



STATE OF NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
12 DHC 26

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

SAMEKA B. BENNERMAN, Attorney,

Defendant

ORDER OF DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Fred M. Morelock, Chair, and members William B. Claytor and Joseph Barlow Herget pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff was represented by Jennifer A. Porter. Defendant, Sameka B. Bennerman ("Bennerman") was represented by Alan M. Schneider.

Based upon the pleadings in this matter, the parties' stipulations of fact, and the evidence presented at hearing, the Hearing Panel hereby finds 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, Sameka B. Bennerman ("Bennerman"), was admitted to the North Carolina State Bar in 2006, 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, Bennerman was engaged in the practice of law in the State of North Carolina and maintained a law office in Edgecombe County, North Carolina.

4. Defendant was properly served with process and the matter came before the Hearing Panel with due notice to all parties.

5. Bennerman represented clients on traffic matters and other legal matters.

6. Beginning in at least May 2009, Bennerman collected funds from clients which were mixed funds, including funds comprised of her fee plus court costs and fines.

7. Bennerman failed to deposit these mixed funds received from clients into her trust account.

8. Instead, Bennerman deposited these funds into her operating account.

9. From at least May 2009 through June 2011, Bennerman used some of the funds in her operating account for her personal purposes, including expending some of the funds she should have maintained in trust for her clients.

Based upon the foregoing 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:

- (a) By failing to deposit funds comprised of her attorney fee and court costs and fines into her trust account, Bennerman failed to deposit mixed funds intact in violation of Rule 1.15-2(g) and failed to properly maintain entrusted funds in violation of Rule 1.15-2(a).

Based upon the foregoing Findings of Fact and Conclusions of Law, and the evidence presented at hearing, the Hearing Panel hereby finds by clear, cogent, and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. Bennerman had only been licensed for 3 years when she opened her own law firm.

2. Bennerman drew erroneous conclusions about the proper handling of funds from clients for court costs and fines when at various clerk's offices she saw other lawyers' operating account checks used to pay court costs and fines in traffic matters.

3. Bennerman has a reputation for honesty and trustworthiness in her community.

4. Bennerman used personal funds to pay the court costs and fines for clients whose funds she had failed to maintain in trust as of June 30, 2011. At the time of the hearing there was no evidence that the court costs and fines had not been paid to the appropriate clerk of court for the clients who had paid funds to Bennerman for this purpose.

5. There were occasions when Bennerman did not have sufficient funds to pay the court costs and fines for a client on the client's court date and had the case continued.

6. When clients give money to a lawyer, they have a right to trust that the lawyer is going to protect those funds and use the funds solely for the purpose for which the funds were given. Protecting and properly maintaining and disbursing entrusted funds is one of the most important obligations of an attorney.

7. Bennerman has no prior discipline.

8. 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 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.A.C. 1B § .0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors warrant suspension of Defendant's license:

- (a) Intent of Defendant to commit acts where the harm or potential harm is foreseeable;
- (b) Elevation of Defendant's own interest above that of the client; and
- (c) Negative impact of Defendant's actions on client's or public's perception of the profession.

2. The Hearing Panel has 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 no factors are present in this instance that would warrant disbarment.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(3) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are applicable in this matter:

- (a) Defendant's lack of prior discipline;
- (b) Defendant made timely good faith efforts to make restitution or to rectify consequences of misconduct;
- (c) Defendant engaged in a pattern of misconduct;
- (d) Defendant engaged in multiple offenses;
- (e) Defendant's full and free disclosure to the Hearing Panel and cooperative attitude toward the proceedings;
- (f) Defendant's remorse;
- (g) Defendant's good character and reputation; and
- (h) Defendant's inexperience in the practice of law.

4. Defendant's failure to properly maintain, manage, and handle entrusted funds betrays a vital trust clients and the public place in attorneys and the legal profession.

5. Defendant's conduct, if continued or tolerated by the Bar, poses potential significant harm to future clients and the profession.

6. The Hearing Panel has considered issuing an admonition, reprimand or censure but concludes that such discipline would not be sufficient discipline because of the gravity of the potential harm to the clients. The Panel further concludes that such discipline would fail to acknowledge the seriousness of the violations committed by Defendant and send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

7. This Hearing Panel has considered lesser alternatives and concludes that a suspension is necessary to adequately protect the public from future misconduct by Defendant.

8. For these reasons, this Hearing Panel finds that an order imposing discipline short of suspension of Defendant's law license would not be appropriate.

Based upon the foregoing Findings of Fact and Conclusions of Law and the Findings of Fact and Conclusions regarding discipline, the Hearing Panel enters the following:

ORDER OF DISCIPLINE

1. Defendant, Sameka B. Bennerman, is hereby suspended from the practice of law for one year, effective 30 days from service of this Order upon Bennerman.
2. Administrative fees and costs are taxed to Defendant.
3. The one-year suspension is stayed for a period of one year as long as Bennerman complies, and continues to comply during the period of the stay, with the following conditions:
 - a. Bennerman shall pay all administrative fees and costs of this proceeding as assessed by the Secretary by November 1, 2013;
 - b. Bennerman shall complete 6 hours of continuing legal education (CLE) in addition to the hours required under 27 N.C. Admin. Code Chapter 1, Subchapter D, Section .1518. These 6 hours shall consist of substantive education courses in the areas of entrusted funds and proper handling of entrusted funds. These courses must be approved in advance by the Office of Counsel of the North Carolina State Bar for compliance with this order. These 6 additional CLE hours must be completed within 6 months of the effective date of this order. Documentation of completion of each qualifying course shall be provided to the Office of Counsel of the State Bar no later than 30 days from the date of the course;
 - c. Bennerman shall arrange for a member of the North Carolina State Bar to serve as her law practice monitor. The selected monitor must be an active member of the North Carolina State Bar in good standing who practices law in North Carolina. The monitor must be approved in advance by the Office of Counsel of the State Bar to serve in this capacity in this case. Bennerman shall submit the name and contact information for the proposed monitor to the Office of Counsel of the North Carolina State Bar for approval no later than 5 business days prior to her deadline for making the arrangement for a practice monitor.
 - d. The selected monitor must agree to so serve and agree to meet with Bennerman at least monthly to review Bennerman's cases and trust account records, as described in more detail below. The selected monitor must agree to review the records provided and assess Bennerman's compliance with Rules 1.15-2 and 1.15-3 of the Rules of Professional Conduct. The monitor must agree to provide a report to the Office of Counsel quarterly containing a detailed review of Bennerman's handling of entrusted funds and her compliance with all provisions of Rule 1.15-2 and 1.15-3;

- e. Bennerman must have made the arrangements for this monitoring attorney and supplied the Office of Counsel of the State Bar with a letter from the monitoring attorney confirming his/her agreement to perform the duties listed above no later than thirty (30) days from service of this Order on Bennerman;
- f. Bennerman shall provide, each month, the following documents to her practice monitor and contemporaneously provide a copy of the documents to the Office of Counsel of the State Bar, such documents due no later than the 30th day of each month or the date on which she meets with her practice monitor, whichever occurs first:
 - i. a list of all clients whose cases are pending or whose cases were resolved in that month with identification of the type of case and any funds collected from each client;
 - ii. a three-way reconciliation of all attorney trust accounts to which she has access using the reconciliation method described in the State Bar Lawyer's Trust Account Handbook on pages 35-40 (reference is to the edition last revised in May 2011);
 - iii. all supporting documentation for the reconciliation, including client ledgers for all clients who have or had funds in the trust account during that month, a ledger for any personal funds maintained in the trust account for bank or credit card fees, her office trust account ledger, and the bank statement, cancelled checks, and deposit slips for each month.
- g. Bennerman shall meet once each month with her monitoring attorney to discuss in detail her cases and her handling of entrusted funds, including but not limited to review of the documents set out in the preceding paragraphs;
- h. The monitor shall review the records provided by Bennerman and assess Bennerman's compliance with Rules 1.15-2 and 1.15-3 of the Rules of Professional Conduct;
- i. The monitor shall provide a report to the Office of Counsel quarterly, containing a detailed review of Bennerman's handling of entrusted funds and her compliance with all provisions of Rule 1.15-2 and 1.15-3. These reports are due on the following dates: March 31, 2013; June 30, 2013; September 30, 2013; and December 31, 2013;
- j. Bennerman shall ensure the monitor provides the above described quarterly report to the Office of Counsel by the deadlines set out above;
- k. Bennerman will pay the cost, if any, charged by the monitor for this service;

- l. Bennerman shall cooperate with the Office of Counsel and make appropriate arrangements for an alternate monitoring attorney if needed during the stay of this suspension;
 - m. Bennerman shall not violate any state or federal laws or any provisions of the Rules of Professional Conduct during the period of the stayed suspension;
 - n. Bennerman shall respond to all State Bar requests for information as required by Rule 8.1(b) of the Rules of Professional Conduct by the earlier of the deadline stated in the communication or within 30 days of receipt;
 - o. Bennerman shall timely comply with all State Bar membership and Continuing Legal Education requirements; and
 - p. Bennerman shall keep the North Carolina State Bar membership department advised of her current home and business street (not P.O. Box) addresses and telephone numbers.
- 4. If Bennerman fails to comply with any one or more of the conditions set out in this Order of Discipline, then the stay of the suspension of her law license may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.
- 5. If the stay of the suspension is lifted and the suspension is activated for any reason, the DHC may enter an Order imposing such conditions as it deems necessary for the reinstatement of Bennerman's license at the end of the suspension. Furthermore, Bennerman will have complied with each of the following conditions precedent before she will be eligible for reinstatement:
 - a. Submitted her license and membership card to the Secretary of the North Carolina State Bar no later than 30 days from the effective date of the order activating her suspension;
 - b. Complied with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the North Carolina State Bar Discipline and Disability Rules on a timely basis;
 - c. Paid any outstanding disciplinary administrative fees and costs; and
 - d. Within 15 days of the effective date of order activating the suspension Defendant shall have provided the State Bar with an address and telephone number at which clients seeking return of files could communicate with Defendant and obtain such files, and Defendant shall have promptly returned all files to clients upon request.

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

6th Signed by the Chair with the consent of the other Hearing Panel members, this the day of February, 2013.



Fred M. Morelock
Chair, Disciplinary Hearing Panel