

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

18 CVS 005645

2018 JUL 17 A 11:47

NORTH CAROLINA STATE BAR

Petitioner,

v.

ALAN G. PHILLIPS

Respondent.

WAKE COUNTY, C.S.C.

BY B

**RESPONSE TO PETITION FOR
INJUNCTION AND ENFORCE
SUBPOENA**

Respondent Alan G. Phillips responds to the Petition for Injunction and Enforce Subpoena filed by the North Carolina State Bar as follows:

1. Admitted.
2. Admitted.
3. Admitted.

Procedural History

4. Admitted that Respondent received a Letter of Warning signed by the Grievance Committee Chair. The letter exists in written form and speaks for itself. Otherwise denied.
5. Admitted that Respondent received a Letter of Warning. Admitted that Respondent did not refuse the Letter of Warning because Respondent could not afford the time and expense of a hearing. The remainder of this paragraph states legal conclusions to which no response is required. To the extent a response is required, these allegations are denied.
6. Admitted that the State Bar has informed Respondent that the same out-of-state Complainant filed a subsequent grievance complaint. The complaint exists in written form and speaks for itself. Otherwise denied.
7. Admitted that Respondent received a Letter of Notice. The Letter of Notice exists in written form and speaks for itself. Otherwise denied.
8. Denied for lack of information sufficient to form a belief.
9. Denied for lack of information sufficient to form a belief.

10. Admitted
11. Admitted that Respondent did not provide the State Bar with a list of out-of-state clients for the reasons stated in Respondent's response to the Letter of Notice. Respondent's response to the Letter of Notice exists in written form and speaks for itself. Otherwise denied.
12. Admitted that Respondent submitted a response to the Letter of Notice on August 15, 2017. Respondent's response to the Letter of Notice exists in written form and speaks for itself. Otherwise denied.
13. Admitted that Respondent received a letter from the State Bar dated August 16, 2017. The letter exists in written form and speaks for itself. Otherwise denied.
14. Admitted that Respondent sent a letter dated August 25, 2017, to the State Bar. The letter exists in written form and speaks for itself. Admitted that Respondent did not provide a list of out-of-state clients. Otherwise denied.
15. Admitted that Respondent received a subpoena dated August 28, 2017. The subpoena exists in written form and speaks for itself. Otherwise denied.
16. Admitted that Respondent received a subpoena dated August 28, 2017. The subpoena exists in written form and speaks for itself. Otherwise denied.
17. Admitted that Respondent filed a Motion to Quash the Subpoena. The Motion to Quash exists in written form and speaks for itself. Otherwise denied.
18. Denied for lack of information sufficient to form a belief.
19. Admitted that Respondent sent an email to the President of the North Carolina State Bar, Mark W. Merritt. The email exists in written form and speaks for itself. Denied for lack of information sufficient to form a belief that the email was sent on September 16, 2017. Otherwise denied.
20. Admitted that the President of the North Carolina State Bar, Mark W. Merritt, issued an Order on Respondent's Motion to Quash on September 26, 2017. The Order exists in written form and speaks for itself. Otherwise denied.
21. Admitted that the President of the North Carolina State Bar, Mark W. Merritt, issued an Order on Respondent's Motion to Quash on September 26, 2017. The Order exists in written form and speaks for itself. Otherwise denied.
22. Admitted that the President of the North Carolina State Bar, Mark W. Merritt, issued an Order on Respondent's Motion to Quash on September 26, 2017. The Order exists in written form and speaks for itself. Otherwise denied.
23. Admitted that Respondent received a Subpoena dated October 17, 2017. The Subpoena exists in written form and speaks for itself. Otherwise denied.

24. Denied that the second Subpoena gave Respondent ample time to produce the requested materials. The Subpoena exists in written form and speaks for itself. Otherwise denied.
25. Admitted that Respondent filed an Objection and Motion to Quash Subpoena, Rule 59 Motion and Motion to Reconsider, Rule 60 Motion, Rule 62 Motion and Motion for Equitable Relief” (the “Objection and Motions”). The Objection and Motions exist in written form and speak for themselves. Admitted that Respondent did not produced documents responsive to the second Subpoena. Otherwise denied.
26. Admitted that the President of the North Carolina State Bar, John Silverstein, issued an Order dated January 16, 2018. The Order exists in written form and speaks for itself. Otherwise denied.
27. Admitted that Respondent filed a Rule 60 Motion on February 13, 2018.
28. Admitted that Respondent did not produce documents responsive to the second Subpoena by February 16, 2018, for the reasons set forth in Respondent’s written submissions to the State Bar. Otherwise denied.
29. Admitted that the President of the North Carolina State Bar, John Silverstein, issued an Order dated February 21, 2018. The Order exists in written form and speaks for itself. Otherwise denied.
30. Admitted that Respondent received an email from Petitioner dated February 27, 2018. The email exists in written form and speaks for itself. Otherwise denied.
31. Admitted that Respondent did not produce documents responsive to the second Subpoena by April 27, 2018, for the reasons set forth in Respondent’s written submissions to the State Bar. Admitted that Respondent did not send a reply email to Petitioner. Admitted that Respondent made no written response to the Order dated February 21, 2018. Otherwise denied.

Discussion

32. This paragraph contains a statement of law to which no response is required. To the extent a response is required, denied that this paragraph contains a full and complete statement of the cited legal authority. N.C. Gen. Stat. § 84-23 exists in written form and speaks for itself.
33. This paragraph contains a statement of law to which no response is required. To the extent a response is required, denied that this paragraph contains a full and complete statement of the cited legal authority. N.C. Gen. Stat. § 84-22 exists in written form and speaks for itself.
34. This paragraph contains a statement of law to which no response is required. To the extent a response is required, denied that this paragraph contains a full and

- complete statement of the cited legal authority. N.C. Gen. Stat. § 84-29 exists in written form and speaks for itself.
35. This paragraph contains a statement of law to which no response is required. To the extent a response is required, denied that this paragraph contains a full and complete statement of the cited legal authority. 27 N.C.A.C. 1B.0112(f) exists in written form and speaks for itself.
 36. Admitted that Respondent did not produce responsive documents for the reasons set forth in Respondent's written submissions to the State Bar. To the extent this paragraph paraphrases Respondent's written submissions, those documents exist in written form and speak for themselves. Admitted that Respondent contends the subpoenas were issued without reasonable cause. Otherwise denied.
 37. This paragraph contains statements of law and legal arguments to which no response is required. To the extent a response is required, denied that this paragraph contains a full and complete statement of the cited legal authority. To the extent his paragraph references Respondent's written submissions to the State Bar, those documents exist in written form and speak for themselves. Otherwise denied.
 38. Admitted that the complaint and Respondent's response to the complaint exist in written form and speak for themselves. Denied for lack of information sufficient to form a belief as to other information that may have come to the attention of the State Bar. Denied that Respondent is engaged in the unauthorized practice of law. Denied that Respondent's written submissions to the State Bar constitute an admission that Respondent is engaged in the unauthorized practice of law. Otherwise denied.
 39. Denied that the requested information is narrowly tailored to gather necessary information. The Letter of Notice and the subpoenas exist in written form and speak for themselves. The remainder of this paragraph states legal conclusions to which no response is required. To the extent a response is required, these allegations are denied.
 40. Denied.
 41. Admitted.
 42. Admitted that Respondent has advised clients in well over half of the U.S. States since 2012. Admitted that North Carolina is the only state in which Respondent is licensed to practice law. Denied that Respondent has engaged in the unauthorized practice of law. Otherwise denied.
 43. This paragraph states a legal argument requiring no response. To the extent a response is required, the allegations of this paragraph are denied.

44. Denied.
45. Denied.
46. Denied.
47. Denied.
48. Denied that Respondent is engaged in misconduct. Otherwise denied.
49. Denied that the State Bar is entitled to the relief requested. Otherwise denied.
50. Denied that the State Bar is entitled to the relief requested. Otherwise denied.

FIRST DEFENSE

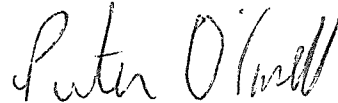
Petitioner's request for an order requiring Respondent to produce records responsive to a Subpoena should be denied for at least the following reasons:

- (1) The Subpoena was issued without reasonable cause, as required by 27 N.C.A.C. 1B.0112(f), where the underlying grievance includes no specific allegation that Respondent engaged in the unauthorized practice of law with any client outside of North Carolina.
- (2) The Subpoena is overly broad and unduly burdensome and otherwise oppressive as it commands Respondent to produce a large number of documents in the absence of reasonable cause to conclude that Respondent engaged in the unauthorized practice of law. *N.C. R. Civ. P. 45*. Respondent advises individuals regarding vaccine exemption issues under federal law and the United States Constitution. These matters often present highly personal and sensitive issues involving freedom of religion, fear of persecution and minor children. Persons whose records are within the scope of the Subpoena credibly fear ostracism and derision for the positions they take, and no allegation in the grievance warrants the Subpoena's invasive and burdensome document request.
- (3) The Subpoena commands production of confidential and privileged information pertaining to a large number of individuals who sought Respondent's advice regarding vaccine exemption issues under federal law and the United States Constitution. These individuals have made no allegation against Respondent and have not waived any applicable attorney-client privilege pertaining to these confidential matters. Nothing in the grievance warrants the compelled disclosure of this confidential and privileged information.

WHEREFORE, having answered the Petition for Injunction and Enforce Subpoena filed by the North Carolina State Bar, Respondent Alan G. Phillips asks the Court to enter an Order:

1. Denying the relief requested in the Petition for Injunction and Enforce Subpoena; and
2. For such further relief as the Court deems just and proper.

This the 11th day of July, 2018.



Peter F. O'Connell
Attorney for Respondent

OF COUNSEL:

SHARPLESS & STAVOLA, P.A.
200 South Elm Street, Suite 400
Greensboro, North Carolina 27401
Telephone: (336) 333-6383

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **RESPONSE TO PETITION FOR INJUNCTION AND ENFORCE SUBPOENA** was served upon the parties to this action by mailing a copy thereof by first-class, postage pre-paid mail to the following counsel of record:

Mr. Joshua T. Walthall
North Carolina State Bar
P O Box 25908
Raleigh, NC 27611

This the th11 day of July, 2018.



Peter F. O'Connell
Attorney for Respondent

OF COUNSEL:

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