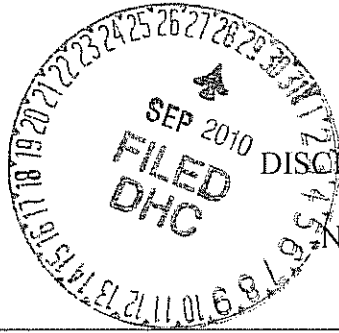


NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
10 DHC 17

THE NORTH CAROLINA STATE BAR,)
Plaintiff,)
v.)
GLENN A. CIPRIANI,)
Defendant.)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
OF DISCIPLINE**

This matter came on to be heard and was heard before a hearing panel of the Disciplinary Hearing Commission composed of the Chair, Theodore C. Edwards, II, Harriett Smalls, and Karen B. Ray on August 13, 2010. Plaintiff was represented by William N. Farrell, Deputy Counsel. Defendant appeared pro se. Based upon the pleadings and the evidence introduced at the hearing, the hearing panel hereby 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 North Carolina General Statutes, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.
2. Defendant, Glenn Andrew Cipriani ("Cipriani" or "Defendant"), was admitted to the North Carolina State Bar on August 24, 2007, 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 Rules and Regulations of the North Carolina State Bar and the Rules of Professional Conduct.

3. During the relevant periods referred to herein, Cipriani was engaged in the practice of law in the State of North Carolina in Charlotte, Mecklenburg County, North Carolina.

4. From on or about August 20, 2007 through on or about January 29, 2008, Cipriani was employed by the law firm Moore & Van Allen PLLC (“Moore & Van Allen”) in the intellectual property group.

5. While employed as an associate attorney with Moore & Van Allen, Cipriani worked on behalf of Moore & Van Allen’s client Lowe’s Companies, Inc. in the defense of a patent infringement lawsuit brought against Lowe’s by a company doing business as Stringliner.

6. As part of his duties and responsibilities as an associate attorney with Moore & Van Allen, Cipriani researched on Lowe’s behalf a possible potential claim or counterclaim against Stringliner for “False Marking” under 35 U.S.C. § 292.

7. “False Marking” under 35 U.S.C. § 292 occurs when a manufacturer or seller places a patent number on a product for the purposes of deceiving the public into believing that the product is covered by a patent when it is not.

8. The false marking statute provides for a fine of \$500.00 for each offense, which any person may bring suit to recover, with one-half of the recovery going to the United States, and the other half going to the plaintiff.

9. Cipriani drafted a potential counterclaim for false marking pursuant to 35 U.S.C. § 292 on Lowe’s behalf for use against Stringliner in the patent infringement suit.

10. Lowe's decided not to assert the false marking claim against Stringliner in the patent infringement case. A decision was not made by Lowe's, at that time, about asserting the claim in the future as a separate action.

11. On or about January 29, 2008, Cipriani's employment at Moore & Van Allen ended. Cipriani joined Attorney James Harrington's law firm.

12. On or about May 13, 2008, Cipriani and Harrington filed a lawsuit as co-plaintiffs against Stringliner, Home Depot U.S.A., Inc. ("Home Depot") and the Lehigh Group, LTD. ("Lehigh") in the United States District Court for the Western District of North Carolina, case number 3:08-cv-00225 ("the lawsuit").

13. But for the benefit of the information Cipriani acquired during his work on the defense of the patent infringement suit for Lowe's, he would not have known about Stringliner products, the possibility that they were falsely marked, and that there was a potential cause of action under 35 U.S.C. § 292 against Stringliner.

14. Cipriani used the information he acquired in the defense of Lowe's for his own and Harrington's personal use and for his own and Harrington's potential financial gain.

15. Cipriani's use of the information to bring his own personal suit under 35 U.S.C. § 292 was done without the consent of Lowe's and to Lowe's disadvantage.

16. The filing of the lawsuit under 35 U.S.C. § 292 may have foreclosed Lowe's from thereafter bringing such a claim against Stringliner.

17. The Cipriani and Harrington lawsuit could have negatively impacted settlement negotiations in the original patent infringement lawsuit between Stringliner and Lowe's, which was pending and ongoing at the time Cipriani and Harrington filed the lawsuit.

18. The information Cipriani acquired while working on Lowe's behalf, and later used to provide the basis of his own personal lawsuit, was not information that was generally known.

Based upon the foregoing Findings of Fact, the hearing panel hereby 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 foregoing actions constitute grounds for discipline pursuant to N.C. General Statute § 84-28(b)(2) in that he violated one or more of the Rules of Professional Conduct as follows:

- a. By using information he acquired while representing Lowe's to the disadvantage of his former client Lowe's, Defendant engaged in conduct in violation of Rule 1.9(c)(1).

Based upon the foregoing Findings of Fact and Conclusions of Law, and the additional evidence and arguments presented concerning appropriate discipline, the hearing panel hereby finds by clear, cogent, and convincing evidence the following:

FINDINGS REGARDING DISCIPLINE

1. Defendant has refused to acknowledge the wrongful nature of his conduct.
2. Defendant has not been previously disciplined by the North Carolina State Bar.
3. Defendant's disregard of his professional obligation to a former client under the Rules of Professional Conduct created the risk of significant potential harm to a former client and the legal profession.

4. Maintaining client confidentiality is a fundamental responsibility of attorneys. It is of the utmost importance to the legal profession that clients are able to rely on attorneys to maintain confidential information and not use it for their own personal gain.

CONCLUSIONS REGARDING DISCIPLINE

1. The hearing panel has considered all of the factors enumerated in 27 N.C.A.C. 1B§ .0114(w) of the Rules and Regulations of the North Carolina State Bar and finds the following factors are applicable in this matter:

- a. Refusal to acknowledge wrongful nature of conduct;
- b. Elevation of the defendant's personal interest above that of a former client; and
- c. Potential negative impact on the interests of the former client.

2. Defendant's lawsuit resulted in potential significant harm to a former client and to the legal profession.

3. The hearing panel has considered all of the different forms of discipline available to it including admonition, reprimand, and censure in considering the appropriate discipline in this case and finds that an admonition or reprimand would not be sufficient to protect the public, because of the potential significant harm to potential clients and the legal profession.

4. The hearing panel considered all lesser options and finds that discipline short of censure would not sufficiently protect the public for the following reasons:

- a. Defendant's refusal to appreciate the significance of the wrongful nature of his misconduct requires a censure to impress upon him the significance of his misconduct, as well as to impress upon him the fundamental importance of maintaining the confidentiality of client information, and to deter Defendant from future misconduct of this kind.

b. Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses that Defendant committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar of this State.

5. The hearing panel therefore concludes that the only sanction in this case that can adequately protect the public is a censure of Defendant to protect clients, the legal profession and the public from the risk of potential significant harm shown by Defendant's conduct in this instance.

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


ORDER OF DISCIPLINE

1. Defendant, Glenn A. Cipriani, is hereby Censured for his violation of the Rules of Professional Conduct. The hearing panel trusts that you will ponder this Censure, recognize the errors that you have made, and that you will not again allow yourself to depart from adherence to the high ethical standards of the legal profession. This Censure should serve as a strong reminder and inducement for you to weigh carefully in the future your responsibilities to the public, your clients, and your fellow attorneys, to the end that you conduct yourself as a respected member of the legal profession whose conduct may be relied upon without question.

2. The costs of this action are taxed to Defendant, including costs of the depositions taken in this case allowed by statute, except that the costs of the videos are not taxed to Defendant. The deposition costs were necessarily incurred for the prosecution of this proceeding. Defendant will receive a statement of costs from the State Bar and will pay these costs within 60 days of the effective date of this order.

Signed by the undersigned Chair with full knowledge and consent of the other members of the hearing panel.

This is the 27th day of September, 2010.



Theodore C. Edwards, II, Chair
Disciplinary Hearing Panel