

23889

WAKE COUNTY
NORTH CAROLINA



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
04 DHC 28

THE NORTH CAROLINA STATE BAR
Plaintiff

v.

HOLLY L. SAUNDERS, ATTORNEY
Defendant

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

THIS MATTER was heard on Friday, Aug. 20, 2004, before a duly assigned Hearing Committee of the Disciplinary Hearing Commission composed of Karen Eady-Williams, Chair; Elizabeth Bunting and Donald G. Wilhoit. The Defendant, Holly L. Saunders, did not appear nor was she represented by counsel. Carolin Bakewell represented the N.C. State Bar. Based upon the pleadings, evidence introduced at the hearing and arguments of counsel, 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 L. Saunders (Saunders) was admitted to the North Carolina State Bar in March 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. During all of the periods relevant hereto, Saunders was engaged in the practice of law in Charlotte, N.C.

4. The State Bar's summons and complaint in this matter were filed on May 28, 2004.

5. Saunders was personally served with the summons and complaint herein by the Mecklenburg County Sheriff's Department on June 23, 2004.

6. Saunders' answer was due no later than July 14, 2004.

7. Saunders did not file an answer or other responsive pleading and the Secretary of the N.C. State Bar entered her default on July 19, 2004.

8. The Disciplinary Hearing Commission has jurisdiction over the person of the Defendant and over the subject matter of the State Bar's complaint.

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

10. On or about Aug. 7, 2001, Saunders undertook to file a civil action against Gaston College on behalf of Sharon E. Williams (Ms. Williams) for wrongful termination and racial discrimination.

11. Between August 7, 2001 and May 21, 2002, Saunders failed to respond promptly to Ms. Williams' inquiries about the case and failed to keep her informed about the status of the matter.

12. On three occasions in January, February and April 2002, Saunders falsely advised Ms. Williams that she had filed the complaint against Gaston College and that she was having difficulties serving one of the individual defendants in the case.

13. On May 21, 2002, Saunders filed the complaint against Gaston College on Ms. Williams' behalf.

14. After June 2002, Saunders failed to respond promptly to Williams' inquiries about the case and failed to keep her informed about the status of the matter.

15. On or about Nov. 27, 2002, Gaston College's attorneys served Saunders with interrogatories and a request for production of documents. Saunders did not notify Ms. Williams of the receipt of the discovery requests and did not file responses thereto.

16. Saunders failed to notify Ms. Williams when Gaston College's attorneys scheduled Ms. Williams' deposition for Jan. 23, 2003. Neither Ms. Williams nor Saunders appeared for the deposition.

17. Saunders failed to notify Ms. Williams when Gaston College's attorneys filed a motion to dismiss Ms. Williams' lawsuit. Saunders did not oppose the motion and did not appear at the hearing on the motion to dismiss.

18. Saunders failed to notify Ms. Williams when the court dismissed the lawsuit against Gaston College on Feb. 12, 2003.

19. On or about Sept. 19, 2003, Ms. Williams filed a grievance against Saunders with the North Carolina State Bar.

20. On or about Oct. 14, 2003, the N.C. State Bar served Saunders with a letter of notice and substance of grievance concerning Ms. Williams' grievance by certified mail.

21. The letter of notice directed Saunders to file a written response to the grievance within 15 days.

22. Saunders did not respond to the letter of notice.

23. On Nov. 7, 2003, the N.C. State Bar sent a letter to Saunders, reminding her that her response to Ms. Williams' complaint was overdue.

24. Saunders did not reply to the Bar's reminder letter of Nov. 7, 2003.

25. On or about Nov. 24, 2003, the Executive Director of the N.C. State Bar issued a subpoena to Saunders. The subpoena directed Saunders to appear at the State Bar's office in person on Dec. 30, 2003, produce copies of Ms. Williams' client file and respond to Ms. Williams' grievance.

26. Saunders was personally served with the State Bar's subpoena by the Mecklenburg County Sheriff's Department on Dec. 19, 2003.

27. Saunders did not appear as directed pursuant to the State Bar's subpoena nor did she produce Ms. Williams' client file.

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

CONCLUSIONS OF LAW

1. By failing to respond to Ms. Williams' requests for information about her case and by failing to tell her that discovery requests had been filed by opposing counsel, that opposing counsel had scheduled her deposition and that her case had been dismissed in February 2003, Saunders failed to communicate with a client in violation of Revised Rule 1.4.

2. By falsely telling Ms. Williams on three occasions in early 2002 that the complaint had been filed against Gaston College, Saunders engaged in conduct involving fraud, deceit or dishonesty in violation of Revised Rule 8.4(c).

3. By delaying until May 2002 to file a complaint on Ms. Williams' behalf against Gaston College, failing to respond to discovery and the motion to dismiss filed by Gaston College's attorneys and by failing to appear at the hearing on the motion to dismiss Ms. Williams' lawsuit against Gaston College, Saunders neglected a client matter in violation of Revised Rule 1.3.

4. By failing to respond to the State Bar's letter of notice, Nov. 7, 2003 follow up notice and the subpoena dated Nov. 24, 2003, Saunders failed to respond to an official inquiry of a disciplinary authority in violation of Revised Rule 8.1(b).

FINDINGS OF FACT REGARDING DISCIPLINE

1. The Defendant's misconduct is aggravated by the following factors:
 - a. Multiple violations of the Revised Rules of Professional Conduct.
 - b. Defendant engaged in a pattern of misconduct.
 - c. Failure to acknowledge wrongdoing or make restitution.
 - d. Bad faith obstruction of the disciplinary process.
 - e. Pattern of misconduct.
2. The Defendant's conduct is mitigated by the following factor:
Defendant has no prior discipline.
3. The aggravating factors outweigh the mitigating factor.
4. Saunders' misconduct has caused substantial actual or potential harm to her client, Sharon E. Williams, who has lost, perhaps forever, her claim against Gaston College and who did not receive the legal services for which she paid. Saunders' misconduct has also harmed the standing of the legal profession in the eyes of her former client.
5. An order calling for discipline short of suspension would not sufficiently protect the public for the following reasons:
 - a. Saunders engaged in a multiple violations of the Revised Rules of Professional Conduct over a substantial period of time. Her misconduct was not the result of a mistake, nor did it appear to be an aberration and it therefore appears that her misconduct is the product of a personality flaw that is not readily changeable.
 - b. Saunders has offered no plausible evidence or assurances that she has addressed the problem or flaw that led to her misconduct. Indeed, she has ignored the State Bar's attempts

to investigate this matter and ignored a lawfully issued subpoena. Consequently, the Committee finds that there is a substantial risk that her misconduct would be repeated if he were permitted to retain her law license.

- c. The protection of the public requires that Saunders be suspended for a period of time, with the right to seek reinstatement under proper conditions.
- d. Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses which Saunders committed, would be inconsistent with the orders of discipline entered by this body in similar cases and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar of this State.
- e. Saunders' misconduct has jeopardized the profession's ability to remain self regulating. Lawyers cannot continue to enjoy this privilege if members of the Bar do not respond to legal inquiries of the regulatory authorities.

Based upon the foregoing Findings of Fact, Conclusions of Law and Findings of Fact Relevant to Discipline, the Hearing Committee hereby enters the following:

ORDER OF DISCIPLINE

1. The law license of the defendant, Holly L. Saunders is hereby suspended for three years, effective 30 days from the date of service of this order upon her. After serving 12 months of the active suspension of her law license, Saunders may apply for reinstatement by filing a petition with the Secretary of the N.C. State Bar demonstrating the following:

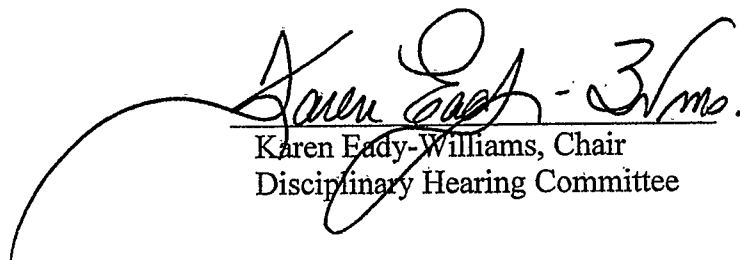
- a. She paid the costs of this proceeding within 30 days of service of the notice of the statement of costs.
- b. She obtained an evaluation within 6 months of the effective date of this order by a psychiatrist approved by the N.C. State Bar and complied with all treatment recommendations of the psychiatrist during the period of the active suspension of her law license. The medical evaluation shall be obtained at Saunders' expense and shall provide that she is not disabled or suffering from any mental or physical condition that prevents her from practicing law competently.
- c. She provided a written release to the N.C. State Bar authorizing its representatives to speak with the psychiatrist who performed her

evaluation and to obtain copies of her medical records from the psychiatrist. The release shall be provided not less than 30 days before Saunders files the petition for reinstatement.

- d. She has responded to all communications from the N.C. State Bar within 30 days of receipt or the date stated in the communication, whichever is sooner.
 - e. She has paid all mandatory state bar dues, Client Security Fund assessments and all sums owed to the N.C. State Bar Continuing Legal Education Department.
 - f. She has not violated the Revised Rules of Professional Conduct or the laws of the United States or of any state.
 - g. That she properly wound down her law practice and complied with the terms of 27 NCAC 1B Section .0124 of the State Bar Discipline & Disability Rules.
 - h. She is current with all mandatory continuing legal education requirements and that she took 12 hours of continuing legal education for each year during which her license was actively suspended.
 - i. She has refunded the \$400 fee paid to her by Sharon E. Williams and has returned Ms. Williams' client file to her.
2. If Saunders successfully seeks a stay of the suspension of her law license, such stay will continue in force only so long as she complies with the conditions set out in ¶ 1(d) – (f) and (h).
 3. If Saunders does not seek a stay of the active portion of the suspension of her law license or if some part of the suspension is stayed and the stay is revoked at any time, Saunders must comply with the conditions set out in ¶ 1 (a)-(i) before seeking reinstatement of her law license.

Signed by the Chair of the Hearing Committee with the consent of the other hearing committee members.

This the 27th day of August, 2004.


Karen Eady-Williams, Chair
Disciplinary Hearing Committee