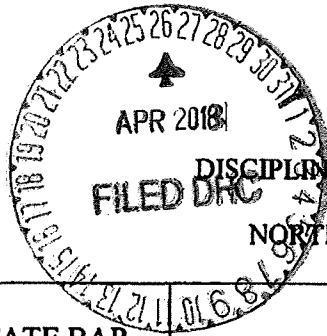


NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
15 DHC 52 A-R

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

SEAN DAVID SOBOLESKI,

Defendant/Petitioner

ORDER STAYING SUSPENSION

THIS MATTER is before a Hearing Panel of the Disciplinary Hearing Commission composed of Fred M. Morelock, Chair, David W. Long and Tyler B. Morris pursuant to a Petition for Stay filed by Petitioner Sean David Soboleski on April 6, 2018. The State Bar did not file a response to the petition.

Based upon a review of the records of the Disciplinary Hearing Commission, the Hearing Panel makes the following:

#### FINDINGS OF FACT

1. Pursuant to a consent Order of Discipline filed in this matter on June 30, 2016, Soboleski was suspended from the practice of law for three years.
2. The effective date of the Order of Discipline was August 18, 2016.
3. The Order of Discipline provided that Soboleski would be eligible to seek a stay of any remaining period of suspension after serving six months of active suspension and upon compliance with conditions stated in the Order of Discipline.
4. As of April 6, 2018, Soboleski had served over 19 months of active suspension.
5. Soboleski filed a verified petition on April 6, 2018 requesting a stay of the remaining period of his suspension and seeking reinstatement to active status subject to conditions and requirements set forth in the Order of Discipline.
6. The Order of Discipline requires that Soboleski be in compliance with conditions set out therein to qualify for a stay of the remaining period of suspension.

7. In his verified petition, Soboleski certified that he has satisfied all of the conditions in the Order of Discipline for a stay of the remaining period of his suspension.

8. After conducting an investigation of Soboleski's compliance with the requirements set forth in 27 N.C.A.C. 1B § .0129(b) and the conditions in the Order of Discipline, counsel for the North Carolina State Bar did not file an objection to Soboleski's petition for stay of the suspension.

BASED UPON the foregoing Findings of Fact, the Hearing Panel makes the following:

#### CONCLUSIONS OF LAW

1. All parties are properly before the Disciplinary Hearing Commission and the Disciplinary Hearing Commission has jurisdiction over Petitioner, Sean David Soboleski, and the subject matter of this proceeding.

2. Soboleski has satisfied the requirements set forth in Rule .0129(b) and the conditions in the Order of Discipline for a stay of his suspension and reinstatement to active status, subject to Soboleski's continued compliance with the conditions set forth in paragraphs 8 (a) through (i) on pages 10-12 of the June 30, 2016 Order of Discipline.

THEREFORE, it is hereby ORDERED:

1. Soboleski's April 6, 2018 Petition for Stay is ALLOWED, the balance of the suspension of his law license is stayed, and he shall be permitted to resume practicing law subject to the conditions set forth in paragraph 2 below.

2. The remaining period of suspension of Soboleski's law license is stayed as long as he continues to comply with the following conditions:

- (a) Soboleski is current in payment of all Membership dues, fees, assessments and costs, including all Client Security Fund assessments and other charges or surcharges that the State Bar is authorized to collect from Soboleski, including all judicial district dues, fees and assessments;
- (b) That there is no deficit in Soboleski's completion of mandatory CLE hours, in reporting of such hours, or in payment of any fees associated with attendance at CLE programs;
- (c) Within the first year of the stayed suspension, Soboleski shall complete three hours of CLE in the area of trust account management approved by the Office of Counsel of the State Bar. At least one such session shall be the Trust Accounting Rules Continuing Legal Education Program taught by the Trust Account Compliance Counsel for the North Carolina State Bar. Soboleski shall provide written proof of successful completion of the CLE courses to the State Bar within ten days of completing the courses.

These three hours are in addition to the CLE requirements set out in 27 N.C. Admin. Code 1D § .1518;

- (d) During the stayed suspension, Soboleski shall personally perform the three-way reconciliations of all bank accounts into which are deposited any funds which Soboleski is required to hold in trust for the benefit of any client or third party, using the reconciliation method described in the State Bar Lawyer's Trust Account Handbook and using the reconciliation form provided therein. Soboleski shall provide the three-way reconciliation report and all appropriate supporting documentation to the Certified Public Accountant (CPA) as provided below within fifteen days of the end of each quarter;
- (e) Soboleski shall engage the services of a CPA to audit his trust account on a quarterly basis to ensure Soboleski's compliance with the Rules of Professional Conduct relating to trust accounts.
  - i. The CPA must submit quarterly a written report to the Office of Counsel concerning whether Soboleski's reconciliations and trust account records and activities comply with the Rules of Professional Conduct, including but not limited to report of any accounting irregularities and any deviation from the requirements of the Rules of Professional Conduct, with a copy of the report sent simultaneously to Soboleski. The CPA's reports are due no later than thirty days after the end of each quarter (each January 30, April 30, July 30, and October 30 during the period of stay). It is Soboleski's sole responsibility to ensure the CPA completes and submits the reports as required herein;
  - ii. If any of the CPA reports note any irregularities or deficiencies, Soboleski shall take all remedial action necessary to bring the trust account into compliance with the Rules of Professional Conduct and shall provide proof of the remedial action and compliance to the CPA and to the Office of Counsel of the State Bar within fifteen days of the date of the CPA's report;
  - iii. All CPA evaluations, reports, and services referred to herein will be completed and submitted at Soboleski's sole expense; and
  - iv. Failure of Soboleski to ensure the CPA submits any report required by this Order shall be grounds to lift the stay and activate the suspension;
- (f) During the period of stay and for any reportable quarter, if another lawyer with whom Soboleski is associated is responsible for administration of entrusted or fiduciary funds in a general or dedicated trust account, in lieu of the provisions of paragraphs (d) and (e) above, Soboleski shall submit

to the Office of Counsel for each such quarter an affidavit signed by him stating 1) that he is not responsible for the administration of any general trust account(s), 2) that he does not have signature authority over such trust account (s), and 3) the name of the attorney so responsible. During the period of stay and for any reportable quarter, if Soboleski is not associated with a responsible attorney as outlined above, does not have a trust account, and has not handled entrusted funds for any reportable quarter, in lieu of the provisions of paragraphs (d) and (e) above, Soboleski shall submit to the Office of Counsel for each such quarter an affidavit signed by him stating 1) that he does not maintain a general or dedicated trust account, and 2) that he has not received or otherwise handled any entrusted or fiduciary funds as defined in Rule 1.15-1 of the North Carolina Rules of Professional Conduct.

- (g) Soboleski shall not violate the Rules of Professional Conduct or the laws of the United States or of any state or local government during the stay of his suspension;
- (h) Soboleski shall keep the State Bar Membership Department advised of his current business address. Soboleski shall notify the State Bar of any change of address within ten days of such change. His current business address must be a street address, not a post office box or drawer;
- (i) Soboleski shall respond to all communications from the State Bar, including communications from the Attorney Client Assistance Program, within thirty days of receipt of such communication or by the deadline stated in the communication, whichever is sooner;
- (j) Soboleski shall participate in good faith in the State Bar's fee dispute resolution process for any petition which is pending during the stay of the suspension.

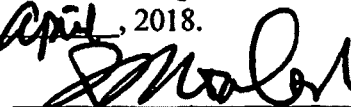
3. If Soboleski fails to comply with any one or more of the conditions of the stay of suspension provided in paragraphs 2 (a) – (j) above, the stay of suspension may be lifted in accordance with 27 N.C. Admin. Code 1B § .0118(a).

4. Soboleski's obligations governing the stay under this Order end after the applicable period of the stay provided there are no motions or show cause proceedings pending alleging lack of compliance with the conditions of the stay of the suspension. Pursuant to § .0118(b) of the North Carolina Discipline and Disability Rules, the DHC retains jurisdiction until all conditions of the stay of the suspension have been met. If a motion or show cause proceeding alleging lack of compliance with the conditions for the stay of the suspension is pending when the period of the stay of the suspension would otherwise have terminated, the DHC retains the jurisdiction and ability to lift the stay of the suspension and activate the remaining portion of the suspension in whole or in part if it finds that any of the conditions of the stay have not been met. The stay of the

suspension and Soboleski's obligation to comply with the conditions for the stay will continue until resolution of any such pending motion or show cause proceeding.

5. The stay of the remainder of Soboleski's suspension is effective immediately upon the filing of this Order.

Signed by the undersigned Chair with the knowledge and consent of the other members of the Hearing Panel, the 26<sup>th</sup> of April, 2018.

  
Fred M. Morelock, Chair  
Disciplinary Hearing Panel