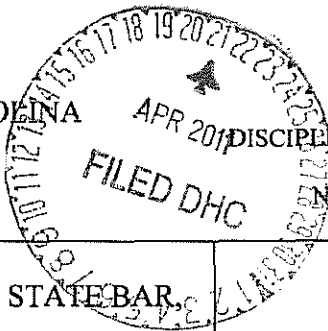


STATE OF NORTH CAROLINA

WAKE COUNTY

THE NORTH CAROLINA STATE BAR



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
10 DHC 8

Plaintiff

v.

ANNETTE H. EXUM, Attorney,

Defendant

ORDER TRANSFERRING
DEFENDANT TO DISABILITY
INACTIVE STATUS

THIS MATTER came on to be heard and was heard on 4 March 2011 before a hearing panel of the Disciplinary Hearing Commission composed of J. Michael Booe, Chair, Robert F. Siler and Michael Houser. Brian P.D. Oten represented the North Carolina State Bar. Dudley A. Witt represented Defendant, Annette H. Exum. Based upon the pleadings and evidence presented at trial, the hearing panel hereby enters 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, Annette H. Exum ("Exum" or "Defendant"), was admitted to the North Carolina State Bar on 4 April 2003 and is, and was at all times referred to herein, an Attorney at Law licensed to practice in North Carolina, 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 times relevant hereto, Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in Raleigh, Wake County, North Carolina.

4. Plaintiff filed the complaint in this action on 15 January 2010 and amended its complaint on 6 December 2010. Defendant was properly served with process and received due notice of the hearing in this matter.

5. By motion dated 31 January 2011, Defendant raised the issue of her disability in the underlying disciplinary proceeding.

6. On 7 February 2011, the Chair of the Disciplinary Hearing Panel stayed the underlying disciplinary proceeding, transferred Defendant to disability inactive status, set a hearing date of 4 March 2011 to determine whether Defendant is disabled and appointed counsel to represent Defendant in the 4 March 2011 hearing on disability pursuant to 27 N.C. Admin. Code 1B § .0118(c).

7. On 4 March 2011, Defendant was an inpatient at Wake Medical Center under the care of her cardiologist, Robert Wesley, II, M.D., F.A.C.C. ("Dr. Wesley"), who has treated Defendant since 2007. At the time of the hearing, a cardiac catheterization was being performed to define her coronary artery anatomy with simultaneous stint implantation if required, thereby preventing Defendant from attending the 4 March 2011 hearing. Counsel for Defendant stipulated in open court that Defendant wished and instructed her counsel to proceed with the 4 March 2011 disability hearing despite her absence.

8. Defendant began experiencing significant health issues requiring inpatient treatment and admission to Wake Med as early as March 2006. During this period of inpatient hospitalization, Defendant advised her treating physicians that she was experiencing light headedness, stuttering and slurred speech, that she felt unsteady on her feet with an abnormal gait, and that she felt weak and anxious. At some point after her discharge from Wake Med in March 2006, Dr. Wesley began treating Defendant for evaluation of hypertension, chest pain and shortness of breath. Defendant was again hospitalized under Dr. Wesley's care at Wake Med in 2008 with symptoms of dizziness and stuttering speech. After a thorough work up it was determined that her episodes were "not particularly consistent with transient ischemic attacks (mini strokes)." She was once again hospitalized under Dr. Wesley's care at Wake Med in 2010 for weakness and slurred speech. Defendant was again hospitalized in January 2011 after experiencing an episode of dizziness and weakness at the courthouse during which she lowered herself to the ground.

9. Based upon his cardiovascular and neurology evaluations of Defendant over the preceding four years, Dr. Wesley diagnosed Defendant with neurocardiogenic presyncope due to hypertensive heart disease. In Dr. Wesley's opinion, this condition is exacerbated by acute and chronic emotional stress. Dr. Wesley explained that neurocardiogenic presyncope is a cardiovascular condition which develops in the setting of decreased blood volume in the left ventricle, which is the main pumping chamber of the heart. A chronic state of decreased blood level leads to stimulation of stretch receptors in the heart muscle, which activate an epinephrine-mediated cardiovascular reflex which leads to enlargement of the veins in the leg. Venous enlargement leads to pooling of a large amount of blood in the lower extremities, which reduces the amount of blood returning to the heart. The ultimate effect is less blood flows from the heart to the brain which leads to neurological symptoms including dizziness and weakness.

10. In Dr. Wesley's opinion, chronic stress combined with acute stressors, including the recent death of her father and the everyday life/practice of an attorney, cause Defendant to experience recurrent symptoms which impact her on a daily basis. Defendant's chronic hypertension combined with her chronic stress cause her symptoms

to be especially debilitating. Dr. Wesley concluded that Defendant currently suffers from a physical disability that impairs her professional performance as an attorney.

11. Dr. Wesley recommended a course of treatment consisting of a referral to cardiac rehabilitation for supervised exercise sessions to allow the Defendant to improve cardiovascular conditioning, lose weight, retrain her cardiovascular system to maintain an appropriate blood pressure response to upright posture and improve blood pressure response to stress. He also indicated that treatment should include careful monitoring of medications and using beta blocker therapy to antagonize the epinephrine-mediated cardiovascular reflex which causes neurocardiogenic presyncope. By following the prescribed cardiac rehabilitation, Dr. Wesley is hopeful that Defendant can improve to a state that allows her to function without neurocardiogenic presyncope.

12. Dr. G. Lane Wagaman, Ed.D, Licensed Psychologist ("Dr. Wagaman"), began treating Defendant in December, 2010. Dr. Wagaman testified that Defendant's general anxiety is presently at such a high level that it impairs her professional judgment and performance as an attorney. Defendant's anxiety and response to acute stressors combined with Dr. Wagaman's limited clinical observations and inability to review medical records outlining Defendant's prior medical history prohibited Dr. Wagaman from conducting a complete psychological examination of Defendant and forming an opinion as to a formal diagnosis of Defendant's psychological condition. However, Dr. Wagaman through his clinical observation has been able to form a working diagnosis that Defendant suffers from an adjustment disorder of unspecified origin that significantly impairs Defendant's judgment and performance as an attorney and which impairs her ability to practice law.

13. Dr. Wagaman recommends the following course of treatment for Defendant: First, attempting to control Defendant's high level of anxiety by referring Defendant to a psychiatrist to determine what, if any, medications may be helpful in reducing, eliminating, or better controlling the Defendant's current significant levels of anxiety and reaction to acute stress because such reaction presently impairs Dr. Wagaman's ability to properly evaluate and determine Defendant's psychological condition. Once Defendant regains control of her anxiety, Dr. Wagaman recommends Defendant submit to a full psychological examination to determine if Defendant suffers from any additional or alternative psychological condition(s) and produce a final, definitive diagnostic impression and consequent treatment. Dr. Wagaman's recommended course of treatment would also include referral for a complete medical work up on Defendant's physical condition, if after reviewing Defendant's previous medical records said referral is necessary to determine what, if any, physical characteristics contribute to Defendant's psychological condition.

14. Defendant's pattern of behavior reflects an ongoing inability to carry out her professional responsibilities based upon her neurocardiogenic presyncope due to hypertensive heart disease, exacerbated by acute chronic stress, chronic anxiety, and potentially other undiagnosed psychological conditions.

15. In order to protect the public, it is necessary for Defendant to identify and obtain appropriate treatment for the mental and physical conditions that have rendered her unable to fulfill her professional responsibilities.

16. The parties, through counsel, informed the panel that an additional amendment to the complaint will be necessary to include an additional claim for relief. Counsel for both parties stipulated in open court that they consented to an Order being entered allowing this amendment. Counsel for the parties further stipulate that the time to answer the allegations of the amended complaint would be stayed until Defendant is reinstated to active status.

Based on the foregoing Findings of Fact, the hearing panel enters the following

CONCLUSIONS OF LAW

1. The Disciplinary Hearing Commission has jurisdiction over Defendant and over the subject matter of this proceeding.

2. Defendant suffers from a mental and physical condition (or conditions) that significantly impairs her professional judgment and performance as an attorney, and she is therefore disabled within the meaning of 27 N.C.A.C. 1B § .0103(19), and should be transferred to disability inactive status pursuant to 27 N.C.A.C. 1B § .0118.

3. Plaintiff, by and with the consent of Defendant, should be allowed to amend its complaint to add a claim for relief.

4. The time in which Defendant will be required to respond to the allegations of the amended complaint will be stayed until she has been reinstated to active status.

ORDER

1. Defendant, Annette H. Exum, is hereby transferred to disability inactive status in accordance with North Carolina General Statute 84-28(g) and 27 N.C.A.C. 1B § .0118(c).

2. The disciplinary action filed by Plaintiff is stayed until such time as Defendant is reinstated to active status.

3. The costs of this proceeding are taxed against Defendant. The Secretary of the State Bar shall send a statement of costs to Defendant. These costs are due within two years after entry of this order, or upon petition by Defendant for reinstatement to active status, whichever is earlier. The costs taxed to Defendant include but are not limited to all fees associated with Dr. G. Lane Wagaman's testimony provided pursuant to subpoena in this case, all fees associated with Dr. Robert Wesley's testimony provided via written letter in this case, and all fees associated with Mr. Witt's appointment to serve as counsel for Defendant in this case.

4. Defendant initiated evaluation and treatment by Dr. Wesley and Dr. Wagaman prior to this disability hearing being scheduled. Defendant remains responsible for any fees associated with Dr. Wesley's and Dr. Wagaman's evaluation and treatment of Defendant.

5. Upon application for reinstatement to active status, in addition to complying with the requirements of 27 N.C.A.C. 1B § .0125(c), Defendant must show by clear, cogent, and convincing evidence that she:

- a. Paid the costs of this proceeding, as contained in the statement of costs provided by the Secretary of the State Bar, within the time frame set forth in paragraph 3 above;
- b. After reducing her anxiety level as described by Dr. Wagaman above, successfully underwent a psychodiagnostic and needs-based behavioral mental health evaluation at Defendant's expense that included a comprehensive review of Defendant's personal, medical, and behavioral health history and current status, as well as a comprehensive mental status evaluation. The evaluation shall also include the administration and interpretation of the current version, in professional use at the time of examination, of at least one empirically-validated psychometric instrument, which must include but need not be limited to the MMPI-2. The purposes of this evaluation shall be: (1) to determine Defendant's current diagnoses based on DSM criteria; and (2) to recommend a course of treatment for Defendant based thereon, if warranted by the evaluation and any resulting diagnoses. The diagnostic testing, interpretation of results, and recommendations shall be performed by an appropriately trained, experienced and licensed psychologist selected by Defendant and approved by the Office of Counsel of the North Carolina State Bar. Defendant shall provide the results of the evaluation and her treatment plan, if any, to the Office of Counsel for its review;
- c. Has consistently complied with the treatment recommendations (including but not limited to medication and/or psychotherapy) of Dr. Wesley and Dr. Wagaman described in the findings of fact above and any additional recommendations generated as a result of the diagnostic evaluation described in paragraph 5(b), as well as any subsequent treatment recommendations indicated by any treatment provider(s), for a period of time sufficient to improve her condition and functioning to the point that Defendant is no longer disabled from the practice of law as defined by 27 N.C.A.C. 1B § .0103(19) and as verified by Defendant's treatment provider(s). All treatment of Defendant and evaluation of Defendant's improvement as referenced in this Order shall occur at Defendant's expense;
- d. Has executed a written release authorizing the Office of Counsel of the North Carolina State Bar to speak with and obtain copies of records from

Dr. Wesley, Dr. Wagaman, any evaluating physicians and any treating health providers;

- e. Is no longer disabled and is competent to practice law;
- f. Has not engaged in the unauthorized practice of law during her period of inactive status;
- g. Has not engaged in any conduct during the period of her inactive status that would constitute grounds for discipline under N.C. Gen. Stat. 84-28(b); and
- h. Has accepted all certified mail and has responded to all letters and other communication from the North Carolina State Bar within the time period stated therein.


6. Pursuant to 27 N.C.A.C. 1B § .0118(f), Plaintiff is permitted to continue investigating allegations of misconduct and preserve evidence of any alleged professional misconduct by Defendant, including taking depositions. However, Plaintiff is not permitted to depose Defendant in its attempt to preserve evidence.

7. To protect the interests of Defendant during the time of her disability, Dudley A. Witt is hereby appointed to represent Defendant in any depositions taken by Plaintiff pursuant to paragraph 6 above.

8. Plaintiff is further allowed to amend its pending disciplinary complaint in this matter to include any additional allegations of professional misconduct. Defendant's time to file a response to Plaintiff's amended complaint shall be tolled until Defendant returns to active status with the North Carolina State Bar.

9. This order shall be effective immediately upon entry pursuant to 27 N.C.A.C. 1B § .0118(c).

Signed by the Chair with the consent of the other hearing panel members, this is the 21st day of April, 2011.


J. Michael Booe, Chair
Disciplinary Hearing Panel