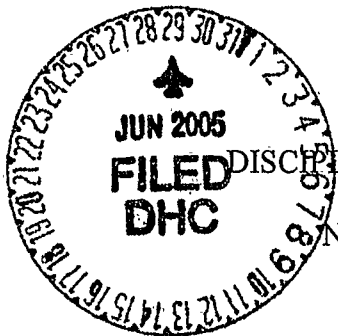


23889

WAKE COUNTY
NORTH CAROLINA



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

THE NORTH CAROLINA STATE BAR
Plaintiff

v.

HOLLY SAUNDERS, ATTORNEY
Defendant

)
)
) FINDINGS OF FACT
) CONCLUSIONS OF LAW
) AND
) ORDER OF DISCIPLINE
)
)

THIS MATTER came on to be heard and was heard by a duly assigned hearing committee of the Disciplinary Hearing Commission composed of Carlyn G. Poole, John M. May and Johnny A. Freeman. Carolin Bakewell appeared for the North Carolina State Bar. The Defendant, Holly Saunders, did not appear nor was she represented by counsel. Based upon the pleadings and evidence produced at trial, the hearing committee hereby enters the following:

FINDINGS OF FACT

1. The 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. The Defendant, Holly Saunders, ("Saunders"), was admitted to the North Carolina State Bar in 1997, and is, and was at all times referred to herein, 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. At all times relevant hereto, Saunders was engaged in the practice of law in Mecklenburg County, North Carolina.
4. The complaint in this action was filed on March 15, 2005.

5. Saunders was personally served with the Summons and Complaint herein by the Mecklenburg County Sheriff's Department on April 18, 2005.

6. Saunders' answer was due no later than May 8, 2005.

7. Saunders did not file an answer or other responsive pleading.

8. The Secretary of the N.C. State Bar entered Saunders' default on May 24, 2005.

9. The Disciplinary Hearing Commission has jurisdiction over Saunders' person and over the subject matter of this proceeding.

10. Saunders had proper notice of the time, date and place of this hearing.

5. In mid-May 2003, Anne B. Johnson ("Ms. Johnson"), retained Saunders' services to represent her regarding her domestic action and to complete a qualified domestic relations order ("QDRO").

6. In December 2003, Saunders told Ms. Johnson that a hearing in the case would be held between Jan. 13 – Feb. 13, 2004.

7. On Jan. 14, 2004, the court held a judicial settlement conference respecting Ms. Johnson's case.

8. Saunders did not notify Ms. Johnson about the settlement conference.

9. During or immediately after the settlement conference Saunders signed a consent order without Ms. Johnson's knowledge or consent.

10. Saunders falsely represented to the Court that Ms. Johnson had been consulted about the terms of the consent order and agreed to them

11. On Feb. 6, 2004, having heard nothing from Saunders regarding the court date, Ms. Johnson began calling Saunders' office.

12. Although Ms. Johnson called Saunders' office at least weekly and left messages each time, Saunders did not return any of Ms. Johnson's calls until March 6, 2004.

13. In the March 6, 2004 telephone conversation, Saunders falsely told Ms. Johnson that opposing counsel had offered to settle the case. Saunders did not reveal that she had already signed a consent order.

14. During the March 6 telephone conversation, Ms. Johnson told Saunders that she would not accept the "settlement offer" and she followed up the

conversation with a letter in which she again stated that the "settlement offer" was unacceptable.

15. After the March 6 telephone conversation, Ms. Johnson telephoned Saunders' office weekly to inquire whether Saunders had received the March 6 letter. Saunders did not return these calls or otherwise respond to Ms. Johnson.

16. On April 9, 2004, Ms. Johnson again wrote to Saunders, inquiring about the case. .

17. Saunders did not respond to Ms. Johnson's April 9 letter or otherwise communicate with her about the case.

18. In late April or early May 2004, Ms. Johnson complained about Saunders to Prepaid Legal Services, a prepaid legal service plan for whose members Saunders' law firm provided legal services.

19. Thereafter, Saunders invited Ms. Johnson to meet with her at Saunders' office to discuss the "settlement offer." Saunders did not reveal that in fact she had signed a consent order on Jan. 14, 2004.

20. Saunders met with Ms. Johnson on May 6, 2004. Saunders told Ms. Johnson that she "had no choice" but to accept the "settlement offer" because Ms. Johnson was in financial straits. Saunders did not tell Ms. Johnson that in fact she had signed a consent order on Jan. 14, 2004. Although Ms. Johnson reluctantly agreed to accept the "settlement offer," she promptly telephoned Saunders' office upon returning home and left a message indicating that she had reconsidered and needed more information before she could make a decision.

21. Saunders did not provide any additional information to Ms. Johnson nor did she ever communicate with Ms. Johnson again.

22. In June 2004 Ms. Johnson learned of the Jan. 14, 2004 consent order from sources other than Saunders.

23. On or about July 20, 2004, Ms. Johnson filed a complaint with the North Carolina State Bar concerning Saunders' handling of her case.

24. On Aug. 8, 2004, the State Bar served Saunders by certified mail with a letter of notice and substance of grievance concerning Ms. Johnson's complaint. Saunders was directed to file a written response within 15 days.

25. On Sept. 7, 2004, the State Bar sent a follow up notice to Saunders, reminding her that her answer to Ms. Johnson's complaint was overdue.

26. Saunders did not respond to the original letter of notice or the Sept. 7, 2004 follow up letter.

28. In approximately April 2003, Saunders undertook to represent Debra Tunstall ("Ms. Tunstall"), and her husband, Paul E. Mills ("Mr. Mills," jointly, "Tunstall/Mills"), respecting their Chapter 13 bankruptcy petition.

29. Prior to June 13, 2003, Ms. Tunstall asked Saunders to include in the bankruptcy plan amounts that she and Mr. Mills owed to Wells Fargo for their May and June 2004 mortgage payments.

30. Saunders agreed to include the May and June mortgage obligations in the bankruptcy plan, but failed to file a timely motion to do so. As a result, the trustee did not send the payments to Wells Fargo, which then filed a motion for a relief from the stay of bankruptcy.

31. On Nov. 18, 2003, Saunders falsely told Ms. Tunstall and Mr. Mills that the hearing scheduled for Wells Fargo's motion for Nov. 20 would not be held.

32. On or about Nov. 20, 2003, a hearing was held regarding Wells Fargo's motion. Saunders failed to notify Ms. Tunstall or Mr. Mills of the hearing.

33. Although Saunders knew or should have known that Ms. Tunstall and Mr. Mills had made the May and June and August – November payments to Wells Fargo, she failed to present evidence concerning the payments at the hearing and consented to entry of an order without their knowledge or consent that recited that the payments had not been made.

34. Ms. Tunstall and Mr. Mills learned that a hearing had actually been held on Nov. 20, 2003 when they received a copy of the order from the bankruptcy court on or about Dec. 9, 2003.

35. Although Saunders agreed to send Wells Fargo proof that the May and June mortgage payments had been made she failed to do so.

36. In early February 2004, after receiving another notice from Wells Fargo, Ms. Tunstall called Saunders to discuss the problem. Saunders failed to return Ms. Tunstall's telephone calls or otherwise communicate with her until Ms. Tunstall complained to Prepaid Legal Services about Saunders.

37. On Feb. 9, 2004, Saunders falsely told Ms. Tunstall and Mr. Mills that she had filed a motion to modify their Chapter 13 plan on around Jan. 14, 2004.

38. On March 26, 2004, Saunders obtained permission from the court to modify the Tunstall/Mills chapter 13 plan but failed to timely draft and obtain a signed order from the court reflecting the court's decision.

39. Meanwhile, Saunders also agreed to file a motion in the bankruptcy case to substitute collateral, after Ms. Tunstall's automobile was involved in a collision. The motion was required to enable Ms. Tunstall to obtain a new vehicle.

40. Saunders falsely represented to Ms. Tunstall that she had actually filed the motion to substitute collateral. In reliance upon this representation, Ms. Tunstall deposited \$2,500 toward the purchase of another vehicle. This deposit was later forfeited.

41. On or about June 1, 2004, Ms. Tunstall filed a complaint against Saunders with the North Carolina State Bar.

42. On Aug. 16, 2004, the Mecklenburg County Sheriff's Department personally served Saunders with a letter of notice and substance of grievance concerning Ms. Tunstall's complaint. Saunders was directed to file a written response within 15 days.

43. On Sept. 7, 2004, the State Bar sent a follow up notice to Saunders, reminding her that her answer to Ms. Tunstall's complaint was overdue.

44. Saunders did not respond to the original letter of notice or the Sept. 7, 2004 follow up letter.

Based upon the foregoing Findings of Fact, the hearing committee hereby enters the following:

CONCLUSIONS OF LAW

1. By agreeing to a consent order on Jan. 14, 2004 without Ms. Johnson's knowledge and consent, Saunders failed to explain a matter to the extent reasonably necessary to permit the client to make an informed decision about the representation in violation of Rule 1.4(b) and failed to keep her client reasonably informed about the case, in violation of Rule 1.4(a)(3) and failed to abide by a client's decision concerning whether to settle a matter in violation of Revised Rule 1.2(a)(1).

2. By telling Ms. Johnson that opposing counsel had offered to settle the case without revealing that in fact Saunders had already signed a consent order resolving the matter, Saunders engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

3. By falsely representing to the Court that Ms. Johnson had agreed to the terms of the Jan. 14, 2004 consent order, Saunders engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and made a knowing false statement of material fact to a tribunal in violation of Rule 3.3(a)(1).

4. By failing to notify Ms. Johnson of the Jan. 14, 2004 court date and by failing to return Ms. Johnson's calls regarding the status of the case, Saunders failed to communicate with a client in violation of Rule 1.4.

5. By effectively abandoning Ms. Johnson's case on and after May 6, 2004 without proper notice to Ms. Johnson and without providing her with the information she had requested, Saunders failed to take adequate steps to protect her client's interest in violation of Rule 1.16.

6. By failing to respond to the State Bar's letters of notice regarding the complaints filed by Ms. Johnson, Ms. Tunstall and Mr. Mills and by failing to respond to the State Bar's follow up letters, Saunders failed to respond to lawful demands for information from a disciplinary authority in violation of Revised Rule 8.1(b).

7. By failing to file a timely motion to include the May and June mortgage payments made by Ms. Tunstall and Mr. Mills in their bankruptcy plan, failing to present evidence at the Nov. 20, 2003 hearing that payments had been made to Wells Fargo, failing to promptly send proof to Wells Fargo concerning payments made by Ms. Tunstall and Mr. Mills and by failing to timely obtain a signed order from the court to modify the Tunstall/Mills bankruptcy plan, Saunders neglected a client matter in violation of Rule 1.3.

8. By failing to tell Ms. Tunstall and Mr. Mills about the Nov. 20, 2003 hearing in their bankruptcy case, and by failing to respond to their inquiries about the status of the case, Saunders failed to communicate with her clients in violation of Rule 1.4.

9. By falsely telling Ms. Tunstall and Mr. Mills on Nov. 18, 2003 that the Nov. 20, 2003 hearing would not take place as scheduled, by telling the clients that she had filed a motion to modify their Chapter 13 plan in January 2004 and that she had filed a motion to substitute collateral on their behalf, Saunders engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE

1. In September or October 2002, Saunders undertook to represent David Manigault ("Manigault") respecting a domestic action that Manigault's estranged wife had filed against him in Catawba County.

2. Saunders failed to file an answer or counterclaim on Manigault's behalf.
3. Counsel for Mrs. Manigault served Saunders with various discovery requests.
4. Manigault provided Saunders with timely responses to opposing counsel's discovery requests.
5. Saunders did not file responses to discovery and an order compelling Manigault to file discovery responses was entered.
6. Saunders did not tell Manigault that she had failed to serve opposing counsel with discovery responses, nor did she tell him about the order compelling discovery responses.
7. On April 21, 2003, the Court entered an order requiring Manigault to pay \$600 in attorney's fees for failing to respond to discovery.
8. Saunders did not tell Manigault about the sanctions order. Saunders paid the \$600 from the \$3,380 advance fee previously paid to her by Manigault.
9. Saunders also failed to appear for a duly noticed deposition in the case.
10. On May 12, 2004, the Court entered an order directing Manigault to pay an additional \$2,435.50 in attorney fees, sanctions and costs.
11. On or about March 31, 2002, the Court ordered Manigault to pay post separation spousal support in the amount of \$2,000 per month for a period of 15 months, ending May 31, 2003.
12. In January 2004, counsel for Mrs. Manigault filed a motion to extend spousal support.
13. Saunders did not respond to the motion to extend spousal support, which was thereafter granted by the Court.
14. Pursuant to the extended support order, Manigault paid post separation spousal support for an additional 21 months. These payments totaled \$42,000.
15. The Court ultimately dismissed Mrs. Manigault's claim for alimony.
16. Saunders' conduct is aggravated by the following facts:
 - a) She was motivated in part by a dishonest or selfish motive.
 - b) She engaged in a pattern of misconduct.

c) She engaged in multiple violations of the Rules of Professional Conduct.

d) She has failed to make restitution.

e) She failed to cooperate with the State Bar's investigation into her misconduct and disobeyed an order of the Chair requiring her to respond to discovery served upon him by the State Bar.

f) Saunders has prior discipline.

17. Ms. Saunders mailed to the Bar a letter dated June 23, 2005 in which she apologized for some of her misconduct. This apology constituted a mitigating factor.

18. The aggravating factors outweigh the mitigating factor.

Based on the foregoing findings of fact, the Committee enters the following:

CONCLUSIONS OF LAW REGARDING DISCIPLINE

1. Saunders's dishonest conduct and neglect has caused significant actual harm to her clients, including Ms. Tunstall, who testified that Ms. Saunders sent her false documents on two occasions, caused her to worry that her house would be foreclosed upon, and caused her to lose a \$2,500 down payment on a car and \$200 in lot storage fees when Saunders failed to file a motion for substitution of collateral in the bankruptcy case. Ms. Tunstall further testified that the representation by Saunders was the worst experience of her life.

2. Disbarment is the only sanction that can adequately protect the public for the following reasons:

a) Saunders' misconduct was repeated and occurred over a substantial period of time and therefore appears to be the result of moral turpitude and/or a serious character flaw, rather than an aberration or mistake.

b) Saunders has failed to show any evidence that she has addressed whatever trait or flaw caused her misconduct and therefore the Committee concludes that there is a risk that she would continue to engage in further misconduct if she were to remain licensed to practice law. Indeed, Saunders failed to answer the State Bar's complaint and failed to appear at the hearing herein. The only information she provided was received by the Bar on the morning of the hearing herein and took the form of an unsworn letter, unaccompanied by any evidence or supporting documents.

c) Saunders failed to take any steps to comply with the order of discipline entered in August 2004, such as seeking a psychiatric evaluation and paying the costs incurred by the Bar in that proceeding.

d) Entry of an order imposing lesser discipline would fail to acknowledge the seriousness of the offenses that Saunders committed, would be inconsistent with precedent in prior cases and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar in North Carolina.

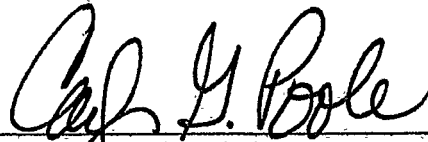
e) The protection of the public requires that Saunders not be permitted to resume the practice of law unless and until she demonstrates that she has reformed, that she understands her obligations to her clients, the public, the courts and the legal profession, and that reinstatement would not injure the standing of the legal profession. Disbarred attorneys must show reformation among other things, before they may resume the practice of law, whereas no such showing of reformation is required of attorneys whose licenses are suspended for a term certain.

Based upon the foregoing Findings of Fact, Conclusions of Law and Findings of Fact Regarding Discipline, and any mixed findings of fact and conclusions of law howsoever designated, the Hearing Committee hereby enters the following:

ORDER OF DISCIPLINE

1. Holly Saunders is hereby DISBARRED from the practice of law.
2. Saunders shall surrender her law license and membership card to the Secretary of the State Bar no later than 30 days from service of this order upon her if she has not already done so in connection with her prior order of discipline.
3. Saunders shall pay the costs of this proceeding as assessed by the Secretary of the N.C. State Bar no later than 30 days from service of this order upon Saunders.
4. Saunders shall comply with all provisions of 27 NCAC 1B § .0124 of the North Carolina State Bar Discipline & Disability Rules ("Discipline Rules").
5. Prior to seeking reinstatement of her law license, Saunders must present satisfactory written evidence to the Office of Counsel that she has made restitution of the following sums to the clients listed below:
 - a) Debra Tunstall and Paul Mills -- \$2,700.
 - b) David Manigault -- \$5,815.50.

Signed by the undersigned chairman with the full knowledge and consent of the
other Hearing Committee members, this the 29 day of June, 2005.



Carlyn G. Poole, Chair
Disciplinary Hearing Committee