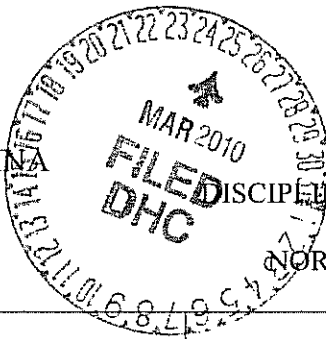


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
09 DHC 29

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

BRET A. TOMITS, Attorney,

Defendant

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
CONSENT TRANSFER TO
DISABILITY INACTIVE STATUS

THIS MATTER was considered by a hearing panel of the Disciplinary Hearing Commission composed of Colon C. Willoughby, Jr., Chair, Harriet T. Smalls and Dr. Cynthia Payne pursuant to 27 N.C.A.C. 1B § .0118 of the Rules and Regulations of the North Carolina State Bar. Plaintiff, the North Carolina State Bar, was represented by Brian P.D. Oten. Defendant, Bret A. Tomits, represented himself. Defendant waives formal hearing in this matter and both parties stipulate and consent to the findings of fact and conclusions of law recited in this order and to Defendant's transfer to disability inactive status. By consenting to the entry of this order, Defendant waives any right to appeal this consent order or challenge in any way the sufficiency of the findings.

Based upon the consent of the parties, the hearing panel hereby finds, by clear, cogent and convincing evidence, the following

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("Plaintiff" or "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, Bret A. Tomits ("Tomits" or "Defendant"), was admitted to the North Carolina State Bar on August 24, 2001. At all times referred to herein, Tomits was 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 part of the relevant periods referred to herein, Tomits was engaged in the practice of law in the State of North Carolina and maintained a law office in Charlotte, Mecklenburg County, North Carolina.

4. During part of the relevant periods referred to herein, Tomits was administratively suspended from the active practice of law in the State of North Carolina pursuant to the Order of Suspension dated March 10, 2009 for failing to submit payment for membership dues for the year 2008, failing to certify his compliance with the mandatory Interest on Lawyers' Trust Accounts ("IOLTA") program, and failing to comply with Continuing Legal Education requirements for the year 2007.

5. Beginning in or around 2002, Tomits suffered from various psychological conditions.

6. While undergoing treatment for the aforementioned conditions, Tomits became dependent upon one or more of the medications prescribed for his psychological condition(s).

7. While attempting to overcome his dependency upon prescription medication, Tomits became dependent upon alcohol.

8. In early 2008, Tomits entered a rehabilitation hospital in Ohio, where he received treatment for prescription drug dependency, anxiety, and alcoholism.

9. In 2008, Tomits wound down his law practice because he believed his psychological condition(s), combined with the high-stress nature of the legal profession, impaired his ability to continue practicing law.

10. In January 2009, Tomits again sought treatment for his various psychological conditions. Dr. Devendra Shah, a psychiatrist practicing in Charlotte, accepted Tomits as a patient and diagnosed Tomits with social anxiety disorder, panic disorder with agoraphobia, and recurrent major depression.

11. Tomits has maintained his treatment with Dr. Shah since January 2009.

12. It is Dr. Shah's professional opinion that Tomits is disabled as defined by the Rules and Regulations of the North Carolina State Bar in that Tomits's mental condition significantly impairs his professional judgment, performance, or competence as an attorney.

13. Tomits consents to being transferred to disability inactive status.

14. Tomits has sufficient capacity to understand the consequences of consenting to the terms of this order.

Based upon the foregoing Findings of Fact, the panel enters the following

CONCLUSIONS OF LAW

1. All parties are properly before the hearing panel and the panel has jurisdiction over Defendant, Bret A. Tomits, and the subject matter of this proceeding.

2. The panel has reviewed the report and materials submitted by Tomits's treating psychiatrist, Dr. Devendra Shah. In light of Tomits's personal privacy interests, these materials should be sealed but stored in the DHC file maintained for this case. The sealed file may be unsealed as necessary to consider any petition Tomits may subsequently file seeking to return to active status.

3. There is clear, cogent, and convincing evidence that Tomits is disabled within the meaning of 27 N.C.A.C. 1B § .0103(19).

4. Tomits should be transferred to disability inactive status with the State Bar.

5. Tomits has voluntarily consented to being transferred to disability inactive status.


Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED:

1. Bret A. Tomits is transferred to disability inactive status.

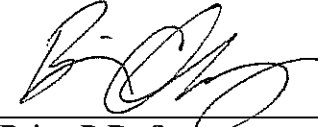
2. Tomits shall not practice law in North Carolina until he is no longer disabled and has been returned to active status as a member of the North Carolina State Bar pursuant to the procedures set out in 27 N.C.A.C. 1B § .0125(c).

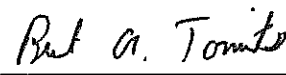
3. The report and materials submitted by Dr. Devendra Shah in this matter are hereby sealed. The sealed documents shall be stored in the DHC file maintained by the Clerk of the Disciplinary Hearing Commission and may be unsealed as necessary to consider any petition Tomits may subsequently file seeking to return to active status.

24th Signed by the Chair with the consent of the other hearing panel members, this the day of March, 2010.


C. Colon Willoughby, Jr., Chair
Disciplinary Hearing Panel

CONSENTED TO BY:


Brian P.D. Oten
Deputy Counsel
North Carolina State Bar
Counsel for Plaintiff


Bret A. Tomits
Defendant