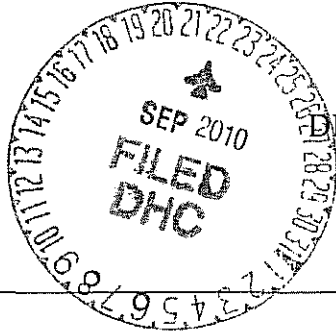


NORTH CAROLINA
WAKE COUNTY



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

The North Carolina State Bar,
Plaintiff,
v.
Janet P. Reed,
Defendant.

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

This matter came on to be heard and was heard before a hearing panel of the Disciplinary Hearing Commission composed of the Chair, C. Colon Willoughby, Jr., J. Michael Booe, and David L. Williams on August 20, 2010. The Plaintiff was represented by William N. Farrell, Deputy Counsel. Defendant was represented by Dudley A. Witt. 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 FACT

1. Plaintiff, the North Carolina 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, Janet P. Reed (hereinafter "Defendant" or "Reed"), was admitted to the North Carolina State Bar on September 12, 1997, 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 all or a portion of the relevant periods referred to herein, Reed was actively engaged in the private practice of law in Jacksonville, Onslow County, North Carolina.

4. On or about October 11, 2007 Reed was appointed to represent Jeremy Cox (hereinafter "Cox") in Onslow County District Criminal Court for multiple traffic offenses including speeding 90 miles per hour in a 45 mile per hour zone and reckless driving in File No. 06CR5216 and speeding 71 miles per hour in a 55 mile per hour zone and driving while license revoked in File No. 06CR703796.

5. Reed was also representing Cox on another traffic infraction for unsafe passing, File No. 06IF4088.

6. On or about February 20, 2008, Reed approached Matthew V. Silva (hereinafter "Silva"), Assistant District Attorney for the Fourth Prosecutorial District, in court to negotiate a plea agreement on behalf of Cox.

7. Reed and Silva reached an agreement in File No. 06CR5216 that upon successful completion of an eight (8) hour driving course Cox would be allowed to plead guilty to speeding 70 mph in a 45 mph zone to resolve the charges of speeding 90 mph in a 45 mph zone and careless and reckless driving. Silva also stated he would not oppose a Prayer for Judgment continued on the 70 mph in a 45 mph zone.

8. At the time Silva agreed to this disposition in 06CR5216, he was unaware of Cox's pending unsafe passing infraction, File No. 06IF4088.

9. At the time Silva agreed to the disposition in 06CR5216, he was also unaware of Cox's pending charges of speeding 71 mph in a 55 mph zone and Driving While License Revoked in File No. 06CR703796.

10. Silva prepared a plea agreement form, reflecting the proposed disposition in 06CR5216, by filling in the case number 06CR5216, marking "90/45 C&R" as the charge and

marking “70/45” as the plea. The form did not contain Silva’s agreement not to object to a Prayer for Judgment Continued.

11. After preparing the plea agreement form Silva signed the form and handed the document to Reed.

12. Reed then informed Silva of Cox’s pending unsafe passing infraction, File No. 06IF4088.

13. Silva agreed to allow Reed to add the unsafe passing infraction, File No. 06IF4088, to the plea agreement form, after verifying with Reed that the addition would be limited to a single infraction of unsafe passing. In return for this addition, Cox would be required to plead to an additional charge of improper equipment in lieu of unsafe passing in File No. 06IF4088.

14. Reed agreed and was given permission by Silva to amend the plea agreement to reflect the additional negotiation described in paragraph 13.

15. Silva was unaware of the pending charges of 71/55 and Driving While License Revoked in File No. 06CR703796 when he made the additional agreement described in paragraph 13.

16. With Silva’s authorization, Reed made the following additions to the plea agreement form:

- a) By the case number, she added “06IF4088”
- b) By the charge, she added “& Unsafe Passing”
- c) By the plea, she added “& IE”

17. Without Silva’s authorization Reed also added the File No. “06CR703796” to the plea agreement form.

18. Reed and Cox signed the plea agreement form and Reed returned it to Silva, who was in trial at the time and unable to review it.

19. When Silva had the opportunity to review the plea agreement form he noticed that Reed had added File No. 06CR703796 to the agreement without obtaining his approval or notifying him that she had added this file to the plea agreement.

20. After he noticed the unauthorized addition of File No. 06CR703796, Silva notified Reed's practice mentor of what Reed had done and to inform him that the plea agreement was no longer valid.

21. The next day, in Reed's presence, Silva told the presiding District Court Judge that the plea agreement was no longer valid and that he would prosecute each charge against Cox individually and without reduction because he could not trust Reed.

22. The presiding Judge called Cox to the front of the courtroom and asked if Cox wanted Reed to continue to represent him.

23. Cox responded in the negative and Silva requested to have Reed removed as appointed counsel for Cox.

24. The court appointed new counsel for Cox.

25. The effect of adding File No. 06CR703796 to the plea agreement could have resulted in a dismissal of the offenses of speeding 71 mph in a 55 mph zone and driving while license revoked by the District Attorney's office.

26. Bobby Franklin Blakeney, Jr. (hereinafter "Blakeney") retained Reed in or about April 2008 to represent him in domestic matters including but not limited to Divorce from Bed and Board, Equitable Distribution, Child Custody and Child Support.

27. Reed filed a Complaint on behalf of Blakeney in Onslow County on or about April 15, 2008.

28. Blakeney's wife filed a similar action in California.

29. After discussion between the California and North Carolina courts, it was determined that the issue of custody would properly be heard in North Carolina and either state could hear the other matters.

30. Reed calendared the issues of temporary custody, visitation and summer vacation for July 21, 2008.

31. Under the local Rules of Court for Onslow County, "all actions involving unresolved, contested, or temporary issues, or change of custody and visitation of a minor child shall be ordered to mandatory mediation on such issues prior to trial."

32. This mandatory mediation is required in all cases unless exempted by the Court.

33. Reed filed for an exemption by a Motion and Order to waive Custody Mediation in Blakeney's case on or about June 25, 2008.

34. Reed falsely stated in the motion that Blakeney lived more than fifty (50) miles from Court. Where the parties reside more than 50 miles from the Court, such distance is considered good cause for an exemption in the discretion of the Court under local rules.

35. Reed also falsely stated in the motion that the opposing party was unwilling to participate in any meaningful contact with the minor child. This allegation was untrue because the minor child was residing with Blakeney's wife at that time.

36. Blakeney discussed the incorrect information in the motion with Reed before Blakeney and Reed signed the motion and before Reed filed the motion with the court.

37. Reed advised Blakeney to sign the Motion even though she knew the allegation in paragraphs 35 and 36 were false.

38. Reed was retained to represent Richard J. Ogniewski (hereinafter "Mr. Ogniewski") in the case entitled Kristie K. Ogniewski vs. Richard Ogniewski, File No.: 08 CVD 4036, Onslow County District Court.

39. Kristie K. Ogniewski, (hereinafter "Ms. Ogniewski") the Plaintiff in 08 CVD 4036, was represented by attorney Timothy Oswalt (hereinafter "Oswalt").

40. Oswalt contacted Reed on March 5, 2009, requesting available dates to depose Mr. Ogniewski.

41. Reed's paralegal, Dorothy J. Novak, responded to Oswalt, on behalf of Reed, that April 8, 2009 would be an acceptable date for Mr. Ogniewski's deposition.

42. On March 25, 2009, Oswalt noticed Mr. Ogniewski, by and through Reed, of his intent to depose Mr. Ogniewski on April 8, 2009.

43. On March 31, 2009, Reed filed calendar requests for April 7, 2009 and April 8, 2009, the date before and the date of the scheduled deposition, asking that all pending motions be heard. At the time that these calendar requests were filed the only pending motion was a motion to modify post separation support. This request was in violation of the local rule requiring calendar requests to be submitted no later than 10 (ten) days prior to the beginning of the session.

44. On April 1, 2009, Reed filed a Motion to Continue Deposition and an Amended Motion to Continue Deposition with no corresponding calendar request.

45. On April 8, 2009, the presiding judge refused to hear any of Reed's motions.

46. Reed and Mr. Ogniewski presented themselves at 2:00 p.m. on April 8, 2009 at Oswalt's law offices for the scheduled deposition of Mr. Ogniewski.

47. Prior to the commencement of the deposition, Reed agreed to standard stipulations which included waiving objection as to the notice of taking said deposition or as to the time or place thereof.

48. Shortly after the deposition began Reed unilaterally terminated the deposition stating that the deposition was being conducted in bad faith and in an unreasonable manner, among other things.

49. In a Motion to Terminate Deposition, filed on April 9, 2009, the day after the deposition was terminated, Reed stated, among other things, that the questions presented “were not part of any prior discovery question” and “that the Defendant or Defendant’s counsel was not put on notice as to the line of questions to be presented”.

50. Ms. Ogniewski, plaintiff in 08 CVD 4036, incurred expenses and inconvenience, including attorney’s fees as a result of Reed’s termination of the deposition without justification.

51. On April 30, 2009, the presiding judge denied Reed’s Motion to Terminate Deposition and found, in part, “that the deposition was not conducted in bad faith or in such a manner as to unreasonably annoy, harass or oppress the defendant”.

52. Reed was ordered to pay the cost of the partial deposition as well as Ms. Ogniewski’s attorney fees.

53. There is no legal authority to terminate a properly noticed deposition on the grounds “that the questions presented to the defendant were not part of any prior discovery questions” and/or “that the defendant or the defendant’s counsel was not put on notice as to the line of questions to be presented”.

Based upon the foregoing Findings of Fact, the hearing panel hereby 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 foregoing actions constitute grounds for discipline pursuant to N.C. General Statute § 84-28(b)(2) in that she violated one or more of the Rules of Professional Conduct as follows:

a. By failing to disclose to Silva the existence of File No. 06 CR 703796 and adding it to the plea agreement form after it was signed by Silva without notifying Silva, Reed engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation and engaged in conduct prejudicial to the administration of justice in violation of Rules 8.4(c) and (d) of the Rules of Professional Conduct.

b. By advising a client to sign a Motion which falsely represented material facts and by filing the form containing false representations with the Onslow County District Court, Reed engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation and engaged in conduct that is prejudicial to the administration of justice in violation of Rules 1.2(d), 3.3, 8.4(c) and (d) of the Rules of Professional Conduct.

c. By failing to comply with the local rules of court, and by failing to make reasonably diligent efforts to comply with a legally proper discovery request, Reed handled a legal matter that she knew or should have known she was not competent to handle in violation of Rule 1.1 of the Rules of Professional Conduct;

d. By unjustifiably terminating a properly noticed and ongoing deposition of her client, Reed failed to make a reasonably diligent effort to comply with a legally proper discovery request 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) in violation of the Rules of Professional Conduct.

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

FINDINGS OF FACT AND CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has 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 finds the following factors are applicable in this matter:
 - a. Prior disciplinary offenses;
 - b. A pattern of misconduct;
 - c. Multiple offenses;
 - d. Acts of dishonesty, misrepresentation, deceit, or fabrication;
 - e. Negative impact of the Defendant's actions on client's or public perception of the legal profession;
 - f. Negative impact of the Defendant's actions on the administration of justice;
 - g. Substantial experience in the practice of law;
 - h. Full and free disclosure to the hearing panel and cooperative attitude toward the proceeding; and
 - i. Remorse.
2. Defendant's conduct in the plea negotiation with Assistant District Attorney Silva caused significant harm to the administration of justice and to her client.
3. Defendant's conduct in the signing and filing of a motion which falsely stated material facts caused significant harm to the administration of justice.
4. Defendant's conduct in terminating a deposition without legal justification caused significant harm to the administration of justice.

5. Defendant's conduct caused significant harm to the legal profession in that her acts bring the legal profession into disrepute.

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 appropriate discipline to impose in this case.

7. The Hearing Panel has considered all lesser forms of discipline available to it and finds that suspension is the only appropriate discipline in this case for the following reasons:

- a. The factors under Rule .0114(w)(1)(A) and the general factors under Rule .0114(w)(3) that are established by the evidence in this case are of a nature to support imposition of a suspension.
- b. Entry of an order imposing lesser discipline than suspension would fail to acknowledge the seriousness of the offenses committed by Defendant, would fail to acknowledge her prior discipline, would be inconsistent with discipline issued in prior cases involving similar misconduct, and would send the wrong message to Defendant, to other attorneys, and the public regarding the conduct expected of members of the North Carolina State Bar;
- c. Defendant's conduct reflects adversely on her trustworthiness or fitness as a lawyer.
- d. Discipline short of an active suspension would not adequately protect the public, the administration of justice, and the legal profession. The protection of the public and the legal profession requires that Defendant be suspended so that she understands her obligations to her clients, the public, the legal profession and the administration of justice.

Based upon the foregoing Findings of Fact, Conclusions of Law and Conclusions

Regarding Discipline, the Hearing Panel enters the following:

ORDER OF DISCIPLINE

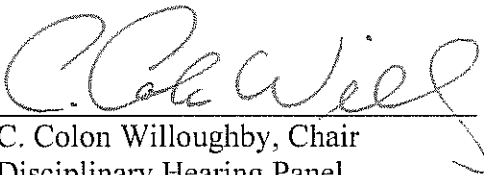
1. The law license of Defendant, Janet P. Reed, is hereby suspended for five (5) years effective thirty (30) days after service of this Order of Discipline on her.
2. Defendant shall submit her license and membership card to the Secretary of the North Carolina State Bar no later than thirty days following service of this Order on Defendant.
3. Defendant shall comply with the wind down provisions contained in 27 N.C.A.C. 1B § .0124, the North Carolina State Bar Discipline and Disability Rules. Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within ten days of the effective date of this Order of Discipline certifying she has complied with the wind down rule.
4. Within fifteen days of the effective date of this Order, Defendant will provide the State Bar with a street address and mailing address at which clients seeking return of their files and records in Defendant's possession or control may obtain such files and records and at which the State Bar may serve any notices or other matters upon her.
5. Defendant must show she has complied with each of the following conditions during her period of suspension before seeking reinstatement:
 - a. Not have violated any laws of the State of North Carolina or the United States;
 - b. Not have violated any provisions of the Rules of Professional Conduct;
 - c. Paid the costs of this proceeding as assessed by the Secretary of the Bar within 30 days;
 - d. Kept her address with the State Bar current;
 - e. Promptly accepted all certified mail from the Bar;

- f. Responded to all letters of notice and requests for information from the Bar by the deadline stated in the communication;
- g. Satisfactorily completed a law office management course taught by a law office management consultant, approved in writing by the Office of Counsel of the Bar within 6 months of petitioning for reinstatement;
- h. Satisfactorily completed a lawyer's ethics course of continuing legal education with the primary emphasis on professionalism in the practice of law, approved in writing by the office of counsel of the Bar, within 6 months of petitioning for reinstatement; and
- i. Completed a practical skills course of continuing legal education in the course area of family law, approved in writing by the office of counsel of the Bar, within 6 months of petitioning for reinstatement.

6. Defendant is taxed with the costs of this action and assessed by the Secretary to be paid within 30 days of the service of this Order of Discipline upon Defendant.

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

This is the 22 day of September, 2010.


C. Colon Willoughby, Chair
Disciplinary Hearing Panel