

18715

NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF
THE NORTH CAROLINA STATE BAR
05 DHC 14

The North Carolina State Bar,
Plaintiff

v.

John A. Martin, Attorney,
Defendant

**Consent Order
Transferring Defendant
to
Disability Inactive Status**

This matter was considered by a Hearing Committee of the Disciplinary Hearing Commission composed of F. Lane Williamson, Chair, M. Ann Reed, and H. Dale Almond based upon the consent of the parties following the entry of an order transferring Defendant to disability inactive status pending a final determination of his disability. Deputy Counsel David R. Johnson represented the plaintiff. Alan Schneider represented the Defendant. By entering into this consent order, Defendant waives any formal hearing in the above referenced matter and the parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the conditions imposed. Further, by consenting to entry of this order, Defendant also stipulates that he waives his right to appeal this consent order or challenge in any way the sufficiency of service of process, the complaint, and the findings of fact, conclusions of law or conditions ordered. Based upon the pleadings and the stipulations of the parties, the hearing committee hereby makes the following Findings of Fact by clear, cogent, and convincing evidence:

Findings of Fact

1. The Plaintiff, the North Carolina State Bar (hereafter "Plaintiff"), 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. The Defendant, John A. Martin (hereinafter Defendant), was admitted to the North Carolina State Bar on March 21, 1992, 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. The Plaintiff filed a disciplinary complaint against the Defendant on April 5, 2005 based on Defendant's alleged conduct as an attorney engaged in the private practice of law in Orange County, North Carolina. Summons was also issued on April 6, 2005. The Summons was served on the Defendant on April 22, 2005.

4. On May 3, 2005, the Chair of the Disciplinary Hearing Commission appointed the three members of the Hearing Committee to hear and determine the Plaintiff's disciplinary complaint, F. Lane Williamson, Chair, M. Ann Reed, and H. Dale Almond.

5. Also, on May 3, 2005, the Defendant, through counsel, moved for an extension of time to file an Answer or otherwise respond to the complaint. On May 6, 2005, the Chair granted the extension of time and set May 31, 2005 as the new deadline for Defendant's responsive pleading.

6. On May 31, 2005, Defendant, through counsel, filed an Answer and a Counterclaim raising a question about whether the Defendant had a disability that impaired his ability to practice law.

7. On June 14, 2005, Defendant, through counsel, filed an amended Answer and a Counterclaim in which he contended that he had a disability within the meaning of 27 N.C.A.C. 1B § .0103(19) and requested that the disciplinary proceedings be stayed pending a determination of his disability pursuant to 27 N.C.A.C. 1B § .0118(c)(1).

8. On June 14, 2005, Plaintiff filed a reply to Defendant's counterclaim, denying the factual basis for the Defendant's disability claim. Plaintiff also moved to dismiss the counterclaim and for a more definite statement.

9. On June 17, 2005, the Chair entered an order staying the disciplinary proceeding and immediately transferring Defendant to disability inactive status pursuant to 27 N.C.A.C. 1B

§ .0118(c)(1). Also on June 17, 2005, the Chair entered a separate order pursuant to 27 N.C.A.C. 1B § .0118(b)(3) requiring Defendant to submit to a complete mental evaluation by a psychiatrist agreed upon by Plaintiff and Defendant and provide the report to the Plaintiff. The Chair then entered an order pursuant to 27 N.C.A.C. 1B § .0118(f) allowing Plaintiff to preserve evidence in the disciplinary proceeding while Defendant is on disability inactive status.

10. On August 31, 2005, Defendant submitted himself to an evaluation by Dr. Phillip L. Hillsman, M.D. Dr. Hillsman is board certified in general psychiatry and in addiction psychiatry. Dr. Hillsman prepared a report and provided it to counsel for Plaintiff. Dr. Hillsman's opinion is that Defendant suffers from severe Attention Deficit Hyperactivity Disorder and possibly has other mental disorders that could be diagnosed in an ongoing treatment regimen. Dr. Hillsman's ultimate conclusion is that Defendant has a current, ongoing mental condition that significantly impairs Defendant's professional judgment, performance, or competence as an attorney.

Based on the foregoing Findings of Fact, the Committee enters the following

Conclusions of Law

1. All parties are properly before the Hearing Committee, and the Committee has jurisdiction over defendant and the subject matter of this proceeding.
2. Defendant is disabled within the meaning of 27 N.C.A.C. 1B § .0103(19), and Defendant should be transferred to disability inactive status pursuant to 27 N.C.A.C. 1B § .0118(c).

Based upon the foregoing **Findings of Fact** and **Conclusions of Law**, the Committee enters the following

Order

1. Defendant is hereby transferred to disability inactive status pursuant to 27 N.C.A.C. 1B § .0118(c) and will remain on disability inactive status until reinstated to active status pursuant to 27 N.C.A.C. 1B § .0125(c).
2. Defendant will not practice law in North Carolina until reinstated to active status pursuant to 27 N.C.A.C. 1B § .0125(c).

3. The disciplinary proceeding above captioned is hereby stayed until such time as Defendant is reinstated to active status.

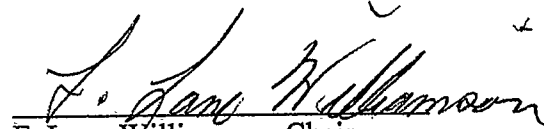
4. The Order authorizing Plaintiff pursuant to 27 N.C.A.C. 1B § .0118(f) to use all necessary means to preserve the evidence related to the disciplinary proceeding, including but not limited to the taking of witness depositions, for use at such time as the stay of the disciplinary proceedings is lifted, remains in full force and effect while Defendant remains on disability inactive status.

5. Defendant may not petition for reinstatement to active status as provided by 27 N.C.A.C. 1B § .0125(c) before the end of one year after entry of this order and will comply with all conditions under 27 N.C.A.C. 1B § .0125(c) before petitioning for reinstatement.

6. To the extent he is able while on disability inactive status, Defendant will personally cooperate with the Office of Counsel of the North Carolina State Bar to identify the proper owners of all funds remaining in his trust account. Defendant will also cooperate with any attorney who is appointed as trustee to protect clients' interests pursuant to 27 N.C.A.C. 1B § .0122(a)

7. The Defendant is taxed with the costs of this action.

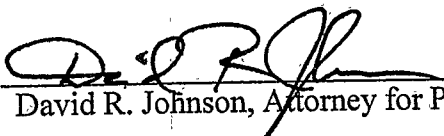
Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Committee, this 17th day of November, 2005.


F. Lane Williamson, Chair
Hearing Committee

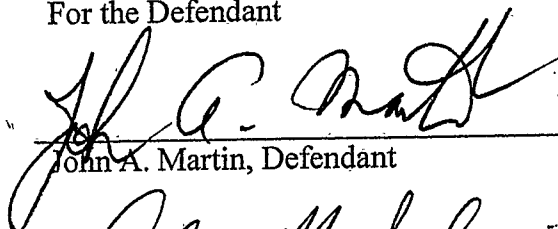
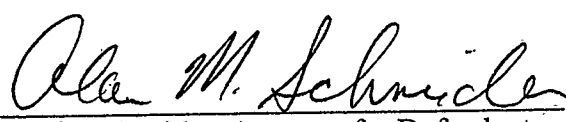
(Consents appear on following page)

By signing below, the parties affirm their consent and agreement to the entry of the foregoing
Consent Order of Disability in the matter of the North Carolina State Bar v. John Martin, 05
DHC 14:

For the Plaintiff


David R. Johnson, Attorney for Plaintiff

For the Defendant


John A. Martin, Defendant

Alan M. Schneider, Attorney for Defendant