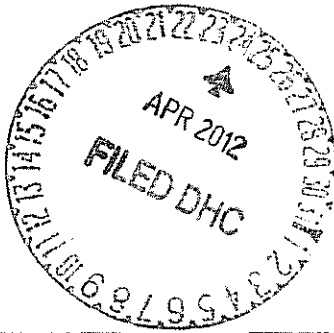


NORTH CAROLINA  
WAKE COUNTY



BEFORE THE DISCIPLINARY  
HEARING COMMISSION OF  
THE NC STATE BAR  
05 DHC 4 & 11 RD 3

IN RE: PETITION FOR REINSTATEMENT OF: )

DAVID S. HARLESS,  
Petitioner )

ORDER DENYING  
REINSTATEMENT  
TO ACTIVE STATUS

This matter was heard on the 13<sup>th</sup> day of April 2012 by a panel of the Disciplinary Hearing Commission composed of Fred M. Morelock, Chair; Harriett Smalls, and Percy L. Taylor. The petitioner, David S. Harless, represented himself. The State Bar was represented by A. Root Edmonson. Based upon petitioner's Petition for Reinstatement to Active Status filed December 12, 2011, the Order Transferring Defendant to Disability Inactive Status filed herein on August 26, 2005, the evidence presented at the hearing and the arguments of Counsel, the panel hereby enters the following:

#### **Findings of Facts**

1. The petitioner, David S. Harless (hereinafter, "Mr. Harless"), was admitted to the North Carolina State Bar in 1997.
2. Mr. Harless presently resides in South Charleston, West Virginia, but wants to return to North Carolina to be closer to two of his children.
3. Mr. Harless was transferred to disability inactive status by August 26, 2005 order of the Disciplinary Hearing Commission.
4. Paragraph 5 of the August 26, 2005 order listed conditions, in addition to the usual requirements of 27 N.C.A.C. 1B, § .0125 (c), that Mr. Harless would have to meet to be eligible for reinstatement to active status, including proving by clear, cogent and convincing evidence that:
  - a. He paid the costs of this proceeding taxed against him by the order;
  - b. He had received appropriate medical treatment for his bipolar disorder, had

been under the care of a treating psychiatrist for his bipolar disorder for not less than a six month period next preceding his reinstatement petition, had been in compliance with the treatment regimen prescribed by his psychiatrist including full compliance with any prescriptions for psychiatric medication and with psychotherapy for not less than a six month period next preceding his reinstatement petition;

- c. He was no longer impaired and was competent to practice law;
- d. Permitting him to resume the practice of law within the state would not be detrimental to the integrity and standing of the bar, to the administration of justice, or to the public's interest;
- e. He had not engaged in the unauthorized practice of law during his period of inactive status; and
- f. He had not engaged in conduct during the period of his inactive status that would constitute grounds for discipline.

4. On December 12, 2011, Mr. Harless filed his second petition for reinstatement to active status, having previously petitioned in 2009. By order dated August 18, 2010, Mr. Harless' first petition was denied.

5. Mr. Harless is also a member of the West Virginia Bar. By order entered on February 3, 2004, Mr. Harless was administratively suspended by order of the West Virginia Supreme Court of Appeals. The Court also ordered Mr. Harless to be examined by a medical expert to determine whether he suffered from a medical, mental or emotional condition that rendered him disabled from continuing to practice law in West Virginia. Mr. Harless has not been returned to active status in West Virginia.

6. Mr. Harless has not paid the costs of the 2005 Disciplinary Hearing Commission proceeding. Mr. Harless' sole source of income has been his monthly Social Security disability payment of \$1,800. Mr. Harless is indigent, but that does not excuse the requirement that he pay the costs of the 2005 proceeding.

7. Mr. Harless has received appropriate medical treatment from Dr. Russell Voltin, M.D., a board certified psychiatrist in South Charleston, West Virginia, for his bipolar disorder since November 3, 2010 and has been in compliance with the treatment regimen prescribed by Dr. Voltin, including compliance with prescription medication and psychotherapy.

8. On July 25, 2011, Mr. Harless was examined by Dr. Ralph S. Smith, Jr., M.D., a board certified psychiatrist from Charleston, West Virginia. Mr. Harless was referred to Dr. Smith by the West Virginia Office of Disciplinary Counsel. Mr. Harless also received a contemporaneous psychological examination by Rosemary L. Smith, Psy. D., a licensed psychologist. Dr. Ralph S. Smith, Jr. prepared an extensive report that chronicled Mr. Harless' nine commitments to psychiatric hospitals between August 24, 2001 and September 19, 2009 and concluded:

Although he appears to have achieved a level of emotional control over the last two years, he remains at substantial risk for repeated episodes of psychotic behavior during manic episodes. Also, he has significant cognitive impairments, which would prevent his being able to perform the tasks a lawyer must do. ... Due to the risk of loss of emotional control and psychosis and his cognitive deficits, it is my opinion that he is not currently safe to practice law.

9. Dr. Voltin was of the opinion that Mr. Harless had demonstrated emotional control over a sufficient period of time that there was little risk of another manic episode as long as a psychiatrist continues to maintain proper supervision of Mr. Harless and he maintains compliance with his medication.

10. Dr. Voltin did not do any psychological testing and had no opinion of whether Mr. Harless had cognitive deficits that would impair his ability to practice law. Dr. Voltin was of the opinion that Mr. Harless should, as a condition of resuming the practice of law, be supervised by another lawyer for a period of time to monitor Mr. Harless' cognitive ability.

11. Mr. Harless presently has no treating psychiatrist in North Carolina and has no plan in place for a lawyer in North Carolina to supervise him.

12. There was no evidence presented that Mr. Harless had engaged in the unauthorized practice of law or that he had engaged in conduct during the period of his inactive status that would constitute grounds for discipline.

BASED UPON the foregoing Findings of Fact, the panel makes the following:

#### **Conclusions of Law**

1. The panel has personal jurisdiction over the petitioner and subject matter jurisdiction over Harless' petition for reinstatement pursuant to the terms of the Order

Transferring Defendant to Disability Inactive Status and 27 NCAC 1B, §§ .0109(11) and .0125(c).

2. Although indigent, Mr. Harless has not carried his burden of proving to the panel that he has fulfilled the requirement set forth in subparagraph (a) in paragraph 5 of the August 26, 2005 order that he pay the costs of the 2005 proceeding. Mr. Harless has made no effort to repay any portion of those costs, and they remain due and payable. Prior to seeking reinstatement to active status again, Mr. Harless should demonstrate reasonable progress toward repayment of those costs.

3. Mr. Harless continues to suffer from bi-polar disorder that significantly impairs his professional judgment, performance or competence as a lawyer within the meaning of 27 N.C.A.C. 1B, § .0103(19) of the State Bar's discipline and disability rules if not properly controlled.

4. Balancing Dr. Smith's report with Dr. Voltin's deposition testimony, Mr. Harless has failed to demonstrate to the panel by clear, cogent and convincing evidence that he is no longer impaired and is competent to practice law.

5. Mr. Harless has failed to demonstrate to the panel by clear, cogent and convincing evidence that permitting him to resume the practice of law within the State of North Carolina would not be detrimental to the integrity and standing of the Bar, to the administration of justice or to the public interest.

6. Mr. Harless has failed to demonstrate to the panel by clear, cogent and convincing evidence that he has fulfilled the requirements set forth in subparagraphs (c) and (d) in paragraph 5 of the August 26, 2005 order.

7. Mr. Harless carried his burden of proving to the panel that he has fulfilled the requirements set forth in subparagraphs (b), (e) and (f) in paragraph 5 of the August 26, 2005 order.

8. Pursuant to 27 N.C.A.C. 1B, § .0125 (c)(1), Mr. Harless may again petition for return to active status six months from the date this order is filed.

THEREFORE, BASED UPON the foregoing Findings of Fact and Conclusions of Law, the panel enters the following:

**ORDER DENYING REINSTATEMENT TO ACTIVE STATUS**

1. Mr. Harless' Petition for Reinstatement to Active Status in North Carolina is

hereby DENIED.

2. Mr. Harless may file a new petition for return to active status six months after this order is filed.

Signed by the Chair of the panel with the full knowledge and consent of the other members of the panel this the 24 day of April 2012.

  
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Fred M. Morelock, Chair