

WAKE COUNTY
NORTH CAROLINA



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
12 DHC 33

THE NORTH CAROLINA STATE BAR
Plaintiff

v.

JANICE P. PAUL, ATTORNEY
Defendant

ORDER
OF DISCIPLINE

THIS MATTER was considered by a hearing panel of the Disciplinary Hearing Commission composed of Sharon B. Alexander, Chair, Joshua W. Willey, Jr., and Patti Head pursuant to 27 N.C.A.C. 1B §.0114 of the Rules and Regulations of the North Carolina State Bar. Defendant, Janice P. Paul, was represented by James B. Maxwell. Plaintiff was represented by Deputy Counsel Margaret Cloutier. Defendant has agreed to waive a formal hearing in this matter and both parties stipulate and consent to the findings of fact and conclusions of law recited in this order and to the discipline imposed. Defendant stipulates that she waives any right to appeal this consent order or challenge in any way the sufficiency of the findings by consenting to the entry of this order.

Based upon the consent of the parties, the hearing panel finds by clear, cogent and convincing evidence the following

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar (hereinafter "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, Janice P. Paul (hereinafter "Paul" or "Defendant"), was admitted to the North Carolina State Bar on August 24, 1985 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, Defendant actively engaged in the practice of law in the State of North Carolina and was employed as an Assistant District Attorney in the office of the District Attorney for Durham County, North Carolina.

4. Defendant was assigned to prosecute the criminal charges against Luis Escobar in *State v. Escobar*, *Durham County Superior Court file nos. 07 CRS 55834-35*. Escobar was charged with First Degree Sex Offense of a Child, Sexual Offense by a Person in Parental Role, and Indecent Liberties With a Child.

5. The alleged victim in Escobar's cases was the young daughter of Terrinni Wasson. Escobar was Wasson's boyfriend but not the father of the child.

6. During the investigation of the allegations against Escobar in July 2007, Wasson told investigators that she did not believe the alleged sexual abuse of her daughter had occurred.

7. Escobar's trial began on August 17, 2009. After the conclusion of the State's evidence on Friday morning, August 21, the presiding judge dismissed the charges of First Degree Sex Offense of a Child and Sexual Offense by a Person in Parental Role. The trial then recessed for the lunch break.

8. The father of the child had primary custody of her but Wasson had a visitation with the child scheduled for the imminent weekend. Wasson was entitled to this visitation pursuant to a court order on custody. During the lunch break in the trial, Defendant learned of Wasson's impending visitation.

9. Defendant instructed a police investigator to take out warrants against Wasson for Aiding and Abetting First Degree Sex Offense of a Child, Accessory After the Fact of First Degree Sex Offense with a Child, and Aiding and Abetting Indecent Liberties With a Child.

10. Defendant made it clear to the investigator that the warrants should be sought promptly and that Wasson should be arrested that day.

11. The investigator obtained the warrants and arrested Wasson as she left the courtroom on Friday afternoon.

12. Given the facts known to Defendant on August 21, 2009, Defendant should have known that established law precluded the charges against Wasson of Aiding and Abetting First Degree Sex Offense of a Child or Aiding and Abetting Indecent Liberties With a Child.

13. After the judge dismissed the charges of First Degree Sex Offense against Escobar on August 21, 2009, established law precluded the charges against Wasson of Accessory After the Fact of First Degree Sex Offense With a Child.

14. Defendant should have known that established law precluded charges against Wasson for Accessory After the Fact of First Degree Sex Offense With a Child on August 21, 2009.

15. Defendant sought the charges against Wasson for the purpose of preventing Wasson's imminent weekend visitation with the child.

16. On Friday afternoon after learning of Wasson's arrest, the presiding judge ordered that Wasson's bond be unsecured. On Monday morning after review of the circumstances leading to Wasson being charged, the presiding judge dismissed the charges against Wasson.

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

CONCLUSIONS OF LAW

1. All parties are properly before the Disciplinary Hearing Commission and the Disciplinary Hearing Commission has jurisdiction over Defendant, Janice P. Paul, and 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.G.S. §84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

a. by instructing law enforcement to seek warrants for charges against Wasson that were precluded by established law, Defendant prosecuted charges that she should have known were not supported by probable cause in violation of Rule 3.8(a) and/or attempted to do so through the acts of another in violation of Rule 8.4(a);

b. by instructing law enforcement to seek warrants for charges against Wasson that were precluded by established law, Defendant brought a proceeding that had no basis in law in violation of Rule 3.1 and/or attempted to do so through the acts of another in violation of Rule 8.4(a); and

c. by instructing law enforcement to seek warrants for charges against Wasson that were precluded by established law for the purpose of preventing court ordered visitation, Defendant used means that had no substantial purpose other than to embarrass, delay or burden a third person in violation of Rule 4.4(a) and engaged in conduct that is 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. The presumptive bond amounts for the serious felonies with which Wasson was charged are in the hundreds of thousands of dollars making it unlikely that Wasson would have quickly been released from detention. Defendant's misconduct, without intervention of the trial court on Friday afternoon, would have likely resulted in Wasson spending time in jail and potentially expending funds on bond and/or legal fees to contest the charges.

2. Defendant maintains that her actions were motivated by her desire to protect the young victim from possible physical or emotional abuse from her mother as a result of having come into court and testifying against Escobar.

3. Defendant had dedicated her professional career to working for the benefit of abused children. Defendant is not currently employed as a prosecutor and the likelihood that this conduct would be repeated is minimal.

4. Defendant has no prior discipline issued in this or any other jurisdiction.

5. Defendant submitted several letters from attorneys with whom she has practiced that demonstrate she enjoyed a good reputation among her peers.

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 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 finds the following factors are applicable in this matter:

a. The absence of any prior disciplinary offenses committed by Defendant in this state or any other jurisdiction;

b. Defendant committed multiple offenses;

c. Defendant lacked a dishonest or selfish motive;

d. Defendant enjoyed a good reputation among her peers; and

e. Defendant's substantial experience in the practice of law.

2. The hearing panel has also 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 finds the following factors are applicable in this matter:

a. The intent of Defendant to commit acts where the harm or potential harm was foreseeable;

b. The negative impact of Defendant's actions on the client's – that is, the State of North Carolina – and the public's perception of the profession;

c. The negative impact of Defendant's actions on the administration of justice;
and

d. The effect of Defendant's conduct on a third party, Ms. Wasson.

3. The hearing panel has considered 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 finds that none of the factors are established by the evidence in this case. The panel therefore does not consider disbarment to be necessary to protect the public in this case.

4. District attorneys and their duly appointed assistants represent the State through their public offices and are critical to maintaining the public trust and confidence in our judicial system. The courts, the general public, criminal defendants, victims and witnesses all expect and are entitled to have district attorneys who adhere to the highest ethical standards.

5. It is imperative to the proper administration of justice that prosecutors maintain objectivity and exercise their powers cautiously. Even the best of intentions is insufficient to justify causing a person to be arrested on charges unsupported by law.

6. The hearing panel has carefully considered all of the different forms of discipline available to it. An admonition, reprimand, or censure would not be sufficient discipline because of the gravity of the harm or potential harm Defendant's conduct caused to the public, the administration of justice, and the legal profession.

7. The panel finds that discipline short of suspension would not adequately protect the public, the legal profession or the administration of justice for the following reasons:

a. The factors under Rule .0114(w)(1) that are established by the evidence in this case are of a nature that support imposition of a suspension as the appropriate discipline;
and

b. Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses Defendant committed and would send the wrong message to attorneys and to the public regarding the conduct expected of members of the Bar of this state.

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 to practice law in the State of North Carolina of Defendant Janice P. Paul is hereby suspended for one year from the date this Order of Discipline is served upon her.

2. The period of suspension is stayed for one year as long as Defendant complies and continues to comply with the following conditions:

a. Defendant shall not violate any state or federal laws or any provisions of the Rules of Professional Conduct during the period of the stayed suspension;

b. Defendant shall respond to all State Bar requests for information by the earlier of the deadline stated in the communication or within 30 days, as required by Rule 8.1(b) of the Rules of Professional Conduct;

c. Defendant shall timely comply with all State Bar membership and Continuing Legal Education requirements; and

d. Defendant 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.

3. If the stay granted herein is revoked or the suspension of Defendant's license is activated for any reason, before seeking reinstatement of her license to practice law, Defendant must show by clear, cogent and convincing evidence that she has complied with each of the following conditions:

a. Submitted her license and membership card to the Secretary of the North Carolina State Bar within thirty days after the date of the order lifting the stay and/or activating the suspension of her law license;

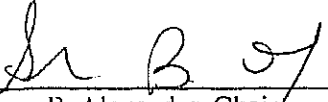
b. Complied with all provisions of 27 N.C.A.C. 1B § .0124 of the State Bar Discipline and Disability Rules on a timely basis following the order lifting the stay and/or activating the suspension of her law license;

c. Paid all due and owing membership fees, Client Security Fund assessments and costs assessed by the DHC or the State Bar and complied with all continuing legal education requirements imposed by the State Bar; and

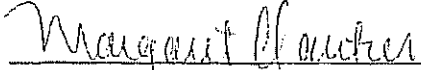
d. Complied with the conditions set forth in Paragraph 2(a) through (d) above.

4. Defendant is taxed with the administrative fees and costs of this action as assessed by the Secretary which shall be paid within ninety days of service of the notice of costs upon Defendant.

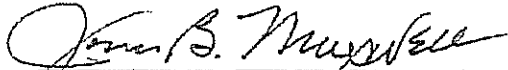
Signed by the undersigned Chair of the hearing panel with the full knowledge and consent of the other panel members, this the 17 day of October, 2012.


Sharon B. Alexander, Chair
Disciplinary Hearing Panel

CONSENTED TO:


Margaret Cloutier, Deputy Counsel
Attorney for Plaintiff


Janice P. Paul, Defendant


James B. Maxwell, Attorney for Defendant