant stipulated to these facts prior to the introduction of evidence relevant to discipline.

4. On or about January 7, 2010 Sherman Curry (hereinafter "Curry") was operating a motor vehicle, owned by Geraldine Moore, (hereinafter "Moore") which was involved in a traffic accident with another vehicle.

5. Moore was a passenger in the vehicle, operated by Curry, at the time of the accident.

6. On or about January 11, 2010 Defendant was retained to represent Curry and Moore regarding their injuries and damages arising out of the accident.

7. Thereafter Defendant entered into settlement negotiations with Integon National Insurance Company, a GMAC Insurance Company (hereinafter "Integon"), on behalf of Curry and Moore. Integon was the insurer of the other vehicle involved in the accident.

8. On or about April 15, 2010 Integon and Defendant reached an agreement to settle Curry's and Moore's claims.

9. Defendant, on behalf of Moore, agreed with Integon on April 15, 2010 to settle Moore's claim for \$8,750.00.

10. Defendant, on behalf of Curry, agreed with Integon on April 15, 2010 to settle Curry's claim for \$8,000.00.

11. At the time Defendant agreed on behalf of Curry and Moore to settle their respective claims with Integon, Defendant did not have authorization from them to settle their claims.

12. On or about April 16, 2010, the day after Defendant settled Curry's claim, Defendant wrote to Curry and falsely represented to him that Integon's initial settlement offer was only \$4,000.00, when in fact Integon had actually offered \$6,135.00.

13. Defendant had already settled the case on April 15, 2010 when he wrote Curry on April 16, 2010.

14. Defendant failed to disclose to Curry that Defendant had already settled Curry's claim with Integon on April 15, 2010 and that Defendant had already advised Integon to send the settlement paperwork to his office.

15. On or about April 16, 2010 Defendant also wrote to Moore and falsely advised her that Integon's initial settlement offer was only \$4,550.00 when in fact Integon had actually offered \$7,000.00.

16. Defendant had already settled the case on April 15, 2010 when he wrote Moore on April 16, 2010.

17. Defendant failed to disclose to Moore that Defendant had already settled Moore's claim with Integon on April 15, 2010 and that Defendant had already advised Integon to send the settlement paperwork to his office.

18. Integon sent a settlement check to Defendant for Curry's claim in the amount of \$8,000.00, payable to Defendant and Curry.

19. Integon sent a settlement check to Defendant for Moore's claim in the amount of \$8,750.00, payable to Defendant and Moore.

20. Without their consent or knowledge, Defendant forged Curry's and Moore's signatures to their respective settlement checks.

21. Defendant deposited both settlement checks into his trust account.

22. Defendant gave Curry a trust account check for Curry's portion of the \$8,000.00 settlement and disbursed checks on Curry's behalf to medical providers.

23. Moore refused to accept any money from Defendant which Defendant had received from Integon on Moore's behalf.

24. Moore later discharged Defendant and retained other counsel to pursue her claim.

25. When Moore's new counsel contacted Integon to inform the company that Moore had retained him with respect to the traffic accident, Integon brought a Declaratory Judgment action against Moore based upon Defendant's unauthorized settlement of Moore's claim.

26. Moore and Curry each filed a grievance with the North Carolina State Bar against Defendant.

27. The State Bar Grievance Committee sent to Defendant a Letter of Notice in Moore's and Curry's grievances. Each Letter of Notice required Defendant to provide a written response.

28. Defendant responded to the Letters of Notice in letters dated January 7, 2011, addressed to State Bar counsel and signed by Defendant.

29. Defendant's written responses to the Letters of Notice contained false and misleading representations.

30. Bar counsel sent a follow-up letter to Defendant specifically asking Defendant whether he signed Curry's name to a \$8,000.00 settlement check from GMAC Insurance. In his written response to the follow-up letter, Defendant falsely represented that he had no recollection of endorsing Curry's name and that it was not his practice to endorse settlement checks without the consent of his client. Defendant did, in fact, endorse Curry's name to the settlement check without the consent of Curry.

31. Defendant settled both Moore's and Curry's claims without their knowledge.

32. In his responses to the Letters of Notice, Defendant falsely represented that he called the insurance adjuster to send both settlement checks to him after he was authorized by Moore and Curry to accept the settlement offers.

Based upon the foregoing Findings of Fact, the Hearing Panel enters the following

CONCLUSIONS OF LAW²

1. All the parties are properly before the Hearing Panel and the Panel has jurisdiction over the Defendant, Dean H. Humphrey, and the subject matter.

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), for engaging in conduct in violation of the Rules of Professional Conduct in effect at the time of his actions as follows:

- a. By failing to advise Curry and Moore of the initial settlement offers by Integon, by falsely representing to them the amounts of the initial offers, by settling their claims without their authorization, and by signing their names to the settlement checks without their knowledge or authorization, Defendant failed to properly inform Curry and Moore with respect to their claims, failed to reasonably consult with his clients, Curry and Moore, failed to keep Curry and Moore reasonably informed about the status of their claims and failed to explain their matters to the extent reasonably necessary to permit them to make informed decisions in violation of Rule 1.4(a)(1)(2) and (3) and Rule 1.4 (b);
- b. By making false representations to Curry and Moore regarding Integon's offers of settlement, Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);
- c. By settling Curry's and Moore's claims without their consent, forging their names on the settlement checks, and falsely representing to the insurance company that he had authorization to settle the claims, Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), engaged in conduct that is prejudicial to the administration of justice in violation of Rule 8.4(d) and committed criminal acts that reflect adversely on Defendant's honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b) and

² Defendant stipulated that he committed the Rule violations contained in the complaint prior to the introduction of evidence relevant to discipline.

- d. By giving making false and misleading representations to the North Carolina State Bar in connection with a disciplinary matter, Defendant knowingly made false statements of material fact in violation of Rule 8.1(a) and (b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the evidence and arguments presented at this hearing, the Hearing Panel hereby finds by clear, cogent, and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. Defendant was forthcoming with the hearing panel and expressed profound remorse for his misconduct. The panel finds his expression of remorse sincere and credible.
2. Defendant presented extensive and substantial uncontroverted evidence of his excellent character among members of the New Hanover County Bar. Witnesses testified regarding their opinions of Defendant's character and opined that the misconduct at issue in this case was an aberration and an isolated occurrence in his legal career of almost 17 years.
3. Defendant presented over thirty character letters from members of his community, including professional colleagues, attesting to his excellent character and excellent reputation. All were aware of Defendant's misconduct and continued to support him.
4. Defendant has no prior disciplinary history with the State Bar.
5. Defendant exhibited a cooperative attitude toward the proceedings before this panel, after his initial misrepresentations to the Grievance Committee. After fully acknowledging his misconduct to the Grievance Committee, Defendant has thereafter consistently admitted his misconduct by admitting and stipulating to all factual allegations and rule violations alleged in the complaint.

Based upon the foregoing Findings of Fact, Conclusions of Law, Findings of Fact Regarding Discipline, and upon the evidence and arguments presented at the hearing concerning appropriate discipline, the Hearing Panel hereby enters the following

CONCLUSIONS OF LAW REGARDING DISCIPLINE

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

- a. Intent of the defendant to cause the resulting harm or potential harm;

- b. Intent of the defendant to commit acts where the harm or the potential harm is foreseeable;
- c. Circumstances reflecting the defendant's lack of honesty, trustworthiness or integrity;
- d. Negative impacts of the defendant's actions on clients or public's perception of the profession;
- e. Negative impact of the defendant's actions on the administration of justice;
- f. Impairment of the client's ability to achieve the goals of the representation;
- g. Effect of the defendant's conduct on third parties;
- h. Acts of dishonesty, misrepresentation, deceit, or fabrication;
- i. Multiple offenses of failure to participate in the legal profession's self-regulation process.
- j. Impulsive acts of dishonesty, misrepresentation, deceit or fabrication;
- k. The absence of prior disciplinary offenses;
- l. The absence of a dishonest or selfish motive;
- m. A pattern of misconduct;
- n. Multiple offenses;
- o. Full and free disclosure to the Hearing Panel and a cooperative attitude toward the proceedings;
- p. Bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency;
- q. Submission of false evidence, false statements or other deceptive practices during the disciplinary process;
- r. Remorse;
- s. Character and reputation;
- t. Vulnerability of the victim;

- u. The degree of experience in the practice of law; and
- v. Acknowledgement of wrongful nature of conduct.

2. Notwithstanding significant mitigating circumstances, any sanction less than suspension would fail to acknowledge the seriousness of the offenses committed by Defendant, would not adequately protect the public, and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar.

3. In light of the seriousness of Defendant's misconduct, the hearing panel finds and concludes that the public and the profession will only be adequately protected by imposing a period of active suspension of Defendant's law license.

4. Defendant should be allowed the opportunity to apply for a stay of a portion of the suspension imposed by this Order upon compliance with certain conditions designed to ensure protection of the public and to ensure Defendant's compliance with the Rules of Professional Conduct.

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

ORDER OF DISCIPLINE

1. The license of Defendant, Dean H. Humphrey, is hereby suspended for one year. This order will be effective 30 days after this Order of Discipline is served upon the Defendant.

2. Six months from the effective date of this Order, Defendant may apply for a stay of the remaining period of suspension imposed by this Order upon filing a petition with the Secretary of the North Carolina State Bar demonstrating by clear, cogent, and convincing evidence that, in addition to complying with the general provisions for reinstatement listed in 27 N.C.A.C. 1B § .0125 of the North Carolina State Bar Discipline & Disability Rules, Defendant has complied with the following conditions:

- a. Paid the applicable costs and administrative fees of this action prior to petitioning for reinstatement;
- b. Provided the North Carolina State Bar with a physical and/or mailing address which shall not be a post office box address and kept this address of record with the North Carolina State Bar current. Defendant shall accept all certified mail from the North Carolina State Bar and respond to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication;
- c. Did not violate the laws of any state or of the United States; and
- d. Did not violate any provision of the Rules of Professional Conduct.

3. Defendant may file a petition seeking a stay of the remaining suspension and demonstrating compliance with the above requirements up to 30 days prior to the end of the 6 month period but shall not be reinstated until the end of the 6 month period.

4. If Defendant successfully seeks a stay of the suspension of his law license pursuant to this Order, any stay will continue in force only as long as Defendant complies with the following conditions:

- a. Defendant shall keep his address of record current with the State Bar and respond to all letters of notice and requests for information from the State Bar by the deadline stated in the communication;
- b. Defendant shall timely comply with his State Bar membership and continuing legal education requirements and pay all fees and costs assessed by the applicable deadline;
- c. Defendant shall participate fully and timely in the fee dispute program when notified of any petitions for resolution of disputed fees;
- d. Defendant shall not violate the laws of any state or of the United States; and
- e. Defendant shall not violate any provision of the Rules of Professional Conduct.

5. If Defendant fails to comply with any one or more of the conditions stated in Paragraph 4 above, then the stay of the suspension of his law license may be lifted as provided in 27 N.C.A.C. 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules. If the stay granted herein is lifted or the suspension of Defendant's license is activated for any reason, before a subsequent stay of the suspension can be entered Defendant must show by clear, cogent, and convincing evidence that he has complied with each of the conditions referenced in Paragraph 2.

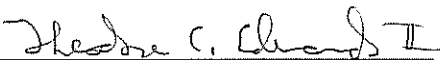
6. If Defendant does not seek a stay of the active portion of the suspension of his law license or if some part of the suspension is stayed and thereafter the stay is revoked, Defendant must provide in his application for reinstatement clear, cogent, and convincing evidence of the following:

- a. Compliance with the general provisions for reinstatement listed in 27 N.C.A.C. 1B § .0125 of the North Carolina State Bar Discipline and Disability Rules; and
- b. Compliance with the conditions set out in Paragraphs 2 (a) – (d) above.

7. The Secretary of the North Carolina State Bar shall serve upon Defendant a statement of costs. Defendant must pay the costs of this action prior to petitioning for reinstatement or within six months of service of the statements of costs, whichever is earlier.

8. 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 Chair with the consent of the other Hearing Panel members, this the 8th day of March 2012.


Theodore C. Edwards, II, Chair
Disciplinary Hearing Panel