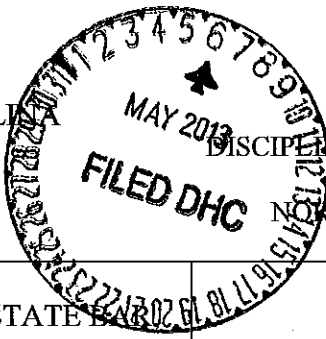


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
12 DHC 27

THE NORTH CAROLINA STATE BAR

Plaintiff

v.

CAROLE P. BURLEY, Attorney,

Defendant

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER OF DISCIPLINE

THIS MATTER was considered by a hearing panel of the Disciplinary Hearing Commission composed of Steven D. Michael, Chair, Harriett Smalls and Percy L. Taylor pursuant to 27 N.C. Admin. Code 1B § .0114 of the Rules and Regulations of the North Carolina State Bar. Plaintiff, the North Carolina State Bar, was represented by Barry S. McNeill. Defendant, Carole P. Burley, was represented by Alan M. Schneider. 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 hereby makes, 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, Carole P. Burley ("Burley" or "Defendant"), was admitted to the North Carolina State Bar on March 5, 1999, 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, Burley was engaged in the practice of law in the State of North Carolina and maintained a law office in Oriental, Pamlico County, North Carolina, doing business as Carole P. Burley, Attorney and Counselor at Law.

4. Burley represented an indigent client in the Craven County District Court proceeding in *State v. Charles Harris*, No. 09-JA-33 (Craven County) ("*Harris*").

5. Burley submitted a fee application, dated June 12, 2009, for her legal services rendered in *Harris* for the time period from April 3, 2009 to July 2, 2009, listing 4.0 in-court hours and 5.5 out-of-court hours, for a total time claimed of 9.5 hours.

6. On July 6, 2009, the presiding judge approved the hours submitted and awarded Burley a payment of \$712.50.

7. Burley received a payment of \$712.50 from Indigent Defense Services ("IDS") on or about October 20, 2009 for her legal services in the *Harris* case.

8. Burley submitted a second fee application, dated March 12, 2010, in *Harris* for the time period from July 3, 2009 to March 12, 2010, listing an additional 3.5 in-court hours and 4.0 out-of-court hours, for a total time claimed of 7.5 hours.

9. The proceedings in the *Harris* case were completed on March 12, 2010.

10. Burley did not perform additional legal services in the *Harris* case after March 12, 2010.

11. After the second fee application referenced in Paragraph 8, Burley wrote a letter to the presiding judge on December 13, 2010 enclosing a copy of the second fee application and reminding the presiding judge that it had not been approved.

12. On March 1, 2011, almost a year after her submission of the second fee application referenced in Paragraph 8 and having not received payment on this second fee application after sending the letter and enclosure referenced in Paragraph 11, Burley sent a second reminder letter to the presiding judge requesting that he process the second fee application in the *Harris* case along with two others.

13. On March 10, 2011, Burley submitted to the presiding judge a duplicate fee application in *Harris*, listing on this duplicate fee application the time period from July 7, 2009 to March 10, 2010, and seeking payment for 3.5 in-court hours and 4.0 out-of-court hours, for a total time claimed of 7.5 hours.

14. This duplicate fee application by Burley referenced in Paragraph 13 listed a "3/10/10" disposition date for the *Harris* case, whereas the proceedings in the *Harris* case were completed on March 12, 2010.

15. The March 10, 2010 disposition date for the *Harris* case Burley listed on this duplicate fee application referenced in Paragraph 13 was incorrect and resulted from a notation in Burley's time records.

16. In response to her submission of the duplicate fee application referenced in Paragraph 13, on or about March 16, 2011 the presiding judge approved 5.0 hours and awarded Burley a payment of \$375.

17. Burley received the \$375 payment from IDS on or about April 5, 2011.
18. Burley's receipt of the \$375 payment from IDS, referenced in Paragraph 17, constituted payment in full to Burley for the legal services she performed in the *Harris* case.
19. After receiving the \$375 payment from IDS, Burley did not notify the presiding judge or IDS that her duplicate fee application referenced in Paragraph 13 duplicated her earlier second fee application referenced in Paragraph 8.
20. Because Burley's March 1, 2011 letter to the presiding judge explained that the letter referenced in Paragraph 11 had enclosed fee application duplicates, Burley saw no reason to notify the presiding judge or IDS that her duplicate fee application referenced in Paragraph 13 duplicated her earlier second fee application referenced in Paragraph 8.
21. After receiving the \$375 payment from IDS, Burley did not withdraw her duplicate fee application referenced in Paragraph 13 and it remained pending with the presiding judge.
22. Burley did not notify the presiding judge or IDS that she had received the April 2011 payment of \$375 from IDS for payment in full for her legal services in the *Harris* case.
23. On September 28, 2011, the presiding judge mistakenly signed the still pending duplicate fee application order referenced in Paragraph 13, along with fee application orders for Burley in other appointed cases.
24. In signing the duplicate fee application order referenced in Paragraphs 13 and 23, the presiding judge approved 6.0 hours, mistakenly awarding Burley an additional payment of \$450 for her legal services in the *Harris* case.
25. The juvenile district court clerk returned this duplicate *Harris* fee application order referenced in Paragraphs 13 and 23 to Burley, along with the fee application order in one other unrelated case, because the presiding judge had signed the fee application orders in the wrong spaces.
26. On October 19, 2011, Burley returned the incorrectly signed fee applications referenced in Paragraph 25 to the presiding judge with a note requesting that the fee application orders be re-signed in the correct spaces.
27. Because of the lapse in time since the March 12, 2010 final disposition date for the *Harris* case, Burley consulted with IDS and became concerned that IDS would not process this duplicate *Harris* fee application referenced in Paragraphs 13, 23 and 26 once the presiding judge re-signed it.
28. Burley did not review her *Harris* file records to determine if she previously had been paid in April 2011 for her legal services in the *Harris* case.

29. At the time of the resubmission of the fee applications referenced in Paragraph 23, Burley did not realize or remember that she previously had been paid in April 2011 for her legal services in the *Harris* case.

30. On November 17, 2011, the presiding judge re-signed the fee application orders referenced in Paragraph 26, again mistakenly approving 6.0 hours and an additional payment of \$450 to Burley for her legal services in the *Harris* case.

31. Burley found the re-signed fee applications referenced in Paragraph 30 in her courthouse inbox and, because of her concerns referenced in Paragraph 27, she falsely modified the *Harris* fee application ending date, disposition date, and fee application date from the year "2010" to "2011."

32. Burley made the modifications referenced in Paragraph 31 so that IDS would process and approve the \$450 payment to her.

33. After making the modifications to the re-signed *Harris* fee application referenced in Paragraph 31, Burley filed the *Harris* fee application order as modified with the juvenile district court clerk on November 17, 2011, who processed and forwarded the modified fee application order to IDS on November 18, 2011.

34. In response to the falsely modified *Harris* fee application order referenced in Paragraphs 31 and 33, Burley received the \$450 payment from IDS on or about December 12, 2011.

35. Burley was not entitled to the \$450 payment from IDS.

36. By receiving from IDS both the payment of \$375 and the payment of \$450, Burley received duplicate payments for her legal services in the *Harris* case.

37. After being notified of the duplicate payments referenced in Paragraph 36, Burley repaid IDS the \$450 on April 16, 2012.

Based upon the foregoing Findings of Fact, the panel enters the following

CONCLUSIONS OF LAW

1. All parties are properly before the hearing panel and the panel has jurisdiction over Defendant, Carole P. Burley, and the subject matter of this proceeding.

2. Burley'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) as follows:

- a) By falsely modifying the fee application ending date, disposition date, and fee application date after the fee application had been signed by the presiding judge, and then submitting the falsely modified fee application for filing by the clerk and payment to her by IDS, Defendant made false statements of material fact to a tribunal or failed to correct false statements

of material fact previously made to the tribunal in violation of Rule 3.3(a)(1).

3. The parties agree and consent that there is no clear, cogent and convincing evidence that Burley committed a criminal act that reflects adversely on her honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b) by receiving the duplicate payments for her legal services rendered in the *Harris* case without disclosing the duplicate payments to the presiding judge or to IDS.

4. The parties agree and consent that there is no clear, cogent and convincing evidence that Burley engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

Based upon the consent of the parties, the hearing panel also finds by clear, cogent, and convincing evidence the following

ADDITIONAL FINDINGS REGARDING DISCIPLINE

1. Defendant has substantial experience in the practice of law.

2. In October 2011, Defendant resubmitted the fee application for payment of her legal services in the *Harris* case not realizing or remembering that she earlier had received payment in full for the *Harris* case in April 2011.

3. Defendant's false modifications of the fee application had the potential to cause significant harm to the public's perception of the legal profession.

4. Defendant made the false modifications of the fee application because she became concerned that, given the IDS rule that prohibits payment on fee applications submitted more than one year after the final disposition date of a case, IDS would not process and pay her what she mistakenly believed she was owed at the time for her legal services in the *Harris* case.

5. As of October 18, 2012, IDS's rules now permit an appointed attorney to apply for a deadline extension of no more than 30 days or to apply for a deadline waiver, options that were not available to Defendant in November 2011.

6. Defendant has been cooperative during the State Bar's investigation of these matters.

7. Defendant accepts responsibility for her conduct and has exhibited remorse.

8. Defendant has not previously been disciplined for violating the Rules of Professional Conduct.

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 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. Admin. Code 1B § .0114(w)(3) of the Rules and Regulations of the North Carolina State Bar and finds the following factors are applicable in this matter:

- a. Defendant does not have a record of prior disciplinary offenses in New York, where she has practiced since 1984, or in North Carolina since being admitted by comity in March 1999;
- b. Defendant has made full and free disclosure to the hearing panel or has demonstrated a cooperative attitude toward the proceedings;
- c. Defendant is remorseful for her conduct; and
- d. Defendant's substantial experience in the practice of law.

2. The hearing panel has carefully considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and finds the following factors warranting consideration of suspension of Defendant's license:

- a. Defendant's actions had a potential negative impact on the public's perception of the legal profession; and,
- b. Defendant's conduct had a negative impact on the administration of justice.

3. The Hearing Panel has also carefully considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(2) of the Rules and Regulations of the North Carolina State Bar and concludes that the only factor present in this instance that would warrant consideration of disbarment is Defendant's acts of dishonesty, misrepresentation, deceit, or fabrication.

4. The hearing panel has considered all other forms of discipline available and concludes that any sanction less than suspension would fail to acknowledge the seriousness of the offenses committed by Defendant, the potential significant harm to the public, the administration of justice, and the legal profession, 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.

5. The hearing panel finds and concludes that the public will be adequately protected by imposing a period of active suspension which is stayed upon Defendant's compliance with 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 Regarding Discipline, the hearing panel enters the following

ORDER OF DISCIPLINE

1. The license of Defendant, Carole P. Burley, is hereby suspended for one year. This period of active suspension is stayed for one year upon Defendant's compliance with the following conditions:

- a. Defendant shall keep and maintain accurate records of her submission of fee applications in her appointed cases, the entry of fee application orders awarding her payments, and her receipt of the awarded payments from IDS. Upon ten (10) day advance notice to Defendant, the Office of Counsel of the State Bar may request inspection of Defendant's fee application recordkeeping to ensure compliance;
- b. Defendant must pay the costs and administrative fees of this action as described in paragraph 5 below;
- c. Defendant shall provide the North Carolina State Bar with a physical mailing address which shall not be a post office box address and keep her 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 or within fifteen (15) days of receipt, whichever is later;
- d. Defendant shall timely comply with her State Bar membership and continuing legal education requirements and pay all fees and costs assessed by the applicable deadline;
- e. Defendant shall participate fully and timely in the fee dispute program when notified of any petitions for resolution of disputed fees;
- f. Defendant shall not violate the laws of any state or of the United States; and
- g. Defendant shall not violate any provision of the Rules of Professional Conduct.

2. If Defendant fails to comply with any one or more of the conditions stated in Paragraph 1 above, then the stay of the suspension of her law license may be lifted as provided in 27 N.C. Admin. Code 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 she has complied with the general provisions for reinstatement listed in 27 N.C. Admin. Code 1B § .0125 of the North Carolina State Bar Discipline & Disability

Rules and the conditions set out in Paragraphs 1 (a) – (f) above for any subsequent stay of the suspension.

3. If Defendant does not seek a stay of any active period of suspension as provided in Paragraph 2 above, Defendant must provide in her application for reinstatement clear, cogent, and convincing evidence of the following:

a. Compliance with the general provisions for reinstatement listed in 27 N.C. Admin. Code 1B § .0125 of the North Carolina State Bar Discipline & Disability Rules; and

b. Compliance with the conditions set out in Paragraphs 1 (a) – (f) above.

4. Nothing in this Order shall prohibit the State Bar from investigating and, if necessary, pursuing disciplinary action against Defendant for additional misconduct discovered or reported which occurred during the same time period as the conduct addressed in this Order.

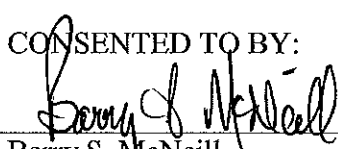
5. All costs and administrative fees of this action are taxed to Defendant. Defendant must pay the costs of this action within 120 days of service upon her of the statement of costs by the Secretary.

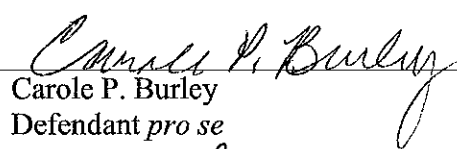
6. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout any period of stayed suspension.

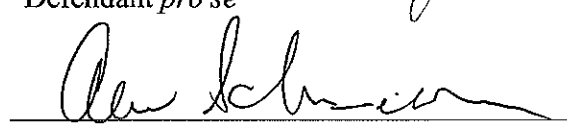
2nd Signed by the Chair with the consent of the other hearing panel members, this the day of May, 2013.


Steven D. Michael, Chair
Disciplinary Hearing Panel

CONSENTED TO BY:


Barry S. McNeill
Deputy Counsel
North Carolina State Bar
Counsel for Plaintiff


Carole P. Burley
Defendant *pro se*


Alan M. Schneider
Counsel for Defendant