

**Judicial Disciplinary Proceedings**  
**Superior Court Judges Fall Conference 2019**  
**Carmen H. Bannon, Deputy Counsel, North Carolina State Bar**

A court's authority to discipline lawyers is one of the most well established inherent powers of a court. "This power is based upon the relationship of the attorney to the court and the authority which the court has over its own officers to prevent them from, and punish them for, acts of dishonesty or impropriety calculated to bring contempt upon the administration of justice." *In re Northwestern Bonding Co.*, 16 N.C. App. 272, 275 (1972).

**I. IN WHAT CONTEXTS MIGHT THE COURT IMPOSE DISCIPLINE FOR LAWYER MISCONDUCT?**

**A. Types of Misconduct:** The grounds on which a court may impose discipline are not limited to violations of the State Bar's Rules of Professional Conduct. *Sisk v. Transylvania Community Hospital, Inc.*, 364 N.C. 172, 182 (2010) ("[T]his authority is not limited by the rules of the State Bar."). For example, the Court may also impose discipline for violations of local rules of court, rules of practice, and other requirements/directives of the Court.

**B. Attorney Charged with a Criminal Offense**

1. If the Court knows before trial that it intends to consider discipline if the attorney is convicted, the Court should give the attorney notice that the Court will consider imposing discipline upon entry of a guilty plea or an adverse jury verdict. (See suggested language in Form 1 contained in Appendix A).
2. If the attorney is convicted of a criminal offense showing that the attorney is professionally unfit, the Court can summarily discipline the attorney, either in the criminal judgment or by a separate civil order. (See suggested language in Form 2 contained in Appendix A.) Imposing discipline via separate civil allows for more flexibility, detail, and clarity and is therefore recommended.
3. Because the question of disciplining an attorney is not a part of the criminal action against him or her, it may be considered at a later time and is

unaffected by the doctrines of res judicata or collateral estoppel. *In re License of Delk*, 336 N.C. 543 (1994).

4. If the attorney is convicted of a criminal offense that doesn't warrant disbarment, the Court can summarily impose a less severe form of discipline. The Court may consult with the State Bar Office of Counsel's Liaison to the Judiciary to determine what discipline has been imposed for similar offenses.
5. Alternatively, the Court may opt not to impose discipline and instead refer an attorney who has been convicted of a crime to the State Bar for discipline pursuant to 27 NCAC 1B, § .0119, which permits the State Bar to seek interim suspension of a lawyer's license immediately upon conviction of a criminal offense showing professional unfitness, and provides that a certified copy of the conviction or judgment shall—for purposes of disciplinary proceedings—conclusively establish all elements of the criminal offense and all facts set out in the document charging the lawyer with the criminal offense.

### **C. Improper Conduct in Connection with a Case Before the Court**

1. If the attorney's misconduct occurred in the presence of the Court, the Court may summarily discipline the attorney or hold the attorney in contempt.
2. If the attorney's conduct occurred outside the presence of the Court, or if facts relating to the attorney's conduct are in dispute, the Court may initiate a judicial disciplinary proceeding or refer the matter to the State Bar.

## **II. DECIDING WHETHER TO INITIATE A JUDICIAL DISCIPLINARY PROCEEDING OR REFER MATTER TO THE STATE BAR**

There are many factors that may affect whether a judge wishes to address a potential disciplinary matter directly or refer the matter to the State Bar for investigation. Among the considerations are:

- whether the integrity of the judicial system or some other compelling circumstance requires an immediate resolution of the matter (e.g. attorney falsely claims in court or in a pleading that some judicial official has engaged in a corrupt act;)

- whether labor and/or time-intensive investigation of the attorney's conduct may be needed (suggesting the State Bar would be best equipped to assemble the evidence in its usual course of business);
- whether the attorney's conduct violates local rules or the General Rules of Practice for the Superior and District Courts as opposed to the Rules of Professional Conduct;
- whether sanctions that the State Bar can't impose may be appropriate, such as a monetary sanction (for a Rule 11 violation) or jail sentence (for contempt);
- whether the Court is willing to accept whatever result the State Bar's consideration of the matter may produce.

### III. PROCEDURE FOR JUDICIAL DISCIPLINARY HEARINGS

#### A. Summary Procedure

1. When an attorney is charged with a criminal offense involving moral turpitude and amounting to a felony and (a) pleads guilty, (b) is convicted or (c) agrees to surrender his/her license in connection with a plea of *nolo contendere*, the judge conducting the criminal trial may summarily discipline the attorney without further proceedings. *In re Burton*, 257 N.C. 534 (1962). (For a sample summary order, see Form 3 in Appendix A.)
2. When an attorney's alleged misconduct occurs in a matter pending before the court and the material facts are not in dispute, the judge may take summary disciplinary action. *See, e.g., In re Hunoval*, 294 N.C. 740 (1977).

#### B. Plenary Procedure

When the potential misconduct occurs in any other circumstances (e.g., when there are disputed facts or additional information outside the court record are necessary for a thorough inquiry), due process requires notice, the opportunity to be represented by counsel, and the right to be heard.

##### 1. Show Cause Order

- (a) Initiation of Show Cause Proceeding: Disciplinary proceedings generally must be initiated by a sworn written complaint. No written complaint is required, however, when the judge initiating the proceeding is acting

on records from the judge's own court. *In re Robinson*, 37 N.C. App. 671, 677 (1978).

- (b) Basic Components of Order: To initiate the disciplinary proceeding, the Court should issue an order advising the lawyer of the charges and directing the lawyer to show cause why discipline should not be imposed. The lawyer should be given a reasonable time to respond and advised that s/he lawyer is entitled to have counsel. *In re Burton*, 257 N.C. 534, 544 (1962). (See Form 4 in Appendix A.)
- (c) Show Cause Order May Be Issued Out of Term: Unlike orders determining a case, which require some action by a party or which affect a party's rights, a show cause order need not be signed in the county in which the case is to be heard. *In re License of Delk*, 336 N.C. 543 (1994) (order issued out of term, but because party to whom show cause order is directed is not entitled to be present when order is signed, issuing judge retained jurisdiction).
- (d) Underlying Case Need Not Be Pending: The court's authority to impose discipline applies to any lawyer practicing before the court, even if the case which gives rise to the discipline is not currently pending. Thus the trial court may sanction of lawyer even though the case creating the disciplinary issue has been appealed and no longer is before the court. *In re Robinson*, 37 N.C. App. 671, 677 (1978).
- (e) Any Session of Court: Disciplinary action may be taken against a lawyer at any session of court, it does not matter whether it is a civil or criminal session. *Robinson*, 37 N.C. App. at 678.
- (f) Recusal of Initiating Judge: The show cause order should not be written in conclusory terms that may indicate bias on the part of the judge. *Robinson*, 37 N.C. App. at 677 (Order stated, "[y]ou have negligently and willfully failed to perfect the appeal" rather than, "[t]he records of this Court indicate that no action has been taken to perfect the appeal. This inquiry is to hear evidence bearing upon why no action has been taken and to determine whether discipline should be imposed upon you by this Court."). If a judge is biased, or if the order to show cause makes it appear that the judge has already made up his/her mind, the judge should not preside over the disciplinary proceeding.

## 2. Hearing

- (a) Issues Before the Court: There are two issues for determination at a disciplinary hearing: Whether misconduct occurred, and if so, what discipline is appropriate. Although the Court is not required to address these issues in any particular format, disciplinary hearings are often

conducted in two phases, similar to guilt/innocence and sentencing: In Phase I, the Court determines whether the lawyer engaged in misconduct and in Phase II, the Court determines what discipline is appropriate.

- (b) Right to Counsel: The attorney should be permitted to have counsel and given a full opportunity to be heard.
- (c) Appointment of Prosecutor: The judge may appoint the District Attorney, another licensed attorney, or the State Bar's Office of Counsel to prosecute the disciplinary hearing. *In re Robinson*, 37 N.C. App. 671 (1978).
- (d) Standard of Proof: The standard of proof is clear and convincing evidence. *In re Palmer*, 296 N.C. 638 (1979).
- (e) No Jury Trial: An attorney has no right to a jury trial in a judicial disciplinary proceeding. *In re Bonding Co.*, 16 N.C. App. 272 (1972).

#### IV. POSSIBLE SANCTIONS

- A. Before imposing sanctions, judges are encouraged to investigate the attorney's current status with the State Bar by calling the Office of Counsel's Judicial Liaison at (919) 719-9283. It may be that the matter before the Court is not an isolated incident. The Liaison can also indicate what type of discipline has previously been imposed by the State Bar for similar misconduct.
- B. Sanctions available include citations for contempt, censure, informing the North Carolina State Bar of the misconduct, imposition of costs, suspension for a limited time of the right to practice before the court, suspension for a limited time of the right to practice law in the State, and disbarment." *In re Robinson*, 37 N.C. App. at 676. The court may also suspend the lawyer's right to represent indigents. *In re Hunoval*, 294 N.C. at 745. The court may also consider requiring a lawyer to complete additional CLE hours or mandating that the lawyer undergo a substance abuse or mental health evaluation and/or treatment.
- C. Levels of discipline that the Court may impose include those set forth in NCGS § 84-28(c):
  - 1. Disbarment;

2. Suspension of the attorney's license for a definite period of time not to exceed five years, all or a portion of which may be stayed upon specified conditions with which the attorney must comply before and/or during the stay
3. Censure – A censure is a written form of discipline more serious than a reprimand issued in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct and has caused significant harm or potential significant harm to a client, the administration of justice, the profession or members of the public, but the protection of the public does not require suspension of the attorney's license;
4. Reprimand – A reprimand is a written form of discipline more serious than an admonition issued in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct, but the protection of the public does not require a censure. A reprimand is generally reserved for cases in which the attorney's conduct has caused harm or potential harm to a client, the administration of justice, the profession or members of the public; or
5. Admonition – An admonition is a written form of discipline imposed in cases in which an attorney has committed a minor violation of the Rules of Professional Conduct.

## V. DISCIPLINARY ORDER

- A. The order should set forth specific findings of fact and conclusions of law describing the misconduct, including—if applicable—which Rules of Professional Conduct the lawyer violated. It should also include any mitigating or aggravating factors the Court took into consideration when determining what discipline is appropriate. (See Form 5 in Appendix A)
- B. A judicial order of disbarment is effective on the date of order. Unlike State Bar proceedings, the Court need not give the attorney a 30-day period in which to wind down his or her affairs. *In re License of Delk*. 336 N.C. 543 (1994).
- C. If the Court suspends or disbars an attorney, consideration must also be given to whether the Court will retain jurisdiction to consider the possible reinstatement of the attorney or whether jurisdiction for reinstatement should be referred to the State Bar. Suggested language to confer reinstatement jurisdiction to the State Bar:

- *[Attorney] is herewith DISBARRED from the practice of law in North Carolina;*
- *[Attorney] should forthwith transmit his [her] license certificate and membership card to the NC State Bar, 217 E. Edenton St., Raleigh, NC, 27601; or mail it to PO Box 25908, Raleigh, NC 27611-5908;*
- *[Attorney] shall not practice law in North Carolina until relicensed pursuant to the reinstatement procedures of the North Carolina State Bar.*

D. Award of Costs:

1. The court may order the misbehaving lawyer to pay the other side's attorney's fees. *Couch v. Private Diagnostic Clinic*, 146 N.C. App. 658, 667 (2001). The court also may order the lawyer to pay a fine. *In re Small*, 201 N.C. App. 390, 395 (2009).
2. Bear in mind that any lawyer or agency appointed to prosecute a disciplinary action is not a party; rather, the prosecutor is acting as a friend of the court. Accordingly, it is appropriate to order reimbursement of the appointed prosecutor's costs in cases where misconduct is established and discipline is imposed. For example, the following costs permitted by N.C. Gen. Stat. § 7A 305(d) may be incurred by an appointed prosecutor in a judicial discipline case:
  - (a) Counsel fees.
  - (b) Expense of service of process by certified mail and by publication.
  - (c) Fees for personal service and civil process and other sheriff's fees
  - (d) Reasonable and necessary expenses for stenographic and videographic assistance directly related to the taking of depositions and for the cost of deposition transcripts.

**Appendix A—Form 1: Notice of Intent to Consider Discipline in Criminal Case**

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

\_\_\_\_\_ COUNTY

FILE NO. \_\_\_ CRS \_\_\_\_\_

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STATE OF NORTH CAROLINA )

)

vs.

) NOTICE OF DISCIPLINARY ACTION

)

\_\_\_\_\_, Attorney, )

Defendant )

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TO: \_\_\_\_\_, Attorney

Address

City, NC Zip

YOU ARE HEREBY GIVEN NOTICE that if you are convicted of the offense(s) with which you are charged in the above-captioned case, this Court, in the exercise of its inherent authority, will conduct an inquiry into whether professional disciplinary action should be taken against you for that criminal conviction. The hearing will be a summary proceeding based upon the records of this Court. You and your attorney may be heard concerning the issue of discipline, but no evidence will be presented relating to the question of guilt or innocence of the crime(s) of which you are convicted.

The Court will take judicial notice of the fact that you are a licensed attorney at law and an officer of the Court.

The hearing will be held [at the same time as the Court considers sentencing for the conviction.] or [at   (time)   on   (date)   in Courtroom   .]

This is the    day of                     , 20\*\*.

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Superior Court Judge

**Appendix A—Form 2: Civil Order of Discipline Based on Criminal Conviction**

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

\_\_\_\_\_ COUNTY

FILE NO. \_\_\_\_\_

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In re Discipline of

)

)

\_\_\_\_\_, Attorney,

)

ORDER OF DISCIPLINE

Respondent

)

)

)

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THIS CAUSE, was heard before the undersigned judge presiding at the [DATE] session of \_\_\_\_\_ County Superior Court, upon notice to the Respondent, [LAWYER] that the Court in its inherent authority intended to consider professional discipline for [LAWYER]'s conviction of a crime in file no. ###. [LAWYER] was present and represented by \_\_\_\_\_. Based on the records of the Court, the undersigned makes by clear, cogent, and convincing evidence the following:

**FINDINGS OF FACT**

1. [LAWYER ], is an attorney licensed to practice law in the State of North Carolina.

2. On [DATE], [LAWYER] was convicted by a jury/pled guilty in the Superior Court of \_\_\_\_\_ County to [criminal offense], a Class \_\_\_ felony/misdemeanor. [Include any additional information about the offense as needed]

3. The offense of which the Respondent has been convicted reflects adversely upon his honesty, trustworthiness, and fitness as an attorney.

4. The Respondent's conduct is such as to demean and bring into disrepute and disgrace the practice and profession of attorney and to bring into contempt the administration of justice.

Based upon the foregoing Findings of Fact, the Court makes the following:

#### CONCLUSIONS OF LAW

1. This Court has authority to discipline [LAWYER] pursuant to its inherent authority to regulate the conduct of licensed attorneys in this state.

2. [LAWYER], has been convicted of a criminal offense/criminal offenses which reflect adversely on his/her honesty, trustworthiness, or fitness as an attorney.

3. The Respondent's misconduct is such as to warrant [suspension or disbarment] by this Court.

#### NOW THEREFORE IT IS ORDERED:

1. Respondent, [LAWYER], is hereby [DISBARRED/SUSPENDED for XX time] from the practice of law in the State of North Carolina effective \_\_\_\_\_.

2. Respondent shall forthwith transmit his/her license certificate and membership card to the North Carolina State Bar at 217 E. Edenton Street, Raleigh, NC 27602 or mail them to PO Box 25908, Raleigh, NC 27611-5908.

3. The Respondent shall not practice law in North Carolina unless and until reinstated by the North Carolina State Bar pursuant to the procedure set forth in 27 N.C. Admin. Code Chapter 1, Subchapter B, Rule .0129 of the NC State Bar Discipline & Disability Rules.

4. Respondent shall comply with the obligations of disbarred and suspended lawyers set forth in 27 N.C. Admin. Code Chapter 1, Subchapter B, Rule .0128 of the NC State Bar Discipline & Disability Rules.

5. The Clerk of Superior Court of \_\_\_\_\_ County shall forthwith certify a copy of this Order to the North Carolina State Bar.

This is the \_\_\_\_ day of \_\_\_\_\_, 20\*\*.

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Judge Presiding



in the Court's discretion, will hold this discipline during the pendency of the attorney's Special Supervised Probation, and upon the attorney's successful completion of the terms of his Special Probation and successful deferred dismissal, the Court will formally close the matter without public report. A record of this disciplinary action shall be transmitted to the North Carolina State Bar to be maintained as private discipline. It is further ORDERED that the Court retains jurisdiction over this matter, and should the attorney fail to successfully complete his Special Probation and fail to successfully obtain his deferred dismissal, this Court shall revisit the matter for further discipline and/or referral to the North Carolina State Bar.

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\*\*.

\_\_\_\_\_  
Honorable \_\_\_\_\_

Resident Superior Court Judge Presiding

**Appendix A—Form 4: Show Cause Order**

NORTH CAROLINA

IN THE GENERAL COURT OF  
JUSTICE  
SUPERIOR COURT DIVISION

\_\_\_\_\_ COUNTY

File Number \_\_\_\_\_

\_\_\_\_\_  
In the Matter of: )  
 )  
LAWYER NAME, Attorney )  
 )  
 )  
 )  
 )  
 )  
 )

**Order to Show Cause**

The undersigned Superior Court Judge, pursuant to the Court’s inherent authority to regulate the conduct of attorneys as officers of the court and N.C. Gen. Stat. § 84-36, Orders that [LAWYER] appear before the Court on the \_\_\_\_ day of \_\_\_\_\_, 20xx, in the \_\_\_\_\_ County Courthouse for a hearing to determine whether disciplinary action should be taken against you by the Court as a result of your conduct in [name of case in which alleged misconduct arose]. In support of this Order, the Court shows as follows:

1. On [DATE], [LAWYER], an attorney licensed to practice law in the State of North Carolina, and practicing law in the Courts of \_\_\_\_\_ County, [description of context].
2. [As many paragraphs as needed to describe facts and circumstances underlying decision that disciplinary proceeding is warranted
3. The foregoing actions and events may constitute professional misconduct in that [LAWYER] may have violated the following N.C. Rules of Professional Conduct:
  - a. [Individually identify each Rule that may be implicated. Examples below]
  - b. Rule 3.3(a)(1) – A lawyer shall not knowingly make a false statement of material fact or law to a tribunal or fail to correct a

false statement of material fact or law previously made to the tribunal by the lawyer;

- Rule 3.3(d) – In an *ex parte* proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse;
- Rule 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation; and
- Rule Rule 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

4. In light of the actions and events described above, the Court concludes that [LAWYER] should appear and show cause as to whether s/he violated the Rules of Professional Conduct set forth above and if so, why s/he should not be subject to discipline for misconduct.

5. Judicial authority to discipline attorneys is well-established in North Carolina common law and “is not dependent upon statutory authority. It arises because of a court’s inherent authority to take disciplinary action against attorneys licensed before it; an authority which extends even to matters which are not pending in the particular court exercising the authority. This power is based upon the relationship of the attorney to the court and the authority which the court has over its own officers to prevent them from, or punish them for, acts of dishonesty or impropriety calculated to bring contempt upon the administration of justice.” *In re Nw. Bonding Co., Inc.*, 16 N.C. App. 272, 275, 192 S.E.2d 33, 35 (1972).

6. [OPTIONAL] The Superior Court's authority to appoint an attorney to prosecute another lawyer for professional misconduct was addressed in *In the Matter of the Right to Practice Law of Harold Robinson, Esq.*, 37 N.C. App. 671, 247 S.E.2d 241, (1978), *on reh'g*, 39 N.C. App. 345, 250 S.E.2d 79 (1979). In that case, a Superior Court Judge believed that an attorney who had practiced before him had engaged in professional misconduct. *Id.* The judge issued an Order to Show Cause and appointed the District Attorney to act as the prosecutor therein. *Id.* The Court held a hearing and suspended the attorney from the practice of law for one year. *Id.* The attorney made a number of arguments on appeal; in one argument, the attorney contended that it was improper for the Superior Court to appoint the District Attorney to prosecute the matter. *Id.* The Court of Appeals rejected this argument, noting that the Superior Court has the authority to designate any licensed attorney to perform the prosecutorial function in a hearing regarding the professional misconduct of an attorney: "Likewise, respondent's argument that it was improper for [a judge] to request the district attorney to present the evidence against

respondent is without merit. [A judge] has the authority to designate the district attorney or any other licensed attorney to perform this function." *Id.*, 37 N.C. App. at 678, 247 S.E.2d at 245 (1978).

7. [OPTIONAL, BUT FACILITATES PRESENTATION OF EVIDENCE] The Court, in its inherent authority, has appointed \_\_\_\_\_ to investigate and perform the function of the prosecution in this matter.

8. [OPTIONAL, BUT OFTEN ADVISABLE] The undersigned recuses him/herself from presiding over further proceedings in this matter, and shall request that another Superior Court Judge be appointed to preside.

Based upon the foregoing, the Court hereby ORDERS:

1. That [LAWYER] appear, with counsel if s/he so chooses, on the \_\_\_\_ day of \_\_\_\_\_, 20xx in the \_\_\_\_ County Courthouse, or such other date to be determined by the judge assigned to provide with due notification to [LAWYER], for a hearing to determine if s/he violated any of the Rules of Professional Conduct outlined in Paragraph ## above and, if so, what discipline or sanction is appropriate;
2. Pursuant to N.C. Gen. Stat. § 5A-15(g), N.C. Gen. Stat. § 84-36, and its inherent authority, [LAWYER ASSIGNED TO PROSECUTE] shall also appear on that date and act as the prosecutor in this matter;
3. The hearing will be governed by the North Carolina Rules of Evidence;
4. The judge assigned to hear this matter will preside over the hearing, serve as the finder of fact, enter judgment, and, if applicable, determine what discipline, sanction, or criminal contempt sentence is appropriate;
5. The [LAWYER & PROSECUTING LAWYER] may stipulate to facts and the authenticity of documents or evidence by filing with the Court signed stipulations by consent at any point prior to the hearing;
6. The hearing will be comprised of two phases; the first phase will be entirely focused on determining if LAWYER violated the Rules outlined in Paragraph ## above;
7. During the first phase of the hearing, [LAWYER & PROSECUTING LAWYER] may call witnesses, submit evidence, and, at its conclusion,

make closing arguments as to the potential Rule violations outlined in Paragraph ## above;

8. At the conclusion of the first phase of the hearing, the Court will announce which, if any, of the potential Rule violations outlined in Paragraph ## above have been proven by clear, cogent, and convincing evidence;
9. The second phase of the hearing, necessary only if the Court determines that [LAWYER] violated any of the Rules outlined in Paragraph ## above, will be entirely focused on what discipline or sanction is appropriate;
10. During the second phase of the hearing, [LAWYER & PROSECUTING LAWYER] may call witnesses, submit evidence, and, at its conclusion, make closing arguments as to what discipline or sanction is appropriate;
11. During the second phase of the hearing, the Court will consider any evidence relevant to what discipline or sanction is appropriate, including, but not limited to, the factors outlined in Title 27 N.C. Admin. Code, Chapter 1B, § .0116(f), as these factors were designed to guide attorney disciplinary decisions; and
12. At the conclusion of the second phase of the hearing, the Court will announce what discipline or sanction it is entering and may direct [LAWYER & PROSECUTING LAWYER] to draft an order consistent with its holding.

So ORDERED, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\*\*.

\_\_\_\_\_  
Superior Court Judge

**Appendix A—Form 5: Order of Discipline**

NORTH CAROLINA

IN THE GENERAL COURT OF  
JUSTICE  
SUPERIOR COURT DIVISION

\_\_\_\_\_ COUNTY

File Number #####

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In the Matter of:

)

[LAWYER NAME], Attorney

)

)

)

)

**Order of Discipline**

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THIS MATTER was heard by the undersigned Judge of Superior Court, pursuant to the Court's inherent authority to discipline attorneys, on [DATE]. \_\_\_\_\_ appeared and prosecuted this matter pursuant to appointment by the Court, and the respondent-attorney [LAWYER] was present and [was represented by \_\_\_\_\_/appeared *pro se*]. Based upon the pleadings, the stipulated facts, and the evidence admitted at the hearing, the Court finds, by clear, cogent, and convincing evidence, the following:

FINDINGS OF FACT

1. [LAWYER] was admitted to the North Carolina State Bar on [DATE], and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the inherent authority of the Courts of this State, the Rules and Regulations of the North Carolina State Bar, and the Rules of Professional Conduct.

2. [List all relevant events, actions, & circumstances, including any related to respondent-attorney's state of mind or knowledge].

Based upon the foregoing findings of fact, the Court makes the following:

CONCLUSIONS OF LAW

1. The parties are properly before the Court and the Court has jurisdiction over [LAWYER] and the subject matter.

2. [Include any relevant general propositions underlying the Rules of Professional Conduct, such as...]

- The Courts of North Carolina and the administration of justice rely upon attorneys being accurate, candid, forthright, and honest with the Court.
- The administration of justice is prejudiced when attorneys knowingly fail to correct misstatements of material fact or law previously made to the Court.
- Attorneys make representations to the Court by the writings they submit, via the oral statements they make, and in some instances by omission.
- When attorneys show disregard for the dignity of the Court and demonstrate undignified and discourteous conduct that is degrading to the Court and that breeds disrespect for the Court and the legal profession, the party that is ultimately harmed or potentially harmed is the public. The public suffers when the participants in the justice system do not treat each other with respect and when attorneys do not display candor toward the Court,
- One of the principal roles of the criminal justice system is to enforce the rule of law and achieve justice for the public; accomplishing this goal is significantly impeded when the attorneys participating in the justice system are not forthright with the Court and show the Court disrespect.
- Abusive and disrespectful conduct by lawyers thwarts the proper administration of justice. Indeed, as Comment [5] to Rule of Professional Conduct 8.4 notes: “Threats, bullying, harassment, and other conduct serving no substantial purpose other than to intimidate, humiliate, or embarrass anyone associated with the judicial process including judges, opposing counsel, litigants, witnesses, or other court personnel violate the prohibition on conduct prejudicial to the administration of justice.”
- When attorneys display disrespect for the Court and make misrepresentations to the Court, it sullies the perception of the profession in the eyes of the public; this is particularly the case when such misconduct occurs in public settings.

3. [LAWYER]’s conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28 in that [LAWYER] violated the Rules of Professional Conduct in effect at the time of the conduct, as follows: By [brief description of misconduct], [LAWYER] violated Rule #####, which indicates that \_\_\_\_\_ and Rule ####, which prohibits \_\_\_\_\_.

4. Judicial authority to discipline attorneys is well-established in North Carolina common law and “is not dependent upon statutory authority. It arises because of a court’s inherent authority to take disciplinary action against attorneys licensed before it; an authority which extends even to matters which are not pending in the particular court exercising the authority. This power is based upon the relationship of the attorney to the court and the authority which the court has over its own officers to prevent them from, or punish them for, acts of dishonesty or impropriety calculated to bring contempt upon the administration of justice.” *In re Nw. Bonding Co., Inc.*, 16 N.C. App. 272, 275, 192 S.E.2d 33, 35 (1972).

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

#### ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE

1. [Note whether lawyer has prior discipline and/or whether lawyer has previously been warned by the court about similar behavior]

2. [List all factors considered in determining what level of discipline is appropriate, such as the amount of harm or potential harm the lawyer’s conduct caused to the public, clients, the profession, and the administration of justice. You may also make findings that track the factors set forth in State Bar Discipline Rule .0116(f), examples of which are below]

- Prior to this action, [LAWYER] had/had not been previously disciplined by the State Bar or any other tribunal or regulatory agency.
- [LAWYER] showed genuine remorse during the trial of this matter, in open court.
- [LAWYER]’s misconduct was/was not the result of any dishonest or selfish motive.
- [LAWYER] enjoys a good reputation of honesty in the community, often volunteering for various civic organizations.
- [LAWYER] engaged in a pattern of misconduct affecting multiple clients and/or proceedings.
- [LAWYER] has refused to acknowledge the wrongful nature of his conduct

Based upon the Findings of Fact, Conclusions of Law, and Additional Findings of Fact Regarding Discipline, the Court hereby makes the following:

## CONCLUSIONS REGARDING DISCIPLINE

1. In light of the Rule violations and additional findings and conclusions regarding discipline, the Court has considered various types of disciplinary actions available within its broad discretion to discipline attorneys.

2. The Court considered [available options of lesser severity than the discipline imposed] but concludes that these dispositions would fail to acknowledge the seriousness of the violations committed by [LAWYER] and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar in this State.

3. For the following reasons, the Court concludes that [LAWYER]'s misconduct warrants [discipline to be imposed]. [Examples below...]

- LAWYER previously received written discipline (or a warning from the court) for the same or similar misconduct, which did not have the intended deterrent effect. Accordingly, suspension of the lawyer's license is necessary to protect the public/the administration of justice.
- Although LAWYER's Rule violations are not "minor," and the misconduct resulted in harm, this was an isolated event and it does not appear that suspension is necessary to protect the public the administration of justice.
- When lawyers refuse to acknowledge the wrongful nature of their conduct and refuse to show remorse for their actions, it demonstrates, at best, a lack of appreciation for the bounds of professional conduct and suggests that the attorney is likely to engage in the behavior again in the future. This likelihood for recidivism poses a danger to the public, and this danger must be mitigated by ongoing accountability and supervision of the attorney and/or a temporary cessation of the attorney's ability to practice law.
- Ongoing accountability and supervision of an attorney and temporary cessation of the attorney's ability to practice law cannot be achieved through written discipline; it can only be achieved through a suspension of the attorney's license to practice law.
- It is evident, given [LAWYER]'s disrespectful and unprofessional conduct and refusal to acknowledge the wrongful nature of the same, that [LAWYER] requires further education and instruction regarding professionalism within the legal profession.

4. [LAWYER]'s misconduct resulted in the litigation of this matter and the appointment of \_\_\_\_\_ to prosecute this matter. Accordingly, [LAWYER], and not [the public/the dues-paying members of the State Bar/the lawyer appointed to prosecute], should bear the costs of this matter.

Based upon the foregoing Findings of Fact, Conclusions of Law and the Additional Findings of Fact and Conclusions Regarding Discipline, the Court hereby ORDERS:

1. [LAWYER] is hereby [DISCIPLINE IMPOSED] for his/her professional misconduct in violating Rules ## and ## of the Rules of Professional Conduct;

*\*\*In instances where the discipline imposed is stayed suspension, active suspension or disbarment, additional language is needed to specify the procedures for winding down the lawyer's practice, monitoring any conditions of a stay, applying for reinstatement, etc. Please contact Carmen Bannon at the State Bar's Office of Counsel (919-719-9283; [cbannon@ncbar.gov](mailto:cbannon@ncbar.gov)) for language appropriate to the disposition imposed\*\**

2. [Include here any additional requirements, such as restitution to client, additional CLE courses, fines, letter of apology, psychological or substance abuse evaluation or treatment, etc.]
3. [LAWYER] is to report the issuance of this disciplinary order against him/her, in writing, to the Secretary of the North Carolina State Bar within 30 days of its service upon him; and
4. [LAWYER] shall pay the costs of this action pursuant to N.C. Gen. Stat. § 7A-305, including reasonable attorneys fees. [PROSECUTING LAWYER] shall submit an Affidavit of Costs to the Court for approval, and [LAWYER] shall remit payment to [PROSECUTING LAWYER] within 15 days after being served with the Court's order approving the Affidavit of Costs.

So ORDERED, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\*\*.

\_\_\_\_\_  
Hon. \_\_\_\_\_  
Superior Court Judge

