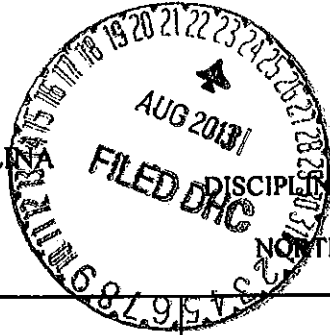


STATE OF NORTH CAROLINA

WAKE COUNTY



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

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

THOMAS H. CLEMENTS, Attorney,

Defendant

CONSENT ORDER

Defendant, Thomas H. Clements ("Clements" or "Defendant"), was ordered to appear and show cause why the stay of the suspension imposed by the Order of Discipline entered in this case on 21 November 2011 should not be lifted and the suspension activated. This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Fred M. Morelock, Chair, Joshua W. Willey, Jr., and Patti Head pursuant to 27 N.C. Admin. Code 1B § .0114(x). Plaintiff, the North Carolina State Bar ("State Bar" or "Plaintiff") was represented by Brian P.D. Oten. Defendant was represented by Bryce D. Neier. Defendant waives a formal hearing in this matter and both parties stipulate and consent to the findings of fact and conclusions of law recited in this order and to the disposition imposed. By consenting to the entry of this order, Defendant waives any right to appeal this consent order or to challenge in any way the sufficiency of the findings.

Based upon the pleadings and the consent of the parties, the Hearing Panel hereby finds by the greater weight of the evidence the following

FINDINGS OF FACT

1. On 6 February 2013, an Order of Discipline (hereinafter "the Order") was entered in this matter. The Order was served on Defendant on the same day.
2. At the time the Order was entered, Defendant was administratively suspended from the practice of law in North Carolina. Defendant was reinstated to active status with the North Carolina State Bar on 6 February 2013.
3. The Order imposed a two-year suspension, stayed for two years, on Defendant's license to practice law in this State. The stay of the suspension was conditioned upon Defendant's compliance with the conditions stated in the Order.

4. The Order, at paragraph 1(a) on page 5, required Defendant to contact and inform all clients whose matters were pending or unresolved at the time Clements was administratively suspended of the reason for his abandonment of his practice and required Defendant to take all steps necessary to resume and diligently pursue the representations within 45 days of being reinstated to active status with the North Carolina State Bar. Defendant failed to comply with this condition by failing to contact all clients as required by the Order, and by failing to take all steps necessary to promptly and diligently pursue all pending representations as required by the Order.

5. The Order, at paragraph 1(k), required Defendant to participate fully and timely in the fee dispute program when notified of any petitions for resolution of disputed fees. Defendant failed to comply with this condition by failing to respond to the following fee disputes:

- a. Defendant was served with a Notice of Mandatory Fee Dispute Resolution in fee dispute file no. 12FD0598 on 30 January 2013. Upon Defendant's request, Defendant's deadline to respond to the fee dispute was extended to 15 March 2013. Defendant did not respond to the notice of fee dispute in 12FD0598 as required;
- b. Defendant was served with a Notice of Mandatory Fee Dispute Resolution in fee dispute file no. 12FD0604 on 30 January 2013. Upon Defendant's request, Defendant's deadline to respond to the fee dispute was extended to 15 March 2013. Defendant did not respond to the notice of fee dispute in 12FD0604 as required;
- c. Defendant was served with a Notice of Mandatory Fee Dispute Resolution in fee dispute file no. 12FD0607 on 30 January 2013. Upon Defendant's request, Defendant's deadline to respond to the fee dispute was extended to 15 March 2013. Defendant did not respond to the notice of fee dispute in 12FD0607 as required;
- d. Defendant was served with a Notice of Mandatory Fee Dispute Resolution in fee dispute file no. 13FD0053 on 12 February 2013. Defendant did not respond to the notice of fee dispute in 13FD0053 as required; and
- e. Defendant was served with a Notice of Mandatory Fee Dispute Resolution in fee dispute file no. 13FD0067 on 26 February 2013. Defendant did not respond to the notice of fee dispute in 13FD0067 as required.

Based upon the foregoing Findings of Fact, the Hearing Panel enters the following

#### CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, Thomas H. Clements, and over the subject matter of this proceeding.

2. Clements failed to comply with the following conditions of the stay of his suspension contained in the Order of Discipline:

- a. That within forty-five (45) days of being reinstated to active status with the North Carolina State Bar, Defendant contact and inform all clients whose legal matters were pending or unresolved at the time Clements was administratively suspended of the reason for his abandonment of his practice and take all steps necessary to resume and diligently pursue the representations as required by paragraph 1(a) of the Order of Discipline; and
- b. That Defendant fully and timely participate in the fee dispute program when notified of any petitions for resolution of disputed fees as required by paragraph 1(k) of the Order of Discipline.

3. Such violations warrant activation of the suspension imposed by the Order of Discipline and warrant imposition of conditions upon Clements' reinstatement at the end of the period of active suspension is over.

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the consent of the parties, the Hearing Panel enters the following

#### ORDER

1. The stay of Defendant's two-year suspension is lifted and the suspension is activated. Pursuant to Rule .0124(c) of the North Carolina State Bar Discipline and Disability Rules, this order and the two-year suspension imposed herein are effective 30 days after service of this order upon Defendant.

2. All costs and administrative fees of this action are taxed to Defendant. Defendant must pay the costs of this action within 120 days of service upon him of the statement of costs by the Secretary.

3. Clements shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following the date that this Order is served upon him. Clements shall comply with the wind down provisions contained in Rule .0124 of the North Carolina State Bar Discipline and Disability Rules, located at 27 N.C. Admin. Code 1B § .0124.

4. At the end of the two-year active period of suspension, Clements may apply for reinstatement by filing a petition with the DHC in accordance with the North Carolina State Bar Discipline and Disability Rules and by showing by clear, cogent, and convincing evidence that she has complied with the following conditions for reinstatement:

- (a) That he has complied with the general provisions for reinstatement listed in 27 N.C. Admin. Code 1B § .0125 of the North Carolina State Bar Discipline & Disability Rules;

- (b) That he refunded all paid legal fees to any client who is entitled to a refund of paid legal fees – in part or in whole as the representation warranted – within 120 days of the effective date of this order. Defendant must also show that he delivered his client file(s) to all clients who request their file within 30 days of the effective date of this order;
- (c) That, within 90 days prior to filing his petition for reinstatement, he has been evaluated by a licensed and qualified psychiatrist or psychologist who certifies under oath, based on his or her independent and comprehensive evaluation of Defendant, that in his or her professional opinion Defendant does not currently have any mental, psychological, behavioral, cognitive, or emotional condition or disorder that impairs Defendant's ability to practice law, that impacts Defendant's ability or willingness to comply with the Rules of Professional Conduct, and/or that poses a risk of harm to the public if he engages in the practice of law. Such psychiatrist/psychologist shall be approved in advance by the North Carolina State Bar Office of Counsel. Defendant shall sign an authorization form consenting to the release of all medical records and information related to Defendant's evaluation to the Office of Counsel, and Defendant will not revoke that release. Defendant shall simultaneously provide a copy of such signed authorization to the Office of Counsel and the psychiatrist/psychologist. Defendant shall direct the evaluating psychiatrist/psychologist described herein to provide a written report of such evaluation and recommended treatment, if any, to the Office of Counsel within thirty (30) days of the evaluation taking place. All expenses of such evaluation and report shall be borne by Defendant;
- (d) That he has complied with all treatment recommendations of the evaluating psychiatrist/psychologist described in paragraph (c) above. Defendant shall sign an authorization form consenting to the release of any medical records and information related to Defendant's treatment to the Office of Counsel, and Defendant will not revoke that release, and Defendant shall simultaneously provide a copy of such signed authorization to the Office of Counsel and his treatment provider. Defendant shall direct his treatment provider to provide the Office of Counsel with a written report detailing Defendant's treatment plan and Defendant's compliance or lack of compliance with such plan. All expenses of such treatment and reports shall be borne by Defendant;
- (e) That he has paid all outstanding membership dues and Client Security Fund assessments and that there is no deficit in his fulfillment of any obligation of membership;
- (f) That he has kept the North Carolina State Bar membership department advised of his current physical home and business addresses and telephone numbers, and that he has accepted all certified mail from the

North Carolina State Bar and responded to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication or within fifteen (15) days of receipt of such communication, whichever is later;

- (g) That he has not violated any state or federal laws or any provisions of the Rules of Professional Conduct; and
- (h) That he has paid all costs and administrative fees associated with this case as assessed by the Secretary.

23<sup>rd</sup> Signed by the Chair with the consent of the other Hearing Panel members, this the day of August, 2013.



Fred M. Morelock, Chair  
Disciplinary Hearing Panel

CONSENTED TO BY:

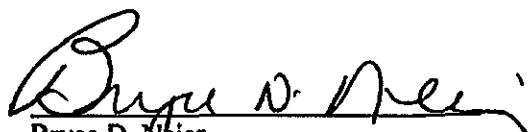


Brian P.D. Oten  
Deputy Counsel  
North Carolina State Bar  
Counsel for Plaintiff



Thomas H. Clements  
Defendant

8/19/13



Bryce D. Neier  
Counsel for Defendant

8-19-2013