

STATE OF NORTH CAROLINA

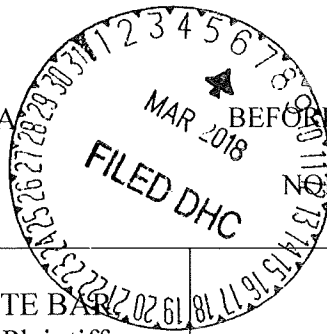
WAKE COUNTY

THE NORTH CAROLINA STATE BAR

Plaintiff

v.

PHILIP M. KLEINSMITH, Attorney,
Defendant



BEFORE THE GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
17G1139

ORDER OF
RECIPROCAL DISCIPLINE

Pursuant to the authority vested in me as Chair of the Grievance Committee of the North Carolina State Bar by 27 N.C. Admin. Code 1B §§ .0105(a)(12) and .0120(b) of the North Carolina State Bar Discipline and Disability Rules, and based upon the record in this matter, the undersigned finds as follows:

1. Respondent, Philip M. Kleinsmith, was admitted to the North Carolina State Bar and licensed to practice law in North Carolina on 23 April 2004 and is thereby 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. On 23 January 2015, the North Carolina State Bar Council approved Kleinsmith's petition for transfer to inactive status.

2. By Order and Notice of Disbarment dated 21 December 2016, the Presiding Disciplinary Judge ("PDR") of a duly constituted Hearing Panel disbarred Kleinsmith from the practice of law in Colorado. The 21 December 2016 Order was affirmed by the Supreme Court of Colorado on 30 October 2017. As a basis for his disbarment order, the PDJ determined by clear and convincing evidence that Kleinsmith had engaged in professional misconduct warranting disbarment. The Hearing Panel, PDJ and Supreme Court of Colorado concluded that Kleinsmith billed for and received payment from a client for title services performed on the client's behalf by a third party title company, and then knowingly converted the funds to pay other law firm expenses rather than remitting payment to the title company; the title company was able to recover only \$1,179.20 of the \$57,338.00 it was owed.

3. On 30 November 2017, the North Carolina State Bar served Kleinsmith with a Notice of Reciprocal Discipline. The Notice advised Kleinsmith that the State Bar was considering imposing identical discipline based upon the Colorado disbarment.

4. Pursuant to 27 N.C. Admin. Code 1B § .0120(b)(1), Respondent was required to file a response within thirty days of service of the Notice of Reciprocal Discipline if he desired to object to the imposition of identical discipline.

5. Kleinsmith failed to respond within thirty days of service of the Notice.

6. The Grievance Committee concluded that none of the elements set forth in 27 N.C. Admin. Code 1B § .0120(b)(3) exist in this case, and therefore that there are no grounds to conclude that the imposition of identical discipline in North Carolina would be unwarranted. The Grievance Committee further concluded that the imposition of identical discipline, to wit: disbarment, should be effective thirty days after service of the Order of Reciprocal Discipline, and that Kleinsmith's reinstatement to the practice of law in North Carolina should be predicated upon his reinstatement to the practice of law in Colorado.

BASED UPON THE FOREGOING FINDINGS the Chair of the Grievance Committee makes the following CONCLUSIONS OF LAW:

1. The North Carolina State Bar has jurisdiction over the subject matter of the proceeding and over the person of the Respondent, Philip M. Kleinsmith.

2. The Grievance Committee has complied with the procedure for imposition of reciprocal discipline set forth in 27 N.C. Admin. Code 1B § .0120(b) of the N.C. State Bar Discipline and Disability Rules.

3. Pursuant to 27 N.C. Admin. Code 1B § .0120(b)(5), the 21 December 2016 Supreme Court of Colorado Order and Notice of Disbarment against Kleinsmith establishes that Kleinsmith engaged in conduct constituting violations of the following North Carolina State Bar Rules of Professional Conduct: Rule 1.15-2 and 8.4(c). These Rule violations justify the imposition of reciprocal discipline in this State.

4. The disbarment imposed by the Colorado disciplinary authority and affirmed by the Supreme Court of Colorado is the equivalent of disbarment as described and set out in N.C. Gen. Stat. § 84-28(c)(1). Kleinsmith shall be disbarred from the right to practice law in the State of North Carolina thirty days after service of this Order of Reciprocal Discipline. Furthermore, Kleinsmith will be allowed to petition for reinstatement of his North Carolina law license only after his license to practice law in Colorado is reinstated.

THEREFORE IT IS HEREBY ORDERED THAT:

1. Respondent, Philip M. Kleinsmith, is hereby DISBARRED from the practice of law in North Carolina effective thirty days from the date this Order of Reciprocal Discipline is served on him.

2. Kleinsmith shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than thirty days following the date he is served with this Order. Kleinsmith shall comply with the wind down provisions contained in Rule .0128 of the North Carolina State Bar Discipline and Disability Rules, located at 27 N.C. Admin. Code 1B § .0128.

3. In accordance with the policy adopted July 23, 2010 by the Council of the North Carolina State Bar regarding the taxing of administrative fees and investigative costs to any attorney issued discipline by the Grievance Committee, and in accordance with 27 N.C. Admin. Code 1B § .0105(a)(15), an administrative fee in the amount of \$350.00 is hereby taxed to Kleinsmith.

4. Kleinsmith may not petition for reinstatement to the practice of law in North Carolina until his license to practice law in Colorado is reinstated. Additionally, in petitioning for reinstatement of his North Carolina law license after being reinstated to the practice of law in Colorado, Kleinsmith must submit proof of his reinstatement to the practice of law in Colorado and must comply with 27 N.C. Admin. Code 1B § .0129.

This the 22 day of FEBRUARY, 2018.


DeWitt F. McCarley, Chairperson
Grievance Committee