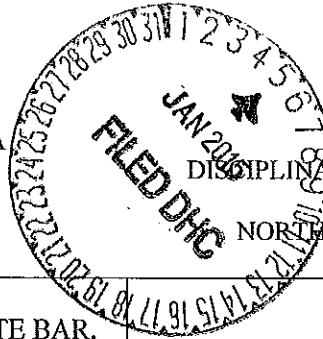


STATE OF NORTH CAROLINA

WAKE COUNTY



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

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

BOBBY D. MILLS, Attorney,

Defendant

ORDER OF DISCIPLINE

THIS MATTER was heard on November 19 and 20, 2014 before a Hearing Panel of the Disciplinary Hearing Commission composed of Joshua W. Willey, Jr., Chair, and members Beverly T. Beal and Bradley Lail. Jennifer A. Porter represented Plaintiff, the North Carolina State Bar. Defendant, Bobby D. Mills, was present and represented by David S. Coats.

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 ("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, Bobby D. Mills ("Mills"), was admitted to the North Carolina State Bar in 1985, 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, Mills was engaged in the practice of law in the State of North Carolina and maintained a law office in Raleigh, Wake County, North Carolina.

4. Mills was properly served with process, a hearing in this matter was set, and the matter came before the hearing panel with due notice to all parties.

5. During the relevant periods referred to herein, Mills was an attorney with the law firm of Herring Mills & Kratt, PLLC ("the firm").

6. The firm's practice includes providing representation in adoption matters.

7. A Child's Hope, LLC ("ACH") is a licensed North Carolina private child placement agency.

8. At the time of the events alleged in this complaint, Mills had an ownership interest in ACH, ACH rented an office in the firm's office suite, and Mills participated in the management of operations of ACH.

9. Prospective adoptive parents who utilize ACH to try to adopt a child are informed of Mills' ownership interest in the firm and in ACH and are informed of their right to counsel of their choice. Prospective adoptive parents indicate in writing whether they choose to retain the firm or outside counsel of their choice.

10. A certain set of prospective parents, who shall be referred to as "the Ns," retained the firm to represent them in pursuing adoption of a child placed with ACH for adoption. The child shall be referred to as "K."

11. On or about January 20, 2010, the firm filed a Petition for Adoption of K on behalf of the Ns.

12. Because K's birth mother indicated to ACH that she did not know K's father's identity, last name, or address, there were two components to Mills's representation of the Ns in the adoption case: (i) a termination proceeding that sought to terminate the parental rights of K's biological father and (ii) the adoption proceeding.

13. Mills handled all aspects of the representation that related to the adoption proceeding.

14. Mills assigned an associate of the firm, DH, to handle the part of the representation that related to the termination proceeding.

15. Mills was DH's supervising attorney for her work related to the termination proceeding.

16. On March 22, 2010, DH filed a petition for termination of parental rights.

17. The termination petition stated that the identity and location of K's father was not known and could not be discovered with reasonable diligence.

18. On March 25, 2010, DH filed a motion to provide service by publication in the termination action based upon the firm's representation to the court that the identity and location of K's father was not known and could not be discovered with reasonable diligence.

19. The court granted the motion for service by publication and the firm proceeded with publishing notice in the termination action. Notice was published on April 7, April 14, and April 21, 2010.

20. On or about April 15, 2010, Mills became aware that an individual who shall be referred to as "J" had contacted ACH and stated that he was K's biological father.

21. On or about April 21, 2010, K's mother identified J as K's father to ACH.

22. Mills gave J notice of the adoption proceeding.

23. Mills did not give J notice of the termination proceeding.

24. Mills did not instruct DH to give J notice of the termination proceeding.

25. On May 11, 2010, after the three dates of notice publication were concluded for service in the termination proceeding, the firm filed an affidavit of service executed by a firm paralegal in the termination case.

26. The affidavit of service stated that the identity of any possible father was not known and could not be known with the exercise of due diligence.

27. The statement in the affidavit of service that the identity of any possible father was not known was not accurate when made in May 2010.

28. There was no indication in the affidavit of service that J was excluded from this description or was intended to be excluded from any resulting termination order.

29. The court held a hearing on ACH's petition for termination of parental rights on or about May 26, 2010.

30. Neither Mills nor DH gave J notice of the hearing on ACH's petition for termination of parental rights.

31. J did not participate in the hearing on ACH's petition for termination of parental rights.

32. Mills failed to ensure DH corrected the prior representation made to the court that the firm lacked knowledge of the identity and location of any possible father of K.

33. Mills failed to ensure that the documentation and information presented to the court by DH and the firm's paralegal in the termination proceeding after J contacted ACH was accurate, excluding J from the broad categories of any possible father or parent.

34. On May 26, 2010 the court entered an order that terminated the parental rights of "Respondents, Calvin or Kevin or Any Unknown or Possible Parent" with no exclusion of J from the category of "possible parent" or any other indication that the order did not apply to J.

35. Despite choosing to give notice to J only of the adoption proceeding and not of the termination proceeding, Mills subsequently attempted to have the termination of parental rights order applied to J.

36. On November 8, 2010, Mills instructed another associate attorney, DB, to file a motion for an order finding J's consent was not required for the adoption, with the basis being that J's parental rights had been terminated by the order in the termination proceeding.

37. J filed an action for custody of K on September 24, 2010. Mills represented ACH in that action. In the answer and counterclaim he prepared and filed for ACH he relied in part on the termination proceeding as a defense.

Based on the foregoing Findings of Fact, the Hearing Panel enters the following:

CONCLUSIONS OF LAW

1. All the parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, Bobby D. Mills, and 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 failing to ensure that the pleadings and other filings DH and the firm's paralegal submitted to the court in the termination proceeding contained accurate information and excluded J, Mills engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d), failed to make reasonable efforts to ensure that the conduct of his subordinate attorney conformed to the Rules of Professional Conduct in violation of Rules 5.1(b), and failed to make reasonable efforts to ensure that the conduct of his nonlawyer assistant was compatible with the professional obligations of a lawyer in violation of Rule 5.3(b); and

(b) By failing to give J notice of the termination proceedings and then attempting to apply the order from the termination proceedings to J in the adoption proceedings, Mills engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d) and is responsible for having a subordinate lawyer file the Motion for Consent Not Necessary which attempted to apply the termination order to J in violation of Rule 5.1(c)(1).

3. It was not established by clear, cogent, and convincing evidence that Defendant's conduct in failing to give J notice of the termination proceedings and then attempting to apply the order from the termination proceedings to J in the adoption proceedings was conduct involving dishonesty, fraud, deceit, or misrepresentation and accordingly the Hearing Panel did not find any violation of Rule 8.4(c).

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

FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1 – 37 above are reincorporated as if set forth herein.

2. Defendant's failure to ensure the affidavit of service by publication and the termination order submitted by the associate and paralegal contained accurate information and excluded J resulted in the following significant harm to the administration of justice: 1) the filing of an inaccurate affidavit that stated "The post office of the person to be served is not known and cannot be ascertained with reasonable diligence" and "the full identity and whereabouts of the Respondents Any Unknown Parent or Possible Parent is unknown and cannot with the exercise of due diligence be determined;" 2) a termination order entered after such inaccurate representations were made to the court and with no correction or disclosure that J was known and that his parental rights were being addressed in the adoption proceeding; 3) a termination order which, on its face, could appear to apply to a man who was known but who had not been properly served or made an appearance in the termination proceeding.

3. The actual attempt in November 2010 to use the termination order against J is evidence of the potential significant harm caused by the failure to ensure that the documents submitted by DH and the paralegal were accurate and excluded J.

4. Defendant's attempt to use against J the termination order from the termination proceeding in which he had not given J notice likewise caused significant harm and potential significant harm to the administration of justice. Defendant filed a motion that J's consent was not necessary to the adoption based upon the termination order. This required J to defend against an order entered in a proceeding in which he had not been given notice or the opportunity to be heard. Defendant sought relief to which he was not entitled and required additional judicial filings and resources to un-do what should never have been done.

5. The area of adoption law involves unique vulnerabilities and risks of harm because of the child that is the subject of the anticipated adoption and the relationships involved.

6. Defendant joined in requesting that the court in the termination action relieve J from application of the termination order after counsel for J filed a motion for relief.

7. Defendant notified courts in subsequent hearings that he had made a mistake and that he was joining in the request to relieve J from application of the termination order.

8. Defendant has established a reputation for good character, veracity, and truthfulness.

9. Defendant has no prior discipline.

10. Defendant's wife was undergoing treatment for cancer in the fall of 2010 and Defendant was out of the office multiple days each week supporting her during this time.

11. K's birthmother did not provide ACH with accurate information about the birthfather, resulting in ACH and Defendant not knowing about J initially.

12. Defendant reduced his caseload and no longer supervises associate attorneys. Defendant resigned as director and no longer has any ownership interest in ACH.

Based on the foregoing Findings of Fact, Conclusions of Law, and Additional Findings Regarding Discipline, the Hearing Panel enters the following

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(1), (2) and (3) of the Rules and Regulations of the State Bar. We conclude that there are no applicable factors under § .0114(w)(2). We conclude that the following factors under .0114(w)(1) and (3) are applicable:

27 N.C.A.C. 1B § .0114(w)(1)

- a. Factor (F), Negative impact of Defendant's actions on the administration of justice.

27 N.C.A.C. 1B § .0114(w)(3)

- b. Factor (A), No history of prior disciplinary offenses;
- c. Factor (C), Absence of selfish motive;
- d. Factor (D), Timely good faith efforts to rectify the consequences of his misconduct;
- e. Factor (G), Multiple offenses;
- f. Factor (H), Effect of personal or emotional problems on the conduct in question;
- g. Factor (K), Full and free disclosure to the hearing panel and a cooperative attitude toward the proceedings;
- h. Factor (Q), Excellent character reputation;
- i. Factor (R), Vulnerability of the victims, particularly the vulnerability of the minor child and the adoptive parents;

- j. Factor (S), Substantial degree of experience in the practice of law; and
- k. Factor (V) Other factors not specifically listed:
 - 1) The dishonesty of the birthmother, which created the circumstances under which J was initially not known; and
 - 2) Defendant's voluntary adjustment of his office practices, his reduction in his practice, his changed management responsibility, and his divestment of an ownership interest in the adoption agency.

2. The Hearing Panel considered all of the disciplinary options available to it. In the course of this consideration, the Hearing Panel carefully considered the factor that could be considered in imposing a suspension or stayed suspension. In light of all of the evidence, and particularly in light of the matters ongoing in Defendant's personal life at the time as well as the additional factors itemized above under .0114(w)(3)(V), the Hearing Panel concluded a censure is a more appropriate discipline.

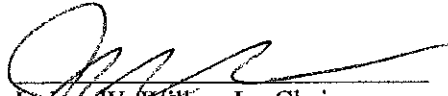
3. The Hearing Panel considered all lesser sanctions and concluded that discipline short of censure would not adequately protect the public. Imposition of a lesser discipline would fail to acknowledge the seriousness of the offenses Defendant committed and would send the wrong message to members of the Bar and the public regarding the conduct expected of members of the Bar of this State.

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

ORDER OF DISCIPLINE

- 1. Defendant, Bobby D. Mills, is hereby CENSURED.
- 2. Defendant shall pay the administrative fees and costs of this proceeding, including the costs of all depositions, as assessed by the Secretary of the North Carolina State Bar. Defendant must pay the costs within 30 days of service upon him of the statement of costs by the Secretary.

Signed by the Chair with the consent of the other Hearing Panel members, this the 5th day of JANUARY, 2014 15


Joshua W. Willey, Jr., Chair
Disciplinary Hearing Panel