

STATE OF NORTH CAROLINA

WAKE COUNTY

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

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

WILLIAM E. BROWN, Attorney,

Defendant

ORDER

Defendant, William E. Brown ("Brown" or "Defendant") was ordered to appear and show cause why the stay of the suspension imposed by the Order of Discipline entered in this case on July 19, 2010 should not be lifted and the suspension activated. This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of J. Michael Booe, Chair, and members Harriett Smalls and Dr. Charles L. Garrett, Jr. pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(x). The Plaintiff was represented by Jennifer A. Porter. The Defendant was represented by Bryce D. Neier. Based upon the evidence presented at the hearing in this matter, the Hearing Panel hereby finds by the greater weight of the evidence the following:

FINDINGS OF FACT

1. On July 19, 2010, an Order of Discipline was entered in this matter. The Order was served on Defendant on July 26, 2010. The effective date of the Order of Discipline was August 25, 2010. The Order of Discipline entered on July 19, 2010 in this matter shall be referred to herein as "the Order of Discipline."

2. The Order of Discipline imposed a three year suspension of Defendant's license to practice law. The Order of Discipline provided that the suspension would be stayed for three years, contingent upon compliance with the conditions stated in the order.

3. Paragraph 3.o. of the Order of Discipline required Defendant to violate no provision of the Rules of Professional Conduct of the North Carolina State Bar during the term of the stayed suspension.

4. Rule 1.3 of the Rules of Professional Conduct requires a lawyer to act with reasonable diligence and promptness in representing a client.

5. Defendant had been retained by Pamela Monroe to represent her to obtain a divorce from Carl Monroe. Defendant failed to properly notice Ms. Monroe's divorce hearing set for September 13, 2010 and thereby failed to diligently represent Ms. Monroe.

6. Defendant's failure to diligently represent Pamela Monroe later caused problems to develop when Ms. Monroe and Carl Monroe discovered they were not divorced in November 2010.

7. Rule 1.5(f)(2) of the Rules of Professional Conduct requires a lawyer to participate in good faith in the fee dispute resolution process.

8. On August 20, 2010, the State Bar served Defendant with notice of the Petition for Resolution of Disputed Fee filed by Virginia Akins. Defendant's response to the fee dispute was due no later than September 4, 2010. Defendant failed to respond and failed to participate in the fee dispute process.

9. On August 25, 2010, the State Bar served Defendant with notice of the Petition for Resolution of Disputed Fee filed by Jackie R. Godwin, Jr. Defendant's response to the fee dispute was due no later than September 9, 2010. Defendant failed to respond and failed to participate in the fee dispute process.

10. On September 16, 2010, the State Bar served Defendant with notice of the Petition for Resolution of Disputed Fee filed by Varonica Morrison. Defendant's response was due no later than October 1, 2010. Defendant failed to timely respond to the notice of fee dispute. Defendant submitted a late response on October 12, 2010. The State Bar sent a supplemental inquiry to Defendant requesting additional information and documentation. Defendant failed to respond to this supplemental inquiry.

11. On September 10, 2010, the State Bar served Defendant with notice of the Petition for Resolution of Disputed Fee filed by Jackie Godwin, Sr. Defendant's response was due no later than September 25, 2010. Defendant failed to respond to the fee dispute and failed to participate in the fee dispute process.

12. Rule 8.1(b) requires a lawyer not to knowingly fail to respond to a lawful demand for information from a disciplinary authority.

13. On August 26, 2010, the State Bar served Defendant with a Letter of Notice in grievance file 10G0500 (complainant Norman K. Pettit). Defendant's response to the Letter of Notice was due 15 days from receipt. Defendant failed to respond within 15 days of receipt.

14. On October 8, 2010, the State Bar served Defendant with a Letter of Notice in grievance file 10G1004 (complainant Jackie Godwin, Jr.). Defendant's response to the Letter of Notice was due 15 days from receipt. Defendant failed to respond within 15 days of receipt.

15. On October 8, 2010, the State Bar served Defendant with a Letter of Notice in grievance file 10G1005 (complainant Virginia D. Akins). Defendant's response to the Letter of Notice was due 15 days from receipt. Defendant failed to respond within 15 days of receipt. Defendant submitted a late response. On November 10, 2010, the State Bar sent a letter to Defendant requesting additional information with a due date of November 29, 2010. Defendant failed to respond to this request by November 29, 2010. Defendant submitted a late response to the request for additional information on December 22, 2010.

16. On January 5, 2011, the State Bar served Defendant with a Letter of Notice in grievance file 10G1148 (complainant Varonica Morrison). Defendant's response to the Letter of Notice was due 15 days from receipt. Defendant failed to respond within 15 days of receipt.

17. Defendant had the ability to timely respond to the fee disputes and grievances listed above.

18. Paragraph 3.l. of the Order of Discipline required Defendant to pay all costs assessed by the Secretary in connection with the disciplinary proceeding, including deposition costs and expert witness costs as allowed by statute, within 30 days of service of a statement of these costs upon him.

19. The Assistant Clerk of the Disciplinary Hearing Commission sent the statement of costs to Defendant by regular mail on August 18, 2010 and served Defendant with the statement of costs by certified mail on September 25, 2010.

20. Based on the service date of September 25, 2010, Defendant was required to pay the costs no later than October 25, 2010.

21. Defendant failed to pay the costs within 30 days of service of the statement of costs.

22. Defendant did not pay the costs until March 4, 2011.

23. Defendant had the ability to pay the costs in a timely manner.

Based upon the foregoing Findings of Fact, the Hearing Panel hereby enters the following:

CONCLUSIONS OF LAW

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

2. The hearing in this matter was conducted pursuant to Rule .0114(x) of the North Carolina State Bar Discipline and Disability Rules. The standard applicable at this hearing is as set out in Rule .0114(x), to wit: "After such a hearing, the hearing panel may enter an order lifting the stay and activating the suspension or any portion thereof,

and taxing the defendant with the costs, if it finds that the North Carolina State Bar has proven, by the greater weight of the evidence, that the defendant violated a condition.” The standard that applies to civil contempt is not the applicable standard for this hearing.

3. Defendant, William E. Brown, has failed to comply with the following conditions of the stay of his suspension contained in the Order of Discipline:

- a. That he pay the costs of the proceeding within 30 days of service of the statement of costs upon him;
- b. That he not violate the Rules of Professional Conduct during the stay of his suspension.

4. The evidence was insufficient to establish that Defendant or his staff continued to represent Pamela Monroe after the date by which he was required to terminate representation of female clients under the Order of Discipline.

5. Defendant substantially complied with terminating his representation of his female clients, obtaining treatment through therapy, and submitting reports to the State Bar.

6. Defendant violated the Rules of Professional Conduct requiring him to respond to the State Bar on at least eight occasions during the stay of the suspension in this case. The Hearing Panel cannot countenance an attorney failing to respond to the State Bar. Although the testimony indicates Defendant is an effective attorney in the courtroom, an essential obligation of each attorney’s professional life is participating in the self-regulation of the bar.

7. Defendant’s failure to timely pay the costs taxed against him is a substantial violation of the conditions of the stay of the suspension.

8. Defendant’s violations of the Rules of Professional Conduct and his failure to timely pay the costs of the disciplinary proceeding warrant lifting the stay and activating a portion of his suspension.

Based upon the foregoing Findings of Fact and Conclusions of Law and the Additional Findings and Conclusion, the Hearing Panel enters the following:

ORDER

1. The stay of Defendant’s suspension is lifted and six months of the three year suspension previously imposed are hereby activated. Pursuant to Rule .0124(c) of the North Carolina State Bar Discipline and Disability Rules, this order and the suspension imposed herein are effective 30 days after service of this order upon Defendant.


2. Defendant must comply with the obligations of a suspended attorney under Rule .0124 of the North Carolina State Bar Discipline and Disability Rules and the requirements of the Order of Discipline.

3. After serving the activated six months of his suspension, Defendant may apply to have the remainder of the three year suspension stayed by petitioning for reinstatement to active status as stated in paragraph 5 on page 11 of the Order of Discipline. In seeking reinstatement, Defendant must comply with the requirements of Rule .0125(b) of the North Carolina State Bar Discipline and Disability Rules and the requirements for reinstatement contained in paragraph 5 and its subparagraphs on pages 11 and 12 of the Order of Discipline. If reinstated to active status prior to the expiration of the three year suspension period, Defendant's active status shall be subject to, and contingent upon compliance with, the terms of the stayed suspension in the Order of Discipline for the remainder of the three year suspension period.

4. If Defendant is not reinstated to active status prior to the expiration of the three year suspension period, then before Defendant may be reinstated to active status he must satisfy the requirements of Rule .0125(b) of the North Carolina State Bar Discipline and Disability Rules and all requirements for reinstatement contained in paragraph 5 and its subparagraphs on pages 11 and 12 of the Order of Discipline.

Signed by the undersigned Chair of the Disciplinary Hearing Panel with the consent of the other Hearing Panel members.

This the 22nd day of March 2011.


J. Michael Booe, Chair
Disciplinary Hearing Panel