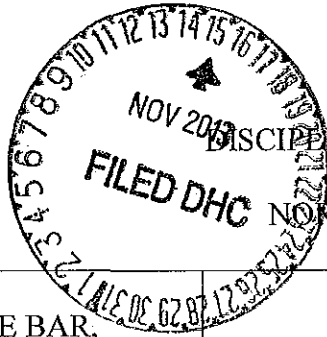


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
13 DHC 1

THE NORTH CAROLINA STATE BAR,
Plaintiff,

v.

CURTIS C. OSBORNE, Attorney
Defendant.

CONSENT ORDER OF DISCIPLINE

This matter came before a hearing panel of the Disciplinary Hearing Commission composed of Joshua W. Willey, Jr., Chair, Harriett Smalls, and Scott A. Sutton. Carmen H. Bannon represented Plaintiff, the North Carolina State Bar. Defendant, Curtis C. Osborne, was represented by Alan M. Schneider. 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 consent order. The parties 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. Based on the foregoing and on 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, 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, Curtis C. Osborne, was admitted to the North Carolina State Bar in August 1998 and is an Attorney at Law 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, Osborne was actively engaged in the practice of law in Charlotte, Mecklenburg County, North Carolina.
4. In March 2009, Lelys Mancia and Roberto Alfaro, consulted with Osborne about potential representation in a personal injury case related to a February 2009 auto accident. Mancia was married to Alfaro's cousin. At the time of the accident, Alfaro had been a passenger in Mancia's car, which was struck by another vehicle. (The driver of the vehicle that struck Mancia's car is referred to hereafter as "the other driver").

5. Osborne agreed to represent both Mancía and Alfaro, but failed to obtain their informed consent, confirmed in writing, to the potential conflict of interest inherent in the joint representation of a driver and passenger under these circumstances.

6. Mancía and Alfaro together met with Osborne at his office on several occasions, and Osborne sent demand letters to the other driver's insurance company on behalf of Mancía and Alfaro.

7. Sometime after Osborne determined that Mancía was likely partially at fault, barring Mancía from any legal recovery, Osborne withdrew from representing Mancía. When it was determined that a suit had to be filed on behalf of Alfaro, Osborne met with Mancía and Alfaro and explained that the suit could include Mancía as a defendant.

8. Osborne did not obtain from either Mancía or Alfaro informed consent confirmed in writing to the conflict of interest inherent in representing a client whose interests were materially adverse to the interests of a former client in the same matter in which the lawyer previously represented the former client.

9. In October 2010, Osborne filed a complaint on behalf of Alfaro alleging that Mancía and the other driver were jointly and severally liable for damages incurred by Alfaro in the accident. (*Alfaro v. Chavis & Mancía*, Mecklenburg County file no. 10-CVS-22097).

10. In June 2011, the defendants in *Alfaro v. Chavis & Mancía* conducted a deposition of Alfaro. During the deposition, Osborne interrupted the questioning, and interjected speaking objections that had the effect of coaching his client's responses.

11. During the deposition, Mancía's counsel asked Alfaro about the conversations that took place when Mancía and Alfaro met together with Osborne. Osborne instructed Alfaro not to answer those questions on the grounds that the communications were protected by the attorney-client privilege.

12. Defense counsel renewed her request for information about conversations amongst Osborne, Alfaro, and Mancía after the deposition and prior to filing a motion to compel. In response, Osborne continued to object on the basis of the attorney client privilege and he did not provide the requested information.

13. Comment 30 to Rule 1.7 of the North Carolina Rules of Professional Conduct provides that—as between commonly represented clients—the attorney-client privilege does not attach and does not protect communications from disclosure if the clients later become adverse parties.

Based on 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 Panel has jurisdiction over Defendant, Curtis C. Osborne, and over the subject matter.

2. Defendant's conduct, as set forth in the 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 agreeing to jointly represent Mancía and Alfaro without obtaining their informed consent confirmed in writing to the potential conflict of interest inherent in the joint representation, Osborne undertook a representation that potentially could have been materially limited by his responsibilities to another client in violation of Rule 1.7(a);
- (b) By representing Alfaro in a lawsuit against Mancía regarding the same matter in which he formerly represented both Alfaro and Mancía, without obtaining Mancía's informed consent confirmed in writing, Osborne represented a client whose interests were materially adverse to the interests of a former client in violation of Rule 1.9(a);
- (c) By interrupting the questioning and interjecting inappropriate speaking objections during Alfaro's deposition, Osborne engaged in conduct intended to disrupt the proceeding in violation of Rule 3.5(a)(4); and
- (d) By asserting the attorney-client privilege as a basis for refusing to provide information about the communications that occurred when Alfaro and Mancía were jointly represented, Osborne failed to disclose information that he reasonably should have known was subject to disclosure in violation of Rule 3.4(d)(3).

Based on the foregoing Findings of Fact and Conclusions of Law and the consent of the parties, the Hearing Panel makes the following:

FINDINGS REGARDING DISCIPLINE

1. When Osborne ceased representing Mancía and filed suit against him on Alfaro's behalf, Mancía's insurance company had to retain counsel to defend him in the lawsuit.

2. After the presiding judge at the hearing on defense counsel's motion to compel raised the issue of a conflict of interest inherent in his representation of Alfaro against Mancía, Osborne voluntarily dismissed Alfaro's case without prejudice after consulting with Alfaro and assisted Alfaro in locating new counsel to re-file his claim. The fact that Alfaro had to seek other counsel and re-file his claim delayed the resolution of his case

3. Osborne has no prior disciplinary record.

4. Osborne has been cooperative throughout the investigation of this matter and the pendency of this case, and is remorseful about his conduct.

Based on the foregoing Findings of Fact, Conclusions of Law, Findings of Fact Regarding Discipline, and the consent of the parties, the Hearing Panel 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.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w) and determined the following factors are applicable:

- (a) negative impact of the defendant's actions on the administration of justice;
- (b) impairment of the client's ability to achieve the goals of the representation, in that the resolution of the case was delayed;
- (c) absence of prior disciplinary offenses;
- (d) cooperative attitude toward the proceedings; and
- (e) remorse.

3. An admonition or reprimand would be insufficient discipline because of the significant harm or potential harm to clients and the profession caused by Defendant's conduct.

4. Although Defendant's conduct is serious enough to warrant more discipline than a reprimand, it does not warrant the suspension of his license.

5. The public will be adequately protected by the imposition of a censure.

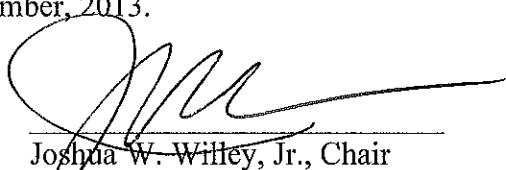
Based on the foregoing Findings of Fact, Conclusions of Law, Findings of Fact Regarding Discipline, Conclusions of Law Regarding Discipline, and the consent of the parties, the Hearing Panel hereby enters the following:

ORDER OF DISCIPLINE

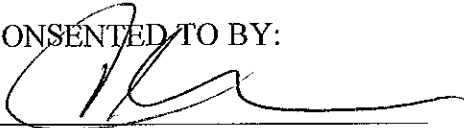
1. Defendant, Curtis C. Osborne, is hereby censured.

2. Defendant is taxed with the administrative fees and costs of this action as assessed by the Secretary, which Defendant shall pay within thirty days of service of the notice of costs upon Defendant.

Signed by the undersigned Chair with the knowledge and consent of the other members of the Hearing Panel, this is the 13 day of November, 2013.

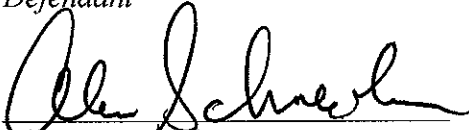

Joshua W. Willey, Jr., Chair
Hearing Panel

CONSENTED TO BY:



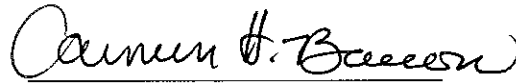
Curtis C. Osborne

Defendant



Alan M. Schneider

Attorney for Defendant



Carmen H. Bannon

Attorney for Plaintiff