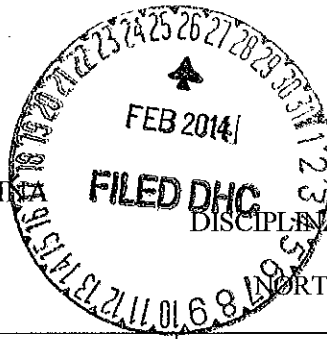


STATE OF NORTH CAROLINA

WAKE COUNTY



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

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

ALLAN C. DE LAINE, 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 Barbara B. Weyher, Chair, Renny W. Deese 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, Deputy Counsel. Defendant, Allan C. De Laine, was represented by Carolin Bakewell, Bakewell & Belo, PLLC. 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, Allan C. De Laine ("De Laine"), was admitted to the North Carolina State Bar on April 11, 1997, 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, De Laine was engaged in the practice of law in the State of North Carolina and maintained a law office

in Clayton, Johnston County, North Carolina, doing business as the Allan C. De Laine Law Office, P.A.

FIRST CLAIM FOR RELIEF

4. On or about April 16, 2008, Marilyn A. Fisher ("Ms. Fisher") was injured while she was a guest in the home of an acquaintance's daughter ("G. Jackson") located in Gladys, Campbell County, Virginia.

5. In August 2008, Ms. Fisher retained De Laine to represent her in a personal injury action for the injuries she sustained.

6. Ms. Fisher and De Laine agreed that De Laine would receive a 33⅓% contingency fee of any proceeds awarded to Ms. Fisher.

7. De Laine did not reduce his contingency fee agreement with Ms. Fisher to writing.

8. After being retained by Ms. Fisher, De Laine did not respond to Ms. Fisher's telephone and e-mail requests for updates on the status of her case.

9. De Laine neglected Ms. Fisher's case and did not adequately pursue settlement negotiations with G. Jackson's insurance company.

10. Although De Laine communicated with Ms. Fisher on some occasions, he did not keep Ms. Fisher informed about the status of her case.

11. De Laine failed to explain to Ms. Fisher the steps he was taking on her behalf, or obtain Ms. Fisher's informed consent for his actions in the case.

12. De Laine should have known that Virginia has a two-year statute of limitations for personal injury actions.

13. De Laine did not know or research the legal issue referenced in Paragraph 12 above, and thereby failed to exercise competence and reasonable diligence in representing Ms. Fisher.

14. The Virginia statute of limitations for Ms. Fisher's action against G. Jackson expired on April 8, 2010.

15. De Laine did not file, or cause to be filed through a licensed Virginia attorney, the personal injury action on behalf of Ms. Fisher against G. Jackson in Campbell County, Virginia, or in any other Virginia venue.

16. De Laine mistakenly believed North Carolina's three-year statute of limitations for personal injury actions was applicable to Ms. Fisher's claim against G. Jackson.

17. On April 15, 2011, the day before the expiration of North Carolina's three-year statute of limitations, De Laine filed a complaint on behalf of Ms. Fisher against G. Jackson in Johnston County District Court.

18. De Laine filed the complaint referenced in Paragraph 17 above with the intent to take a voluntary dismissal and thereby obtain an additional year to pursue settlement negotiations in Ms. Fisher's case.

19. The complaint referenced in Paragraph 17 above contained a notarized verification that purported to be signed by Ms. Fisher on April 15, 2011.

20. Ms. Fisher did not sign the verification referenced in Paragraph 19 above, and did not authorize anyone, including De Laine, to sign her name to the verification.

21. Without Ms. Fisher's knowledge or authorization, De Laine signed Ms. Fisher's name to the verification referenced in Paragraph 19 above.

22. After signing Ms. Fisher's name to the verification referenced in Paragraphs 19 and 21 above, De Laine presented the falsified verification to a notary public ("R. Wooten"), and requested that she notarize Ms. Fisher's purported signature on the verification.

23. At De Laine's request, R. Wooten notarized the purported signature of Ms. Fisher on the verification referenced in Paragraph 19 above even though Ms. Fisher had not signed the verification in her presence.

24. By presenting Ms. Fisher's false signature to R. Wooten for notarization, De Laine exposed R. Wooten to the risk of being charged with a violation of N.C. Gen. Stat. § 10B-60(c).

25. On May 23, 2011, without notice to Ms. Fisher or her consent, De Laine filed a notice of dismissal of the complaint referenced in Paragraph 17 above.

26. De Laine did not inform Ms. Fisher about the dismissal referenced in Paragraph 25 above.

27. De Laine failed to re-file the complaint against G. Jackson within one year of the May 23, 2011 dismissal referenced in Paragraph 25 above.

28. De Laine ceased representing Ms. Fisher without informing her that he was no longer acting as her attorney and without obtaining permission of the court to withdraw from her case.

SECOND CLAIM FOR RELIEF

29. On August 13, 2005, Delphine D. Wilder ("Ms. Wilder") was injured in Cary, North Carolina, when her vehicle was rear-ended by another vehicle driven by G. Sholar ("G. Sholar").

30. In January 2008, Ms. Wilder retained De Laine to represent her in a personal injury action against G. Sholar.

31. Ms. Wilder and De Laine agreed that De Laine would receive a contingency fee of any proceeds awarded to Ms. Wilder.

32. De Laine failed to reduce his contingency fee agreement with Ms. Wilder to writing.

33. After conferring with Ms. Wilder, on or about July 1, 2008 De Laine notified G. Sholar's insurance company that Ms. Wilder rejected their settlement offer.

34. On August 13, 2008, the day of the expiration of the statute of limitations, De Laine filed a complaint on behalf of Ms. Wilder against G. Sholar in Johnston County District Court.

35. The Sheriff's Department was unable to serve G. Sholar with Ms. Wilder's summons and complaint, and returned notice to De Laine of lack of service on or about October 10, 2008.

36. De Laine took no action on Ms. Wilder's case after the return of service referenced in Paragraph 35 above.

37. De Laine did not inform Ms. Wilder about the inability to obtain service upon G. Sholar of the summons and complaint referenced in Paragraphs 34 and 35 above.

38. De Laine did not inform Ms. Wilder of her options if the Sheriff's Department was unable to obtain service upon G. Sholar of the summons and complaint referenced in Paragraphs 34 and 35 above.

39. De Laine failed to keep alive the summons referenced in Paragraph 35 above in order to prevent Ms. Wilder's lawsuit against G. Sholar from becoming time-barred under the statute of limitations.

40. Because of De Laine's inaction referenced in Paragraph 39 above, Ms. Wilder's cause of action against G. Scholar is now time-barred.

41. After failing to obtain service of the summons and complaint upon G. Sholar as referenced in Paragraphs 34 and 35 above, De Laine failed to respond to Ms. Wilder's telephone calls and messages inquiring about the status of her case.

42. De Laine ceased representing Ms. Wilder without informing her that he was no longer acting as her attorney and without obtaining permission of the court to withdraw from her case.

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, Allan C. De Laine, and the subject matter of this proceeding.
2. De Laine'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 failing to reduce his contingency fee agreements with Ms. Fisher and Ms. Wilder to writing, Defendant violated Rule 1.5(c) requiring that a contingent fee agreement be in writing signed by the client and that the agreement state the method by which the fee is to be determined;
 - b) By neglecting Ms. Fisher's case, failing to pursue settlement negotiations with G. Jackson's insurance company, failing to research applicable Virginia law, and failing to timely file or cause to be filed Ms. Fisher's complaint against G. Jackson, Defendant failed to competently represent Ms. Fisher in violation of Rule 1.1, Defendant failed to act with reasonable diligence and promptness in representing Ms. Fisher in violation of Rule 1.3, and Defendant engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
 - c) By failing to respond to Ms. Fisher's requests for status updates, failing to consult with Ms. Fisher, and failing to explain the effect of the dismissal of her complaint to Ms. Fisher, Defendant failed to reasonably consult with Ms. Fisher about the means by which her objectives were to be accomplished in violation of Rule 1.4(a)(2), failed to keep Ms. Fisher reasonably informed about the status of her case in violation of Rule 1.4(a)(3), failed to promptly comply with Ms. Fisher's reasonable requests for information in violation of Rule 1.4(a)(4), and failed to explain the matter to the extent necessary to permit Ms. Fisher to make informed decisions about her case in violation of Rule 1.4(b);
 - d) By knowingly forging Ms. Fisher's signature on the complaint verification, causing the notary public to notarize the falsified signature, and filing the complaint containing the notarized falsified signature, Defendant made false statements of material fact to a tribunal in violation of Rule 3.3(a)(1), falsified evidence in violation of Rule 3.4(b), engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
 - e) By filing the dismissal of the complaint without Ms. Fisher's knowledge or consent, Defendant failed to consult with Ms. Fisher as to the means by which the objectives of her representation were to be pursued in violation of Rule 1.2(a);

- f) By failing to obtain the permission of the court to withdraw from Ms. Fisher's and Ms. Wilder's cases, Defendant failed to comply with applicable law requiring notice to or permission of a tribunal when terminating a representation in violation of Rule 1.16(c), and by not informing Ms. Fisher and Ms. Wilder that he would no longer be representing them, Defendant failed to protect his clients' interest by giving reasonable notice of his termination of thier representation in violation of Rule 1.16(d);
- g) By neglecting Ms. Wilder's case and failing to keep alive the summons to prevent Ms. Wilder's lawsuit against G. Sholar from becoming time-barred under the statute of limitations, Defendant failed to act with reasonable diligence and promptness in representing Ms. Wilder in violation of Rule 1.3, and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d); and,
- h) By failing to consult with Ms. Wilder about the inability to obtain service upon G. Sholar and failing to respond to Ms. Wilder's telephone calls and messages inquiring about the status of her case, Defendant failed to reasonably consult with Ms. Wilder about the means by which her objectives were to be accomplished in violation of Rule 1.4(a)(2), failed to keep Ms. Wilder reasonably informed about the status of her case in violation of Rule 1.4(a)(3), failed to promptly comply with Ms. Wilder's reasonable requests for information in violation of Rule 1.4(a)(4), and failed to explain the matter to Ms. Wilder to the extent necessary to permit Ms. Wilder to make informed decisions about her case in violation of Rule 1.4(b).

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. Defendant's failures to properly research the applicable law and timely file and serve his clients' complaints prior to the expiration of the statute of limitations caused significant harm to his clients and had the potential to cause significant harm to the public's perception of the legal profession.
3. Defendant's forgery of Ms. Fisher's signature on the complaint verification, and causing the notary public to notarize the falsified signature, had the potential to cause significant harm to the notary public and caused significant harm to the public's perception of the legal profession.
4. Defendant has been cooperative during the State Bar's investigation of these matters.

5. Defendant understands the significance of his misconduct and is remorseful for the harm and potential harm that his conduct caused his clients, the notary public, and the public's perception of the legal profession.

6. Defendant enjoys a reputation of good character in his professional and personal life.

7. 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. Absence of prior disciplinary offenses;
- b. Defendant engaged in multiple offenses;
- c. Defendant is remorseful for his conduct;
- d. The vulnerability of the victims;
- e. Defendant's reputation for good character; and
- f. 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 warrant suspension of Defendant's license:

- a. Circumstances reflecting Defendant's lack of honesty, trustworthiness, or integrity;
- b. Defendant's actions had a potential negative impact on his clients' and the public's perception of the legal profession;
- c. Defendant's conduct had a negative impact on the administration of justice;
- d. Defendant's conduct impaired each client's ability to achieve the goals of the representation;

- e. Defendant's conduct had a potential adverse affect on a third party; and,
- f. Defendant's conduct included acts of dishonesty, misrepresentation, deceit, or fabrication.

3. The hearing panel has also carefully considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0114(w)(2) of the Rules and Regulations of the North Carolina State Bar and concludes that although acts of dishonesty or misrepresentation are present in this case, disbarment is not necessary in order to protect the public.

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, 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 subject to being stayed in part 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, Allan C. De Laine, is hereby suspended for two years. This Order will be effective 30 days after service of the Order upon Defendant.

2. Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following the effective date of this Order.

3. Defendant shall comply with the wind down provisions contained in 27 N.C. Admin. Code 1B § .0124 of the Rules and Regulations of the North Carolina State Bar.

4. Defendant is taxed with the costs and administrative fees of this action as assessed by the Secretary. Defendant shall be served with a statement of costs and fees. Defendant shall pay the amount assessed within thirty days of service of the statement of costs and fees upon him.

5. One year from the effective date of this Order, Defendant may file a verified petition for a stay of the remaining period of his suspension demonstrating by clear, cogent and convincing evidence that, in addition to complying with the general provisions for reinstatement contained in 27 N.C. Admin. Code 1B § .0125 of the Rules

and Regulations of the North Carolina State Bar, Defendant has complied during his suspension with the following conditions:

- a. Defendant properly wound down his law practice and complied with the terms of 27 N.C. Admin. Code 1B § .0124 of the Rules and Regulations of the North Carolina State Bar;
- b. Defendant kept the Membership Department of the State Bar informed of his current information for his physical address (not a Post Office box), telephone number, and e-mail address throughout the period of his suspension;
- c. Defendant accepted all certified mail from the State Bar sent to the address on record with the Membership Department of the North Carolina State Bar throughout the period of the suspension;
- d. Defendant responded to all letters of notice and requests for information from the North Carolina State Bar by the deadline stated therein with full and complete responses and all requested documentation throughout the period of his suspension;
- e. Defendant has come into compliance with any outstanding continuing education or membership obligations at the time of the filing of his petition for reinstatement;
- f. Defendant did not violate any of the Rules of Professional Conduct in effect during the period of the suspension;
- g. Defendant did not violate any laws of the State of North Carolina or of the United States during the period of the suspension; and
- h. Defendant paid all costs and fees of this proceeding as assessed by the Secretary within thirty days of service of the statement of costs and fees upon him.

6. Defendant may file a petition seeking a stay of the remaining period of his suspension and demonstrating compliance with the conditions stated in Paragraph 5 above up to 30 days prior to the end of the first year of the two year suspension, but the stay shall not be lifted and Defendant shall not be reinstated until the end of that first year of the two year suspension.

7. If Defendant seeks and obtains a stay of any active period of his two year suspension, Defendant shall arrange for an active member of the North Carolina State Bar to serve as his law practice monitor. Defendant's practice monitor shall be an attorney in good standing who practices law in Defendant's judicial district and who has been approved by the Office of Counsel. The monitor will supervise all client matters

and will ensure that Defendant handles all client matters in a timely fashion, including, but not limited to, promptly responding to his clients and diligent pursuit of his clients' matters. Defendant shall meet once a month with his monitoring attorney, report the status of all current client matters to the monitor, cooperate with the monitoring attorney, and provide any information the monitoring attorney deems reasonably necessary to ensure that Defendant is properly and timely handling all client matters. The monitor will submit written quarterly reports of this supervision to the Office of Counsel, such reports due on the following dates as they occur during the stay of this suspension: January 15, April 15, July 15, and October 15. Defendant bears the responsibility of ensuring the monitoring attorney sends a written report each quarter to the Office of Counsel as described above. This monitoring will occur for the duration of any stay of this suspension. Defendant will pay the cost, if any, charged by the monitor for this supervision. Defendant must make the arrangements for this monitoring attorney and supply the Office of Counsel with a letter from the monitoring attorney confirming his or her agreement to perform the duties listed above.

8. Defendant shall cooperate with the Office of Counsel and make appropriate arrangements for an alternate monitoring attorney if needed during any stay of this suspension.

9. Unless Defendant's obligations under this Order are modified by further order of the Disciplinary Hearing Commission ("DHC"), Defendant's obligations under this Order end two years from the effective date of the Order provided there are no motions or show cause proceedings pending alleging lack of compliance with the conditions of the stay of the suspension. Pursuant to 27 N.C. Admin. Code 1B § .0114(x) of the Rules and Regulations of the North Carolina State Bar, the DHC retains jurisdiction until all conditions of the stay of the suspension have been met. If a motion or show cause proceeding alleging lack of compliance with the conditions for the stay of the suspension is pending when the period of the stay of the suspension would otherwise have terminated, the DHC retains the jurisdiction and ability to lift the stay of the suspension and activate the one year suspension in whole or in part if it finds that any of the conditions of the stay have not been met. The stay of the suspension and Defendant's obligation to comply with the conditions for the stay will continue until resolution of any such pending motion or show cause proceeding.

10. If during the stay of the suspension Defendant fails to comply with any one or more of the conditions stated in Paragraphs 5, 7 and 8 above, then the stay of the suspension of his law license may be lifted as provided in 27 N.C. Admin. Code 1B § .0114(x) of the Rules and Regulations of the North Carolina State Bar.

11. If the stay of the suspension is lifted and the suspension is activated for any reason, Defendant may apply for reinstatement after serving the activated suspension by filing an application for reinstatement demonstrating by clear, cogent, and convincing evidence the following:

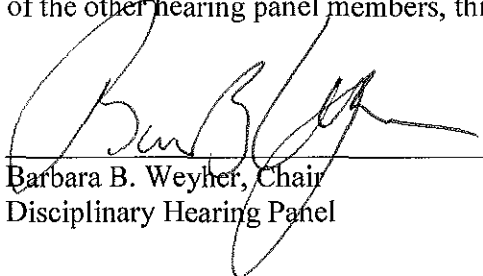
- a. Compliance with the general provisions for reinstatement listed in 27 N.C. Admin. Code 1B § .0125 of the Rules and Regulations of the North Carolina State Bar; and
- b. Compliance with the conditions set out in Paragraphs 5 (a) – (h), 7 and 8 above.

12. If Defendant does not seek a stay of any active period of his two year suspension, Defendant must provide in his application for reinstatement clear, cogent, and convincing evidence of the following:

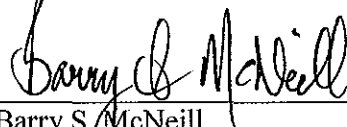
- a. Compliance with the general provisions for reinstatement listed in 27 N.C. Admin. Code 1B § .0125 of the Rules and Regulations of the North Carolina State Bar; and
- b. Compliance with the conditions set out in Paragraphs 5 (a) – (h) above.

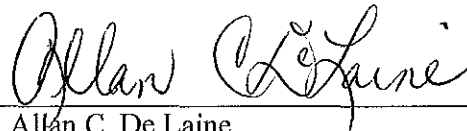
13. Nothing in this Order shall prohibit the State Bar from investigating and, if necessary, pursuing disciplinary action against Defendant for additional misconduct discovered or reported which occurred during the same time period as the conduct addressed in this Order.

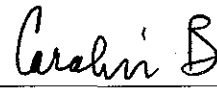
Signed by the Chair with the consent of the other hearing panel members, this the 25 day of February, 2014.


Barbara B. Weyher, Chair
Disciplinary Hearing Panel

CONSENTED TO BY:


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


Allan C. De Laine


Carolin Bakewell
Attorney for Defendant