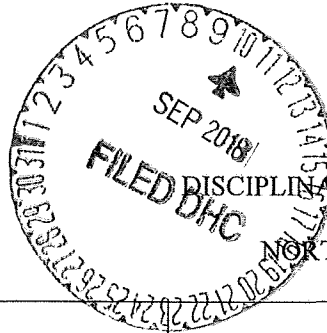


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
18 DHC 1

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

MATTHEW A. SMITH, Attorney,

Defendant

**ORDER OF DISCIPLINE**

Following entry of Judgment on the Pleadings, this matter on August 17, 2018 came before a hearing panel of the Disciplinary Hearing Commission composed of Allison C. Tomberlin, Chair, Richard V. Bennett and Brandon Gosey for a hearing on what discipline is appropriate. G. Patrick Murphy represented Plaintiff. Robert O. Crawford III represented Defendant. Upon hearing testimony from witnesses and making credibility determinations, evaluating the exhibits admitted into evidence, and considering the contentions of the parties, the Hearing Panel hereby makes by clear, cogent and convincing evidence the following:

**FINDINGS OF FACT**

1. Plaintiff, the North Carolina State Bar ("State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, Matthew A. Smith, ("Smith" or "Defendant"), was admitted to the North Carolina State Bar on March 27, 2010, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Rules of Professional Conduct.

3. During all or part of the relevant periods referred to herein, Smith resided in Wake County, North Carolina. Smith has not been engaged in the active practice of law since June 2011.

4. On December 15, 2017, Smith entered a plea of guilty to the charge of taking indecent liberties with a child, a Class F felony pursuant to N.C. Gen. Stat. §14-202.1, in *State v. Matthew A. Smith*, 17 CRS 202882 (Wake County).

5. Judgment was entered on Smith's conviction sentencing him to a term of imprisonment of not less than 16 or more than 29 months. The term of imprisonment was

suspended and Smith was placed on special supervised probation for 48 months with the condition, among others, that Smith serve an active term of 40 days in the custody of the Sheriff of Wake County on weekends at the discretion of his probation officer.

6. On January 29, 2018, a Consent Order of Interim Suspension was entered against Smith in *The North Carolina State Bar v. Matthew A. Smith*, 18 DHC 1.

Based on the foregoing Findings of Fact, the Hearing Panel by clear, cogent and convincing evidence enters the following:

### **CONCLUSIONS OF LAW**

1. All parties are properly before the Hearing Panel and the Hearing Panel has jurisdiction over Smith and the subject matter of this proceeding.

2. Smith engaged in conduct constituting grounds for discipline as follows:

(a) Pursuant to N.C. Gen. Stat. § 84-28(b)(1) in that, based on the judgment entered against Smith for taking indecent liberties with a child, a Class F felony pursuant to N.C. Gen. Stat. §14-202.1, Smith has been convicted of a criminal offense showing professional unfitness; and

(b) Pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Smith violated the Rules of Professional Conduct in effect at the time of the conduct as follows: by engaging in criminal conduct that resulted in judgment being entered against Smith for taking indecent liberties with a child, a Class F felony pursuant to N.C. Gen. Stat. §14-202.1, Smith committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b) of the North Carolina Rules of Professional Conduct.

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Panel by clear, cogent and convincing evidence enters the following:

### **FINDINGS OF FACT REGARDING DISCIPLINE**

1. In April 2005, Smith was licensed to practice law in the Commonwealth of Pennsylvania and was admitted to the North Carolina State Bar on March 27, 2010.

2. On December 22, 2016, Smith exchanged 57 text messages with a minor child using a social media application ("social media application 1"). Smith's user name for the application was, "I\_Know\_Your\_Dad."

3. Early in the exchange of text messages, the minor child told Smith that she was fifteen years old, though she was thirteen. Even though Smith was informed that he was texting with a minor child, he asked for and received pictures from the minor child which included nude images of the minor child's upper body.

4. Smith's text exchange with the minor child included the discussion of various sexual acts the minor might perform in exchange for a gift or loan from Smith of \$350.

5. Social media application 1 uses geo fencing through GPS to determine the user's location. Posts on social media application 1 can be seen by users in that geo fence. Investigators later determined that when Smith and the minor child were using social media application 1, they were approximately eleven miles apart.

6. At Smith's suggestion, he and the minor child switched to another social media application ("social media application 2") where they exchanged approximately 113 text messages. On social media application 2, Smith and the minor child discussed sexual acts and the location for a meeting between Smith and the minor child. At Smith's request, the minor child sent Smith additional nude pictures of herself and a friend of the minor child, who was also a minor.

7. The text messages between Smith and the minor child were time stamped and began at 6:35 am and continued through 10:24 am on December 22, 2016. Two more times that day, at 1:10 pm and 6:19 pm, Smith sent text messages to the minor child seeking to continue the discussion.

8. On December 23 and December 28, 2016, Smith sent texts to the minor child, using social media application 2, asking if she was still interested in the money.

9. On December 26, 2016, the minor child's mother found that the minor child had a cell phone and reviewed the text messages between Smith and the minor child. After doing so, the minor child's mother contacted the Raleigh Police Department ("RPD").

10. When she was interviewed by the first responding RPD officer, the minor child's mother was emotional.

11. On January 30, 2017, RPD Investigator Pike engaged in the exchange of text messages with Smith using the minor child's user name. During that text message exchange on social media application 2, Smith asked for pictures of the minor child.

12. Smith was arrested by RPD investigators on February 15, 2017 and a search warrant was executed on his residence. Investigators seized computer and electronic equipment from Smith's residence.

13. Smith was interviewed by RPD investigators on February 15, 2017 and was informed he had been, in fact, messaging a minor child. He admitted that he had engaged in the subject messaging and provided passwords for investigators to examine his computer equipment.

14. When searching Smith's electronic equipment, investigators found artifacts in his Dropbox account that contained terminology and naming schemes for child pornography that had been deleted. Smith denied downloading any child pornography but did not deny the existence of

the artifacts which he testified he became aware of when the prosecution provided his defense attorneys with their case file.

15. Smith told RPD investigators that he had previously met with a person whom he contacted through social media. Smith told investigators that the person he met said she was eighteen years-old.

16. Smith's arrest was the subject of media coverage, his conviction is a matter of public record, and Smith is required to register as a sex offender for thirty years from the date of his conviction, though he can file a petition to end his registration after ten years.

17. The judgment in Smith's criminal case permits Smith to serve his active sentence on weekends on a schedule set by his probation officer. Smith is serving the active sentence on weekends and had not completed the 40-day jail term as of the date of his hearing.

18. Smith testified during his phase two hearing. Smith told the hearing panel that while he was text messaging with the minor child he was engaged in a fantasy, did not intend to meet with the minor child, and was not capable of contemplating the potential harm his conduct could cause at the time of the act. Smith's testimony on these points was not credible and was contradicted by other evidence presented at the hearing.

19. Because of Smith's conduct and/or conviction, he lost his job, his marriage broke up, and he incurred significant financial losses. Smith has over \$110,000 in debt.

20. On January 15, 2017, Smith began seeing a therapist for compulsive sexual behavior. Smith was suffering from suicidal thoughts, moderate depression, sexual compulsion, and a poor sense of self.

21. Smith's conduct prior to therapy was marked by deceit and misrepresentation. Smith's therapist believes that through therapy, Smith has changed his belief structure from one of selfishness to selflessness.

22. On January 22, 2018, Smith signed a recovery contract with the Lawyer Assistance Program ("LAP"). Smith has followed through on all LAP recommendations and has complied with his contract. Smith attends weekly meetings of Sex Addicts Anonymous ("SAA").

23. Since beginning therapy, Smith attends his church every week that he is not serving a weekend in jail and regularly attends SAA meetings where he has openly discussed his conduct and told others that he has taken responsibility for it. Smith has become a sponsor for others in SAA.

24. At the time of the hearing, Smith had accumulated 495 consecutive days of sobriety (abstention from sexually compulsive acts).

25. Smith has been continuously, gainfully employed, full-time with the same employer since April 2017.

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

### **CONCLUSIONS REGARDING DISCIPLINE**

1. The Hearing Panel has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension and disbarment. In addition, the Hearing Panel has considered all factors contained in 27 N.C.A.C. 1B § .0116(f)(1) of the Rules and Regulations of the State Bar and finds that the following factors are established by the evidence:

- (a) intent of the defendant to cause the resulting harm or potential harm;
- (b) intent to commit acts where the harm or potential harm is foreseeable;
- (c) circumstances reflecting on defendant's lack of integrity;
- (d) negative impact of the defendant's actions on the public's perception of the profession;
- (e) impairment of clients' ability to achieve the goal of representation;
- (f) effect of defendant's conduct on third parties; and
- (g) acts of dishonesty, misrepresentation and deceit.

2. The Hearing Panel has also considered all factors enumerated in 27 N.C.A.C. 1B § .0116(f)(2) of the Rules and Regulations of the North Carolina State Bar and concludes that the following factors are established and warrant consideration of disbarment:

- (a) commission of a felony.

3. The Hearing Panel has also considered all factors enumerated in 27 N.C.A.C. 1B § .0116(f)(3) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are established by the evidence:

- (a) selfish motive;
- (b) pattern of misconduct by continuing to reach out to the minor child seeking pictures;
- (c) effect of personal or emotional problems on the conduct;
- (d) effect of mental disability or impairment on the conduct;

- (e) interim rehabilitation;
- (f) refusal to acknowledge wrongful nature of conduct;
- (g) remorse;
- (h) negative reputation of defendant as a sex offender;
- (i) testimony of defendant's witnesses that defendant has good character;
- (j) vulnerability of victim;
- (k) experience in the practice of law; and
- (l) imposition of other penalties.

4. Defendant's conduct resulted in significant harm or potential significant harm to the public and the legal profession. A lawyer's conviction of a felony reflects poorly upon the profession and engenders a lack of trust and confidence in lawyers, causing potential significant harm to the public and the profession.

5. The Hearing Panel has considered all lesser sanctions and finds that discipline less than disbarment would not adequately protect the public for the following reasons:

- (a) Smith engaged in conduct constituting a felony that involved indecent liberties with a child;
- (b) Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offense Smith committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar of this State; and
- (c) The protection of the public and the legal profession requires that Smith not be permitted to resume the practice of law until he demonstrates the following: that he has reformed; that he understands his obligations to the public, the courts, and the legal profession; and that reinstatement will not be detrimental to the public or the integrity and standing of the legal profession. The State Bar rule on reinstatement, 27 N.C. Admin. Code 1B.0129, requires disbarred lawyers to make such a showing before they may resume practicing law, whereas no such showing of reformation is required by the rule of attorneys whose licenses are suspended.

Based on the foregoing Findings of Fact, Conclusions of Law, Findings of Fact Regarding Discipline and Conclusions of Law Regarding Discipline, the Hearing Panel hereby enters the following:

#### **ORDER OF DISCIPLINE**


1. Defendant, Matthew A. Smith, is hereby DISBARRED from the practice of law in the State of North Carolina.

2. Defendant shall comply with the wind-down provisions of 27 N.C.A.C. 1B § .0128 of the State Bar Discipline and Disability Rules.

3. Defendant shall submit his license and membership card to the Secretary of the State Bar within ten (10) days of the effective date of this Order.

4. Defendant shall pay the costs of this proceeding as assessed by the Secretary of the North Carolina State Bar. Defendant shall pay the costs within 120 days of the service upon him of the statement of costs by the Secretary.

Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Panel, this is the 10 day of Sept, 2018.

  
Allison C. Tomberlin, Chair  
Hearing Panel