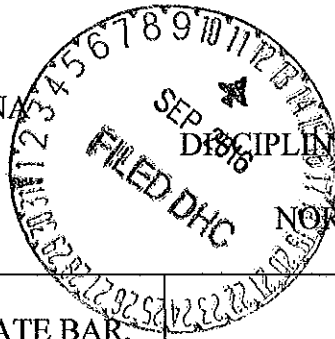


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
15 DHC 38

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

CLIFTON J. GRAY III, Attorney,

Defendant

ORDER OF DISCIPLINE

THIS MATTER was heard on August 1-2 and August 8-12, 2016 by a Hearing Panel of the Disciplinary Hearing Commission composed of Beverly T. Beal, Chair, William O. King, and Michael S. Edwards pursuant to 27 N.C.A.C. 1B § .0114 of the Rules and Regulations of the North Carolina State Bar. Carmen Hoyme Bannon and Maria J. Brown represented Plaintiff, the North Carolina State Bar. Defendant, Clifton J. Gray III, represented himself.

Based upon the pleadings, record, and evidence presented 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, 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, Clifton J. Gray III, was admitted to the North Carolina State Bar in 2005, and is 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 the relevant period referred to herein, Gray was actively engaged in the practice of law in the State of North Carolina and maintained a law office in Greenville, Pitt County, and/or Raleigh, Wake County, North Carolina.

4. Gray was properly served with the summons and complaint in this matter.

5. Gray represented Montreal Hunt in *State v. Hunt*, Washington County file nos. 10- CR-502851-52.

6. Gray failed to appear at a hearing in Hunt's case on 26 August 2010. As a result of Gray's failure to appear on Hunt's behalf, Hunt was called and failed, and an order for his arrest was issued.

7. Gray subsequently filed a motion to have the order for Hunt's arrest recalled. In that motion, the justification Gray provided for his failure to appear was that the cell phone containing his calendar had fallen in the ocean.

8. In December 2011, Hunt filed with the State Bar a Petition for Resolution of Disputed Fee ("fee dispute") concerning Gray's representation of him. Gray was served with notice of Hunt's fee dispute on 30 January 2012.

9. The notice provided that Gray was required to respond to the fee dispute within fifteen days of receipt of the notice. Gray failed to respond to Hunt's fee dispute within fifteen days.

10. On 28 February 2012, the fee dispute mediator informed Gray that his response to Hunt's fee dispute was two weeks late and asked Gray to provide a response by the end of business on 29 February 2012. On 29 February 2012, Gray submitted a response to Hunt's fee dispute, which was inadequate.

11. In February 2012, Willis Riddick hired Gray to seek to have Riddick's criminal record expunged. Riddick paid Gray \$1,500.00 for the representation.

12. Gray did not file Riddick's petition for expunction.

13. On 26 November 2012, Riddick filed a fee dispute with the State Bar concerning Gray's representation of him.

14. In correspondence with the fee dispute mediator regarding Riddick's fee dispute, Gray indicated that the expunction petition he had prepared for Riddick must have gotten lost in the mail, and, as a result, he was willing to refund to Riddick a "substantial portion" of the fee.

15. On 18 February 2013, the mediator asked Gray to specify an amount he would be willing to refund Riddick. Gray did not respond to the mediator's 18 February 2013 inquiry.

16. On 26 February 2013 and again on 5 March 2013, the mediator reiterated her request that Gray specify an amount he would be willing to refund Riddick.

17. On 13 March 2013, Gray indicated to the mediator that he would be willing to refund \$750.00 to Riddick.

18. On 8 April 2013, the mediator notified Gray that Riddick had made a counter-offer in the fee dispute mediation and asked him to respond.

19. Gray did not respond to the notification regarding Riddick's counter-offer.

20. In April 2012, Brenza Ernul retained Gray to represent her son in a criminal matter and paid Gray several installments towards Gray's quoted \$1,500.00 fee.

21. Gray did not go to court on behalf of Ernul's son.

22. On 18 March 2013, Ernul filed a fee dispute with the State Bar concerning the amounts paid to Gray for representing her son.

23. Gray was served with notice of Ernul's fee dispute on 19 March 2013. The notice provided that Gray was required to respond to the fee dispute within fifteen days of receipt of the notice. Gray failed to respond to Ernul's fee dispute within fifteen days.

24. On 16 April 2013, the fee dispute mediator reminded Gray that his response to Ernul's fee dispute was late. Later that day, Gray submitted his response.

25. Immediately upon receipt of Gray's response to the fee dispute, the mediator requested a copy of Ernul's son's client file from Gray. Gray did not respond.

26. On 7 May 2013 and again on 15 May 2013, the mediator reiterated her request that Gray provide a copy of Ernul's son's client file. In the 15 May 2013 communication, the mediator instructed Gray to provide the client file no later than 22 May 2013. Gray provided the file on 23 May 2013.

27. In September 2012, Alphonso Gibbs hired Gray to file a petition to have his name removed from the sex offender registry. Gibbs paid Gray \$725.00.

28. In March 2013, Gibbs filed a fee dispute with the State Bar concerning Gray's representation of him.

29. In responding to Gibbs's fee dispute, Gray indicated that he had filled out the petition for Gibbs but had been unable to schedule the hearing because he had difficulty contacting Gibbs.

30. The fee dispute mediator subsequently asked Gray to indicate whether he would be willing to issue a partial refund to Gibbs.

31. Gray did not respond to the mediator's inquiry regarding a partial refund to Gibbs.

32. Megan Mauffrey hired Gray to handle her uncontested divorce and paid Gray \$500.00 for the representation.

33. During a 14 May 2012 meeting, Gray prepared the verified complaint for divorce and Mauffrey signed it. At the time of her May 2012 meeting with Gray, Mauffrey and her husband had already been living apart for one year.

34. At no time did Gray notify Mauffrey that she was required to pay a filing fee before he would file her divorce complaint.

35. On 13 August 2012, Mauffrey sent Gray an email indicating that she had been attempting to contact him to check on the status of her divorce. In response, Gray represented to Mauffrey that he had "sent out" her divorce paperwork and was "waiting to get it back."

36. At the time he made the representation in paragraph 35, Gray had not filed Mauffrey's divorce complaint. Gray never filed Mauffrey's divorce complaint.

37. On 15 October 2012, Mauffrey sent Gray another email indicating that she had not heard from him since August 2012, had not received responses to several requests for information, and wanted to know the status of her case. Gray did not respond to Mauffrey's 15 October 2012 email.

38. On 15 February 2013, Mauffrey filed for divorce *pro se*, paying all costs associated with that filing, and received a divorce judgment within three months.

39. In April 2013, Mauffrey filed a fee dispute with the State Bar regarding the \$500.00 she had paid Gray.

40. In his response to Mauffrey's fee dispute, Gray indicated that he did not file Mauffrey's divorce paperwork because Mauffrey had not paid the filing fee.

41. On 23 May 2013, the fee dispute mediator asked Gray to indicate whether he would be willing to issue a partial refund to Mauffrey. Gray did not respond to the mediator's 23 May 2013 inquiry regarding a partial refund to Mauffrey.

42. In February 2013, Khaleel Dugan retained Gray to represent him on a charge of indecent liberties with a child in Pitt County.

43. Dugan agreed to pay Gray a total of \$6,000.00 for the representation. Dugan's sister paid Gray \$3,000.00 at the outset of the representation and made several subsequent installment payments of fees.

44. Gray appeared on Dugan's behalf at his first appearance in February 2013, and continued Dugan's case on several occasions in District Court. Gray did not perform any other services for Dugan before Dugan discharged Gray and obtained appointed counsel.

45. Gray did not refund any of the fees paid by Dugan's sister.

46. Dugan filed a grievance against Gray with the North Carolina State Bar (grievance file #14G0933). Gray was served with the Letter of Notice in file 14G0933 on 16 March 2015.

47. Gray requested additional time to respond to the Letter of Notice in file 14G0933, and was given an extension of time until 15 April 2015. Gray did not respond until 29 April 2015. Gray's 29 April 2015 response was incomplete.

48. On 7 May 2015, the State Bar sent Gray a follow-up letter requesting additional information about file 14G0933. The letter provided that Gray was required to respond within fifteen days. Gray did not respond until 18 June 2015.

49. On 23 June 2015, the State Bar sent Gray another follow-up inquiry requesting additional information about file 14G0933. The inquiry provided that Gray was required to respond by 2 July 2015. Gray failed to respond as required, submitting a partial response on 24 July 2015.

50. All attorneys practicing in the Superior and District Courts of this State are required to comply with the North Carolina General Rules of Practice for the Superior and District Courts.

51. Rule 12 of the North Carolina General Rules of Practice ("Rule 12") provides, in pertinent part:

Counsel are at all times to conduct themselves with dignity and propriety. All statements and communications to the court . . . shall be . . . made from a standing position behind the counsel table. . . . All personalities between counsel should be avoided. . . . Colloquies between counsel should be avoided. Adverse witnesses . . . should be treated with fairness and due consideration. . . . In an argument addressed to the court, remarks or statements should not be interjected to influence the jury or spectators. . . . Counsel should yield gracefully to rulings of the court and avoid detrimental remarks both in court and out. He should at all times promote respect for the court.

52. Gray represented Donnell Benson in *State v. Benson*, Wake County file nos. 11-CR-207261-63 & 11-CR-206494. Gray appeared on behalf of Benson at a probable cause hearing before The Honorable Jennifer Knox in Wake County District Court during the last week of April 2011.

53. During the proceedings in *State v. Benson* on 26 April 2011, Judge Knox admonished Gray regarding his repeated interruptions of both the Court and opposing counsel. During the continued proceedings on 29 April 2011, Judge Knox again admonished Gray about interrupting and about his lack of civility toward opposing counsel and the Court, warning Gray that his conduct was unprofessional, violated the Rules of Professional Conduct, and was contemptuous.

54. After he was admonished by the Court, Gray continued to direct personal invectives toward opposing counsel and continued interrupting both counsel and the judge while they were speaking.

55. After considerable discussion on 29 April 2011 about scheduling matters, the Court announced that the proceedings in *State v. Benson* would be re-set to resume at a later date. Gray continued to argue with the judge after she announced her decision. He also stated (about opposing counsel), "they're gonna lose, and they know it," and addressed one of the ADAs directly, saying "I have beat you many times."

56. In response to Gray's conduct described in paragraph 53, Judge Knox again reprimanded Gray about his lack of civility. Gray repeatedly interrupted and argued with the judge, asking her how his behavior violated any ethical rules.

57. As a result of Gray's conduct described in paragraphs 51 through 54, above, Gray was convicted of direct criminal contempt of court (*In re Gray*, Wake County file no. 11-CR-4511).

58. Gray represented Edna Navarro, who was charged with two counts of trafficking cocaine, in *State v. Navarro*, Greene County file nos. 13-CRS-0095 and 11-CRS-50116.

59. On 8 July 2013, Navarro's case was on the calendar but Gray failed to appear in court. Gray was not on secured leave on 8 July 2013.

60. The Greene County Superior Court issued an order directing Gray to appear and show cause why he should not be held in contempt for failing to appear on Navarro's behalf and thereby obstructing the court's ability to dispose of cases.

61. On 26 August 2013, Gray was found guilty of direct criminal contempt of court for failing to appear on behalf of Navarro (*State v. Gray*, Greene County file 13-CRS-258).

62. Gray's contemptuous conduct interrupted and interfered with matters before the Court by obstructing the Court's ability to dispose of Navarro's case and the case of Navarro's co-defendant.

63. Gray represented Lamont Nichols, who was charged with possession of a firearm by a felon in *State of North Carolina v. Lamont Nichols*, Wake County file no. 12-CRS-221822.

64. Gray appeared in Wake County Superior Court on behalf of Nichols during the June 2013 trial of *State v. Nichols*, which was presided over by the Honorable Shannon R. Joseph.

65. Prior to the Nichols trial, Gray had not asked to examine the physical evidence in the case.

66. When the Nichols trial began, Gray asserted he had not been given an opportunity to examine the physical evidence.

67. Gray was immediately given an opportunity to view the physical evidence. Gray examined only some of the items in the box of evidence presented to him by the State.

68. When the ADA later sought to introduce items of evidence from that same box, Gray repeatedly objected on the grounds that he had never before seen the item of evidence.

69. On multiple occasions in the Nichols case, Gray made allegations of discovery-related misconduct by the ADA and threatened to report the ADA to the State Bar.

70. Gray made one such allegation in the presence of the jury, and Judge Joseph admonished Gray for making his discovery objection in front of the jury.

71. The Court determined that none of Gray's allegations of discovery misconduct by the State in the Nichols case had merit.

72. During a pretrial motion to suppress, Gray laughed derisively at a witness who was testifying and was admonished by the Court for doing so.

73. While questioning one of the State's witnesses during the trial, Gray again laughed out loud in reaction to the witness's testimony. In response, Judge Joseph sent the jury out of the courtroom and notified Gray that if he laughed at a witness again, she would hold him in contempt of court.

74. On multiple occasions during the Nichols trial, Gray:

- (a) Was late returning to the courtroom after recesses.
- (b) Used his cell phone in the courtroom, including while Judge Joseph was addressing him.
- (c) Failed to yield to Judge Joseph's rulings and continued to argue with her after she had ruled.

75. During his closing argument in *State v. Nichols*, Gray indicated to the jury that the judge was going to instruct them on the issue of control over the house where the firearm was located and then attempted to tell the jury how Webster's dictionary defined "control." The State objected, noting that the definition of "control" was not in evidence and that it would be inaccurate and misleading to give the jurors a definition that was not the legal standard. Judge Joseph sustained the objection, and Gray continued to argue as follows:

"No, I'm not saying that that's the legal standard. I said that Webster's defines control as. And I can absolutely give the definition of control or any other definition in my closing argument, Your Honor. . . . The definition of control wouldn't come up as a question in the evidence. It's not a fact to be determined. It's a definition that I'm making. And it's not objectionable."

76. A firearm was entered into evidence in the Nichols case, and Gray used it as a "prop" during his closing argument. At one point during his argument, Gray aimed the weapon directly at the ADA and then at the jury. Gray then apologized for pointing the firearm at the jury, resumed pointing it at the ADA, and laughed.

77. During closing argument, Gray shouted rhetorical questions at the ADA while standing unnecessarily close to her in a physically intimidating manner.

78. During closing argument, Gray singled out one of the jurors, addressing him individually by name on three separate instances. Gray's statements to the juror related to

information Gray had learned during the jury selection process, including the fact that the juror had a firearm in his home. Gray stated to the juror “you have a loaded gun in your home,” following up with the comment, “And the reason you have a gun in the home is for protection of those babies.”

79. Due to Gray’s statements that singled him out by name, this juror felt intimidated and was unable to continue his service on the jury. As a result, the Nichols case ended in a mistrial

80. Gray represented Shawn Pendergraft on charges of felonious breaking or entering, obtaining property by false pretenses, and misdemeanor trespass in *State of North Carolina v. Shawn Pendergraft*, Wake County file no. 11-CRS-218528.

81. In July 2013, approximately one month after the Nichols trial described above, Gray represented the defendant in the trial of *State v. Pendergraft* in Wake County Superior Court, which was presided over by the Honorable Paul G. Gessner.

82. During the charge conference in *Pendergraft*, Gray submitted a set of jury instructions that included a proposed definition of adverse possession. Judge Gessner rejected Gray’s proposed instructions because he deemed the definition incomplete.

83. In response to continued argument from Gray regarding inclusion of a definition of adverse possession in the jury instructions, Judge Gessner stated he would include a definition from “Webster’s” that he felt was adequate.

84. Gray became disrespectful and argumentative and interrupted the judge to assert that he did not feel Webster’s Dictionary was an adequate source for a definition.

85. In response, Judge Gessner informed Gray that he was referring not to Webster’s Dictionary, but to Webster’s Real Estate Law in North Carolina.

86. Gray persisted in questioning Judge Gessner’s decision on this issue until Judge Gessner abruptly stood up and left the courtroom.

87. During his closing argument in the Pendergraft case:

- (a) Gray singled out a juror and addressed her individually. Judge Gessner immediately informed Gray this conduct was not acceptable.
- (b) Gray addressed opposing counsel directly, making comments like “you should never have brought criminal charges against this man,” and “Mr. DA, you – you can’t be serious.”
- (c) Gray stated that he was “so glad” his client had testified. Judge Gessner began to admonish Gray about the impropriety of this comment, but Gray interrupted and said, “That’s fine, Judge.” Gray interrupted the judge several more times before Judge Gessner was able to complete his instruction to the jury to disregard Gray’s statement.

(d) Gray told the jury “your integrity is on the line.” The ADA’s objection to this comment was sustained. Immediately thereafter, Gray told the jury that their “integrity is on the line at all times.” The State’s objection was again sustained.

88. Gray represented Jennifer James and Tyree Dozier on charges of drug trafficking in Wake County file nos. 11-CRS-217643 and 11-CRS-227765.

89. Because James and Dozier were potential codefendants, the ADA handling the cases for the State sought to bring James and Dozier before the Court to have them, on the record, waive any potential conflict presented by Gray’s joint representation.

90. Gray informed the ADA that it was not her role to determine whether there was a potential conflict in Gray’s joint representation of James and Dozier and that he was therefore not going to bother his clients with attending a hearing on the matter.

91. The ADA placed the James/Dozier case on the Motions and Arraignment calendar several times in an effort to have this issue addressed, but Gray did not appear.

92. The ADA eventually calendared the James/Dozier matter for 21 September 2012.

93. On 19 September 2012, Gray sent the ADA an email indicating there had been a death in his family and he would not be available for court on 21 September 2012.

94. In response, the ADA told Respondent that she would reset the James/Dozier matter for 29 October 2012 so Gray would have sufficient time to prevent any scheduling conflicts.

95. On Monday, 29 October 2012, Gray’s clients (James and Dozier) were present in Wake County Superior Court, but Gray did not appear. A colleague of Gray’s arrived in court and indicated that Gray was ill and unable to attend court. Judge Gessner, who was presiding over the matter, held the case open until Friday, 2 November 2012.

96. On 2 November 2012, Gray’s clients were in court but Gray did not appear. Gray called the ADA and informed her that he was still sick. Judge Gessner held the matter open until Monday, 5 November 2012.

97. On 5 November 2012, Gray’s clients were again present in court but Gray did not appear. Judge Gessner held the matter open until 6 November 2012.

98. On the morning of 6 November 2012, Gray’s clients were in court but Gray did not appear.

99. When Gray’s clients, James and Dozier, appeared in Court on October 29, November 2, November 5, and November 6, they were unaware of their lawyer’s whereabouts.

100. Gray did not communicate directly with the Clerk or the judge regarding his absences from court on October 29, November 2, November 5, and November 6.

101. On the morning of 6 November 2012, Gray sent the ADA an email indicating that he would not be in Wake County Superior Court that morning because he had “three in custody defendants at the jail whom [he] did not get to address” the prior day, but he would come to Wake County after he had dealt with those matters.

102. Later in the morning of 6 November 2012, Judge Gessner sent Gray an email inquiring about Gray’s whereabouts, noting that he had been informed that Gray would come to Wake County when “finish[ed] visiting clients in jail.” Judge Gessner further informed Gray that his failure to comply with the court schedule was interfering with the business of the court and would result in a show cause order if Gray continued to fail to appear.

103. Gray responded to Judge Gessner’s email approximately half an hour later. He did not answer Judge Gessner’s direct questions, instead asserting that he had told the ADA where he was and that he had, throughout the week, “followed the Rules of Practice to the letter.”

104. When Gray arrived in court later on 6 November 2012, he insisted he had been legitimately delayed in his appearance in court that day because he had been attending hearings at the Pitt County jail, and “people in custody get precedent [sic] over regular administrative superior court. It’s just a rule.”

105. In arguing that his absences were excused, Gray cited to the North Carolina General Rules of Practice for the Superior and District Courts.

106. Rule 3.1 of the North Carolina General Rules of Practice for the Superior and District Courts (“Rule 3.1”) provides priority for incarcerated defendants over other superior court matters only for the trial of their criminal cases.

107. Gray’s incarcerated clients were on an administrative calendar for Pitt County Superior Court during the week of 5 November 2012. Their cases were not set for trial on the morning of 6 November 2012 or at any other time during that session of court.

108. After Judge Gessner addressed the issue of potential conflict of interest, the attorneys and the Court discussed when the James/Dozier matter would be re-set. The ADA proposed 26 November 2012, and Respondent said “I have a matter that’s been peremptorily set for November 26. I have a conflict that day.”

109. When pressed for details about the case that presented a conflict on the 26 November 2012 date, Gray told the Court it was a Wake County District Court “child custody case” in which he (Gray) was the plaintiff.

110. Gray’s statements to the Court described in paragraphs 108 and 109 above were false: The only matter Gray had in Wake County District Court during the week of 26 November 2012 was a 29 November 2012 hearing on a 50B petition filed against him by his daughter’s mother. There was no pending child custody case in which Gray was the plaintiff.

111. While Gray was in Wake County Superior Court on 6 November 2012, Judge Gessner addressed Gray’s client Jennifer James about another pending criminal charge upon which Gray was not representing James. The following exchange took place after Judge Gessner

asked James whether she understood that she had the right to remain silent and that anything she said could be used against her.

THE COURT: Mr. Gray, we typically don't use our cell phones or text.

MR. GRAY: Judge, I don't have anything to do with this.

THE COURT: You're in open court in the well of the court texting, standing right next to this lady who you represent on another charge.

MR. GRAY: I don't have anything to do with what you're doing right now.

THE COURT: I understand you don't have anything to do with it. What I'm saying is please put away your phone.

MR. GRAY: I was going in my calendar.

THE COURT: I don't care where you were going and what you were doing. I'm standing here trying to have a dialogue with this lady, and you're standing right next to her, you represent her on other charges, texting or doing something.

MR. GRAY: I'm not texting, Your Honor.

THE COURT: I don't know what you're doing with it. Put it away.

112. In September 2013, Gray was served with a Letter of Notice from the North Carolina State Bar regarding a grievance alleging Gray had engaged in professional misconduct in his representation of James and Dozier.

113. In his response to the Letter of Notice, Gray stated that his appearance at hearings in two "jail cases" scheduled for the week of 5 November 2012 took precedence over appearing in Wake County Superior Court.

114. Gray represented the plaintiff in *Murrell v. Williams*, Beaufort County file no. 09-CVS-1287, a personal injury case arising out of an automobile accident which occurred on 24 December 2006.

115. Gray filed the complaint in Murrell's case on 23 December 2009.

116. During 2010, defense counsel made repeated attempts to contact Gray by phone and letter regarding potential settlement of Murrell's case. Gray did not respond to these communications.

117. Gray made minimal efforts to advance Murrell's case toward resolution. For example, Gray didn't seek an entry of default until nearly 8 months after the defendant failed to answer. In addition, Gray learned in July 2011 that the named defendant was deceased, and he did not amend the complaint to name the representative of the estate as a defendant until 7 March 2013.

118. Defense counsel filed a motion to dismiss the Murrell case for failure to prosecute, and the motion was heard before the Honorable Gary Trawick on 9 September 2013.

119. Judge Trawick found that Gray had failed to “diligently pursue and prosecute this action in the manner in which it should have been prosecuted.”

120. During the hearing, Gray represented to the court that he had previously met in person with J.D. Keister, a lawyer for the defense firm, at which time Keister photocopied Gray’s file at an Office Depot.

121. On 12 September 2013, Keister wrote a letter to Judge Trawick disputing Gray’s representations regarding the “in person meeting” and requesting that the order not contain any reference to this purported meeting.

122. Keister sent Gray a copy of his 12 September 2013 letter.

123. On 25 September 2013, the Beaufort County Trial Court Administrator (TCA) emailed defense counsel and indicated that Judge Trawick had not heard from Gray and therefore wanted defense counsel to proceed with preparing the order, leaving out the paragraph about the purported in-person meeting.

124. On 30 September 2013, Keister sent a letter to Judge Trawick, copying Gray and enclosing the order defense counsel had prepared per Judge Trawick’s direction.

125. Upon receipt of defense counsel’s draft order, Judge Trawick sent an email to Gray and defense counsel stating that he would wait a week before signing the order to give Gray time to respond to the proposed order.

126. Gray did not respond to Judge Trawick’s email or to the proposed order.

127. After the order was entered on 7 October 2013, Gray falsely claimed that he had not been given an opportunity to provide input on its content.

128. Judge Trawick imposed the following sanctions for Gray’s lack of diligence in pursuing Murrell’s case: Gray was prohibited from seeking further continuances in the matter, and Murrell’s discovery was limited to a total of 20 interrogatories.

129. Gray subsequently served discovery on defense counsel that included both interrogatories and requests for production of documents.

130. Defense counsel filed a motion to quash the requests for production because they were served in violation of Judge Trawick’s order.

131. On 19 December 2013, defense counsel served Gray with the defendant’s First Set of Interrogatories and Requests for Production of Documents.

132. On 22 January 2014, having received no response or objection to the discovery requests, defense counsel attempted to confer with Gray about the outstanding requests.

133. Gray denied receiving the discovery requests, and defense counsel filed a motion to compel discovery responses.

134. During January 2014, defense counsel attempted on multiple occasions to confer with Gray about scheduling his client's deposition.

135. Gray did not reply, so defense counsel served Gray with a notice of Murrell's deposition.

136. Defense counsel called Gray's office the day before the deposition to confirm the location of Gray's office and to confirm that he and his client would attend. Gray's staff would not confirm either the physical location of his law office or the fact that the deposition was expected to take place the following day.

137. Gray and his client were present for the deposition the following morning.

138. On several occasions throughout the deposition, Gray interrupted the questioning to engage in lengthy accusatory and discourteous colloquies with opposing counsel about whether and when he had received various documents relating to the case.

139. Gray repeatedly objected to defense counsel's questions about how much his client was seeking in damages and would not let his client respond.

140. The defendant's motion to compel discovery responses was heard by the Honorable Marvin Blount on 27 February 2014.

141. On 28 February 2014, Judge Blount entered an order granting the defendant's motion to compel and awarding costs and attorney fees to the defendant.

142. Judge Blount's order required Gray to completely respond to the defendant's interrogatories and completely produce all requested documents by noon on 6 March 2014, as the case was on the trial calendar for 10 March 2014.

143. Gray hand-delivered discovery responses to defense counsel on 6 March 2014 at or about 12:30 p.m. The responses did not include requested medical records, tax returns, and other documentation related to lost wages, nor did they identify the medical expenses incurred by the plaintiff as a result of the accident.

144. The discovery responses Gray hand-delivered were neither signed nor dated and did not include a certificate of service.

145. On 6 March 2014, defense counsel filed a motion for sanctions regarding Gray's failure to comply with the order compelling discovery. The motion requested that Murrell's case be dismissed with prejudice.

146. On 7 March 2014, Gray voluntarily dismissed Murrell's case without prejudice.

147. Defense counsel learned of the dismissal that morning from the TCA, but when she contacted Gray's office, his staff refused to fax or e-mail a copy of the dismissal or even confirm that the dismissal had been filed.

148. Also on 7 March 2014, Gray filed a Rule 60 motion seeking to set aside Judge Blount's order of sanctions requiring him to pay attorney's fees and costs.

149. Gray's stated basis for Rule 60 relief was that defense counsel had intentionally sent discovery requests to an incorrect office address and therefore had not properly served him with discovery.

150. The issue of Gray's office address and the adequacy of service had been thoroughly explored at the 27 February 2014 hearing before Judge Blount.

151. Specifically, Gray had asserted at the February 2014 hearing that his Greenville office moved from South Evans Street to Pitt Street in December 2012 and that, because the discovery requests had been sent to South Evans Street, defense counsel had not properly served him with the requests.

152. Information presented at the hearing before Judge Blount demonstrated that: Gray had made no effort to communicate with opposing counsel regarding his change of address; Gray's staff refused to provide information to opposing counsel about Gray's address; and, as late as February 2014, Gray had a sign posted on the door of his Pitt Street office indicating that his "Greenville Office" was located on South Evans Street.

153. Judge Blount found as fact that Gray had been properly served with the discovery requests on 19 December 2013.

154. Throughout the pendency of the case, defense counsel attempted to communicate with Gray by U.S. Mail, fax, and e-mail to cliftongray@cliftongraylaw.com.

155. Because Gray consistently denied receiving communications from defense counsel, even when they were transmitted by all three methods, defense counsel sometimes asked the TCA to forward e-mail communications to Gray.

156. Although defense counsel and the TCA both used the cliftongray@cliftongraylaw.com email address, Gray frequently only acknowledged receipt of the forwarded message from the TCA, denying that he had previously received the original message from defense counsel.

157. In connection with his law practice, Gray maintained a website to advertise and promote his law firm: <http://cliftongraylaw.com>.

158. The following statements were prominently displayed in red typeface near the top of the homepage of cliftongraylaw.com: "BREAKING NEWS in attorney Gray's cases!!!! 1. Raleigh Man Not Guilty of Murder 2. Texas Man Cleared of Trafficking Half a Key of Cocaine 3. Man Blows .18 and defeats DWI!!!"

159. When a visitor to the website clicked on these statements, s/he was taken to another page ("the secondary page") that contained an additional narrative by Gray about the murder case and displayed the following statements about cases Gray had previously handled:

- Texas Man Charged with Trafficking over 500g of Cocaine in Wilson County Freed
- Raleigh Man Charged with First Degree Murder Found Not Guilty
- Beaufort County Man Charged with Trafficking Cocaine Charges Suppressed
- Farmville Man Charged with DWI blows .18 and defeats charges

160. Neither on the homepage nor on the secondary page was there a disclaimer indicating that the results described were merely illustrative or that these results did not guarantee a similar outcome in other cases.

161. On 25 September 2012, Gray had an altercation with another driver in traffic (this individual is referred to hereafter as "the other driver").

162. The altercation occurred in mid-day traffic on Capital Boulevard in Raleigh.

163. Gray pursued the other driver, pulled up next to the other driver while they were traveling down the road, and brandished a handgun at the other driver so that it was visible through his car window.

164. Gray then pulled into a gas station behind the other driver, got out of his car, and approached the other driver's vehicle, waving his arms and yelling.

165. The other driver was, at the time of the incident, in the car with his wife and young child.

166. Gray had no prior relationship with the other driver; the only provocation for Gray's behavior toward the other driver was the manner in which the other driver operated his vehicle.

167. In connection with this incident, Gray was convicted of two counts of simple assault in *State of North Carolina v. Clifton Jarvis Gray*, Wake County file nos. 13-CRS-990-51 and 13-CRS-990-52.

Based on the record and the foregoing Findings of Fact, the Hearing Panel makes the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and this tribunal has jurisdiction over Defendant, Clifton J. Gray III, and the subject matter of this proceeding.

2. Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-28(b)(1) & (2) in that Gray violated § 84-28(b)(1) and the Rules of Professional Conduct in effect at the time of his actions as follows:

- (a) By missing Hunt's court date, Defendant failed to exercise reasonable diligence in representing a client in violation of Rule 1.3;
- (b) By providing a late and inadequate response to Hunt's fee dispute, Defendant failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f)(2);
- (c) By failing to file Riddick's expunction petition, Defendant failed to act with reasonable diligence in representing a client in violation of Rule 1.3;
- (d) By repeatedly failing to respond and/or failing to timely respond to communications from the fee dispute resolution mediator regarding Riddick's fee dispute, Defendant failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f)(2);
- (e) By failing to timely respond to the notice of Ernul's fee dispute and failing to respond to the mediator's first two requests for Ernul's son's client file, Defendant failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f)(2);
- (f) By failing to respond to the fee dispute mediator's inquiry regarding a partial refund to Gibbs, Defendant failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f)(2);
- (g) By failing to file Mauffrey's divorce complaint, Defendant failed to act with reasonable diligence in representing a client in violation of Rule 1.3;
- (h) By falsely stating to Mauffrey that he had "sent out" her divorce complaint and was "waiting to get it back," Defendant engaged in conduct involving dishonesty, deceit, or misrepresentation in violation of Rule 8.4(c);
- (i) By failing to inform Mauffrey that she had to pay a filing fee before he would file her divorce complaint, Defendant failed to reasonably consult with his client about the means by which her objectives were to be accomplished and failed to keep his client reasonably informed about the status of the matter in violation of Rule 1.4(a);
- (j) By failing to respond to Mauffrey's inquiries about the status of her case, Defendant failed to comply with a client's reasonable request for information in violation of Rule 1.4(a);
- (k) By failing to respond to the fee dispute mediator's inquiry about whether he would refund a portion of Mauffrey's fee, Defendant failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f)(2);

512

- (l) By collecting in excess of \$3,000.00 when the only service he provided was repeatedly continuing Dugan's case, Defendant collected a clearly excessive fee in violation of Rule 1.5(a);
- (m) By submitting late and incomplete responses to the Letter of Notice and several follow-up inquiries regarding grievance #14G0933, Defendant failed to respond as required to lawful demands for information from a disciplinary authority in violation of Rule 8.1(b);
- (n) By repeatedly interrupting opposing counsel and the Court and making disparaging comments toward opposing counsel during proceedings in *State v. Benson*, Defendant engaged in undignified or discourteous conduct that was degrading to the tribunal in violation of Rule 3.5(a)(4), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- (o) By arguing with the Court rather than yielding gracefully to its rulings and by directing personal invectives toward opposing counsel during proceedings in *State v. Benson*, Defendant engaged in acts prohibited by Rule 12 and thereby knowingly disobeyed an obligation under the rules of a tribunal in violation of Rule 3.4(c);
- (p) By engaging in criminal contempt of court during proceedings in *State v. Benson*, Defendant committed a criminal act reflecting adversely on his trustworthiness or fitness as a lawyer in violation of Rule 8.4(b) and was convicted of a criminal offense showing professional unfitness as provided in N.C. Gen. Stat. § 84-28(b)(1);
- (q) By failing to appear in court on behalf of Navarro, thereby interfering with the business of the Court, Defendant knowingly violated an obligation under the rules of the tribunal in violation of Rule 3.4(c), failed to act with reasonable diligence on behalf of a client in violation of Rule 1.3, and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- (r) By engaging in criminal contempt of court in connection with his representation of Navarro, Defendant committed a criminal act reflecting adversely on his trustworthiness or fitness as a lawyer in violation of Rule 8.4(b) and was convicted of a criminal offense showing professional unfitness as provided in N.C. Gen. Stat. § 84-28(b)(1);
- (s) By making unfounded objections asserting he had not seen evidence the State sought to introduce and alleging without basis that opposing counsel had engaged in discovery-related misconduct in *State v. Nichols*, Defendant asserted positions that were without basis in law or fact in violation of Rule 3.1 and used means that had no substantial purpose other than to embarrass, delay, or burden a third person in violation of Rule 4.4(a);
- (t) By conspicuously using his cell phone while court was in session, laughing at witness testimony, failing to report to court on time, and pointing a gun at opposing counsel during argument in *State v. Nichols*, Defendant engaged in undignified or

discourteous conduct that was degrading to the tribunal in violation of Rule 3.5(a)(4)(B);

- (u) By arguing with the Court about its rulings and addressing opposing counsel during his closing argument in *State v. Nichols*, Defendant engaged in acts prohibited by Rule 12 and therefore knowingly disobeyed an obligation under the rules of a tribunal in violation of Rule 3.4(c);
- (v) By singling out a juror and referring to him repeatedly by name, causing the juror such discomfort that he had to be excused, resulting in a mistrial in *State v. Nichols*, Defendant engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- (w) By interrupting the judge, refusing to yield gracefully to the Court's rulings, and directly addressing opposing counsel, Defendant engaged in acts during the trial of *State v. Pendergraft* that are prohibited by Rule 12 and therefore knowingly disobeyed an obligation under the rules of a tribunal in violation of Rule 3.4(c), and engaged in undignified or discourteous conduct that was degrading to the tribunal in violation of Rule 3.5(a)(4)(B);
- (x) By making statements in his argument intended to influence the jury, including singling out a juror and telling jurors their integrity was "on the line" in *State v. Pendergraft*, Defendant engaged in acts prohibited by Rule 12 and therefore knowingly disobeyed an obligation under the rules of a tribunal in violation of Rule 3.4(c), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- (y) By failing to appear in court on behalf of James and Dozier for three and a half days and failing to notify his clients regarding his whereabouts, Defendant failed to act with reasonable diligence in violation of Rule 1.3, failed to keep his clients reasonably informed about the status of the matter in violation of Rule 1.4(a), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- (z) By failing to notify the Court directly of his reasons for not appearing on behalf of James and Dozier, instead expecting opposing counsel to deliver those messages to the Court, Defendant knowingly failed to comply with an obligation under the rules of the tribunal in violation of Rule 3.4(c);
- (aa) By stating to the Wake County Superior Court that he had been absent on 6 November 2012 due to other cases that had priority, Defendant made a false statement of material fact to the tribunal in violation of Rule 3.3(a)(1) and engaged in conduct involving dishonesty, deceit or misrepresentation, in violation of Rule 8.4(c);
- (bb) By informing the Court that he would be unavailable on 26 November 2012 because a "child custody case" in which he "was the plaintiff" had been peremptorily set for that date, Defendant made false statements of material fact to the tribunal in violation

of Rule 3.3(a)(1) and engaged in conduct involving dishonesty, deceit, or misrepresentation in violation of Rule 8.4(c);

- (cc) By using his cell phone while the court was addressing his client, Jennifer James, and arguing with the judge about his cell phone use, Defendant engaged in undignified and discourteous conduct that was degrading to the tribunal in violation of Rule 3.5(a)(4);
- (dd) By falsely stating in response to a grievance that his appearance in "jail cases" excused his absence from Wake County Superior Court on the morning of 6 November 2012, Defendant made a false statement of material fact in connection with a disciplinary matter in violation of Rule 8.1(a) and engaged in conduct involving dishonesty, deceit or misrepresentation, in violation of Rule 8.4(c);
- (ee) By neglecting to pursue Murrell's case over a period of several years, Defendant failed to act with reasonable diligence on behalf of a client in violation of Rule 1.3 and failed to make reasonable efforts to expedite litigation in violation of Rule 3.2;
- (ff) By falsely asserting that he had no opportunity to provide input on the content of the draft order for Judge Trawick in the Murrell case, Defendant engaged in conduct involving dishonesty in violation of Rule 8.4(c);
- (gg) By serving discovery that included requests for production of documents when Judge Trawick's order limited Murrell's discovery to interrogatories, Defendant knowingly disobeyed an obligation under the rules of a tribunal in violation of Rule 3.4(c);
- (hh) By interrupting opposing counsel's questioning and acting aggressively accusatory toward opposing counsel during Murrell's deposition, Defendant used means that had no substantial purpose other than to burden a third person in violation of Rule 4.4(a) and engaged in undignified conduct degrading to the tribunal in violation of Rule 3.5(a)(4)(B);
- (ii) By refusing to timely and completely respond to the defendant's discovery requests in the Murrell case even after he was ordered to do so, Defendant failed to make a reasonably diligent effort to comply with a legally proper discovery request in violation of Rule 3.4(d), and knowingly disobeyed an obligation under the rules of a tribunal in violation of Rule 3.4(c);
- (jj) Defendant's pattern of denying receipt of communications from counsel and the court related to Murrell's case and his staff's refusal to provide basic information to opposing counsel thwarted and complicated the processing of Murrell's case and thereby prejudiced the administration of justice in violation of Rule 8.4(d);
- (kk) By including on his law firm website brief references to results obtained in prior cases without adequate explanation or disclaimers, Defendant made misleading communications about his services in violation of Rule 7.1(a); and

- (ll) By brandishing a gun at members of the public on the roadway and being criminally convicted for that act, Defendant committed a criminal act that reflects adversely on his fitness as a lawyer in violation of Rule 8.4(b) and was convicted of a criminal offense showing professional unfitness as provided in N.C. Gen. Stat. § 84-28(b)(1).

3. The State Bar did not establish by clear cogent and convincing evidence the following Rule violations alleged in the complaint:

- (a) The Rule violations alleged in the Third, Tenth, and Twelfth Claims for Relief.
- (b) The Rule violations alleged in paragraphs (a) & (b) of the Second Claim for Relief.
- (c) The alleged violation of Rule 4.4(a) in paragraph (a) of the Fourth Claim for Relief.
- (d) The Rule violation alleged in paragraph (d) of the Sixth Claim for Relief.
- (e) The Rule violation alleged in paragraph (c) of the Seventh Claim for Relief.
- (f) The Rule violations alleged in paragraph (b) of the Ninth Claim for Relief.

Based upon the foregoing Findings of Fact and Conclusions of Law, and the additional evidence regarding discipline presented at the hearing, the Hearing Panel hereby finds by clear, cogent, and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1 through 167 above are reincorporated as if fully set forth herein.

2. Defendant was admonished by the North Carolina State Bar's Grievance Committee in 2009 for lack of diligence and conduct prejudicial to the administration of justice. He was also censured by the Committee in 2010 for failure to participate in the fee dispute resolution process, failure to respond to grievance-related inquiries, and dishonesty.

3. In addition to these prior disciplinary actions, over approximately the last five years, Defendant has been sanctioned and warned by multiple judges about his improper, unprofessional, and unethical behavior.

4. Defendant not only engaged in a pattern of repeated similar acts of misconduct but also engaged in a wide variety of misconduct.

5. Beginning in approximately 2008, Defendant began experiencing medical problems which, in turn, caused emotional distress, altered mood, and behavioral changes. Although his medical conditions are chronic, Defendant did not seek treatment for the associated emotional and behavioral symptoms until 2014. Defendant was diagnosed with depression secondary to a medical condition and has been in treatment for depression since 2014. Defendant's medical and psychiatric conditions contributed in part to the misconduct described herein.



6. Self-regulation of the legal profession depends upon the cooperation and participation of lawyers in the self-regulatory process. Defendant's persistent refusal to meaningfully participate in the self-regulatory process interferes with the State Bar's ability to regulate its members and undermines the profession's privilege to remain self-regulating.

7. Defendant has argued that the allegations of misconduct against him were primarily due to animosity by the Wake County District Attorney's Office arising out of Defendant's successful defense of a client charged with homicide in Wake County in 2010. This contention is belied by the fact that Defendant's established pattern of misconduct was not confined to Wake County and was not limited to his representation of criminal defendants. Moreover, Defendant's misconduct occurred in multiple counties, before multiple judges. Specifically:

- (a) The Murrell personal injury case, in which Defendant engaged in the misconduct described in paragraphs (ee) through (jj) above, was in Beaufort County, Judicial District 2.
- (b) The Senior Resident Superior Court Judge for Judicial District 8-A testified in this matter regarding Defendant's pattern—over a period of years—of not appearing in court when his client's cases were on the calendar. The judge noted that the impact of Defendant's absenteeism is “totally chaotic,” and opined that Defendant is “maliciously abusing the system and obstructing justice by this willful failure to make court appearances.”
- (c) The Senior Resident Superior Court Judge for Judicial District 3-A also testified in this matter, confirming that: (i) Defendant's pattern of exhibiting disrespect for opposing counsel and the court occurred in matters over which he presided in eastern North Carolina; and (ii) Defendant's persistent absences from court when expected also occurred in Pitt County.

8. Defendant's chronic absenteeism created a foreseeable risk of harm to the administration of justice in that it interfered with the timely and orderly disposition of cases by the court. Failing to appear in court also creates a foreseeable risk of harm to clients who are left in the anxiety-producing situation of facing the court system without counsel, and may have to miss repeated days of work when their lawyer repeatedly does not appear to handle their case.

9. Defendant recurrently received payment of fees from clients, failed to perform the services for which he was hired, and then refused to refund any of the fees. In so doing, Defendant elevated his own pecuniary interests above the interests of his clients and intentionally caused financial harm to his clients. This course of action impaired the client's ability to achieve the goals of the representation and reflects that Defendant acted with selfish motive. This pattern continued during the time this disciplinary action was pending: In September 2015, Defendant told Carrie Taylor, who had paid Defendant \$1,000.00 to represent her son on a charge of DWI, that he would not refund any of the fees paid, even though he had failed to appear in court on behalf of her son on multiple occasions over the preceding eight months.

10. Defendant's refusal to refund unearned fees to his clients, including several to whom he acknowledged a refund was owed, reflects Defendant's indifference to making restitution for the harm caused by his misconduct.

11. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. On more than one occasion, Defendant used means in representing a client that had no substantial purpose other than to embarrass, delay, or burden a third person. Such conduct is intended to cause harm or potential harm to others.

12. Defendant was threatening and intimidating to opposing counsel during the 2010 trial of *State v. Oyenyin* by invading the ADA's personal space and shouting at her while court was in recess. This behavior is consistent with Defendant's treatment of opposing counsel in the 2014 deposition of Murrell and the 2013 trial of *State v. Nichols*, described above. Verbally and physically aggressive behavior towards opposing counsel corrodes standards of professionalism among lawyers and tends to divert the targeted lawyer's focus away from representing his or her client's interests.

13. Societal order depends in large measure on respect for the rule of law and deference to the decisions of our courts. To maintain this respect and deference, litigants, witnesses, jurors, and the general public must have faith in the integrity and impartiality of our system of justice.

14. Defendant's habitual lack of courtroom decorum jeopardized the public's faith in the integrity of the judicial process. Defendant's disrespectful courtroom conduct foreseeably caused significant potential harm to public perception of the legal profession by reinforcing the negative stereotype that lawyers are antagonistic and combative, and by diminishing the public's expectation that attorneys will conduct themselves with dignity and adhere to the Rules of Professional Conduct.

15. Defendant's conduct caused significant harm to his clients' perception of the profession, as evidenced by the fact that Defendant's clients who testified in this case said they will be less likely to trust lawyers in the future due to their experience with Defendant.

16. Defendant publically displayed disrespect for the judiciary and opposing counsel, including in open court with members of the public present. In doing so, Defendant intentionally engaged in conduct that foreseeably undermines public faith in the legal system.

17. Defendant repeatedly violated both the letter and the spirit of Rule 12 of the General Rules of Practice for the Superior and District Courts in North Carolina governing "Courtroom Decorum."

18. Defendant's disruptive and provocative conduct in the courtroom directly interferes with the ability of a court to perform its function. For example:

- (a) Judge Gessner observed that due to Defendant's "unnecessarily aggressive" behavior, he had to be especially vigilant to protect the record, defendants' rights, and the jurors' experience. Gray's behavior was so provocative that—for the first

and only time in nineteen years on the bench—Judge Gessner stood and left the courtroom to avoid responding in frustration.

- (b) Judge Joseph said that Gray's behavior was disruptive to the point that managing it would have halted the trial of *State v. Nichols*.
- (c) Judge Knox noted that when a lawyer is relentlessly discourteous and disrespectful, it makes it harder for the judge to keep a clear mind and focus on the evidence.

19. Defendant's disruptive and provocative conduct in the courtroom is also detrimental to clients' interests. As one of the testifying judges stated, this type of behavior by counsel puts the focus on controlling the lawyer, rather than on the merits of the case.

20. An attorney's duty to persuasively advocate for his client is qualified by his duty of candor towards the tribunal. Accordingly, lawyers must always be honest and forthright with the tribunal. It is unacceptable for a lawyer to be anything less than completely candid with the court. As indicated in conclusions of law (aa), (bb), and (ff) above, on multiple occasions, Defendant made false statements to the tribunal in violation of his fundamental obligation as an officer of the court.

21. Attorneys as officers of the court have a duty to avoid conduct that undermines the integrity of the adjudicative process. When an attorney makes false statements to the court, it causes significant harm to the profession and the administration of justice. Although much of the resulting harm is due to the intangible erosion of judges' and lawyers' ability to rely on another attorney's word, sometimes the impact on the administration of justice is more concrete. For example, two of the Superior Court Judges who testified in this case indicated that they took time away from their regular duties to attempt to verify Defendant's whereabouts when he was absent from court.

22. Defendant's longstanding pattern of denying receipt of communications from opposing counsel, coupled with his proclivity for baselessly accusing his adversaries of wrongdoing, interferes with opposing counsel's ability to effectively and efficiently represent their clients' interests. The credible evidence supporting this finding includes:

- (a) The testimony of two Wake County Assistant District Attorneys, describing the additional and atypical steps they took to avoid allegations of discovery misconduct by Defendant. These extra measures—which were not necessary for other defense counsel—included delivering discovery materials in open court on the record, creating a detailed written receipt for discovery materials, and ensuring that a witness was present when materials were hand-delivered to Defendant.
- (b) The testimony of two civil defense lawyers who were involved in the Murrell case, indicating that Defendant's conduct caused the case to be protracted and cost their client significantly more in attorney's fees.



23. Defendant's criminal conviction for assault arising out of a road rage incident reflects a disregard for the rule of law and has the potential to cause significant harm to the standing of the legal profession in the eyes of the public. When lawyers violate the law in their business and personal affairs, it brings disrepute upon the legal profession and undermines public confidence in lawyers.

24. During the disciplinary phase of this case, Defendant expressed remorse about some of his misconduct. Nonetheless, Defendant has not acknowledged most of his violations of the Rules of Professional Conduct and shows little insight regarding his lack of professionalism.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Additional Findings of Fact Regarding Discipline, and upon consideration of the factors set forth in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(w), the Hearing Panel hereby enters the following additional

CONCLUSIONS OF LAW REGARDING DISCIPLINE

1. The Hearing Panel considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w) of the Discipline and Disciplinary Rules of the North Carolina State Bar.

2. The Hearing Panel concludes that the following factors from § .0114(w)(1), which are to be considered in imposing suspension or disbarment, are present in this case:

- (a) intent of the defendant to cause the resulting harm or potential harm;
- (b) intent of the defendant to commit acts where the harm or potential harm is foreseeable;
- (c) circumstances reflecting the defendant's lack of honesty, trustworthiness, or integrity;
- (d) elevation of the defendant's own interest above that of the client;
- (e) negative impact of defendant's actions on client's or public's perception of the profession;
- (f) negative impact of the defendant's actions on the administration of justice;
- (g) impairment of the client's ability to achieve the goals of the representation;
- (h) effect of defendant's conduct on third parties;
- (i) acts of dishonesty, misrepresentation, deceit, or fabrication; and
- (j) multiple instances of failure to participate in the legal profession's self-regulation process.

3. The Hearing Panel has carefully considered all of the factors enumerated in Rule .0114(w)(2) and concludes that although Defendant engaged in acts of dishonesty,

misrepresentation, and deceit, and impulsive acts of dishonesty without timely remedial efforts, disbarment is not necessary in this case.

4. The Hearing Panel concludes that the following factors from § .0114(w)(3), which are to be considered in all cases, are present in this case:

- (a) prior disciplinary offenses;
- (b) dishonest or selfish motive;
- (c) indifference to making restitution;
- (d) a pattern of misconduct;
- (e) multiple offenses;
- (f) effect of any personal or emotional problems on the conduct in question;
- (g) effect of any physical or mental impairment on the conduct in question; and
- (h) remorse, as expressed in the second phase of this disciplinary hearing.

5. The Hearing Panel has considered admonition, reprimand, and censure as potential discipline but finds that admonition, reprimand, or censure would not be sufficient discipline because of the gravity of the harm to clients, the administration of justice, and the profession in the present case.

6. Suspension of Defendant's law license is warranted due to Defendant's pattern of dishonesty and failure to fully grasp the impropriety of his conduct. Furthermore, the Panel finds that any sanction less than suspension would fail to acknowledge the seriousness of the offenses committed by Defendant, would not adequately protect the public, and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar in this State.

7. Suspension of Defendant's law license is necessary to protect the public because—although instances of prior discipline and admonishments from judges should have assisted Defendant in complying with the Rules of Professional Conduct—Defendant did not reform in response to clear directives that his behavior was improper. Notwithstanding these explicit warnings, Defendant's pattern of client neglect, absenteeism, dishonesty, and refusal to participate in the self-regulatory process continued unabated.

8. The Panel considered disbarment but determined, in light of all relevant facts and circumstances, that disbarment is not necessary to protect the public. The Hearing Panel finds and concludes that the public will be adequately protected by a five-year suspension of Defendant's license to practice law, with an opportunity to have one year of the suspension stayed upon compliance with conditions.



Based upon the foregoing Findings of Fact, Conclusions of Law, and Additional Findings and Conclusions Regarding Discipline, the Hearing Panel enters the following

ORDER OF DISCIPLINE

1. Defendant's license to practice law in the State of North Carolina is hereby suspended for five years, beginning 30 days from the date of service of this order upon Defendant.

2. Defendant shall submit his law license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon Defendant.

3. Defendant shall comply with the wind down provisions contained in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 ("Obligations of Disbarred or Suspended Attorneys"). As provided in § .0124(d), Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within 10 days of the effective date of this order, certifying he has complied with the wind down rule.

4. The administrative fees and costs of this action, including deposition costs, are taxed to Defendant. Defendant must pay the costs of this action within 30 days after the statement of costs is served upon Defendant by the Secretary of the State Bar.

5. Within 30 days after service of this Order, Defendant shall provide the State Bar's Office of Counsel with an address and telephone number at which clients seeking their files can communicate with Defendant. Defendant shall promptly return all files to his clients upon request.

6. After serving no less than four years of the suspension, Defendant may apply for a stay of the remaining period of suspension imposed by this Order by filing a motion in the cause and demonstrating by clear, cogent, and convincing evidence that, in addition to complying with the general provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0125 ("Reinstatement"), he has complied with the following conditions:

- (a) Defendant timely complied with paragraphs 2-5 of this section of the Order of Discipline;
- (b) Defendant kept the North Carolina State Bar membership department advised of his current physical¹ home and business addresses, telephone numbers, and email address, and shall notify the membership department within 10 days of any change to his contact information;
- (c) Defendant accepted all certified mail from the North Carolina State Bar and responded to all letters of notice and requests for information from the North Carolina State Bar—including communications from the Attorney Client Assistance

¹ The addresses provided to the State Bar must be street addresses, not a post office box or drawer.

Program—within 30 days of receipt or by the deadline stated in the communication, whichever was sooner;

- (d) Defendant participated fully, timely, and in good faith in the State Bar's fee dispute resolution program when notified of any petitions for resolution of disputed fees. This shall apply to any fee dispute(s) pending as of 12 August 2016, any fee dispute(s) filed between 12 August 2016 and the effective date of the suspension, and any fee dispute(s) filed during the period of suspension. For fee disputes initiated during the first year of Defendant's suspension, Defendant shall refund to the client any amount the fee dispute mediator determines is owed;
- (e) Defendant timely complied with State Bar membership requirements and paid all fees and costs assessed by the State Bar and the Client Security Fund by the applicable deadline. At the time he petitions for reinstatement or seeks a stay, Defendant must demonstrate that he is current in payment of all applicable membership dues, fees, costs, penalties accrued, Client Security Fund assessments, judicial district dues, and any other charges the State Bar is authorized to collect;
- (f) During the period of active suspension, Defendant attended twelve hours of accredited Continuing Legal Education (CLE) courses annually, as if he were a member in good standing.² No more than six of the twelve annual CLE hours may be completed via online courses. Six of the twelve annual CLE hours must be in the areas of ethics and professionalism. At the time he petitions for reinstatement or seeks a stay, Defendant must demonstrate that there is no deficit in his completion of CLE hours as provided herein, reporting of CLE hours, and payment of any fees associated with attendance at CLE programs. The CLE requirements shall apply to each calendar year during which Defendant is actively suspended as of December 31. For example, if Defendant applies for a stay four years after the effective date of this order, he must demonstrate that he completed the annual CLE requirements for 2016, 2017, 2018, and 2019;
- (g) Defendant completed a course of training in law office management, approved in advance by the Office of Counsel, which included instruction on tax liability reporting and payment for small businesses. It is recommended, although not required, that Defendant read the treatise entitled "How to Start and Build a Law Practice," by Jay Foonberg.
- (h) Within 30 days of the effective date of this order, Defendant made arrangements to be evaluated by a psychologist or psychiatrist approved in advance by the Office of Counsel. The evaluator shall undertake a comprehensive evaluation, at Defendant's sole expense, to assess whether Defendant has any physical, mental, psychological, behavioral, cognitive, or emotional condition or disorder that affects his professional judgment, performance, or competence, and shall recommend appropriate treatment for any condition or disorder identified.

² The CLE Department does not send notices to lawyers who are actively suspended, so it is incumbent upon Defendant to attend the required courses and maintain records of his compliance with the CLE requirements set forth in this Order.

- (i) Within 10 days after the evaluation is completed, Defendant provided to the State Bar a written certification under oath by the evaluating clinician describing the results of his/her independent comprehensive evaluation of Defendant and setting forth his/her recommendations regarding treatment. The evaluation must be completed and the evaluator's certification submitted to the State Bar no later than 90 days from the effective date of this order.
- (j) Defendant complied with all treatment recommendations of the evaluating clinician and any additional treatment recommendations of his treating clinicians until such time as a modality of treatment was no longer necessary as determined by his treating clinician;
- (k) Prior to seeking a stay or petitioning for reinstatement, Defendant provided written releases to the Office of Counsel, authorizing all clinicians from whom he received any recommended treatment during the period of active suspension to communicate with the Office of Counsel and to release to the Office of Counsel records relating to his treatment;
- (l) Defendant ensured that each clinician from whom he received any recommended treatment during the period of active suspension generated quarterly written reports to the State Bar setting forth: (i) a description of Defendant's participation in and compliance with treatment, (ii) the clinician's opinion as to whether Defendant has any physical or mental impairment, or other condition or illness, that could adversely affect his ability to practice law; and (iii) the clinician's recommendations, if any, regarding ongoing treatment. The reports shall be provided to the Office of Counsel on January 30, April 30, July 30, and October 30 during the period of active suspension. Defendant is responsible for ensuring that the reports described herein are timely submitted. Defendant shall be solely responsible for the costs of treatment and any additional charges assessed for preparation of the quarterly reports;
- (m) Within 30 days of the effective date of this order, Defendant entered into a contract with the Lawyers Assistance Program (LAP) and complied with the requirements of that contract. At the time he petitions for reinstatement or a stay, Defendant must demonstrate that he either successfully completed his LAP contract or that he has been in compliance—and continues to comply—with his LAP contract.
- (n) Defendant bears the burden of proving that, at the time he petitions for reinstatement or seeks a stay, he does not have any physical or mental impairment or other condition or illness that significantly impairs his professional performance, judgment or competence.
- (o) Defendant has not engaged in the unauthorized practice of law during the period of active suspension;
- (p) Defendant successfully completed the probationary sentence imposed in *State of North Carolina v. Clifton Jarvis Gray*, Wake County file nos. 13-CRS-990-51 and 13-CRS-990-52; and

- (q) Defendant has not violated the Rules of Professional Conduct or any state or federal laws (including the revenue and tax laws of any jurisdiction) other than minor traffic violations during the period of active suspension.

7. Defendant may file a motion in the cause seeking a stay of the remainder of the suspension up to 30 days prior to completing four years of active suspension but shall not be permitted to resume practicing until he has served at least four years of active suspension.

8. If Defendant successfully seeks a stay of the suspension of his law license pursuant to this Order, the stay will continue in force only as long as Defendant complies with the following conditions:

- (a) Defendant shall keep the North Carolina State Bar membership department advised of his current physical home and business addresses, telephone numbers, and email address, and shall notify the membership department within 10 days of any change to his contact information;
- (b) Defendant shall accept all certified mail from the North Carolina State Bar and respond to all letters of notice and requests for information from the North Carolina State Bar within 30 days or by the deadline stated in the communication, whichever is sooner;
- (c) Defendant shall timely comply with his State Bar membership and continuing legal education requirements, and pay all fees and costs assessed by the State Bar and the Client Security Fund by the applicable deadline;
- (d) Defendant shall satisfy the CLE requirements for members in good standing. Six of the annual CLE hours completed by Defendant during the stayed suspension must be in the areas of ethics and professionalism;
- (e) Defendant shall participate fully, timely, and in good faith in the State Bar's fee dispute resolution program when notified of any petitions for resolution of disputed fees;
- (f) Defendant shall arrange for an active member in good standing of the North Carolina State Bar who has been approved by the Office of Counsel and practices in the county of Defendant's practice to serve as Defendant's practice monitor. The monitor shall:
 - (i) meet with Defendant monthly to review Defendant's cases;
 - (ii) provide supervision to ensure that Defendant timely and completely handles client matters;
 - and (iii) provide written quarterly reports of this supervision to the Office of Counsel on the following dates as they occur during the duration of the stay of the suspension: January 30, April 30, July 30, and October 30. Defendant will be solely responsible for the cost, if any, charged by the monitor for providing supervision and/or generating quarterly reports. Failure to ensure that the reports required herein are timely submitted shall be grounds for lifting the stay and reactivating the suspension;

- (g) Defendant must submit to the Office of Counsel the name of the proposed monitor within 15 days after the order staying the suspension. Upon approval, and within 30 days after entry of the order staying the suspension, Defendant must submit to the Office of Counsel a letter from the approved monitoring attorney confirming his or her agreement to perform the duties outlined above. Defendant's failure to timely submit the name of a proposed monitor will not toll or excuse noncompliance with Defendant's obligations under this Order to meet monthly with a monitor and to ensure the monitor provides quarterly reports;
- (h) Defendant shall meet at least monthly with the practice monitor, to whom he shall report the status of all current clients and provide copies of any court filings for the monitor's review. Defendant shall provide any other information or documentation deemed necessary and requested by the monitor. Defendant's first meeting with the monitor must occur within 30 days of entry of the order staying suspension;
- (i) Should it become necessary to replace the practice monitor, Defendant shall immediately notify the Office of Counsel and shall provide the name of a proposed alternate monitor for approval. Defendant's failure to timely submit the name of a proposed replacement monitor will not toll or excuse noncompliance with Defendant's obligations under this Order to meet monthly with a monitor and to ensure the monitor provides quarterly reports;
- (j) Defendant shall continue to comply with any treatment recommendations of his treating clinicians until such time as a modality of treatment is no longer necessary as determined by his treating clinician;
- (k) Defendant shall provide written releases to the North Carolina State Bar Office of Counsel, authorizing all clinicians from whom he receives any recommended treatment during the period of stayed suspension to communicate with the Office of Counsel and to release to the Office of Counsel records relating to his treatment;
- (l) Defendant shall ensure that each clinician from whom he receives any recommended treatment during the period of stayed suspension generates quarterly written reports to the State Bar setting forth: (i) a description of Defendant's participation in and compliance with treatment, (ii) the clinician's opinion as to whether Defendant currently has any physical or mental impairment, or other condition or illness that could adversely affect his ability to practice law; and (iii) the clinician's recommendations, if any, regarding ongoing treatment. The reports shall be provided to the Office of Counsel on January 30, April 30, July 30, and October 30 during the period of active suspension. Defendant is responsible for ensuring that the reports described herein are timely submitted; and
- (m) Defendant shall not violate the Rules of Professional Conduct or any state or federal laws (including the revenue and tax laws of any jurisdiction) other than minor traffic violations during the period of stayed suspension.

9. If Defendant fails to comply with any one or more of the conditions stated in Paragraph 8 above, then the stay of the suspension of his law license may be lifted as provided in 27 N.C. Admin. Code 1B § .0114(x) ("Stayed Suspensions").

10. If Defendant does not seek a stay of the suspension, or if some part of the suspension is stayed and thereafter the stay is revoked, Defendant must provide in support of his petition for reinstatement clear, cogent, and convincing evidence of the following:

(a) Compliance with the general provisions for reinstatement listed in 27 N.C. Admin. Code 1B § .0125 ("Reinstatement"); and

(b) Compliance with the conditions set out in paragraph 6, above.

11. Nothing in this Order shall prohibit the State Bar from investigating and, if necessary, pursuing disciplinary action against Defendant for additional misconduct discovered or reported which occurred during the same time period as the conduct addressed in this Order.

12. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the suspension, and any stay thereof, and until all of the conditions in paragraph 6 above are satisfied.

The findings, conclusions and orders herein are the unanimous decisions of the Hearing Panel.

Signed by the Chair with the consent of the other Hearing Panel members, this the 7th day of September, 2016.


Beverly T. Beal, Chair
Disciplinary Hearing Panel

