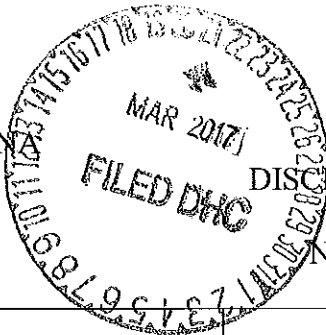


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
17 DHC 06

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

MARJORIE R. MANN, 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 Fred M. Morelock, Chair, and members N. Hunter Wyche, Jr. and Michael S. Edwards, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff was represented by Joshua T. Walthall. Defendant was represented by David B. Freedman and Dudley A. Witt. Both Plaintiff and Defendant stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Defendant freely and voluntarily waives any and all right to appeal the entry of this consent order of discipline.

Based upon the pleadings in this matter, the parties' stipulations of fact, and with the consent of the parties, the Hearing Panel hereby finds by clear, cogent, and convincing evidence the following:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("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 (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, Marjorie R. Mann ("Defendant"), was admitted to the North Carolina State Bar in 1985, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Rules of Professional Conduct.

3. During all or part of the relevant periods referred to herein, Defendant was engaged in the practice of law in the State of North Carolina and maintained a law office in Asheville, North Carolina.

4. In 2015, Defendant represented TD Bank in a foreclosure sale of property to Houses 2 Homes, LLC, in Henderson County, North Carolina.

5. In June 2016, the attorney for Houses 2 Homes, LLC notified Defendant and her legal assistant that the original Substitute Trustee's Deed recorded on July 22, 2015 had not properly conveyed the property because it was signed by M.C., the wrong substitute trustee, instead of A.M., the correct substitute trustee.

6. On June 20, 2016, in an effort to correct this error, Defendant recorded and filed an Amended Substitute Trustee's Deed, Amended Final Report and Amended Notice of Foreclosure bearing the purported signature of A.M.

7. Defendant forged A.M.'s signature on the Amended Substitute Trustee's Deed, Amended Final Report and Amended Notice of Foreclosure without A.M.'s consent.

8. On July 14, 2016, Defendant's employer received information suggesting that the purported signatures of A.M. on the Amended Substitute Trustee's Deed, Amended Final Report and Amended Notice of Foreclosure had been forged by Defendant.

9. On July 14, 2016, in response to an e-mail from an attorney at Defendant's firm inquiring about the signatures on the Amended Substitute Trustee's Deed, Amended Final Report and Amended Notice of Foreclosure, Defendant claimed that she had spoken with A.M. and that A.M. had authorized her to sign his name to the documents.

10. Defendant had not spoken with A.M. and A.M. did not authorize Defendant to sign his name to the Amended Substitute Trustee's Deed, Amended Final Report or Amended Notice of Foreclosure.

11. Defendant's claim that she had spoken to A.M. and that A.M. had authorized her to sign his name to the Amended Substitute Trustee's Deed, Amended Final Report and Amended Notice of Foreclosure was false.

12. Defendant knew at the time she made the claim that she had spoken to A.M. and that A.M. had authorized her to sign his name to the Amended Substitute Trustee's Deed, Amended Final Report and Amended Notice of Foreclosure that this statement was false.

13. Defendant instructed her legal assistant to notarize the signatures on the Amended Substitute Trustee's Deed, Amended Final Report and Amended Notice of Foreclosure that Defendant knew to be improperly executed and falsified.

14. Pursuant to N.C. Gen. Stat. § 10B-60(c)(2), it is a misdemeanor for a notary to verify a signature without the principal appearing in person before the notary.

15. By instructing her assistant to notarize signatures when the principal had not appeared in person before her, Defendant solicited her assistant to engage in official misconduct constituting a misdemeanor.

16. Pursuant to N.C. Gen. Stat. § 10B-60(d)(1), it is a felony for a notary to verify a signature that the notary knows to be false or fraudulent.

17. By instructing her assistant to notarize signatures that she and her assistant knew to be falsified, Defendant solicited her assistant to engage in official misconduct constituting a felony.

18. Pursuant to N.C. Gen. Stat. § 10B-60(j), "Any person who knowingly solicits, coerces, or in any material way influences a notary to commit official misconduct, is guilty as an aider and abettor and is subject to the same level of punishment as the notary."

19. Pursuant to N.C. Gen. Stat. § 14-122, any person who forges the signature of another on a deed is guilty of the criminal act of forgery, a felony.

Based upon the foregoing Findings of Fact, with the consent of the parties the Hearing Panel enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant and the subject matter of this proceeding.

2. Defendant's conduct, as set out in the stipulated Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 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 falsely claiming to others that A.M. had signed documents when she knew that to not be the case and by falsely claiming that A.M. had given her permission to sign his name to various documents, Defendant knowingly made a false statement of material fact to a third person in violation of Rule 4.1 and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);
- (b) By directing her legal assistant to notarize a signature Defendant knew to be improperly executed and falsified, Defendant ordered a nonlawyer assistant to engage in conduct that would be a violation of the Rules of Professional Conduct were a lawyer to engage in it, in violation of Rule 5.3;
- (c) By directing her legal assistant to notarize a signature Defendant knew to be improperly executed and falsified, Defendant solicited a notary to commit official misconduct, thereby committing a misdemeanor and a felony, respectively, in North Carolina that reflect adversely on her fitness as an attorney, in violation of Rule 8.4(b); and
- (d) By forging a signature on a deed, Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and violated Rule 8.4(b) by committing the criminal act of forgery.

Based upon the foregoing Findings of Fact and Conclusions of Law and with the consent of the parties, the Hearing Panel hereby finds by clear, cogent, and convincing evidence the following:

ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE

1. Defendant has been an actively licensed attorney in North Carolina since 1985 and has never been disciplined by the State Bar or any other regulatory agency during that time.
2. At the time of the activities described herein, Defendant was experiencing severe emotional and physical trauma.
3. On January 19, 2015, Defendant was diagnosed with a very aggressive form of cancer.
4. Shortly thereafter, Defendant began to undergo a series of weekly chemotherapy treatments.
5. In June 2015, Defendant underwent lumpectomy surgery followed by daily radiation treatment through October 2015.
6. The side effects commonly accompanying chemotherapy and radiation followed Defendant's treatments: severe nausea, depression, physical and emotional weakness, poor memory, hair loss, and impaired eye sight, among others.
7. In the midst of her battle with cancer and three days after one of her surgeries, Defendant woke up one morning to discover – with no prior warning – that her husband of nearly 30 years had left in the middle of the night and that he was filing for divorce.
8. Defendant's husband served discovery on Defendant that week, even though litigation had not yet begun.
9. Shortly thereafter, in the midst of her sudden and contentious divorce, Defendant was diagnosed with diplopia, a serious eye condition likely resulting from the chemotherapy.
10. Defendant underwent a brain MRI that revealed that she would need surgery on both eyes in the near future.
11. While the potential harm caused by Defendant's actions was significant, the actual harm was, according to Defendant's former firm, minimal – it took approximately two hours and \$1,000.00 to correct the issue.
12. Defendant, of her own volition and not upon request of Plaintiff or her former firm, has reimbursed her former firm for the total costs of correcting the harm caused by her actions.

13. The mental and physical trauma of Defendant's battle with cancer and her contentious divorce affected her judgment and ability to practice law.

14. Defendant has been open and honest with Plaintiff at all stages of this disciplinary proceeding against her.

15. Defendant has admitted to all of the violations and expressed sincere remorse for her actions.

16. Defendant's colleagues – including attorneys at her former firm – have a high opinion of Defendant's trustworthiness and capabilities as a lawyer.

17. Defendant has, since engaging in the misconduct that is the subject of this action, established, of her own volition and not upon request of Plaintiff, a system of professional and personal accountability and support in an effort to protect her clients and herself from any further lapses in judgment or mistakes of this nature.

18. Defendant's divorce is nearing resolution and she is now cancer free; thus, she is no longer experiencing the circumstances that affected her judgment and ability to practice law.

19. The Hearing Panel has carefully considered all of the different forms of discipline available, including admonition, reprimand, censure, suspension, and disbarment, in considering the appropriate discipline to impose in this case.

Based upon the Findings of Fact, Conclusions of Law, Additional Findings of Fact Regarding Discipline, and the consent of the parties, the Hearing Panel 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)(1) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are present:

- a. Intent of Defendant to commit acts where the harm or potential harm is foreseeable;
- b. Circumstances reflecting the defendant's lack of honesty, trustworthiness, or integrity; and
- c. Acts of dishonest, misrepresentation, deceit, or fabrication.

2. While the Hearing Panel does not believe that disbarment is necessary in light of the unique and extraordinary extenuating circumstances present in this case, it has considered all of 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 concludes that the following factors are applicable:

- a. Acts of dishonesty, misrepresentation, deceit, or fabrication; and
- b. Commission of a felony.

3. 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 concludes the following factors are applicable:

- a. The absence of prior disciplinary offenses in this state or any other jurisdiction;
- b. Effect of personal or emotional problems on the conduct in question;
- c. Effect of physical or mental disability or impairment on the conduct in question;
- d. Interim rehabilitation;
- e. Full and free disclosure to the hearing panel or cooperative attitude toward the proceedings;
- f. Remorse; and
- g. Character and reputation.

4. The Hearing Panel has considered issuing an admonition, reprimand or censure but concludes that such discipline would not be sufficient. The Hearing Panel concludes that such discipline would fail to acknowledge the seriousness of the violations committed by Defendant and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar in this State.

5. The Hearing Panel has considered all alternatives and concludes that a suspension is necessary to adequately protect the public. The Hearing Panel finds that an order imposing discipline short of suspension would not be appropriate.

Based upon the foregoing Findings of Fact, Conclusions of Law and the Additional Findings of Fact and Conclusions regarding discipline, and with the consent of the parties, the Hearing Panel enters the following:

ORDER OF DISCIPLINE

1. Defendant, Marjorie R. Mann, is hereby suspended from the practice of law for four years.

2. Defendant is taxed with the costs and administrative fees of this action as assessed by the Secretary. Defendant shall be served with a statement of costs and administrative fees

assessed against Defendant. Defendant shall pay the costs and administrative fees within thirty days of service of the statement of costs and administrative fees upon her.

3. The four-year suspension is stayed for a period of four years as long as Defendant complies, and continues to comply during the period of the stay, with the following conditions:

- a. Defendant pays the administrative fees and costs of this proceeding as assessed by the Secretary of the State Bar within thirty days of service of the statement of fees and costs upon her;
- b. Each year of the stay, Defendant completes four additional hours of Continuing Legal Education ("CLE") courses on the subject of ethics or professional responsibility. This CLE requirement is in addition to the CLE requirements set out in North Carolina Administrative Code, Title 27, Chapter 1, Subchapter D § .1518. These courses must be completed within the applicable time period for completing the CLE hours required under North Carolina Administrative Code, Title 27, Chapter 1, Subchapter D § .1518 each year of the stay and must be reported on the annual CLE report forms;
- c. Defendant arranges for an active member of the North Carolina State Bar who is in good standing who practices law in the county in which Defendant primarily practices and who has been approved by the State Bar Office of Counsel to serve as her practice monitor. The selected monitor must agree to serve and agree to meet with Defendant monthly to review Defendant's cases. Each month, the monitor must go over at least one case in detail in each area of law in which Defendant is practicing, with discussion including but not limited to identification of applicable statutory and regulatory authorities, identification of potential legal issues, plan of representation, and the appropriate roles of Defendant's nonlawyer assistants in each case. Defendant shall come prepared each month to discuss these topics in her cases with her practice monitor. The monitor must submit written quarterly reports of these meetings and discussions to the Office of Counsel; such reports are due on the following dates as they occur during the stay of this suspension: October 15, January 15, April 15, and July 15. This monitoring must occur for the duration of the stay of this suspension. Defendant will pay all costs, if any, charged by the monitor. 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 or her agreement to perform the duties listed above no later than thirty days from service of this Order upon Defendant;
- d. Defendant keeps the North Carolina State Bar Membership Department advised of her current physical business address (not post office box or drawer addresses), telephone number, and e-mail address and notifies the Bar of any change in address within ten days of such change;
- e. Defendant accepts all certified mail from the State Bar sent to the address on record with the Membership Department of the North Carolina State Bar;

- f. Defendant responds to all letters of notice and requests for information from the North Carolina State Bar by the deadline stated therein with full and complete responses and all requested documentation;
- g. Defendant timely complies with all State Bar continuing legal education requirements and pays all fees and costs assessed by the applicable deadline;
- h. Defendant pays all membership dues, fees, costs and assessments, including all Client Security Fund assessments, and other charges or surcharges the State Bar is authorized to collect from her, including all judicial district dues and assessments all membership, Client Security Fund, and any other related dues, fees, costs and/or assessments by the applicable deadline;
- i. Defendant does not violate any of the Rules of Professional Conduct in effect during the period of the stay; and
- j. Defendant does not violate the laws of the United States, or the laws of any state or local government, other than minor traffic violations, during the period of the stay.

4. Unless Defendant's obligations under this Order are modified by further order of the DHC, Defendant's obligations under this Order end four years from the effective date of the Order provided there are at that time no motions or show cause proceedings pending alleging lack of compliance with the conditions of the stay of the suspension. Pursuant to 27 N.C. Admin. Code 1B § .0114(x), the DHC retains jurisdiction until all conditions of the stay of the suspension have been met. If a motion or show cause proceeding alleging lack of compliance with the conditions for the stay of the suspension is pending when the period of the stay of the suspension would otherwise have terminated, the DHC retains the jurisdiction and ability to lift the stay of the suspension and activate the suspension in whole or in part if it finds that any of the conditions of the stay have not been met. The stay of the suspension and Defendant's obligation to comply with the conditions for the stay will continue until resolution of any such pending motion or show cause proceeding.

5. If Defendant fails to comply with any one or more of the conditions set out above in this Order of Discipline, then the stay of the suspension may be lifted and the suspension activated in accordance with 27 N.C. Admin. Code 1B § .0114(x).

6. If the stay of the suspension is lifted and the suspension is activated for any reason, the DHC may enter an order imposing such conditions as it deems proper for the reinstatement of Defendant's license at the end of the suspension. Moreover, in addition to complying with the provisions of 27 N.C. Admin. Code 1B § .0125, Defendant must establish the following by clear, cogent and convincing evidence prior to being reinstated to the practice of law after any period of active suspension:

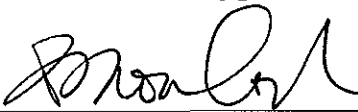
- a. That Defendant submitted her law license and membership card to the Secretary of the State Bar within thirty days of the date of the order lifting the stay and/or activating the suspension of her law license;
- b. That Defendant complied with the provisions of 27 N.C. Admin. Code 1B § .0124 following entry of the order lifting the stay and/or activating the suspension of her law license;
- c. That Defendant timely paid all administrative fees and costs assessed against her in this proceeding as reflected on the statement of costs served upon her by the Secretary of the State Bar;
- d. That within 15 days of the effective date of the order activating the suspension, Defendant provided the State Bar with an address and telephone number at which clients seeking return of files could communicate with Defendant to obtain such files;
- e. That Defendant provided within ten days client files to all clients who made a request for return of their files;
- f. That Defendant kept the State Bar Membership Department advised of her current business street addresses (not post office box or drawer addresses) and notified the State Bar of any change in address within ten days of such change;
- g. That Defendant responded to all communications from the State Bar, including communications from the Attorney Client Assistance Program, within thirty days of receipt or by the deadline stated in the communication, whichever is sooner;
- h. That, at the time of her petition for reinstatement, Defendant is current in payment of all membership dues, fees, costs and assessments, including all Client Security Fund assessments, and other charges or surcharges the State Bar is authorized to collect from her, including all judicial district dues and assessments;
- i. That, at the time of her petition for reinstatement, there is no deficit in Defendant's completion of mandatory CLE hours, in reporting of such hours, or in payment of any fees associated with attendance at CLE programs;
- j. That Defendant did not violate any of the Rules of Professional Conduct in effect during the period of the suspension; and
- k. That Defendant did not violate the laws of the United States, or the laws of any state or local government, other than minor traffic violations, during the period of the suspension.

7. If Defendant is obligated to comply with the provisions of 27 N.C. Admin. Code 1B § .0124 to wind down her practice and fails to do so at any point during the effective period

of this Order, Defendant shall reimburse the State Bar for any and all expenses incurred by the State Bar to wind down Defendant's practice. Such expenses may include, but are not limited to, storage facility fees, rent payments, moving expenses, charges for secure disposal of client files, postage or other mailing expenses, and compensation paid to a trustee and/or a trustee's assistant for time and travel associated with any trusteeship. The State Bar shall send an invoice of wind-down expenses to Defendant at Defendant's last known address of record with the North Carolina State Bar. Defendant shall not be eligible to file a petition for reinstatement until she has reimbursed the State Bar for all wind-down expenses incurred.

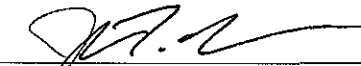
8. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules until all conditions of the stay of suspension are satisfied.

Signed by the Chair with the consent of the other hearing panel members, this the 21st day of March 2017.



Chair
Disciplinary Hearing Panel

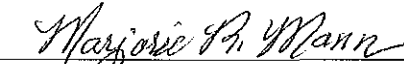
CONSENTED TO BY:



Joshua T. Walthall
Counsel for Plaintiff

3/20/17

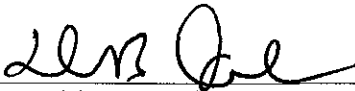
Date



Marjorie R. Mann
Defendant

3/13/17

Date



David B. Freedman
Counsel for Defendant

3/15/17

Date



Dudley A. Witt
Counsel for Defendant

3/15/17

Date