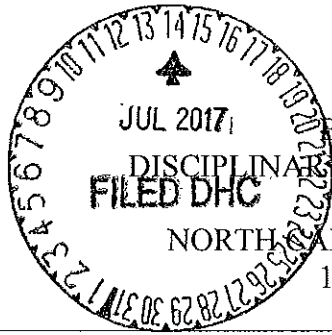


NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION,
OF THE
NORTH CAROLINA STATE BAR
16 DHC 40

THE NORTH CAROLINA STATE BAR,)
Plaintiff)

v.)

CRAIG OWEN ASBILL, Attorney,)
Defendant)

ORDER OF DISCIPLINE

This matter was heard by a Hearing Panel of the Disciplinary Hearing Commission composed of R. Lee Farmer, Chair, and members William O. King and Jane B. Weathers pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff was represented by Deputy Counsel Margaret T. Cloutier. Defendant made no appearance, but was properly served with process and was duly notified of the hearing in this matter.

Asbill failed to file a responsive pleading in this matter and on May 23, 2017 the Hearing Panel entered an Order Pursuant to Default against Asbill in which the allegations in the Plaintiff's complaint were deemed admitted and concluding as a matter of law that Asbill violated the Rules of Professional Conduct set forth in the complaint.

Based upon the pleadings in this matter and the Order Pursuant to Default entered by the Hearing Panel, the Hearing Panel 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, Craig Owen Asbill ("Defendant" or "Asbill"), was admitted to the North Carolina State Bar on August 18, 2000 and is, and was at all times referred to herein, an attorney at law licensed to practice law 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 Charlotte, Mecklenburg County, North Carolina.

4. In October 2009 Defendant undertook to represent Anthony Jenkins in connection with a personal injury claim stemming from an automobile accident in which Jenkins was involved on June 8, 2009.

5. Under the applicable statute of limitations for Jenkins' claim, the period within which he could file a lawsuit expired on June 8, 2012, after which Jenkins would be legally prohibited from recovering for his damages.

6. Defendant did not settle Jenkins' claim and did not file a lawsuit on Jenkins' behalf before the expiration of the applicable statute of limitations period.

7. On June 8, 2012, Defendant emailed the insurance company's representative requesting that Jenkins' claim be arbitrated under the provisions of the insurance policy.

8. Defendant's request for arbitration emailed to the insurance company was not timely or properly made.

9. Defendant's request for arbitration without filing a lawsuit did not toll the statute of limitations on Jenkins' claim.

10. On November 6, 2012, the insurance company filed a lawsuit against Jenkins requesting the court to declare that the insurance company had no obligation to pay any claim made by Jenkins based on the expiration of the statute of limitations period.

11. Also on November 6, 2012, the attorney for the insurance company mailed a copy of the lawsuit to Defendant.

12. Shortly thereafter, Jenkins was served by a deputy sheriff with a copy of the lawsuit.

13. Shortly after he was served, Jenkins contacted Defendant's office and notified Defendant's paralegal that he had received a copy of the lawsuit.

14. Defendant took no steps to defend Jenkins against the lawsuit filed by the insurance company.

15. Defendant did not communicate to Jenkins at any time that Defendant's representation of Jenkins did not include representation in the lawsuit the insurance company filed due to Defendant's failure to file a complaint for Jenkins before the filing period under the statute of limitations expired.

16. The insurance company obtained a judgment by default declaring that the insurance company had no further obligation to pay any claims made by Jenkins

17. In August 2013 Jenkins learned of the judgment by speaking to the Clerk of Court and promptly notified Defendant's paralegal.

18. Defendant took no steps to set aside the default judgment.

19. Defendant did not explain to Jenkins the import of the default judgment. Instead, when Jenkins spoke to Defendant in early April 2015, Defendant told Jenkins that he would be seeking arbitration with the insurance company on Jenkins' claim within two weeks, despite Defendant's knowledge that the court had determined that the statute of limitations precluded any claims made by Jenkins.

20. Jenkins attempted to contact Defendant about the status of his claim many times during the representation but often received no return contact. Jenkins also left messages for Defendant in June, July and August 2014 and for several weeks after early April 2015 when Defendant said he would seek arbitration. Defendant did not return Jenkins' phone calls.

21. Jenkins filed a grievance against Defendant with the North Carolina State Bar concerning Defendant's handling of Jenkins' claim.

22. Defendant was notified of the grievance on or near August 11, 2015 and was required to respond within fifteen days.

23. Defendant did not respond to the grievance until January 11, 2016.

24. In his response, Defendant falsely stated that during the first few months of 2013, Defendant continued to leave messages for the attorney for the insurance company in an attempt to schedule arbitration of Jenkins' claim, but that the attorney would not return the calls.

25. In his response, Defendant falsely stated that, in late 2013 or early 2014, the arbitrator Defendant had engaged offered to contact the attorney for the insurance company to schedule arbitration, and informed Defendant that after multiple attempts to contact the attorney for the insurance company, the attorney for the insurance company would not return the arbitrator's calls.

26. On March 8, 2016 the State Bar sent Defendant a letter requesting additional information to which he was required to respond by March 17, 2016.

27. Defendant did not respond to the March 8, 2016 letter.

Based upon the pleadings, the Order Pursuant to Default, 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 and the subject matter of this proceeding.

2. Asbill'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) as follows:

- (a) By failing to timely or properly request arbitration from the insurance company without filing a lawsuit to preserve Jenkins' claim before the expiration of the statute of limitations period, and by failing to take any steps to defend Jenkins against the lawsuit filed by the insurance company or to set aside the default judgment after he became aware of it, Defendant failed to act with reasonable diligence in representing a client in violation of Rule 1.3;
- (b) By failing to explain to Jenkins that the default judgment precluded Jenkins' claim, by continuing to claim that arbitration could still be requested after the court declared that any claim by Jenkins was barred, and by failing to respond to Jenkins' calls, Defendant failed to keep his client reasonably informed about the status of the matter, failed to promptly comply with reasonable requests for information, and failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in violation of Rule 1.4(a)(3) and (4) and 1.4(b);
- (c) By failing to timely respond to the grievance and failing to respond to the letter requesting additional information, Defendant knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b); and
- (d) By implying to Jenkins that arbitration could still be requested after the court declared that any claim by Jenkins was barred, by making false statements in his response to the grievance about Defendant's efforts and the arbitrator's efforts to contact the insurance company's attorney, Defendant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c).

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

- (a) For knowing misrepresentation of any facts or circumstances surrounding any complaint, allegation, or charge of misconduct; and/or
- (b) For failure to answer the formal inquiry issued by the North Carolina State Bar in a disciplinary matter.

Based upon the foregoing Findings of Fact and Conclusions of Law, and the additional evidence presented at the hearing, the Hearing Panel finds by clear, cogent, and convincing evidence the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Asbill's multiple violation of the Rules of Professional Conduct demonstrates his unwillingness to adhere to the rules enacted for the purpose of protecting the public.
2. Asbill failed to protect the interests of Jenkins in his personal injury claim, precluding Jenkins from accessing the courts to attempt to recover compensation for his injuries and pay his medical expenses.
3. Jenkins was a vulnerable victim of Asbill's misconduct and was harmed by his conduct. Jenkins was unfamiliar with the legal process and had limited financial resources. Jenkins relied upon Asbill to protect and pursue his legal rights.
4. Asbill failed to return the calls of other clients and/or otherwise neglected their cases. In at least one instance, Asbill failed to respond to discovery in a client's lawsuit, causing the lawsuit to be dismissed. That client will likely incur an additional filing fee to reinstate his lawsuit.
5. Clients are entitled to representation by attorneys they can trust to accomplish their goals. A cornerstone of client trust in an attorney is that the attorney will properly protect and maintain the client's interests. Failure to do so erodes the confidence clients place in attorneys who handle their affairs and harms the public and the profession as a whole.
6. By failing to respond to State Bar inquiries and otherwise failing to participate in the grievance process, Asbill caused significant harm to the profession. Such conduct interferes with the State Bar's ability to regulate its members and undermines the profession's privilege to remain self-regulating.
7. Asbill has a profile on a lawyer directory website. Multiple negative reviews have been posted by the public on this profile, noting Asbill's neglect of their cases and failure to adequately communicate with them.
8. Asbill's conduct caused potential significant harm to the standing of the legal profession in the eyes of the public in that such conduct by attorneys erodes the trust of the public in the profession, as evidenced by negative reviews posted by the public on the internet. Confidence in the legal profession is a building block for public trust in the entire legal system.
9. Asbill was sued by a firm with which he was previously associated. That action resulted in multiple orders of the court with which Asbill failed to comply. Asbill was ultimately held in contempt of court for those failures and served 20 days in jail. Asbill's failure to comply with multiple orders of the court in that action shows his unwillingness to submit to a tribunal's authority.

10. By engaging in various instances of client neglect, failing to communicate with his client, and failing to respond to the Bar, Asbill committed multiple offenses and displayed a pattern of misconduct. At the time of his conduct, Asbill knew or should have known that his actions could harm his client and the administration of justice.

11. Asbill has no prior professional discipline.

Based on the Findings of Fact and Conclusions of Law above and the additional Findings of Fact Regarding Discipline, the Hearing Panel makes the following:

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has carefully considered all of the different forms of discipline available to it. In addition, 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 warrant suspension:

- (a) Intent of Defendant to commit acts where the harm or potential harm is foreseeable;
- (b) Circumstances reflecting Defendant's lack of honesty, trustworthiness, or integrity;
- (c) Negative impact of Defendant's actions on his client's and the public's perception of the profession;
- (d) Negative impact of Defendant's actions on the administration of justice;
- (e) Impairment of the client's ability to achieve the goals of the representation; and
- (f) Multiple instances of failure to participate in the legal profession's self-regulation process.

2. The Hearing Panel 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 although one factor is present the circumstances of this case do not warrant disbarment in order to protect the public.

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 in this matter:

- (a) Lack of prior professional discipline;
- (b) A pattern of misconduct;

- (c) Multiple offenses;
- (d) Absence of full and free disclosure to the hearing panel or cooperative attitude toward the proceedings;
- (e) Refusal to acknowledge wrongful nature of conduct;
- (f) Vulnerability of victim;
- (g) Extensive experience in the practice of law; and
- (h) Lack of effort to rectify the consequences of his misconduct by failing to defend the insurance company's lawsuit against Jenkins or file post-judgment motions.

4. The Hearing Panel has carefully considered all of the different forms of discipline available to it. An admonition, reprimand, or censure would not be sufficient discipline because of the gravity of the harm or potential harm Defendant's conduct caused to the public, the administration of justice, and the legal profession.

5. The Hearing Panel further concludes that such discipline would fail to acknowledge the seriousness of the violations committed by Defendant and send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

6. For these reasons, this Hearing Panel finds that an order imposing discipline short of suspension would not be adequate or appropriate.

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

ORDER OF DISCIPLINE

1. Defendant, Craig Owen Asbill, is hereby suspended from the practice of law for four years, effective thirty days from 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 thirty days following service of this Order upon Defendant.

3. Defendant shall comply with the wind down provisions contained in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124, including filing an affidavit with the Secretary of the North Carolina State Bar within ten days of the effective date of this order.

4. Defendant shall pay the costs and administrative fees of this proceeding as assessed by the Secretary within thirty days of service of the statement of costs and administrative fees upon Defendant.

5. Within thirty 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 two years, Defendant may apply for a stay of the remainder of the suspension upon filing of a verified petition with the DHC demonstrating by clear, cogent and convincing evidence the following:

- (a) Defendant properly surrendered his law license and membership card as provided in paragraph 2 of this Order;
- (b) Defendant has complied with the general provisions for reinstatement listed in 27 N.C. Admin. Code 1B § .0125 of the North Carolina State Bar Discipline & Disability Rules;
- (c) That, not more than sixty days before he petitions for reinstatement, Defendant has been evaluated by a licensed psychiatrist or psychologist approved in advance by the North Carolina State Bar Office of Counsel. Defendant shall attach to his petition the affidavit of the evaluating psychiatrist/ psychologist certifying whether, based on his or her independent and comprehensive evaluation of Defendant and in his or her professional opinion, Defendant currently has any physical, mental, psychological, behavioral, cognitive, or emotional illness, disorder, or other condition that impairs Defendant's ability to practice law, that impacts Defendant's ability or willingness to comply with the Rules of Professional Conduct, and/or that poses a risk of harm to the public if he engages in the practice of law. Defendant bears the burden of proving that he does not suffer from any such impairing condition at the time of his petition. Defendant shall sign an authorization form consenting to the release of all medical records and information related to Defendant's evaluation to the Office of Counsel, and Defendant shall not revoke that release. Defendant shall include with his petition for stay the signed authorization form and a written report of such evaluation and recommended treatment, if any, prepared by the psychiatrist/psychologist described herein. All expenses of such evaluation, reports, and production of records shall be borne by Defendant;
- (d) Defendant has arranged for an active member of the North Carolina State Bar to serve as his law practice monitor. Defendant's practice monitor shall be an attorney in good standing who practices law in Defendant's judicial district and who has been approved in advance by the Office of Counsel. The monitor shall agree to supervise all client matters and to ensure that Defendant handles all client matters in a timely fashion,

including promptly responding to his clients, promptly responding to notices from the clerk of court, properly handling entrusted funds, and diligently pursuing his clients' matters. The monitor shall agree to meet monthly with Defendant and to submit written quarterly reports of this supervision to the Office of Counsel, such reports due on the following dates as they occur during the stay of this suspension: January 30, April 30, July 30, and October 30. Defendant must make the arrangements for this monitoring attorney before petitioning and provide a letter from the monitoring attorney confirming his or her agreement to perform the duties listed above with his petition for stay;

- (e) Defendant has paid the costs of this proceeding as assessed by the Secretary of the North Carolina State Bar within thirty days of notice of the costs being served on Defendant at his address of record;
- (f) Defendant has kept the North Carolina State Bar Membership Department advised of his current address (not P.O. box) and notified the Bar of any change in address within ten days of such change;
- (g) Defendant has responded to all communications from the State Bar within thirty days of the date of the communication or by the deadline stated in the communication, whichever is sooner;
- (h) Defendant is current in payment of all Membership dues, fees, and costs, including all Client Security Fund assessments and other charges or surcharges the State Bar is authorized to collect from him, and including all judicial district dues, fees and assessments;
- (i) There is no deficit in Defendant's completion of CLE hours, in reporting such hours or in payment of any fees associated with attendance at CLE programs;
- (j) Defendant has not violated the Rules of Professional Conduct or the laws of the United States or any state or local government during his suspension; and
- (k) Defendant properly wound down his law practice and complied with the requirements of 27 N.C.A.C. 1B§.0124, the North Carolina State Bar Discipline and Disability Rules.

7. 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 comply, at his sole expense, with all recommendations for ongoing treatment set forth in the clinician's report described in paragraph 6(c) above;
- (b) Defendant shall provide a written release to the North Carolina State Bar Office of Counsel, authorizing all providers from whom he is receiving any ongoing treatment to communicate with the Office of Counsel and to

release to the Office of Counsel records relating to his compliance with treatment recommendations. Defendant shall not revoke these releases during the period of the stay.

- (c) Defendant shall ensure that all providers from whom he is receiving any ongoing treatment send a quarterly written report to the State Bar confirming that he is complying with treatment recommendations. The reports shall be due each January 30, April 30, July 30, and October 30 during the stayed suspension;
- (d) Defendant shall meet with his law practice monitor as described in paragraph 6(d) above. Defendant shall meet at least once a month with his monitoring attorney, report the status of all current client matters to the monitor, cooperate with the monitoring attorney, and provide any information the monitoring attorney deems reasonably necessary to ensure that Defendant is properly and timely handling all client matters. Defendant shall direct his law practice monitor to submit written quarterly reports of this supervision to the Office of Counsel, such reports due on the following dates as they occur during the stay of this suspension: January 30, April 30, July 30, and October 30. Defendant bears the responsibility of ensuring the monitoring attorney sends a written report each quarter to the Office of Counsel as described above. This monitoring will occur for the duration of any stay of this suspension. Defendant will pay the cost, if any, charged by the monitor for this supervision;
- (e) Defendant shall cooperate with the Office of Counsel and make appropriate arrangements for an alternate monitoring attorney if needed during any stay of this suspension;
- (f) Defendant shall keep his address of record current with the State Bar and respond to all letters of notice and requests for information from the State Bar by the deadline stated in the communication or within thirty days of the date of the communication, whichever is sooner;
- (g) Defendant shall timely comply with her State Bar membership and continuing legal education requirements and pay all fees and costs assessed by the applicable deadline;
- (h) Defendant shall participate fully and timely in the fee dispute resolution process when notified of any petitions for resolution of disputed fees;
- (i) Defendant shall not violate the laws of the United States or any state or local government, other than minor traffic violations; and
- (j) Defendant shall not violate any provision of the Rules of Professional Conduct.

8. If Defendant fails to comply with any of the conditions of the stayed suspension provided in paragraph 7(a) through (j) above, the stay of the suspension may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

9. If Defendant does not seek or fails to obtain a stay of the active portion of his suspension, or if some part of the suspension is stayed and thereafter the stay is lifted/revoked, Defendant must comply with the requirements of paragraphs 6(a) through (k) above before being reinstated to the practice of law.

10. Any order of the Administrative Committee of the North Carolina State Bar placing Defendant in inactive status for any reason shall toll the running of the suspension, the period of the stay of the suspension, and Defendant's obligation to comply with the terms of the stay of the suspension under this order. Upon Defendant's reinstatement to active status by the Administrative Committee, the tolling of the running of the suspension and the stay of the suspension under this order shall be lifted, at which time such Defendant's obligation to comply with the conditions of the suspension and the stay in this order will resume.

11. If Defendant fails to fully comply with 27 N.C. Admin. Code 1B § .0124 and the Court appoints a trustee to wind down any portion of Defendant's practice, Defendant shall reimburse the State Bar for all expenses incurred by the State Bar in winding 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 the trustee and/or the trustee's assistant for time and travel associated with the trusteeship. After the Court has discharged the trustee, 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 for reinstatement until he has reimbursed the State Bar for all wind-down expenses incurred.

12. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of the stayed suspension.

Signed by the Chair with the consent of the other Hearing Panel members, this the 14th day of July, 2017.



R. Lee Farmer, Chair
Disciplinary Hearing Panel