

STATE OF NORTH CAROLINA

NOV 2007

WAKE COUNTY

FILED
DHC

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
07 DHC 3

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

SCOTT E. HAWKINS, Attorney,

Defendant

ORDER OF DISCIPLINE

This matter was heard on September 28, 2007, before a hearing committee of the Disciplinary Hearing Commission composed of Sharon B. Alexander, Chair, John Breckenridge Regan, and Pamela U. Weis. Carmen K. Hoyme and Margaret T. Cloutier represented Plaintiff, the North Carolina State Bar. Defendant, Scott E. Hawkins, represented himself. Based upon the pleadings and the evidence introduced at the hearing, the hearing committee hereby enters the following

FINDINGS OF FACT

1. 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. Defendant, Scott E. Hawkins (hereinafter "Hawkins" or "Defendant") was admitted to the North Carolina State Bar on August 20, 1993, and is, and was at all times referred to herein an attorney at law licensed to practice in North Carolina, subject to the rules and regulations of the North Carolina State Bar, the Revised Rules of Professional Conduct, and the laws of the State of North Carolina.

3. Defendant was properly served with process and the hearing was held with due notice to all parties.

4. During the times relevant herein, Defendant was licensed to practice law only in the State of North Carolina and was not licensed to practice law in any other state.

5. Between August 2004 and April 2005, Defendant engaged in the unauthorized practice of law in the State of South Carolina by engaging in the following activities:

- a. Entering into an agreement with Amy Ramirez-Hector (hereinafter "Ramirez-Hector") to provide legal services, including legal advice, representation, and legal work product, in a divorce action pending in the State of South Carolina;
- b. Providing counsel and advice to Ramirez-Hector, who was the named defendant in Case No. 03DR26-2209, Horry County Superior Court, State of South Carolina (hereinafter "the South Carolina case");
- c. Communicating offers to settle the South Carolina case to counsel for Claude J. Hector, the named plaintiff therein;
- d. Sending written communication to the trial court in the South Carolina case, which the court construed as a request for continuance;
- e. Preparing a Motion for Reconsideration of the January 18, 2005 Final Order in the South Carolina case; and
- f. Preparing a Notice of Appeal to the South Carolina Court of Appeals from the January 18, 2005 Final Order in the South Carolina case.

6. On or about August 6, 2004, Defendant and his girlfriend, Dawn M. Baker ("Baker"), began residing with Ramirez-Hector at 27200 East State Route 70 in Myakka City, Florida ("the Myakka City property"), which was jointly owned by Ramirez-Hector and Claude J. Hector.

7. Ramirez-Hector did not give informed consent, in a signed writing, to the terms of the agreement by which Defendant and Baker resided at the Myakka City property.

8. Defendant did not advise Ramirez-Hector of the desirability of seeking independent legal counsel regarding the agreement for Defendant and Baker to reside at the Myakka City property.

9. Defendant and Baker continued to live at the Myakka City property through at least April 2005.

10. On or about October 20, 2004, Defendant communicated directly with Claude J. Hector, the named plaintiff in the South Carolina case, about settlement of that case when Defendant knew Claude J. Hector was represented by counsel.

11. On or about July 10, 2005, a grievance was filed with the State Bar against Defendant regarding his conduct in the South Carolina case.

12. On or about August 8, 2005, the State Bar issued a letter of notice to Defendant, advising him that a grievance had been filed against him. Defendant responded to the letter of notice on September 26, 2005.

13. On or about October 27, 2005, Counsel for the State Bar sent a follow-up letter requesting further information from Defendant regarding the grievance. Defendant failed to respond to the State Bar's October 27, 2005 letter.

14. On or about December 14, 2005, a State Bar investigator sent another follow-up letter to Defendant reminding him to respond to the October 27, 2005 letter and providing Defendant another copy of the October 27 letter. Defendant failed to respond to the December 14, 2005 letter.

CONCLUSIONS OF LAW

1. All the parties are properly before the hearing committee and the committee has jurisdiction over Defendant, Scott E. Hawkins, and the subject matter.

2. Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-28(b)(2) and (b)(3) as follows:

- (a) By agreeing to represent Ramirez-Hector, counseling Ramirez-Hector, communicating with opposing counsel, and preparing legal documents for filing, all in the South Carolina case, when he was not licensed to practice law in South Carolina, Defendant engaged in the unauthorized practice of law in violation of Rule 5.5(a);
- (c) By residing in the Myakka City property owned by Ramirez-Hector, without obtaining her prior informed consent in a signed writing and without advising her of the desirability of seeking independent legal counsel, Defendant entered into a business transaction with a client, in violation of Rule 1.8(a);
- (d) By communicating directly with Claude J. Hector, Defendant communicated with a person he knew to be represented by another lawyer in the matter in violation of Rule 4.2(a); and
- (e) By failing to respond the State Bar's December 14, 2005 follow-up letter regarding a grievance, Defendant failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b) and N.C. Gen. Stat. § 84-28(b)(3).

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the evidence and arguments of the parties concerning appropriate discipline, the hearing committee hereby makes additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. The Committee finds the following aggravating factor:
 - a. multiple offenses.
2. The Defendant's misconduct is mitigated by the following factors:
 - a. absence of a prior disciplinary record; and
 - b. absence of a dishonest or selfish motive.
3. The mitigating factors outweigh the aggravating factor.
4. Defendant's actions caused actual harm to the standing of the legal profession and to the administration of justice. Disregard for the Rules of Professional Conduct causes significant harm to the standing of the legal profession in the eyes of the public because it demonstrates disdain for a lawyer's obligations as an officer of the court. Such erosion of public confidence in attorneys tends to sully the reputation of, and fosters disrespect for, the profession as a whole.
5. Defendant's failure to respond to a follow-up letter from the State Bar regarding a grievance interfered with the State Bar's ability to regulate attorneys and undermined the privilege of lawyers in this State to remain self-regulating.
6. Defendant's pattern of conduct reveals an acute lack of understanding of his obligations under the Rules of Professional Conduct, and Defendant has failed to present any evidence that he has reformed or taken any steps to ensure that the public will not be harmed if he is permitted to continue to practice law at this time.
7. This DHC Committee has considered lesser alternatives and finds that a public censure or reprimand would not be sufficient discipline because of the gravity of the harm to the legal profession and to the administration of justice caused by Defendant's conduct, and the threat of significant potential harm Defendant poses to the public.
8. This DHC Committee finds Defendant's conduct caused significant harm to the administration of justice, to the profession, and significant potential harm to his client and members of the public, and that a more severe discipline is necessary to protect the profession, the public, and potential clients.
9. This Committee finds that entry of an order less than a suspension would fail to acknowledge the seriousness of the offenses committed by Defendant and would send the wrong message to attorneys regarding the conduct expected of member of the Bar in this State.

10. For those reasons, this DHC Committee believes and so finds that an Order calling for a discipline short of a suspension of Defendant's law license would not be appropriate.

11. The expenses incurred by Plaintiff for stenographic and videographic assistance in the taking of depositions in this matter and the cost of deposition transcripts were reasonable and necessary in the litigation of this case. The cost of the depositions should be taxed to the Defendant.

Based upon the foregoing Findings and Conclusions of Law and the arguments of the parties, the hearing committee hereby enters the following

ORDER OF DISCIPLINE

1. The license of Defendant, Scott E. Hawkins, is hereby suspended for three years, beginning 30 days from the date of service of this order upon Defendant.
2. Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon Defendant.
3. After serving one year of the active suspension of his license, Defendant may apply for reinstatement upon filing a petition with the Secretary of the North Carolina State Bar demonstrating the following by clear, cogent, and convincing evidence:
 - a. That he paid the costs of this proceeding within 30 days of service of the statement of costs upon him.
 - b. That he has kept the North Carolina State Bar Membership Department advised of his current business and home address.
 - c. That he has responded to all communications from the North Carolina State Bar within 30 days of receipt or by the deadline stated in the communication, whichever is sooner.
 - d. That he has not violated the Revised Rules of Professional Conduct or the laws of the United States or any state.
 - e. That he paid all Membership dues and Client Security Fund assessments and complied with all Continuing Legal Education (CLE) requirements on a timely basis as if still in practice during the suspension.

- f. That in addition to satisfying the CLE requirements imposed upon all active members of the State Bar during the applicable time period, Defendant has obtained annually an additional three (3) hours of ethics CLE specific to the North Carolina Rules of Professional Conduct, above that which is otherwise required by the State Bar.

4. If Defendant successfully seeks a stay of the suspension of his law license, such stay will continue in force only as long as he complies with the conditions set out in paragraphs 3(b) – (e) above and with the following conditions:

- a. After the suspension is stayed, Defendant shall file a quarterly report with the State Bar's Office of Counsel which lists any legal services provided by Defendant to clients outside the state of North Carolina, and, for each client, describes all measures Defendant is taking to comply with the other jurisdiction's law regarding the unauthorized practice of law.

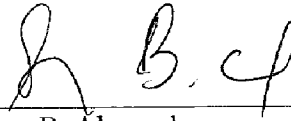
5. If an order staying any period of this suspension is entered and Defendant fails to comply with any one or more of the conditions referenced in Paragraphs 3(b) – (e) and (4), then the stay of the suspension of his law license may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

6. If Defendant does not seek a stay of the active portion of the suspension of his law license or if some part of the suspension is stayed and thereafter the stay is revoked, Defendant must comply with the conditions set out in Paragraphs 3(a) – (f) above before seeking reinstatement of his license to practice law.

7. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of the stayed suspension.

8. Defendant shall be taxed with the costs permitted by law in connection with this proceeding, including deposition costs.

Signed by the Chair with the consent of the other hearing committee members,
this the 16 day of November, 2007.

A handwritten signature in black ink, appearing to read 'S. B. Alexander', is positioned above a horizontal line.

Sharon B. Alexander
Chair, Disciplinary Hearing Committee