

STATE OF NORTH CAROLINA

WAKE COUNTY

MAY 2017

FILED DHC

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
16 DHC 4D

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

JAMES I. AVERITT, Attorney,

Defendant

CONSENT ORDER CONTINUING
DEFENDANT'S DISABILITY
INACTIVE STATUS AND
STAYING DISCIPLINARY
PROCEEDING

This matter was considered by a hearing panel of the Disciplinary Hearing Commission composed of Donald C. Prentiss, Chair, Shirley Fulton, and Bradley Lail. Barry S. McNeill and Leonor Bailey Hodge represented Plaintiff, the North Carolina State Bar. Defendant, James I. Averitt, was represented by Alan M. Schneider. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to continuing Defendant's disability inactive status. Defendant freely and voluntarily waives any right to appeal the entry of this consent order continuing his disability inactive status.

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("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 North Carolina General Statutes, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.
2. Defendant, James I. Averitt ("Averitt" or "Defendant"), was admitted to the State Bar on 25 August 2006, and was an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar, and the Rules of Professional Conduct.
3. On 13 January 2016, Plaintiff filed a disciplinary complaint against Defendant in 16 DHC 4.
4. Defendant accepted service of the summons and complaint on 9 February 2016, but the executed acceptance of service was not received until 25 February 2016.
5. On 4 March 2016, the Chair of the Disciplinary Hearing Commission appointed three members to hear Plaintiff's disciplinary complaint.
6. On 28 March 2016, Defendant filed an Answer and Affirmative Defense denying the factual allegations of the disciplinary complaint, alleging that he was disabled within the meaning of 27 NC Admin. Code 1B § .0103, and asserting that he was currently seeking medical treatment for his disability.

7. Pursuant to 27 NC Admin. Code 1B § .0118(c), on 29 March 2016 the hearing panel entered an order staying the disciplinary proceeding against Averitt pending a determination by the panel of whether Averitt is disabled and immediately transferring Averitt to disability inactive status.

8. In or about March of 2016, Averitt sought psychiatric treatment from Dr. Saman Hasan.

9. At that time, Dr. Hasan diagnosed Averitt with the following mental disorders:

- a. Gambling disorder, and
- b. Major Depressive Disorder, Mild, Recurrent

10. Dr. Hasan's treatment of Averitt's major depressive disorder includes prescription anti-depressant medication that also helps with anxiety.

11. Plaintiff deposed Dr. Hasan on 19 January 2017.

12. During her deposition, Dr. Hasan asserted that Averitt's depression resulted in a depressed mood that affected his sleep, appetite, energy, and concentration.

13. After being diagnosed by Dr. Hasan with gambling disorder and major depressive disorder, Averitt worked as corporate counsel for a software company in Georgia.

14. Averitt's position required him to exercise legal judgment.

15. Averitt's performance in this position was described by his work reviewer as poor and sub-par.

16. In or about September 2016, Averitt underwent an independent medical examination by Dr. Mehul Mankad, a board certified psychiatrist and board certified forensic psychiatrist.

17. On or about 11 October 2016, Averitt provided to Plaintiff a 10 October 2016 report from Dr. Mehul Mankad.

18. In his report, Dr. Mankad diagnosed Averitt with the following mental disorders:

- a. Gambling Disorder, Severe, and
- b. Major Depressive Disorder with Anxious Distress, Severe, Recurrent

19. Plaintiff deposed Dr. Mankad on 20 January 2017 and he asserted as follows:

- a. The above listed mental disorders significantly impair Averitt's professional judgment;
- b. The above listed mental disorders would also each individually significantly impair Averitt's professional judgment;

- c. The severity and intensity of Averitt's gambling disorder and depression are such that they impact his ability to practice law;
- d. Averitt had recurrent depressive episodes with many symptoms of intense severity;
- e. Averitt's depression caused functional impairment in activities of daily living;
- f. Averitt's depression manifested with persistent insomnia, lack of appetite, negative thinking (hopelessness, helplessness, and guilt), and poor concentration;
- g. He would not recommend that Averitt return to the practice of law in his current condition.

20. Averitt's mental disorders significantly impair his professional performance and judgment as an attorney.

21. Averitt requests and consents to continuance of his disability inactive status.

22. The State Bar consents to continuance of Averitt's disability inactive status.

Based on the foregoing Findings of Fact, the Hearing Panel makes the following

CONCLUSIONS OF LAW

1. All parties are properly before the DHC and the DHC has jurisdiction over Defendant and over the subject matter of this proceeding.

2. Averitt is disabled within the meaning of 27 N.C. Admin. Code 1B § .0103(19) and should be transferred to disability inactive status pursuant to 27 N.C. Admin. Code 1B § .0118 and N.C. Gen. Stat. § 84-28(g).

3. Any proceeding pending before the Grievance Committee or before the DHC, including this matter, should be stayed as long as Averitt remains in disability inactive status pursuant to 27 N.C. Admin. Code 1B § .0118(e)¹. If Averitt is returned to active status by the DHC, the disciplinary proceeding in 16 DHC 4 will be rescheduled by the Chair of the DHC.

ORDER

1. Defendant, James I. Averitt's disability inactive status is hereby continued in accordance with N.C. Gen. Stat. § 84-28(g) and 27 N.C. Admin. Code 1B § .0118(d)(5).

¹ 27 N.C. Admin. Code 1B § .0118 is in the process of being renumbered as 27 N.C. Admin. Code 1B § .0122. The change has been adopted by the State Bar Council, approved by the Supreme Court, and is pending publication in the N.C. Supreme Court Reports.

2. Averitt shall not practice law in North Carolina until he is no longer disabled and has been returned to active status as a member of the North Carolina State Bar pursuant to the procedures set forth in 27 N.C. Admin. Code 1B § .0125(c)².


3. All proceedings pending before the Grievance Committee and the Disciplinary Hearing Commission against Averitt are stayed until such time as Averitt is reinstated to active status.

4. Averitt is taxed with the costs of this action as assessed by the Secretary. Averitt shall pay costs of this action as assessed by the Secretary within 30 days of service of the statement of costs upon him.

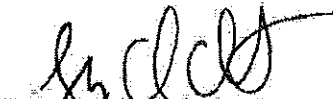
5. Pursuant to 27 N.C. Admin. Code 1B § .0118(e)(2), Plaintiff is permitted to continue investigating allegations of misconduct and preserve evidence of any alleged professional misconduct by Averitt, including the taking of depositions.

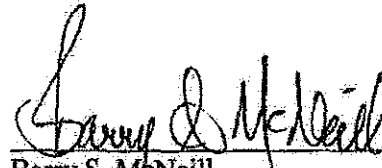
6. This order shall be effective immediately upon entry pursuant to 27 N.C. Admin. Code 1B § .0118(d)(5)(A).

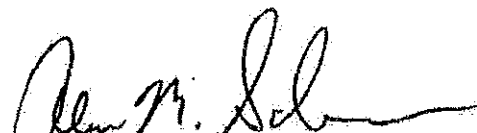
Signed by the Chair with the consent of the other Hearing Panel members, this the 22 day of May, 2017.

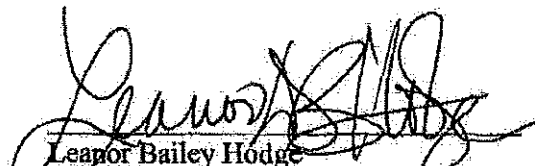

Donald C. Prentiss, Chair
Disciplinary Hearing Panel

CONSENTED TO:


James I. Averitt, Defendant


Barry S. McNeill
Deputy Counsel


Alan M. Schneider
Counsel for Defendant


Leapor Bailey Hodge
Deputy Counsel

² 27 N.C. Admin. Code 1B § .0125 is in the process of being renumbered as 27 N.C. Admin. Code 1B § .0129. The change has been adopted by the State Bar Council, approved by the Supreme Court, and is pending publication in the N.C. Supreme Court Reports.