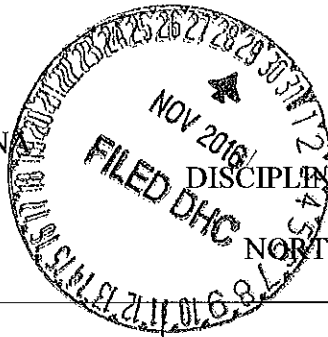


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
16 DHC 38

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

SHAUN L. HAYES, Attorney,

Defendant

CONSENT ORDER
OF
DISCIPLINE

This matter was considered by a hearing panel of the Disciplinary Hearing Commission composed of Fred M. Morelock, Chair, William O. King, and Jane B. Weathers. Leonor Bailey Hodge represented Plaintiff, the North Carolina State Bar. Defendant, Shaun L. Hayes was represented by Deanna Brocker. Defendant waives a formal hearing in the above referenced matter. The parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order. The parties consent to the discipline imposed by this order. Defendant knowingly, freely, and voluntarily waives his right to appeal this consent order or to challenge in any way the sufficiency of the findings by consenting to entry of this order.

Based on the foregoing and on the consent of the parties, the Hearing Panel hereby makes by clear, cogent, and convincing evidence the following:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar (hereafter "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, Shaun L. Hayes (hereafter "Defendant"), was admitted to the State Bar on 26 August 2003 and is an attorney at law 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 the relevant periods referred to herein, Defendant was actively engaged in the practice of law and maintained a law office in Asheboro, Randolph County, North Carolina.
4. T. Lancaster retained Defendant on or about 23 September 2015 to represent her in a civil dispute between Lancaster and her employee/landlord S. Wood.

5. Defendant charged and Lancaster paid Defendant \$2,500 for the representation.
6. On or about 25 September 2015, Lancaster learned from Wood that Defendant had previously represented Wood's ex-husband in an unrelated domestic matter against Wood.
7. Although Defendant represented Wood's ex-husband in the domestic matter, Wood and her ex-husband had since reconciled.
8. At the time of Defendant's representation of Lancaster, Lancaster considered both Wood and Wood's ex-husband as her adversaries in the civil matter.
9. Lancaster ended Defendant's representation of her out of concerns about his ability to be loyal to his representation of her given his prior representation of Wood's ex-husband.
10. On or about 17 October 2015, Lancaster filed a Petition for Resolution of Disputed Fee ("Fee Dispute Petition").
11. Pursuant to the Fee Dispute Petition, Lancaster sought the return of the \$2,500 fee she had paid Defendant because she was concerned that Defendant's prior representation of Wood's ex-husband negatively affected his loyalty to his representation of Lancaster.
12. Defendant submitted his response to the Fee Dispute Petition on or about 29 October 2015.
13. In his response to the Fee Dispute Petition, Defendant denied engaging in misconduct, stated that he had earned according to the written fee agreement the fee Lancaster paid, and attached to his response a 23 September 2015 Hayes Law Firm Agreement which he represented as the fee agreement between him and Lancaster ("the agreement").
14. "T. Lancaster" is on the signature line at the bottom of the agreement purporting to represent the signature of Lancaster.
15. Lancaster did not sign the agreement Defendant attached to his response to the Fee Dispute Petition.
16. Defendant handwrote "T. Lancaster" on the agreement he submitted in support of his response to the Fee Dispute Petition to falsely represent the signature as Lancaster's.
17. Defendant was successful in his effort to have the Fee Dispute Petition dismissed.
18. On 15 January 2016, a grievance file was opened against Defendant alleging in part that Defendant handwrote Lancaster's signature on the agreement he provided in support of his response to the Fee Dispute Petition.

19. In his response to the grievance, Defendant “adamantly denie[d]” the allegation that he handwrote Lancaster’s signature on the agreement.

20. On or about 25 May 2016, Defendant was provided with the opinion of a handwriting expert that Lancaster did not sign the agreement.

21. After being provided with the handwriting expert’s opinion about the signature on the agreement, Defendant admitted that he had written Lancaster’s signature on the agreement.

Based upon the consent of the parties and the foregoing Findings of Fact, 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, Shaun L. Hayes, and over the subject matter.

2. Defendant’s conduct, as set forth in the 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 as follows:

- a) By submitting the agreement bearing a false, handwritten signature in support of his response to the Fee Dispute Petition, Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);
- b) By handwriting “T. Lancaster” on the agreement with the intent to falsely represent it as Lancaster’s signature, Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c); and
- c) By denying in his response to the grievance complaint the allegation that he handwrote Lancaster’s signature, Defendant knowingly made a false statement of material fact in connection with a disciplinary matter in violation of Rule 8.1(a), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

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

ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE

- 1. Defendant has no prior discipline.
- 2. One of the issues for which Lancaster sought Defendant’s assistance was access to the property that was the subject of the dispute between Lancaster and her

landlord. Lancaster obtained access to the property before she ended Defendant's representation of her.

3. The domestic matter in which Defendant represented Wood's ex-husband was initiated in or about May 2006 and was concluded in or about June 2006.

4. Defendant expressed remorse for his conduct and apologized to Lancaster.

5. Defendant refunded the legal fee that he charged Lancaster for his representation of her.

6. Defendant paid Lancaster for the cost she incurred for the handwriting expert.

7. Defendant has a good reputation in the community and among his professional colleagues.

Based upon the Findings of Fact and Conclusions of Law above and the Additional Findings of Fact Regarding Discipline, and with the consent of the parties, the Hearing Panel makes the following:

CONCLUSIONS OF LAW REGARDING DISCIPLINE

1. The Hearing Panel has considered all of the factors contained in 27 N.C. Admin. Code 1B § .0114(w)(1) and concludes that the following factors that warrant suspension or disbarment are present:

- (a) Intent of the defendant to commit acts where the harm or potential harm is foreseeable;
- (b) Circumstances reflecting the defendant's lack of honesty, trustworthiness, or integrity;
- (c) Elevation of the defendant's own interest above that of the client;
- (d) Negative impact of defendant's actions on client's or public's perception of the profession;
- (e) Negative impact of the defendant's actions on the administration of justice; and
- (f) Acts of dishonesty, misrepresentation, deceit or fabrication.

2. The Hearing Panel has considered all of the factors contained in 27 N.C. Admin. Code 1B § .0114(w)(2) and concludes that the following factor exists that warrants consideration of disbarment:

(a) Acts of dishonesty, misrepresentation, deceit or fabrication.

3. The Hearing Panel has considered all of the factors contained in 27 N.C. Admin. Code 1B § .0114(w)(3) and concludes that the following are applicable in this matter:

(a) Absence of prior disciplinary offenses;

(b) Good character and reputation;

(c) Remorse; and

(d) Defendant has been licensed to practice law for approximately thirteen years.

4. By choosing to engage in dishonest conduct, Defendant caused significant potential harm to the legal profession.

5. By providing false documentation in support of his response to the fee dispute petition, Defendant caused harm to Lancaster.

6. By initially providing a false response to the grievance complaint, Lancaster caused harm to the attorney self-regulation process and thus, the legal profession and to Lancaster in that she had to incur the cost of a handwriting expert.

7. The Hearing Panel considered disbarment, but determined that disbarment is not warranted because: (i) Defendant has no prior discipline, (ii) his misconduct was isolated, (iii) his misconduct did not cause significant harm, though it created the potential for significant harm to the profession, and (iv) Defendant made restitution to Lancaster for the harm caused to her by his misconduct.

8. The Hearing Panel has considered all lesser sanctions including: censure, reprimand, and admonition, and finds that discipline less than suspension would not adequately protect the public from Defendant's future misconduct because of the harm caused to his client and the gravity of potential significant harm Defendant's conduct caused to the profession.

Based upon the foregoing Findings of Fact, Conclusions of Law, Additional Findings of Fact Regarding Discipline, and Conclusions of Law Regarding Discipline, and on the consent of the parties, the Hearing Panel enters the following:

ORDER OF DISCIPLINE

1. Defendant, Shaun L. Hayes, is hereby suspended from the practice of law for 2 years, effective 30 days from service of this order upon Hayes.
2. Defendant shall submit his law license and membership card to the Secretary of the State Bar no later than 30 days following the effective date of this Order.
3. Defendant shall comply with the wind down provisions contained in 27 N.C. Admin. Code 1B § .0124 (“Obligations of Disbarred or Suspended Attorneys”). As provided in § .0124(d), Defendant shall file an affidavit with the Secretary of the State Bar within 10 days of the effective date of this Order, certifying he has complied with the wind down rule.
4. Defendant is taxed with the costs and administrative fees for this action as assessed by the Secretary. Defendant shall pay, within 30 days of service of the statement of fees and costs upon him by the Secretary of the State Bar, the administrative fees and costs of this proceeding.
5. Within 30 days after service of this Order, Defendant shall provide the State Bar’s Office of Counsel with an address and telephone number at which clients seeking their files can communicate with Defendant. Defendant shall promptly return all files to his clients upon request.
6. After serving no less than one year of the suspension, Defendant may apply for a stay of the remaining period of suspension imposed by this Order by filing a motion in the cause and demonstrating by clear, cogent and convincing evidence that in addition to complying with the general provisions of 27 N.C. Admin. Code 1B § .0125 (“Reinstatement”), Defendant has complied with the following:
 - (a) Defendant timely complied with paragraphs 2-5 of this section of the Order of Discipline;
 - (b) Defendant kept the State Bar Membership Department advised of his current physical home and business addresses (addresses must be a street address, not P.O. Box or Drawer);
 - (c) Defendant has accepted all certified mail from the State Bar and responded to all letters of notice and requests for information from the State Bar – including communications from the Attorney Client Assistance Program – within 30 days of receipt or by the deadline state in the communication; whichever is sooner;
 - (d) Defendant participated fully, timely and in good faith in the State Bar’s fee dispute resolution program when notified of any petitions for resolution of disputed fees. This provision applies to any fee dispute petition pending at the

time of entry of this Order or of which he receives notice after the effective date of this Order;

- (e) Defendant did not engage in the unauthorized practice of law during the period of suspension;
- (f) Defendant did not violate the Rules of Professional Conduct or any state or federal laws other than minor traffic violations during the period of active suspension.

7. Defendant may file a motion in the cause seeking a stay of the remainder of the suspension up to 30 days prior to completing one year of active suspension, but shall not be reinstated prior to the end of at least a one year suspension period.

8. If Defendant successfully seeks a stay of the suspension of his law license pursuant to this Order, the stay will continue in force only as long as Defendant complies with the following conditions:

- (a) Defendant shall keep the State Bar Membership Department advised of his current physical home and business addresses (addresses shall be street addresses, not P.O. Box or Drawer), telephone numbers, and email address, and shall notify the membership department within 10 days of any change to his contact information;
- (b) Defendant shall accept all certified mail from the State Bar and respond to all letters of notice and requests for information from the State Bar within 30 days or by the deadline stated in the communication, whichever is sooner;
- (c) Defendant shall timely comply with his State Bar membership and continuing legal education requirements, and pay all fees and costs assessed by the State Bar and the Client Security Fund by the applicable deadline;
- (d) Defendant shall satisfy the CLE requirements for members in good standing;
- (e) Defendant shall participate fully, timely, and in good faith in the State Bar's fee dispute resolution program when notified of any petitions for resolution of disputed fees; and
- (f) Defendant shall not violate the Rules of Professional Conduct or any state or federal laws (including the revenue and tax laws of any jurisdiction) other than minor traffic violations during the period of stayed suspension.

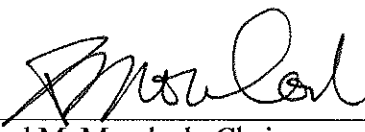
9. If Defendant fails to comply with any one or more of the conditions stated in Paragraph 8 above, then the stay of the suspension of his law license may be lifted as provided in 27 N.C. Admin. Code 1B § .0114(x) ("Stayed Suspensions").

10. If Defendant does not seek a stay of the suspension, or if some part of the suspension is stayed and thereafter the stay is revoked, Defendant must provide in his application for reinstatement clear, cogent, and convincing evidence of the following:

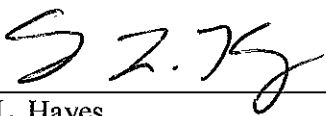
- (a) Compliance with the general provisions for reinstatement listed in 27 N.C. Admin. Code 1B § .0125 ("Reinstatement"); and
- (b) Compliance with the conditions set out in paragraph 6, above.


11. 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 throughout the suspension, and any stay thereof, and until all of the conditions in paragraph 6 above are satisfied.


Signed by the Chair with the consent of the other Hearing Panel members this the 29th day of November, 2016.


Fred M. Morelock, Chair
Disciplinary Hearing Panel

WE CONSENT:


Shaun L. Hayes
Defendant


Deanna Brocker
Attorney for Defendant


Leann Bailey Hodge, Deputy Counsel
Attorney for Plaintiff