

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF THE STATE OF NORTH DAKOTA

In the Matter of the Application for Disciplinary)	
Action Against Kristin A. Overboe, a Member of)	
the Bar of the State of North Dakota)	DEFAULT FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Disciplinary Board of the Supreme Court of the)	AND RECOMMENDATION
State of North Dakota,)	
)	File No. 6772-SE-2207
Petitioner,)	
v.)	
)	
Kristin A. Overboe,)	
)	
Respondent.)	

This matter was presented to the Hearing Panel based on the Office of Disciplinary Counsel’s Motion for Default Findings of Fact, Conclusions of Law, and Recommendation, the brief in support of the motion, affidavit, and other supporting documents.

The Hearing Panel, having reviewed the Petition for Discipline, the motion and supporting documents, and all records on file, now makes the following:

FINDINGS OF FACT

1. Kristin A. Overboe (Overboe) is an attorney admitted to practice in the State of North Dakota. Overboe was admitted to practice in North Dakota on September 24, 2010.
2. Overboe was a practicing attorney out of Overboe Law. The firm is located in Fargo, North Dakota.
3. Overboe is, at this time, subject to an interim suspension of her ability to practice law. *See North Dakota Supreme Court Order 20220352.*
4. However, Overboe was a licensed North Dakota attorney at all times during the representation of Kristen Nelson (Nelson).

5. Overboe was retained by Nelson to provided legal services in a divorce matter in January 2021. The case was Hettinger Count District Court No. 21-2021-DM-00003.
6. Nelson retained Overboe with a payment of \$5,000.
7. Nelson's husband was served the Summons and Complaint in mid-March 2021, despite Overboe being retained in January.
8. Beginning early in the representation, Nelson had difficulty communicating with Overboe, often going weeks without receiving information in response to questions regarding her case.
9. When Overboe did communicate with Nelson, their communications were not regarding the substance of the representation or the actions that were being taken on Nelson's behalf.
10. During the pendency of the representation, Nelson provided Overboe the needed documentation to prepare for and execute the complete representation including a trial.
11. Little communication was had about the documents and Nelson was still not provided updates as to the case's status. Further, her requests for information went unheeded and Overboe only provided excuses for the lack of movement within the case when questioned by Nelson.
12. During the course of the representation, Overboe received discovery requests from opposing counsel.
13. Overboe provided them to Nelson and Nelson returned the completed questions to Overboe.
14. Overboe did not submit the completed discovery responses to opposing counsel. As a result of that action, Overboe was prohibited from entering specific evidence and eliciting element of testimony from Nelson during the October 18, 2021, trial.

15. Additionally, Overboe was generally unprepared for the October 18, 2021, trial. Due to the lack of preparation, Nelson's case was damaged and Overboe was negatively critiqued by the judge presiding over the matter.
16. After the trial was completed and the decision of the court issued, Overboe failed to provide a copy of the judgment to Nelson.
17. Nelson had to receive a copy of the judgment from the Clerk of Court after requesting the same.
18. Nelson continued to have communication issues with Overboe post-judgment. The lack of communication caused her to be unaware of the options available to her and the overall status of the matter.
19. On June 13, 2022, Overboe indicated through an email to Nelson that she would be withdrawing from her representation of Nelson. She further indicated that she would not be engaging in an appeal of the matter.
20. Overboe's communication caused Nelson to believe the representation was terminated.
21. Overboe did not withdraw as she indicated she would.
22. On July 22, 2022, Overboe filed an appeal of the judgement in 21-2021-DM-00003.
23. This appeal was not authorized by Nelson.
24. Nelson has since, unquestionably, terminated the representation.
25. Nelson has made requests of Overboe to return the documents Nelson provided to Overboe during the pendency of the matter.
26. Overboe has not complied with the requests.
27. Nelson is entitled to the documents that she is requesting as they are her property.
28. Judicial notice is taken of the entire transcript of the October 18, 2021, trial in Case No. 21-2021-DM-00003. The transcript is located at Docket ID Index #165. Said transcript

is applicable to the above recited facts with special attention given to pages 5-9 and 89-94. However, the entirety of the transcript lends credibility to the allegations.

29. Judicial notice is taken of North Dakota Supreme Court Order 20220352. Said order imposed an interim suspension against Overboe's ability to practice law. The order considered, among other elements, Overboe's current fitness to practice law relative to her mental health.

CONCLUSIONS OF LAW

Overboe has been given ample opportunity to participate in the disciplinary process and argue a defense to this Panel. She has not utilized that opportunity and as such is subject to the following Conclusions of Law and Recommended Discipline.

1. Overboe violated Rule 1.1, N.D.R. Prof. Conduct, by failing to utilize methods of competent practitioners and be sufficiently prepared to represent Nelson in her trial.
2. Overboe violated Rule 1.2, N.D.R. Prof. Conduct, by pursuing alternative objectives while failing to pursue her client's stated objectives and by engaging in unauthorized actions on behalf of her client.
3. Overboe violated Rule 1.4, N.D.R. Prof. Conduct, by failing to make reasonable efforts to keep her client informed as to the status of the matter and comply with Nelson's reasonable requests for information.
4. Overboe violated Rule 1.16, N.D.R. Prof. Conduct, by failing to surrender papers and property to which Nelson was entitled.
5. Overboe violated Rule 3.4, N.D.R. Prof. Conduct, by failing to make a reasonably diligent effort to comply with a legally proper discovery request of opposing counsel.
6. After considering the sanctions available to the Hearing Panel under the North Dakota Standards for Imposing Lawyer Sanctions, the Hearing Panel concluded the appropriate

sanction for Overboe's lack of competence is reprimand under Standard 4.53, N.D. Stds.

Imposing Lawyer Sanctions, which states:

4.53 Reprimand is generally appropriate when a lawyer:

(a) Demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client.

7. Overboe failed to sufficiently prepare for the trial in the matter and it was noted by the Court that she was not prepared and should have requested a continuance. *See* Trial Transcript, Case No. 21-2021-DM-00003, Docket ID 165. Further, Overboe did not adequately review documents within the representation before committing to courses of action which later caused negative results for Nelson. Such review was fundamental to the representation. Overboe's conduct is deserving of a sanction.

8. After considering the sanctions available to the Hearing Panel under the North Dakota Standards for Imposing Lawyer Sanctions, the Hearing Panel concluded the appropriate sanction for Overboe's initiation of an appeal without client consent is suspension under Standard 4.62, N.D. Stds. Imposing Lawyer Sanctions, which states:

4.62 Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.

9. Overboe's knowing reversal in undertaken actions after giving indications that she was withdrawing from representation and not conducting an appeal caused confusion to Nelson. Overboe failed to receive authorization to act in the manner she did, failed to communicate with Nelson her intention to act on her behalf, did not communicate how that action would be accomplished, and did not explain what consequence could result from the action. Overboe's conduct is deserving of a sanction.

10. After considering the sanctions available to the Hearing Panel under the North Dakota Standards for Imposing Lawyer Sanctions, the Hearing Panel concluded the appropriate sanction for Overboe's lack of communication is reprimand under Standard 4.63, N.D. Stds. Imposing Lawyer Sanctions, which states:

4.63 Reprimand is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information, and causes injury or potential injury to the client.

11. Overboe negligently failed to reasonably communicate with Nelson at numerous times during the representation. She did not update Nelson as to the status of the matter by failing to provide to her a copy of the judgment. She also did not comply with Nelson's reasonable requests for information. Overboe's conduct is deserving of a sanction.

12. After considering the sanctions available to the Hearing Panel under the North Dakota Standards for Imposing Lawyer Sanctions, the Hearing Panel concluded the appropriate sanction for Overboe's failure to properly terminate representation is suspension under Standard 4.12, N.D. Stds. Imposing Lawyer Sanctions, which states:

4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

13. Nelson directly requested that Overboe provide back to her the materials submitted to Overboe to conduct the representation. Overboe, knowingly, has not returned those materials in their entirety. Overboe's conduct is deserving of a sanction.

14. After considering the sanctions available to the Hearing Panel under the North Dakota Standards for Imposing Lawyer Sanctions, the Hearing Panel concluded the appropriate sanction for Overboe's failure to make a reasonably diligent effort to comply with a legally proper discovery request is a suspension under Standard 6.22, N.D. Stds.

Imposing Lawyer Sanctions, which states:


6.22 Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.

15. Overboe knowingly failed to submit Nelson's answers to the opposing counsel's discovery requests. As a result, evidence and testimony of Nelson was excluded from the October 18, 2021, trial. Overboe's conduct is deserving of a sanction.
16. Due to the existence of the interim suspension and its underlying bases, it is believed such factors contributed to the instant misconduct in this matter as well. As a result, continuing concerns as to Overboe's fitness to practice law are present beyond the instant facts and resultant sanctions of this disciplinary matter.
17. A period of suspension, with requirement for application for reinstatement after the term of suspension is complete, is proper as a result.

RECOMMENDATIONS

1. That Overboe be suspended from the practice of law for a period of six (6) months and one (1) day;
2. That Overboe be assessed the costs and expenses of these disciplinary proceedings in the amount of \$250;
3. That Overboe comply with N.D.R. Lawyers Discipline 6.3, regarding notice.

Dated this 14th day of March, 2023.



Sarah Barron
Chair, Hearing Panel

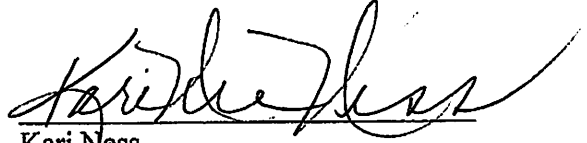
Dated this 15 day of March, 2023.



Jennifer Grosz
Member, Hearing Panel

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Dated this 30th day of March, 2023.



Kari Ness
Member, Hearing Panel

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