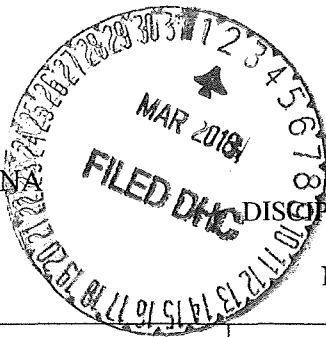


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
18 DHC 13

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

JEFFREY S. MILLER, Attorney,

Defendant

CONSENT ORDER

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission ("DHC") composed of Allison C. Tomberlin, Chair, and members David W. Long and Tyler B. Morris, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0115(i). Plaintiff was represented by Mary D. Winstead. Defendant, Jeffrey S. Miller, appeared *pro se*. Both Plaintiff and Defendant stipulate and agree to the findings of fact and conclusions of law recited in this Consent Order and to the discipline imposed. Defendant has freely and voluntarily stipulated to the findings of fact and consents to the conclusions of law and entry of the order of discipline. Defendant freely and voluntarily waives any and all right to appeal the entry of this Consent Order of Discipline.

Based upon the pleadings in this matter, the parties' stipulations of fact, and with the consent of the parties, the Hearing Panel hereby enters 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, Jeffrey S. Miller, was admitted to the North Carolina State Bar in August, 1976 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, Defendant was engaged in the practice of law in the State of North Carolina and maintained a law office in Jacksonville, Onslow County, North Carolina.

4. Attorney Matthew Silva ("Silva") represented Bryce Crain ("Crain") on an embezzlement charge in Onslow County.
5. On July 13, 2015, the State dismissed the embezzlement charge.
6. Defendant then undertook to represent Crain regarding a potential malicious prosecution lawsuit against a law enforcement officer and possibly others involved in charging and prosecuting Crain for embezzlement.
7. In the course of Defendant's representation, a dispute arose between Crain and Silva in which Crain alleged that he was unaware that Silva had paid restitution to the alleged victim in the embezzlement case thereby precluding Crain's malicious prosecution claim.
8. On June 28, 2016, Defendant wrote a letter to Silva which read: "Enclosed please find a letter from your former client Bryce Crain to the North Carolina State Bar. He has instructed me to mail the letter on July 10, 2016. If you would like to discuss the matter, please be in touch with me before that time."
9. The letter dated July 10, 2016 from Crain to the State Bar which Defendant enclosed was a grievance against Silva concerning his representation of Crain.
10. In response to Defendant's letter, on June 30, 2016, Silva called Defendant and spoke with him on the phone.
11. In that conversation, Silva inquired, "So what's the deal?" and Defendant stated that his client needed to get some money. When asked for a ball park amount, Defendant stated, "I'd say about \$25,000.00."
12. Silva asked whether Crain would still pursue the State Bar grievance if they agreed upon an amount, and Defendant said he would not.
13. Silva said he didn't have \$25,000.00, and Defendant offered to talk to his client.
14. In a telephone conversation with Silva on July 14, 2016, Defendant said his client wanted \$15,000.00.
15. Silva asked what \$15,000.00 would get him and Defendant stated it would get him released from liability.
16. Silva asked, "From liability on the bar complaint? From liability on the lawsuit? From liability on what?"
17. Defendant replied, "From liability of all kinds and sorts. He's confided in me as long as his lawsuit is settled, he has no interest in pursuing any bar action."
18. Silva did not pay any money to Crain and Defendant mailed Crain's grievance letter, now dated July 27, 2016, to the State Bar.

19. Crain has not filed a lawsuit against Silva.
20. The State Bar opened a grievance file against Defendant concerning the aforementioned conduct and sent him a Letter of Notice.
21. Defendant stated in his response to the Letter of Notice, "The only 'demand' that was ever put forward to Silva was that if Silva would pay Mr. Crain's attorney fees that I believed that I could persuade Mr. Crain not to go to the bar."
22. Defendant stated in follow-up correspondence with the State Bar, "I had gotten Crain to agree not to pursue his bar grievance if the civil action was settled."

Based upon the consent of the parties and the foregoing stipulated Findings of Fact, 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 stipulated Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows: By getting Crain to agree that Crain would not file a bar grievance against Silva if Silva paid a sum of money to Crain to settle their dispute, Defendant engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

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

#### **Findings of Fact Regarding Discipline**

1. The findings of fact in paragraphs 1 - 22 above are reincorporated as if set forth herein.
2. Defendant has no prior discipline.
3. Defendant has cooperated with the State Bar's review of this matter.
4. Defendant has more than 40 years in the experience in the practice of law.
5. While Defendant should have been aware of RPC 84, he asserts that he was not aware of the opinion until well after the State Bar opened the grievance giving rise to this complaint. Once he became familiar with that ethics opinion, Defendant recognized and acknowledged that it was improper for him to link the filing of a bar grievance with his attempt to settle his client's claim.

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

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

### **Conclusions With Respect To 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 §.0116(f)(1) and concludes that while the following factors are present, they do not warrant suspension of Defendant's license:

(a) Negative impact of Defendant's actions on client's or public's perception of the profession; and

(b) Negative impact of Defendant's actions on the administration of justice

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0116(f)(2) and concludes no factors are present in this case that would warrant disbarment.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0116(f)(3) and concludes the following factors are applicable in this matter:

(a) Absence of prior discipline;

(b) Cooperative attitude toward the proceedings; and

(c) Degree of experience in the practice of law

4. The Hearing Panel concludes that that the potential harm to the administration of justice and the profession warrants the issuance of a reprimand to Defendant and that this level of discipline will adequately protect the public.

5. Defendant should be taxed with the administrative fees and costs of this action.

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

### **Order of Discipline**

1. Defendant, Jeffrey S. Miller, is hereby REPRIMANDED for his misconduct.

2. Defendant shall pay all administrative fees and costs of this proceeding as assessed by the Secretary within 30 days after service of the statement of costs on him.

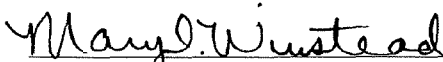
Signed by the undersigned Hearing Panel Chair with the consent of the other Hearing Panel members.

This the 2 day of March 2018.

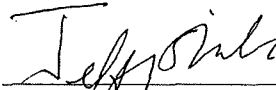


Allison C. Tomberlin, Chair  
Disciplinary Hearing Panel

Agreed and consented to by:



Mary D. Winstead  
Attorney for Plaintiff



Jeffrey S. Miller  
Defendant