

STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
14 DHC 27

THE NORTH CAROLINA STATE BAR

Plaintiff

v.

CONAN LEE SCHWILM, Attorney,

Defendant

CONSENT
ORDER OF DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Joshua W. Willey, Jr., Chair, and members Fred M. Morelock and Patti Head, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff was represented by Mary D. Winstead. Defendant, Conan Lee Schwilm, was represented by Edward T. Hinson. 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. Schwilm has freely and voluntarily stipulated to the following findings of fact and consents to the conclusions of law and entry of the Order of Discipline. Schwilm 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 and with the consent of the parties, the Hearing Panel 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, Conan Lee Schwilm, was admitted to the North Carolina State Bar in 1997 and is, and was at all times referred to herein, 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 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 August of 2008, M.B. retained Defendant to represent her in a bankruptcy matter. That matter was concluded in the spring of 2009.

5. Defendant subsequently undertook to represent M.B. on a workers' compensation claim and a social security disability claim.

6. On or about September 4, 2008, M.B. signed a representation agreement as to the workers' compensation claim with Defendant's solo practice, Schwilm Law Firm, PLLC.

7. On or about September 18, 2008, M.B. signed a fee agreement as to the social security disability claim with Defendant's solo practice, Schwilm Law Firm, PLLC.

8. On or about August 22, 2009, Defendant, who was still representing M.B. on the workers' compensation and disability claims, engaged in sexual relations with M.B.

9. On or about August 25, 2009, Defendant came to M.B.'s residence and presented her with a new representation agreement with Schwilm and Lezman, P.A. as to the workers' compensation claim and a new fee agreement with Schwilm and Lezman, P.A. as to the disability claim.

10. On or about August 25, 2009, M.B. signed the new fee and representation agreements.

11. Mr. Jack Lezman also signed the new fee and representation agreements.

12. In a letter dated August 24, 2009, Defendant informed the Social Security Administration that "C. Lee Schwilm of Schwilm Law Firm" was "no longer representing [M.B.] in her appeal for Social Security Disability Benefits."

13. On or about August 25, 2009, M.B. appointed Jack Lezman as her representative in connection with the social security disability claim and Mr. Lezman accepted that appointment.

14. On or about August 25, 2009, Defendant notified the Industrial Commission of the appearance of Schwilm and Lezman, P.A. in M.B.'s workers' compensation case.

15. Defendant did not file a motion to withdraw in the workers' compensation case.

16. After M.B. signed the new fee and representation agreements, Defendant continued to be involved in the representation of M.B. including but not limited to:

- (a) Corresponding with M.B. about her claims;
- (b) Advising M.B. about her claims;
- (c) Representing to third parties, including physicians, the workers' compensation case manager and M.B.'s employer, that he was M.B.'s attorney;
- (d) Attending mediation regarding the workers' compensation claim;

(e) Corresponding with third parties on behalf of M.B.; and

(f) Coordinating M.B.'s medical benefits.

17. After mediation, in October 2010, M.B. sent an email to Defendant expressing her dissatisfaction with the proposed settlement and with Defendant's handling of her legal matters.

18. In response to M.B.'s email, Defendant informed M.B. that he and Mr. Lezman would accept less than the agreed upon legal fee in the workers' compensation case, but that she would need to retain other counsel on the social security disability claim.

19. M.B. ultimately agreed to a settlement in her workers' compensation case and on or about November 29, 2010, executed a Clincher Agreement.

20. Defendant took steps to ensure that Mr. Lezman, rather than Defendant, signed the Clincher Agreement in the workers' compensation case.

Based upon the consent of the parties and the foregoing stipulated 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. 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 engaging in sexual relations with M.B. while he was representing her, Defendant engaged in sexual relations with a current client in violation of Rule 1.19(a);
- (b) By remaining involved in M.B.'s legal matters after having sexual relations with M.B., Defendant engaged in representation of a client which might be materially limited by the personal interest of the lawyer in violation of Rule 1.7(a)(2);
- (c) By failing to withdraw from representation of M.B. on the workers' compensation case, Defendant failed to withdraw from representation of a client when representation would violate the Rules of Professional Conduct in violation of Rule 1.16(a)(1); and
- (d) By taking steps to make it appear that he was not representing M.B. while continuing to be involved in her legal matters, Defendant engaged in conduct involving dishonesty in violation of Rule 8.4 (c).

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

FINDINGS OF FACT REGARDING DISCIPLINE

1. In 2001, the State Bar's Grievance Committee issued an Admonition to Schwilm in 01G0170 for advertising in a telephone directory as a specialist when he was not certified as a legal specialist and for including in the advertisement misleading information that would create unrealistic client expectations.

2. In 2003, the State Bar's Grievance Committee issued an Admonition to Schwilm in 03G1044 for his conduct while handling a client's bankruptcy case, which included filing a Chapter 13 petition for a client when the client was not eligible for Chapter 13. Schwilm's conduct resulted in the Bankruptcy Court suspending Schwilm from practicing before that court for one year.

3. There is no indication that Defendant had sexual relations with any other client or that there is a pattern of such misconduct.

Based on the foregoing Findings of Fact, Conclusions of Law, 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 carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension and disbarment.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(2), and determined that this case involves acts of dishonesty which require the Hearing Panel to consider disbarment.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(1) and (3) and determines the following factors are applicable:

- (a) Intent of Defendant to commit acts where the potential harm was foreseeable;
- (b) Elevation of Defendant's own interests above that of the client;
- (c) Circumstances reflecting Defendant's lack of honesty, trustworthiness, or integrity;
- (d) Negative impact of Defendant's actions on client's or public's perception of the profession;
- (e) Impairment of the client's ability to achieve the goals of the representation;
- (f) Prior disciplinary offenses;

- (g) Dishonest or selfish motive;
- (h) Multiple offenses;
- (i) Vulnerability of the victim;
- (j) Cooperative attitude toward the proceedings; and
- (k) Experience in the practice of law.

4. A censure, reprimand, or admonition would be insufficient discipline because of the significant potential harm to clients and the profession caused by Defendant's conduct.

5. Although Defendant's conduct is serious enough to warrant more discipline than a censure, it does not warrant an active suspension of his license.

6. The public will be adequately protected by suspension of Defendant's license, stayed for a period of time with conditions imposed upon Defendant to ensure protection of the public and continued compliance with the Rules of Professional Conduct.

7. A stayed suspension of Defendant's law license is warranted insofar as entry of an order imposing less severe discipline would fail to acknowledge the seriousness of the misconduct and would send the wrong message to attorneys and the public about the conduct expected of members of the Bar of this State.

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

ORDER OF DISCIPLINE

1. The law license of Defendant, Conan Lee Schwilm, is hereby suspended for two years. The suspension shall be stayed for two years as long as Defendant complies, and continues to comply, with the following conditions:

- (a) Defendant shall arrange for an active member of the North Carolina State Bar who practices law in Mecklenburg County and who has been approved by the Office of Counsel to serve as his law practice monitor. Defendant shall submit the name of the proposed practice monitor to the Office of Counsel within fifteen (15) days of service of this order upon him. Defendant's failure to provide the name of a proposed practice monitor to the Office of Counsel will not excuse any failure to meet monthly with an approved practice monitor as required by this order. Nor will Defendant's failure to provide the name of a proposed practice monitor excuse an approved practice monitor's failure to provide written quarterly reports to the Office of Counsel. The selected practice monitor must indicate in writing his or her agreement to serve. The selected practice monitor must meet

with Defendant monthly to review Defendant's cases. The first such meeting between Defendant and the practice monitor must be held within fifteen (15) days of the date that Defendant submits the name of the proposed practice monitor to the Office of Counsel. The practice monitor will submit to the Office of Counsel written quarterly reports summarizing his or her supervision of Defendant. These reports shall be provided to the Office of Counsel on January 30, April 30, July 30 and October 30. Monitoring of Defendant's law practice as provided herein shall continue for the duration of any stay of Defendant's suspension. Defendant shall be solely responsible for any cost assessed by the practice monitor for his or her monitoring of Defendant's law practice. Defendant must supply the Office of Counsel with a letter from the practice monitor confirming his or her willingness to serve as practice monitor and to perform the duties outlined in this order. Defendant must provide this confirmation within sixty (60) days of service of this Order on Defendant;

- (b) Defendant shall meet at least once monthly with his practice monitor, to whom he shall report the status of all current client matters and provide copies of any pleadings filed on behalf of current clients. Defendant shall provide any information the practice monitor deems reasonably necessary to ensure that Defendant is handling all client matters in accord with the requirements of the Rules of Professional Conduct, the North Carolina Rules of Civil Procedure and the North Carolina General Rules of Practice;
- (c) Defendant shall ensure that the practice monitor sends to the Office of Counsel a written report each quarter as described above;
- (d) Should the need arise to find a replacement practice monitor during the stay of Defendant's suspension, Defendant shall promptly provide to the Office of Counsel the name of a proposed alternative practice monitor. Defendant's failure to promptly provide the Office of Counsel the name of an alternative practice monitor will not excuse any failure to meet monthly with an approved practice monitor and will not excuse failure of an approved practice monitor to provide quarterly reports to the Office of Counsel;
- (e) Defendant shall, in addition to completing his annual CLE requirement, complete six hours of CLE in law practice management;
- (f) Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or of any state or local government during his suspension;
- (g) Defendant shall keep the North Carolina State Bar Membership Department advised of his current business and home addresses and shall notify the Bar of any change in address within ten days of such change;
- (h) Defendant shall respond to all communications from the North Carolina 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, and shall participate in good faith in the State Bar's fee dispute resolution process for any petition of which he receives notice after the effective date of this Order;

- (i) Defendant shall promptly accept service of all certified mail from the State Bar that is sent to him;
- (j) Defendant shall pay the administrative fees and costs of this proceeding, including the costs of all depositions, as assessed by the Secretary of the North Carolina State Bar. Defendant must pay the costs within 30 days of service upon him of the statement of costs by the Secretary; and
- (k) Defendant shall timely comply with all State Bar Membership and Continuing Legal Education requirements.

2. If Defendant fails to comply with any of the conditions of the stayed suspension provided in paragraph 1(a) through (k) above, the stay of the suspension may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

3. If the stay granted herein is lifted or the suspension of Defendant's license is activated for any reason, before seeking reinstatement of his license to practice law, Defendant must show by clear, cogent and convincing evidence that he has complied with each of the following conditions:

- (a) Defendant kept the North Carolina State Bar Membership Department advised of his current business and home addresses and notified the Bar of any change in address within ten days of such change;
- (b) Defendant responded to all communications from the North Carolina 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, and participated in good faith in the State Bar's fee dispute resolution process for any petition of which he received notice after the effective date of this Order;
- (c) Defendant promptly accepted all certified mail sent to him by the State Bar;
- (d) At the time of his petition for reinstatement, 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, as well as all judicial district dues, fees and assessments;
- (e) At the time of his 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;
- (f) Defendant did not violate the Rules of Professional Conduct or the laws of the United States or of any state or local government during his suspension;

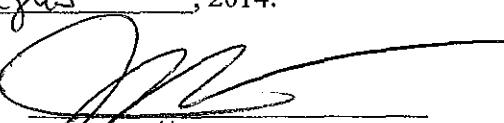
- (g) Defendant paid the administrative fees and costs of this proceeding, including the costs of all depositions, as assessed by the Secretary of the North Carolina State Bar within 30 days of service upon him of the statement of costs by the Secretary; and
- (h) Defendant complied with any other conditions deemed necessary for reinstatement imposed by the Hearing Panel pursuant to the order lifting the stay of the suspension of Defendant's law license.

4. Unless Defendant's obligations under this Order are modified by further order of the DHC, Defendant's obligations under this Order end two 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 § .0114(x) of the North Carolina Discipline and Disability Rules, 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 2 year 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. Defendant is taxed with the administrative fees and costs of this action as assessed by the Secretary, which Defendant shall pay within thirty days of service of the notice of costs and administrative fees upon Defendant.

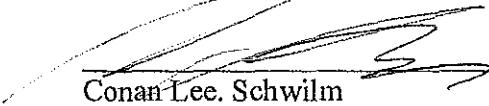
6. This Order shall be effective on the date it is filed.

Signed by the undersigned Chair with the knowledge and consent of the other members of the Hearing Panel, this is the 15th day of August, 2014.

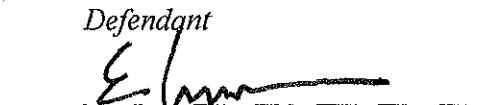


J. W. Wille, R., Chair
Hearing Panel

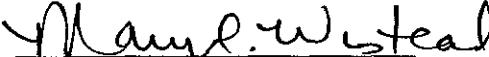
CONSENTED TO BY:



Conan Lee Schwilm
Defendant



Edward T. Hinson
Attorney for Defendant



Mary D. Winstead
Attorney for Plaintiff