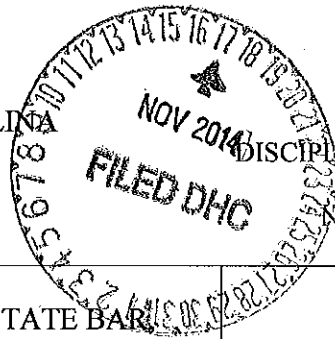


STATE OF NORTH CAROLINA

WAKE COUNTY

THE NORTH CAROLINA STATE BAR



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
14 DHC 24

Plaintiff

v.

PAUL L. WHITFIELD, Attorney,

Defendant

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
CONSENT ORDER OF DISCIPLINE

THIS MATTER was considered by a hearing panel of the Disciplinary Hearing Commission composed of Renny W. Deese, Chair, Ronald R. Davis, and Randy A. Moreau 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 Brian P.D. Oten. Defendant, Paul L. Whitfield, was represented by Douglas J. Bocker and K. Brooke Ottesen. 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 ("Plaintiff" or "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, Paul L. Whitfield ("Defendant" or "Whitfield"), was admitted to the North Carolina State Bar on 3 September 1963 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. During the times relevant herein, Whitfield actively engaged in the practice of law in the State of North Carolina and maintained a law office in Charlotte, Mecklenburg County, North Carolina.

4. Whitfield was properly served with process and received due notice of the hearing in this matter.
5. In or around September 2009, James Ogburn retained Whitfield for representation in a personal injury matter and entered into a contingency fee agreement with Ogburn.
6. In or around November 2010, Whitfield filed a complaint in Mecklenburg County Superior Court on behalf of Ogburn in the personal injury matter, case no. 10 CVS 23464.
7. In or around January 2011, Whitfield received an offer from the defendant's insurance carrier to settle Ogburn's claim.
8. After communicating the settlement offer to Ogburn, Whitfield accepted the settlement offer on Ogburn's behalf.
9. Ogburn subsequently asserted that he had not authorized Whitfield to accept the proposed settlement offer, and by letters dated 22 February 2011 and 25 February 2011, Ogburn terminated Whitfield's representation and requested his client file.
10. Whitfield did not promptly provide Ogburn with his client file.
11. Whitfield did not withdraw from Ogburn's case.
12. In or around May 2011, Ogburn retained a new attorney to assist him in obtaining his client file from Whitfield and to represent him in case no. 10 CVS 23464.
13. Ogburn's new attorney requested Ogburn's client file from Whitfield.
14. Whitfield did not promptly provide Ogburn's new attorney with the client file.
15. Even though Whitfield knew Ogburn had retained a new attorney, and even though Whitfield had communicated with Ogburn's new attorney, Whitfield did not withdraw from the representation.
16. On or about 31 May 2011, the defendants in case no. 10 CVS 23464 filed a motion to enforce the settlement agreement that Whitfield accepted on behalf of Ogburn.
17. Following a 5 July 2011 hearing on the defendants' motion to enforce the settlement agreement and by order dated 19 July 2011, the Honorable Yvonne Mims Evans found Whitfield had apparent authority to accept the settlement agreement on Ogburn's behalf and granted the defendants' motion to enforce the settlement agreement.
18. In or around September 2011, the attorneys involved in case no. 10 CVS 23464 sought additional guidance from Judge Evans regarding how the settlement proceeds should be handled.
19. By conference call on or about 27 September 2011, by a letter sent by Whitfield to Judge Evans dated 4 October 2011, and by email messages occurring between 4 October 2011

and 10 October 2011, Judge Evans communicated with Whitfield, Ogburn's new attorney, and the defendants' attorney regarding how the settlement proceeds should be handled and how a portion of the proceeds representing Whitfield's claimed contingent fee should be preserved. Judge Evans suggested the disputed portion of the settlement proceeds be deposited with the Mecklenburg County Clerk of Court until Whitfield and Ogburn settled their dispute concerning Whitfield's claim to a contingent fee.

20. Whitfield participated in or had the opportunity to participate in all discussions with Judge Evans, Ogburn's new attorney, and the defendants' attorney as described in paragraph 19 above.

21. By order dated 11 October 2011, Judge Evans ordered the settlement proceeds be re-issued by the defendants' insurance company to Ogburn and Ogburn's new attorney, that the funds be deposited in the trust account of Ogburn's new attorney, and that Ogburn's new attorney deposit funds representing one-third of the settlement proceeds with the Mecklenburg County Clerk of Court until the dispute over Whitfield's claim to a contingent fee was resolved.

22. On 27 October 2011, Ogburn dismissed case no. 10 CVS 23464.

23. During the time that Ogburn disputed Whitfield's authority to accept the settlement offer, in or around April 2011, Whitfield filed a Petition for Adjudication of Incompetence and Application for Appointment of Guardian or Limited Guardian wherein Whitfield sought to have Ogburn declared incompetent for the limited purpose of handling his financial affairs.

24. On or about 31 May 2011, Whitfield noticed a deposition of Glenn D. Huggins, Pharm.D., in connection with Whitfield's pursuit of incompetency proceedings against Ogburn. However, Whitfield mistakenly issued the deposition under a caption for case no. 10 CVS 23464 and signed the notice of deposition purportedly as Ogburn's attorney.

25. At the time Whitfield noticed the deposition, Whitfield did not have Ogburn's authority to take any further action on his behalf in case no. 10 CVS 23464.

26. After a hearing in June 2011 on Whitfield's petition to declare Ogburn incompetent, the Assistant Clerk of Superior Court in Mecklenburg County found that, although Whitfield did not pursue the incompetency proceedings for an improper purpose, Whitfield failed to establish any reasonable grounds to initiate the incompetency proceedings and dismissed Whitfield's petition. Dr. Huggins was unable to attend the incompetency hearing because he was out of the state for an extended period.

27. On 20 October 2011, after Judge Evans entered orders enforcing the settlement in case no. 10 CVS 23464 and instructing the parties as to how the settlement proceeds would be handled, Whitfield filed a lawsuit in Mecklenburg County Superior Court (case no. 11 CVS 19374) against Ogburn's new attorney and that attorney's law firm, against the defendants' attorney and that attorney's law firm, and against the insurance company involved in Ogburn's underlying personal injury case. Whitfield's complaint sought to impose a charging lien against the defendants to recover his claimed contingent fee from Ogburn's settlement proceeds and sought to estop the defendants from denying Whitfield's claimed charging lien.

28. Whitfield's complaint in 11 CVS 19374 accused the defendants of deceit, fraud, and misrepresentation and sought punitive damages resulting therefrom based upon Whitfield's allegations that the defendants excluded Whitfield from participating in discussions with Judge Evans concerning her 11 October 2011 order wherein she instructed the parties on how to handle the settlement proceeds.

29. Whitfield's allegations against the defendants were factually insufficient or frivolous in that Whitfield was not excluded from arguing his contentions to Judge Evans prior to entry of her 11 October 2011 order.

30. Whitfield's complaint filed in case no. 11 CVS 19374 was frivolous in that it was not based in fact or in law and did not include a good faith argument for an extension, modification, or reversal of existing law.

31. Whitfield ultimately dismissed the complaint in case no. 11 CVS 19374.

32. During the time that Ogburn disputed Whitfield's authority to accept the settlement offer, in or around May 2011, Ogburn filed a grievance complaint against Whitfield with the North Carolina State Bar, grievance file no. 11G0589.

33. Whitfield was served with a Letter of Notice in grievance file no. 11G0589 on 12 July 2011.

34. In December 2011, in connection with Whitfield's responses to the State Bar's inquiries regarding his conduct in Ogburn's case, Whitfield issued a subpoena to Verizon Wireless seeking the production of the following documentation: "A record of all calls placed from 704-534-1919 and 704-534-1967 to the following numbers only: 704-372-8322—704-372-8323—704-8324 [sic] and 704-335-1007 from December 2010 thru March 2011. These records are needed within the next 15 days."

35. Whitfield's subpoena sought Ogburn's cellular telephone records.

36. Whitfield's subpoena purported to be issued under case no. 10 CVS 23464, was captioned "James W. Ogburn and wife, Trish Ogburn versus Toni LaJean Howell, et al.," purported to be issued on behalf of Ogburn, listed Whitfield as Ogburn's attorney in the matter, and was signed by Whitfield.

37. At the time Whitfield issued the subpoena, case no. 10 CVS 23464 had been dismissed.

38. At the time Whitfield issued the subpoena, Whitfield did not represent Ogburn in case no. 10 CVS 23464 or any other case.

39. Whitfield issued the subpoena to gather records for his own purposes and not on behalf of or for the benefit of Ogburn.

40. Whitfield did not serve Ogburn with a copy of the subpoena, did not provide Ogburn with notice of the subpoena, and did not otherwise communicate with Ogburn about the subpoena.

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, Paul L. Whitfield, and over the subject matter of this proceeding.

2. Defendant'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 withdraw from case no. 10 CVS 23464 after Ogburn terminated Whitfield's services, by failing to return Ogburn's client file to Ogburn upon request, and by failing to turn over Ogburn's client file to Ogburn's new attorney upon request, Whitfield failed to withdraw from representation upon being discharged in violation of Rule 1.16(a)(3) and failed to take steps to the extent reasonably practicable to protect a client's interests upon termination of representation in violation of Rule 1.16(d);
- (b) By noticing a deposition in the wrong proceeding, listing himself as Ogburn's attorney on the notice of deposition, and signing the notice of deposition purportedly as counsel for Ogburn after being discharged from representation, Whitfield failed to exercise the proper care, attention, and competence in his handling of a legal matter in violation of Rule 1.1 and engaged in conduct that was prejudicial to the administration of justice in violation of Rule 8.4(d);
- (c) By filing a petition to declare Ogburn incompetent and failing to present sufficient evidence to support the petition, Whitfield engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- (d) By filing a frivolous lawsuit in case no. 11 CVS 19374, Whitfield violated Rule 3.1 and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d); and
- (e) By issuing a subpoena in a case that Whitfield knew had been dismissed, by issuing the subpoena purportedly on Ogburn's behalf, by listing himself as Ogburn's attorney after being discharged by Ogburn, by signing the subpoena purportedly as counsel for Ogburn, and by issuing the subpoena seeking Ogburn's telephone records without providing notice to Ogburn, Whitfield knowingly disobeyed his obligations under the rules of a tribunal in violation of Rule 3.4(c), engaged in conduct involving 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).

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. After accepting the settlement offer on his client's behalf in 2011, the status of Defendant's representation was unclear. Although his client purportedly terminated Defendant's representation in February 2011, Defendant and his client continued to communicate regarding the representation, including the client executing a release allowing Defendant to obtain the client's medical records in March 2011. Nevertheless, subsequently Defendant's representation was clearly terminated, at which point Defendant should have withdrawn from the representation.

2. Defendant's conduct caused significant harm to his client by impeding his client's ability to direct the course of his case, by impeding his client's ability to freely and promptly obtain new representation when desired, and by delaying his client's ability to promptly resolve the case in an effort to preserve his fee. Defendant elevated his interests above those of his client to the detriment of his client.

3. Defendant's conduct caused significant harm to the administration of justice in that his misconduct unnecessarily took up the court's and the various parties' time and resources.

4. Defendant's conduct caused potential significant harm to the standing of the legal profession in the eyes of the public in that such conduct by attorneys erodes the trust of the public in the profession. Confidence in the legal profession is a building block for public trust in the entire legal system.

5. Defendant, who was licensed to practice law on 3 September 1963 and has been practicing law for over fifty years, has substantial experience in the practice of law.

6. Defendant enjoys a reputation of honesty, integrity, and good character in his professional and personal life. The conduct described herein appears to be an aberration of Defendant's character.

7. In 2007, Defendant was admonished by the Grievance Committee of the North Carolina State Bar for employing improper language in a fee agreement which attempted to assert a charging lien against any sum recovered by his client.

8. With the exception of the admonition mentioned in the preceding paragraph, Defendant has received no other professional discipline over the course of a 50-year career as an attorney in North Carolina.

9. Defendant has acknowledged his conduct violated the Rules of Professional Conduct and is remorseful for his actions. Defendant has also fully and freely disclosed his admission of misconduct to the hearing panel and has remained cooperative with the State Bar throughout this proceeding.

10. In 2012, Ogburn initiated a malpractice claim against Defendant. In 2013, Defendant settled the malpractice claim; as part of the settlement agreement, Defendant received no fee from his representation of Ogburn and Defendant paid an additional significant sum of money to Ogburn as compensation.

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 determines the following factors are applicable:

- (a) Defendant's prior disciplinary offenses in North Carolina;
- (b) Defendant's positive character and reputation;
- (c) Defendant's full and free disclosure to the hearing panel and cooperative attitude toward the proceeding; and
- (d) 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)(2) of the Rules and Regulations of the North Carolina State Bar and concludes that although an act of misrepresentation is present in this case, disbarment is not necessary in order to protect the public.

3. 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 determines the following factors warrant suspension of Defendant's license:

- (a) Defendant's actions elevated his own interests above that of his client's;
- (b) Defendant's actions potentially had a negative impact on the public's perception of the legal profession;
- (c) Defendant's actions had a negative impact on the administration of justice; and
- (d) Defendant's actions impaired his client's ability to achieve the goals of the representation.

4. The hearing panel has considered all other forms of discipline 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 to the public regarding the conduct expected of members of the Bar.

5. Due to the misconduct described in the present action, the hearing panel concludes that the public will only be adequately protected by imposing a period of active suspension of Defendant's law license. Additionally, the hearing panel concludes that Defendant should be allowed the opportunity to apply for a stay of a portion of the suspension imposed by this Order upon compliance with certain conditions designed to ensure protection of the public and to ensure Defendant's compliance with the Rules of Professional Conduct.

6. Under other circumstances, the misconduct in this case would warrant more serious discipline. However, the hearing panel finds and concludes that the unique circumstances surrounding this case justify lesser discipline than would otherwise be appropriate. The factors that particularly warrant lesser discipline include: Defendant has received no public discipline over the course of his 50-year career as an attorney, thereby suggesting Defendant's conduct is truly an aberration of his typical character; Defendant significantly compensated his client for his wrongdoing; Defendant cooperated with the State Bar throughout this proceeding; Defendant has accepted personal responsibility for his actions; Defendant acknowledges the wrongfulness and seriousness of his misconduct; and Defendant is genuinely remorseful.

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, Paul L. Whitfield, is hereby suspended for two years.
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. Defendant shall have 30 days to comply with the wind down provisions contained in Rule .0124 of the North Carolina State Bar Discipline and Disability Rules, located at 27 N.C. Admin. Code 1B § .0124.
3. Defendant shall pay the costs and administrative fees of this proceeding as assessed by the Secretary within 120 days of the statement of costs being mailed to him at his address of record with the State Bar's Membership Department.
4. After serving no less than six months of the suspension, Defendant may apply for a stay of the remaining period of suspension imposed by this Order by filing a petition with the Secretary of the North Carolina State Bar. In order to be eligible for a stay of the remaining period of suspension, Defendant must demonstrate by clear, cogent, and convincing evidence that, in addition to complying with the general provisions for reinstatement listed in 27 N.C. Admin. Code 1B § .0125 of the North Carolina State Bar Discipline & Disability Rules, he has complied with the following conditions:
 - (a) Defendant has arranged for an active member of the North Carolina State Bar in good standing who practices law in Defendant's judicial district and who has been approved by the Office of Counsel of the North Carolina State Bar to serve as his law practice monitor. The selected monitor must agree to so serve and agree to meet with Defendant at least twice a month to review, discuss, and

consult with Defendant about all material aspects of Defendant's current client matters, including anticipated courses of action and the filing of future pleadings and/or motions related to Defendant's cases. The monitor will supervise all client matters and will make reasonable efforts to ensure Defendant continues to comply with the Rules of Professional Conduct, including that Defendant handles all client matters in an appropriate and professional manner, that Defendant abides by his clients' requests, and that Defendant exercises appropriate judgment, care, and accuracy in drafting and filing documents related to his representation of clients. The monitor will submit written quarterly reports of this supervision to the Office of Counsel of the State Bar, 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. 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 have made the arrangements for this monitoring attorney and supplied the Office of Counsel with a letter from the monitoring attorney confirming his agreement to perform the duties listed above;

- (b) Defendant has kept his physical address of record current with the State Bar and responded to all letters of notice and requests for information from the State Bar within fifteen days of receipt or by the deadline stated in the communication, whichever is sooner;
- (c) Defendant has timely complied with his State Bar membership and continuing legal education requirements. Defendant has paid all fees and costs assessed by the State Bar by the applicable deadline, including but not limited to Client Security Fund assessments, the costs and administrative fees associated with this case as assessed by the Secretary, and the costs and administrative fees associated with any other disciplinary or disability action;
- (d) Defendant has participated fully and timely in the fee dispute program when notified of any petitions for resolution of disputed fees;
- (e) Defendant has not violated the laws of any state or of the United States; and
- (f) Defendant has not violated any provision of the Rules of Professional Conduct.

5. Defendant may file a petition seeking a stay of the remaining period of suspension and setting forth the above requirements up to 30 days prior to the end of the 6 month period but shall not be reinstated prior to the end of that 6 month period.

6. If Defendant successfully seeks a stay of the suspension of his law license pursuant to this Order, the stay will continue in force only as long as Defendant complies with the following conditions:

- (a) Defendant shall meet at least twice a month with his monitoring attorney – as described in paragraph 4(a) above – to review, discuss, and consult with Defendant about all material aspects of Defendant's current client matters,

including anticipated courses of action and the filing of future pleadings and/or motions related to Defendant's cases. Defendant shall cooperate with the monitoring attorney and provide any information the monitoring attorney deems reasonably necessary to ensure Defendant continues to comply with the Rules of Professional Conduct, including that Defendant handles all client matters in an appropriate and professional manner, that Defendant abides by his clients' requests, and that Defendant exercises appropriate judgment, care, and accuracy in drafting and filing documents related to his representation of clients. Defendant shall also ensure the monitoring attorney sends the quarterly written report to the Office of Counsel as described in paragraph 4(a) above. All costs, if any, associated with the practice monitor's supervision of Defendant shall be borne by Defendant;

- (b) 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;
- (c) Defendant shall keep his physical address of record current with the State Bar and respond to all letters of notice and requests for information from the State Bar within fifteen days of receipt or by the deadline stated in the communication, whichever is sooner;
- (d) Defendant shall timely comply with his State Bar membership and continuing legal education requirements. Defendant shall pay all fees and costs assessed by the State Bar by the applicable deadline, including but not limited to Client Security Fund assessments, the costs and administrative fees associated with this case as assessed by the Secretary, and the costs and administrative fees associated with any other disciplinary or disability action;
- (e) Defendant shall participate fully and timely in the fee dispute program when notified of any petitions for resolution of disputed fees;
- (f) Defendant shall not violate the laws of any state or of the United States; and
- (g) Defendant shall not violate any provision of the Rules of Professional Conduct.

7. If Defendant fails to comply with any one or more of the conditions referenced in Paragraph 6, then the stay of the suspension of his law license may be lifted as provided in 27 N.C. Admin. Code § .0114(x).


8. If Defendant does not seek a stay of any active period of suspension, or if some part of the suspension is stayed and thereafter the stay is revoked, Defendant must provide in his application for reinstatement clear, cogent, and convincing evidence of the following:

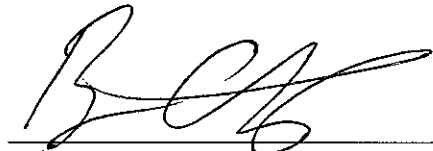
- (a) Compliance with the general provisions for reinstatement listed in 27 N.C. Admin. Code 1B § .0125 of the North Carolina State Bar Discipline & Disability Rules; and

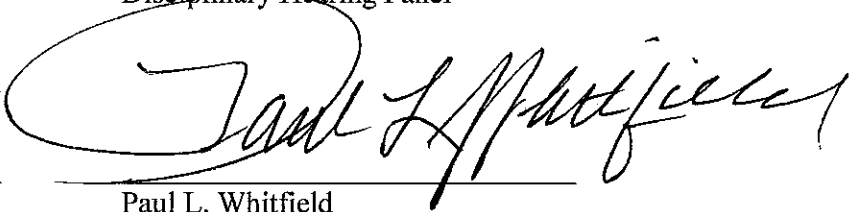
(b) Compliance with the conditions set out in paragraph 4 (b) – (f) above.

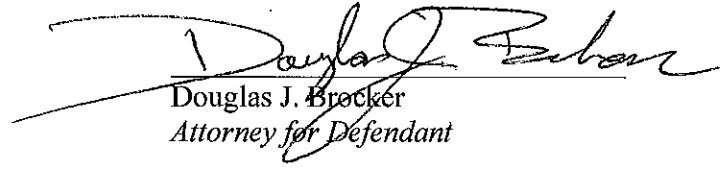
9. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of any stayed suspension.

Signed by the Chair with the consent of the other hearing panel members, this the 18th day of November, 2014.


Renny W. Deese, Chair
Disciplinary Hearing Panel


Brian Oten
Deputy Counsel
The North Carolina State Bar
Attorney for Plaintiff


Paul L. Whitfield
Defendant


Douglas J. Brocker
Attorney for Defendant