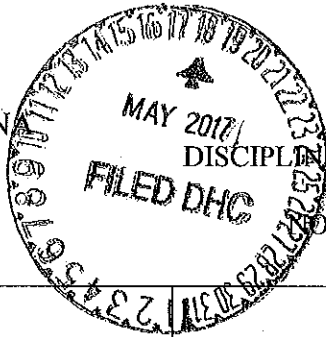


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
17 DHC 12

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

DOUGLAS J. TATE, Attorney,

Defendant

CONSENT
ORDER

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of David W. Long, Chair, and members Richard V. Bennett and Christopher R. Bruffey, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff, the North Carolina State Bar, was represented by Maria J. Brown. Defendant, Douglas J. Tate, was represented by Alan M. Schneider. 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 consent order and to the discipline imposed. Defendant consents to entry of this order of discipline and freely and voluntarily waives any and all right to appeal the entry of this order or to challenge in any way the sufficiency of the findings.

Based upon the pleadings in this matter, the parties' stipulations of fact, and with the consent of the parties, the Hearing Panel hereby finds by clear, cogent, and convincing evidence the following:

FINDINGS OF FACT

1. 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. Defendant, Douglas J. Tate ("Defendant" or "Tate"), was admitted to the North Carolina State Bar in February 1989 and is an Attorney at Law 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. Defendant was properly served with process, and the matter came before the Hearing Panel with due notice to all parties.

4. During the relevant period referred to herein, Defendant was engaged in the practice of law in Asheville, Buncombe County, North Carolina.

5. From 2000 to 2007, Defendant was an associate with the law firm of McGuire, Wood & Bissette, P.A. Defendant became a partner in 2007. Defendant ceased practicing law in January 2016 and resigned his position with the firm effective 30 April 2016.

6. As an attorney member of the firm, it was Defendant's responsibility to open client records within the firm's client management system for any client for whom he undertook representation.

7. The firm's conflict check system relied upon client records being opened in the firm's client management system.

8. The firm's standard billing arrangement was to require clients to pay advance fees which were deposited into the firm's trust account, held as a security deposit during the representation, and billed against if necessary.

9. As an attorney member of the firm, it was Defendant's responsibility to ensure that any check for advance fees from a client were deposited into the firm's trust account.

10. As an attorney member of the firm, it was Defendant's responsibility to prepare and send monthly invoices to his clients.

11. Defendant failed to comply with the above responsibilities with regards to numerous clients, who were unknown to the firm, including as set out in more detail below.

12. In 2009, Client A retained Defendant to handle a business dispute.

13. In September 2013, Defendant stopped communicating with Client A and failed to respond to Client A's telephone calls.

14. In 2013, Client B hired Defendant in conjunction with a property damage matter. At the time she retained Defendant, she had already negotiated a settlement but wanted Defendant to prepare a release to ensure she was protected from future claims.

15. Defendant did not provide Client B with a release.

16. Defendant last contacted opposing counsel in the matter in 2013 and last contacted Client B in 2014.

17. Client C hired Defendant to handle an eviction and paid Defendant's \$500.00 advance fee by check.

18. Defendant did not deposit the check into the firm trust account but instead left it in his client file.

19. Defendant did not complete work on the matter and failed to respond to multiple telephone calls from Client C.

20. In June 2014, Client D hired Defendant to assist him with a creditor claim in a bankruptcy matter.

21. Defendant received a copy of the bankruptcy plan, pursuant to which Client D's claim would be paid no more than \$0.22 on the dollar, rendering Client D's \$173,764.72 claim worth a maximum of approximately \$38,000.00.

22. Client D told Defendant at the outset of the representation that he needed to keep the costs of the representation as low as possible. Defendant acknowledged this.

23. Defendant sent invoices to Client D for June and July 2014.

24. Defendant did not provide Client D with invoices for August or September 2014.

25. On 28 October 2014, Client D learned that, since 1 August 2014, Defendant had billed additional fees totaling more than one-half of Client D's maximum recovery on the claim.

26. Defendant's failure to provide Client D with invoices deprived Client D of the opportunity to decide how his objectives would best be met before incurring extensive legal fees.

27. Client D addressed the billing issue with Defendant on 27 May 2015. Defendant told Client D he would review the past billing and talk with Client D about adjusting the charges.

28. Defendant never spoke with Client D about the bills and only communicated once more with Client D.

29. In addition to Client D, Defendant failed to send regular billing invoices to numerous other clients. By April 2015, Defendant had essentially stopped sending invoices to any of his clients.

30. Client E hired Defendant in July 2015 to handle an eviction of Client E's tenant and paid Defendant's \$1500 advance fee by check.

31. Defendant did not deposit the check into the firm trust account but instead kept the paper check in his client file.

32. After ascertaining that it would not be possible to obtain a summary eviction on Client E's behalf, Defendant failed to take additional steps to complete the matter.

33. Defendant stopped communicating with Client E and stopped returning her calls.

34. When Client F hired Defendant, she gave him a check for the advance fee. Defendant failed to deposit this check into the firm trust account and instead kept the paper check in the client file.

35. Defendant stopped communicating with Client F in October 2015.

36. Client F called Defendant multiple times in October 2015, and Defendant did not return her calls.

37. On 30 October 2015, Defendant's assistant forwarded to Defendant an email from Client F in which Client F asked Defendant to respond.

38. Defendant never responded.

39. During the month of November 2015, Client G tried numerous times to reach Defendant, and Defendant failed to respond to Client G's inquiries.

40. When Defendant left practice in January 2016, his firm discovered that he had failed to open proper client records in the firm's client management system for a large number of matters he had taken on.

41. Where Defendant had not opened a client record in the firm's system, he had not performed a conflict check for that client or matter.

42. In at least seven of these matters for which Defendant had failed to open a proper client record, he kept an advance fee check in the paper file he maintained.

43. From August 2012 until July 2015, Defendant had direct supervisory authority over paralegal Margaret Harmon.

44. Defendant failed to adequately supervise Harmon.

45. Unbeknownst to Defendant, Harmon held herself out as an attorney while working on various matters for Defendant.

46. Harmon performed work for other attorneys, and the matters she handled for Defendant were the only matters in which she held herself out as an attorney.

47. For instance, on 5 March 2013, Harmon sent a letter enclosing a summons and complaint to Scott Cook in the matter of *Shepherd v. Cook*, Buncombe County Civil District Court file no. 13 CV 00145.

48. The letter said: "As attorney for McGuire, Wood & Bissette, P.A., I hereby serve you with the enclosed Summons and Complaint pursuant to the laws of the State of North Carolina."

49. Harmon signed her name to the letter.

Based on the foregoing Findings of Fact and with the consent of the parties, 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 and the subject matter of this proceeding.

2. Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:

- (a) By ceasing communication with Client A and failing to respond to Client A's inquiries, Defendant failed to keep the client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3) and failed to comply promptly with reasonable requests for information in violation of Rule 1.4(a)(4);
- (b) By failing to complete work on Client B's matter and ceasing communications with Client B, Defendant failed to act with reasonable diligence in representing a client in violation of Rule 1.3 and failed to keep the client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3);
- (c) By keeping the advance fee checks of Client C, Client E, Client F, and others in his client files, Defendant failed to promptly deposit entrusted funds into a trust account in violation of Rule 1.15-2(b) and failed to manage entrusted funds in accordance with Rule 1.15 in violation of Rule 1.15-2(a);
- (d) By failing to complete work on Client C's matter and failing to respond to Client C's inquiries, Defendant failed to act with reasonable diligence in representing a client in violation of Rule 1.3 and failed to comply promptly with reasonable requests for information in violation of Rule 1.4(a)(4);
- (e) By failing to provide Client D with invoices reflecting that Defendant had billed additional fees totaling more than \$25,000 in two months, failing to follow up with Client D about the past bills, and communicating only once with Client D from May 2015 to January 2016, Defendant failed to reasonably consult with the client about the means by which the client's objectives were to be accomplished in violation of Rule 1.4(a)(2) and failed to keep the client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3);
- (f) By ceasing to send invoices to his clients, Defendant failed to keep the clients reasonably informed about the status of their matters in violation of Rule 1.4(a)(3);
- (g) By failing to complete work on Client E's matter, ceasing communications with Client E, and failing to respond to Client E's inquiries, Defendant failed to act with reasonable diligence in representing a client in violation of Rule 1.3, failed to keep the client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3), and failed to comply promptly with reasonable requests for information in violation of Rule 1.4(a)(4);
- (h) By failing to maintain adequate communication with Client F and Client G, Defendant failed to keep clients reasonably informed about the status of their matters in violation of Rule 1.4(a)(3);
- (i) By failing to open proper client records for numerous clients, thereby failing to ensure a lack of conflict in the representations, Defendant failed to act with reasonable diligence in the representation of clients in violation of Rule 1.3; and

- (j) By failing to adequately supervise Harmon, Defendant failed to make reasonable efforts to ensure that the nonlawyer's conduct was compatible with his professional obligations in violation of Rule 5.3(b).

Based on the foregoing Findings of Fact and Conclusions of Law, and with the consent of the parties, the Hearing Panel also enters the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1 – 49 above are reincorporated as if set forth herein.
2. Defendant has been practicing law for 26 years and has no prior professional discipline.
3. During the time period relevant to this matter, Defendant was suffering from severe depression that contributed to Defendant's misconduct. Defendant was receiving treatment for his depression throughout the time period described in the complaint. Defendant's ongoing treatment did not help him perceive that he was becoming increasingly unable to fulfill his professional obligations or take steps to prevent harm to his clients.
4. In neglecting the matters of multiple clients, failing to communicate with multiple clients, and failing to complete multiple matters for which he had been retained, Defendant failed to fulfill his obligations and duties to his clients. Defendant's conduct caused significant frustration for these clients and impaired their ability to achieve the goals of their representations by causing unnecessary delay in their cases. In this way, Defendant's conduct had the potential to cause significant harm.
5. Defendant's failure to deposit entrusted funds into his firm's trust account as required by the trust accounting Rules had the potential to cause significant harm to his clients. The checks could have been lost or stolen, and, to the extent the firm remained unaware of the funds the clients had already paid, the clients would not get credit from the firm for those funds. Each of the checks found in Defendant's files has been properly disposed of such that the clients did not suffer harm.
6. There is an absence of any evidence that Defendant intended to harm his clients or that he exhibited a dishonest or selfish motive.
7. Defendant has acknowledged his conduct violated the Rules of Professional Conduct and is remorseful for his actions.

Based on the Findings of Fact and Conclusions of Law above, the additional Findings of Fact Regarding Discipline, and the consent of the parties, the Hearing Panel makes the following:

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has carefully considered all of the different forms of discipline available to it. In addition, the Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors warrant consideration of suspension of Defendant's license:

- (a) Negative impact of defendant's actions on client's or public's perception of the profession; and
- (b) Impairment of the client's ability to achieve the goals of the representation.

2. The Hearing Panel concludes that none of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(2) of the Rules and Regulations of the North Carolina State Bar are present in this case.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(3) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are applicable in this matter:

- (a) Defendant's lack of prior disciplinary offenses;
- (b) Absence of dishonest or selfish motive;
- (c) Effect of any personal or emotional problems on the conduct in question;
- (d) Remorse; and
- (e) Defendant's degree of experience in the practice of law.

4. The Hearing Panel has considered lesser alternatives and finds that a censure, reprimand, or admonition would be insufficient discipline because of the potential significant harm to clients caused by Defendant's conduct.

5. Although Defendant's conduct is serious enough to warrant more than a censure, it does not warrant an active suspension of his license.

6. A stayed suspension of Defendant's law license is warranted because entry of an order imposing less severe discipline would fail to acknowledge the seriousness of the misconduct and would send the wrong message to attorneys and the public about the conduct expected of members of the Bar of this State.

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

ORDER OF DISCIPLINE.

1. The law license of Defendant, Douglas J. Tate, is hereby suspended for one year, effective from the date this Order of Discipline is served upon him. The period of suspension is stayed for two years as long as Defendant complies and continues to comply with the following conditions:

- (a) Within 10 days of the effective date of this order, Defendant shall provide a copy of this order to the Clerk of the Supreme Court of South Carolina in connection with his pending application for admission to the bar of that state and comply with all directives they issue related to this order or the misconduct at issue in this order;
- (b) Within 30 days of the effective date of this order, Defendant shall make arrangements to be evaluated by a psychologist or psychiatrist approved in advance by the Office of Counsel. The evaluator shall undertake a comprehensive evaluation, at Defendant's sole expense, to assess whether Defendant has any physical, mental, psychological, behavioral, cognitive, or emotional condition or disorder that affects his professional judgment, performance, or competence, and shall recommend appropriate treatment for any condition or disorder identified;
- (c) Within 10 days after the evaluation is completed, Defendant shall provide to the State Bar a written certification under oath by the evaluating clinician describing the results of his/her independent comprehensive evaluation of Defendant and setting forth his/her recommendations regarding treatment. The evaluation must be completed and the evaluator's certification submitted to the State Bar no later than 90 days from the effective date of this order;
- (d) Defendant shall comply with all treatment recommendations of the evaluating clinician and any additional treatment recommendations of his treating clinicians until such time as a modality of treatment is no longer necessary as determined by his treating clinician;
- (e) Defendant shall provide written releases to the Office of Counsel, authorizing all clinicians from whom he receives any treatment during the period of stayed suspension to communicate with the Office of Counsel and to release to the Office of Counsel records relating to his treatment;
- (f) Defendant shall ensure that each clinician from whom he receives any treatment during the period of stayed suspension generates quarterly written reports to the State Bar setting forth: (i) a description of Defendant's participation in and compliance with treatment, (ii) the clinician's opinion as to whether Defendant has any physical or mental impairment, or other condition or illness, that could adversely affect his ability to practice law; and (iii) the clinician's recommendations, if any, regarding ongoing treatment. The reports shall be provided to the Office of Counsel on January 30, April 30, July 30, and October 30 during the period of stayed suspension. Defendant is responsible for ensuring that the reports described herein are timely submitted. Defendant shall be solely responsible for the costs of treatment and any additional charges assessed for preparation of the quarterly reports;
- (g) Defendant shall arrange for an active member in good standing of the North Carolina State Bar who has been approved by the Office of Counsel and practices in the county of Defendant's practice to serve as Defendant's practice monitor for

any North Carolina matters undertaken by Defendant. The monitor shall: (i) meet with Defendant monthly to review Defendant's North Carolina cases; (ii) provide supervision to ensure that Defendant timely and completely handles client matters in North Carolina; and (iii) provide written quarterly reports of this supervision to the Office of Counsel on the following dates as they occur during the duration of the stay of the suspension: January 30, April 30, July 30, and October 30. If Defendant is not handling any North Carolina matters during any given month, the practice monitor shall still meet with Defendant for the purpose of certifying that Defendant is not handling any North Carolina matters, and the monitor shall report Defendant's certification to the Office of Counsel in accordance with the reporting procedure described above. Defendant will be solely responsible for the cost, if any, charged by the monitor for providing supervision and/or generating quarterly reports. Failure to ensure that the reports required herein are timely submitted shall be grounds for lifting the stay and activating the suspension;

- (h) Defendant must submit to the Office of Counsel the name of the proposed monitor within 15 days after the effective date of this order. Upon approval, and within 30 days after the effective date of this order, Defendant must submit to the Office of Counsel a letter from the approved monitoring attorney confirming his or her agreement to perform the duties outlined above. Defendant's failure to timely submit the name of a proposed monitor will not toll or excuse noncompliance with Defendant's obligations under this Order to meet monthly with a monitor and to ensure the monitor provides quarterly reports;
- (i) Defendant shall meet at least monthly with the practice monitor, to whom he shall either (1) certify that he is not currently handling any North Carolina matters or (2) report the status of all current North Carolina clients and provide copies of any court filings for the monitor's review. Defendant shall provide any other information or documentation deemed necessary and requested by the monitor. Defendant's first meeting with the monitor must occur within 30 days after the effective date of this order;
- (j) Should it become necessary to replace the practice monitor, Defendant shall immediately notify the Office of Counsel and shall provide the name of a proposed alternate monitor for approval. Defendant's failure to timely submit the name of a proposed replacement monitor will not toll or excuse noncompliance with Defendant's obligations under this Order to meet monthly with a monitor and to ensure the monitor provides quarterly reports;
- (k) Defendant shall keep the North Carolina State Bar Membership Department advised of his current contact information, including his current business and home addresses (not a P.O. Box) as well as his current telephone number(s), and shall notify the Bar of any change in address or telephone number within 10 days of such change;
- (l) Defendant shall promptly accept service of all certified mail from the State Bar and shall respond to all letters of notice and requests for information from the

State Bar, including communications from the Attorney Client Assistance Program, within 15 days of receipt or by the deadline stated in the communication, whichever is sooner;

- (m) Defendant shall timely comply with all State Bar membership and Continuing Legal Education requirements, and Defendant shall pay all fees and costs assessed by the State Bar by the applicable deadline;
- (n) Defendant shall participate fully and timely in the State Bar's fee dispute resolution process for any petition of which he receives notice after the effective date of this Order;
- (o) Defendant shall timely pay the costs and administrative fees of this action as described below; and
- (p) Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or of any state or local government during his suspension.

2. If Defendant fails to comply with any of the conditions of the stayed suspension provided in paragraph 1(a) – (n) above, the stay of the suspension may be lifted as provided in 27 N.C. Admin. Code 1B § .0114(x).

3. If the stay granted herein is lifted or the suspension of Defendant's license is activated for any reason, before seeking reinstatement of his license to practice law, Defendant must show by clear, cogent, and convincing evidence that he has complied with each of the following conditions:

- (a) Defendant submitted his license and membership card to the Secretary of the North Carolina State Bar within thirty days after the date of the order lifting the stay and/or activating the suspension of his law license;
- (b) Defendant complied with all provisions of 27 N.C. Admin. Code 1B § .0124 of the State Bar Discipline and Disability Rules following the order lifting the stay and/or activating the suspension of his law license;
- (c) Defendant provided written releases to the Office of Counsel, authorizing all clinicians from whom he received any treatment during the period of active suspension to communicate with the Office of Counsel and to release to the Office of Counsel records relating to his treatment;
- (d) Defendant continued to comply with any treatment recommendations of his treating clinician(s) until such time as a modality of treatment is no longer necessary as determined by his treating clinician;
- (e) Defendant demonstrated that, at the time of his petition for reinstatement, Defendant does not have any physical or mental impairment of other condition or illness that significantly impairs his professional performance, judgment, or competence;

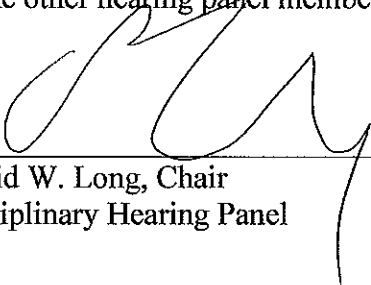
- (f) Defendant kept the North Carolina State Bar Membership Department advised of his current business and home addresses, as well as his current telephone number, and notified the Bar of any change in address or telephone number within 10 days of such change;
- (g) Defendant responded to all communications from the North Carolina State Bar, including communications from the Attorney Client Assistance Program, within 15 days of receipt or by the deadline stated in the communication, whichever is sooner, and has participated in good faith in the State Bar's fee dispute resolution process for any petition of which he receives notice after the effective date of this Order;
- (h) Defendant promptly accepted all certified mail sent to him by the State Bar;
- (i) That at the time of his petition for reinstatement, Defendant is current in payment of all Membership dues, fees and costs, including all Client Security Fund assessments and other charges or surcharges the State Bar is authorized to collect from him, and including all judicial district dues, fees and assessments;
- (j) That at the time of his petition for reinstatement, there is no deficit in Defendant's completion of mandatory Continuing Legal Education (CLE) hours, in reporting of such hours, or in payment of any fees associated with attendance at CLE programs;
- (k) Defendant has not violated the Rules of Professional Conduct or the laws of the United States or of any state or local government during his suspension;
- (l) Defendant has paid the administrative fees and costs of this proceeding as reflected on the statement of costs served upon him by the Secretary of the State Bar; and
- (m) Defendant has complied with any other conditions deemed necessary for reinstatement imposed by the Hearing Panel pursuant to the order lifting the stay of the suspension of Defendant's law license.

4. Defendant is taxed with the administrative fees and costs of this action as assessed by the Secretary which Defendant shall pay within thirty days of service of the notice of costs upon Defendant.

5. Nothing in this Order shall prohibit the State Bar from investigating and, if necessary, pursuing disciplinary action against Defendant for additional misconduct discovered or reported which occurred during the same time period as the conduct addressed in this Order.


6. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout any period of stayed suspension.

Signed by the Chair with the consent of the other hearing panel members, this the 18th
day of May, 2017.

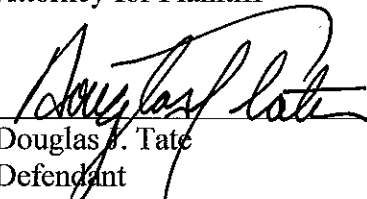


David W. Long, Chair
Disciplinary Hearing Panel


CONSENTED TO BY:



Maria J. Brown
Attorney for Plaintiff



Douglas J. Tate
Defendant



Alan M. Schneider
Attorney for Defendant