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U.S. DEPT. OF JUSTICE

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V.

FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER OF DISCIPLINE

Based upon the pleadings herein, the prehearing order and the evidence presented at trial, the Hearing Committee enters the following:

1. The Plaintiff, the North Carolina 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 General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. The Defendant, Marshall A. Mason III (Mason), was admitted to the North Carolina State Bar in 1978, 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. During all of the periods relevant hereto, Mason was engaged in the practice of law in the State of North Carolina.

4. On or about June 15 – 22, 2000, Mason grabbed Heidi Adams and restrained her by holding her shoulders while he touched her breasts without her consent and against her will and for the purpose of arousing or gratifying his sexual desires.

5. Ms. Adams was a current client of Mason's as of June 15 – 22, 2000 and at all times relevant hereto.

6. On or about Feb. 5 – 7, 2001, Mason met with, Rachel Riggs, and grabbed her buttocks and attempted to kiss her, without her consent and against her will and for the purpose of arousing or gratifying his sexual desires.

7. Ms. Riggs was a current client of Mason's as of Feb. 5 – 7, 2001 and at all times relevant hereto.

8. On or about June 28, 2001, Mason offered to forgive legal fees owed to him by Ms. Riggs in exchange for sexual intercourse.

9. On or about Nov. 28, 2001, Mason was convicted of misdemeanor false imprisonment, two counts of misdemeanor simple assault, and one count of misdemeanor solicitation of prostitution in Durham County District Court.

10. Mason was sentenced to 60 days in jail, which sentence was suspended for 24 months on various conditions. He was ordered to pay \$2,000 and court costs.

11. The offenses of which Mason was convicted are serious criminal violations which reflects adversely on his honesty, trustworthiness or fitness as a lawyer.

Based on the foregoing Findings of Fact, the hearing committee makes the following:

CONCLUSIONS OF LAW

1. The offenses of which Mason was convicted are criminal offenses showing professional unfitness in violation of N.C. Gen. Stat. Section 84-28(b)(1), and which reflect adversely on his honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b) of the Revised Rules of Professional Conduct.

2. By grabbing Ms. Riggs' buttocks and attempting to kiss her against her will, Mason engaged in sexual relations with a client in violation of Rule 1.18 of the Revised Rules of Professional Conduct.

3. By grabbing Ms. Adams around the shoulders and touching her breasts against her will, Mason engaged in sexual relations with a client in violation of Rule 1.18 of the Revised Rules of Professional Conduct.

4. By offering to forgive legal fees owed by Ms. Riggs in exchange for sexual intercourse, Mason demanded sexual relations with a client incident to professional representation in violation of Rule 1.18(c) of the Revised Rules of Professional Conduct and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d) and engaged in a conflict of interest in violation of Rule 1.7 of the Revised Rules of Professional Conduct.

Based upon the further evidence at trial, the hearing committee also makes the following

FINDINGS OF FACT RELEVANT TO DISCIPLINE

1. A number of individuals, including a superior court judge, the Durham County Sheriff, the chief district court judge of the 14th Judicial District and lawyers from several counties testified live or via letter on Mason's behalf. Mason's character witnesses stated that, in their opinion, Mason is a good attorney who effectively handles a large caseload of criminal matters.

2. In September 2001, after the criminal charges were filed against him, but before the hearing on the criminal assault charges, Mason sought professional counseling. He has continued to receive counseling since that time and has complied with all of the treatment recommendations of his psychologist.

3. Mason has a histrionic personality disorder, a condition which is characterized by over-flirtatiousness and poor judgment and impulse control. Mason's personality disorder contributed to his misconduct toward Ms. Adams and Ms. Riggs.

4. Ms. Adams continues to suffer psychological and/or emotional difficulties as the result of Mason's misconduct toward her.

5. Ms. Adams and Ms. Riggs, who were 18 and 20, respectively, at the time of Mason's misconduct toward them, were not sophisticated in legal matters and lacked the contacts and resources to select other counsel.

6. Mason's misconduct is aggravated by the following factors:

- a. Mason engaged in a pattern of misconduct.
- b. Mason committed multiple violations of the Revised Rules of Professional Conduct.
- c. Mason has substantial experience in the practice of law.
- d. Mason was motivated by a selfish motive.
- e. The victims of Mason's misconduct were particularly vulnerable.
- f. By suggesting that he would forgive legal fees owed by Ms. Riggs in exchange for sex, Mason solicited criminal conduct by a client.

7. Mason's misconduct is mitigated by the following factors:

- a. Absence of a prior disciplinary record.
- b. Mason had personal or emotional problems.
- c. Mason has a histrionic personality disorder, which amounts to a mental disability or impairment.
- d. Mason enjoys a good character and reputation with members of the Durham County Bar and individuals who work within the legal system.
- e. Mason was cooperative with the disciplinary proceeding to the best of his ability.
- f. Mason has sought interim rehabilitation by consulting a psychologist and following his recommendations regarding treatment of his personality disorder.

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

ORDER OF DISCIPLINE

1. The law license of the Defendant, Marshall A. Mason III, is hereby **SUSPENDED** for three years, effective 30 days from service of the written order upon him.

2. Defendant shall submit his license and membership card to the Secretary of the N.C. State Bar no later than 30 days after service of this order upon Defendant.

3. Defendant shall comply with all applicable provisions of the N.C. State Bar Discipline & Disability Rules, including, but not limited to, the wind down provisions set out in 27 N.C. Admin. Code Tit. 1, Chapter B, Section .0124.

4. The Defendant shall pay the costs of this proceeding within 60 days after service of the order upon him.

5. Six months after the effective date of the suspension of Defendant's law license, or any time thereafter, Defendant may seek a stay of the remaining term of suspension, upon filing a written petition with the N.C. State Bar and demonstrating that he has complied with the following conditions:

a. The Defendant has obtained a psychiatric evaluation from a board certified psychiatrist approved by the North Carolina State Bar for the purpose of determining if the Defendant suffers from any condition or disorder that causes him to engage in predatory sexual behavior. The Defendant shall produce a copy of the written evaluation of the psychiatrist to the Counsel for the North Carolina State Bar no later than the date on which he files his petition for stay or reinstatement.

b. The Defendant has complied with all treatment plans and recommendation of the psychiatrist, if any, continuing through the stayed suspension and shall execute a written release at or before he petitions for stay of the remaining suspension period, to permit the N.C. State Bar to contact his psychiatrist to determine if he is complying with the treatment plan.

c. Defendant has followed all treatment plans recommended by Dr. John Gorman, PhD or successor counselor approved by the N.C. State Bar. Dr. Gorman, or his successor shall provide a written report to the N.C. State Bar regarding Defendant's progress each Oct. 1, Jan. 1, April 1 and July 1 throughout the term of the stayed suspension or until he is discharged from treatment. Dr. Gorman or his successor shall agree to notify the N.C. State Bar Counsel immediately if Defendant fails to comply with the treatment plan.

d. Defendant shall be responsible for all costs associated with obtaining a psychiatric evaluation and the cost of any treatment from the psychiatrist and Dr. Gorman or his successor.

e. Defendant has violated no provisions of the Revised Rules of Professional Conduct, nor the laws of any state or of the United States during the 6 month active suspension.

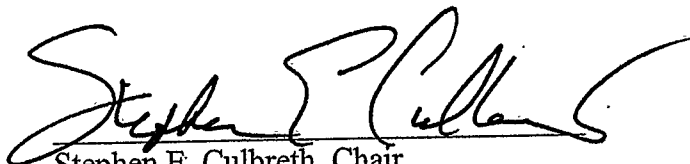
f. If Heidi Adams desires to obtain professional counseling for any emotional trauma caused by Defendant's misconduct, Defendant has paid for such professional counseling, that may be incurred during the period of his active suspension of license.

6. If Defendant seeks a stay of his law license he will comply with all terms of paragraphs 5(a)-(f) through the balance of the stayed suspension period.

7. If the Defendant does not seek a stay of the suspension of his law license, or if the stay is revoked for any reason, the Defendant shall comply with the following conditions prior to seeking reinstatement at the end of the period of active period of suspension, Defendant shall comply with the provisions of paragraphs 1-4 and 5(a)-(b) and (f).

This the 22nd day of July, 2002.

Signed by the Chair with the consent of all Committee members.

A handwritten signature in black ink, appearing to read "Stephen E. Culbreth", written over a horizontal line.

Stephen E. Culbreth, Chair
Disciplinary Hearing Committee