

STATE OF NORTH CAROLINA

WAKE COUNTY

THE NORTH CAROLINA STATE BAR,

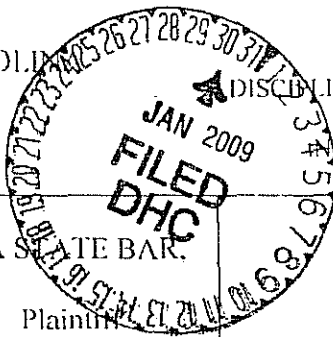
Plaintiff

v.

PAUL C. POOLEY, Attorney,

Defendant

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
08 DHC 2



ORDER TRANSFERRING  
DEFENDANT TO DISABILITY  
INACTIVE STATUS

THIS MATTER came on to be heard and was heard on 5 December 2008 before a hearing panel of the Disciplinary Hearing Commission composed of F. Lane Williamson, Chair, J. Michael Booe, and Joe Castro. Carmen K. Hoyme and Brian P.D. Oten represented the North Carolina State Bar. Defendant, Paul C. Pooley, represented himself. Based upon the pleadings and evidence presented at trial, the hearing panel hereby enters 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, Chapter 1 of Title 27 of the North Carolina Administrative Code ("NCAC").

2. Defendant, Paul C. Pooley ("Pooley" or "Defendant"), was admitted to the North Carolina State Bar in 1996, 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 Revised Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During the times relevant hereto, Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in Durham County, North Carolina.

4. The Complaint in this action was filed by Plaintiff on 25 January 2008. Defendant was properly served with process and received due notice of the hearing in this matter.

5. In the fall of 2005, Defendant filed motions to withdraw from his representation of at least four clients, citing as the basis for his withdrawal Rule 1.16(a)(2) of the Rules of Professional Conduct, which provides that a lawyer "shall

withdraw from the representation of a client if . . . the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client."

6. In a March 2006 letter to Superior Court Judge Judson DeRamus, Jr., Defendant stated, "I continue to believe that my emotional condition affects my ability to represent clients."

7. In a letter to the State Bar dated 9 March 2006, Defendant stated that since 2004 he had been undergoing counseling and treatment, including taking medication, for an anxiety disorder with post-traumatic stress features, depression, and chronic insomnia.

8. From approximately November 2005 through April 2006, Defendant received Letters of Notice from the State Bar regarding grievance file numbers 05G0982, 05G1043, 05G1242, 05G1316, and 06G0361. Defendant did not respond, or did not timely respond, to these Letters of Notice.

9. The State Bar's Grievance Committee determined that Defendant's alleged misconduct in file numbers 05G0982, 05G1043, 05G1242, 05G1316, 06G0236, and 06G0361 was primarily attributable to Defendant's mental health problems, and recommended referral of those grievances to the Lawyer Assistance Program ("LAP").

10. Defendant consented to the Grievance Committee's recommended referral to LAP and began participating in LAP in or about June 2006. As part of his participation in LAP, Defendant underwent an evaluation and entered into a rehabilitation contract by which he agreed to seek appropriate mental health treatment.

11. After Defendant's referral to LAP, the State Bar continued to receive grievances against Defendant. Four additional grievances received between February and July 2007 were assigned file numbers 07G0225, 07G0226, 07G0360, and 07G0886.

12. Despite numerous attempts by the State Bar to elicit responses, Defendant did not respond to the Letters of Notice in file numbers 07G0225, 07G0226, 07G0360, and 07G0886.

13. On or about 17 July 2006, Defendant was appointed to represent Vincent Bonds ("Bonds") in a criminal appellate matter before the Fourth Circuit Court of Appeals.

14. On 3 January 2007, 25 April 2007, 13 June 2007, and 18 July 2007, the Fourth Circuit sent Defendant "Notices of Rules Violation" based upon his failure to file the brief and appendix in Bonds' case.

15. Each Notice of Rules Violation issued by the Fourth Circuit established a new deadline for Defendant to file the brief and appendix in Bonds' case. Defendant failed to comply with each new deadline set.

16. In the fall of 2007, Elizabeth ColemanGray ("ColemanGray") of North Carolina Prisoner Legal Services attempted to contact Defendant by letter and by

telephone to request a copy of the trial transcript for one of Defendant's former clients, Alton Bagley ("Bagley").

17. Defendant did not respond to ColemanGray's requests.

18. By letter dated 8 May 2008, ColemanGray again asked Defendant to provide a copy of the transcript from Bagley's trial as well as a copy of Defendant's client file on Bagley.

19. Defendant did not respond to ColemanGray's 8 May 2008 letter.

20. In the summer of 2008, ColemanGray sought assistance from the North Carolina State Bar in contacting Defendant regarding Bagley's transcript. By letters dated 30 June 2008 and 15 July 2008, the North Carolina State Bar asked Defendant to respond to ColemanGray immediately.

21. In mid-July 2008, Defendant left a voicemail message with ColemanGray regarding Bagley's transcript and client file. Defendant stated in his message that he would deliver the transcript and client file to ColemanGray, but did not do so.

22. Defendant then sent ColemanGray a letter asking her to provide a signed release from Bagley before he sent the file materials, but the letter was addressed to an incorrect post office box and ColemanGray did not receive it. ColemanGray did not contact Defendant after mid-July.

23. On 19 March 2008, the Chair of this hearing panel entered an order requiring Defendant to submit to a psychological evaluation. The order required Defendant to "submit to a complete . . . examination no later than May 30, 2008."

24. On 26 August 2008, Plaintiff filed a motion to compel Defendant to complete the psychological evaluation by submitting to all psychological testing recommended by the examining clinician. The Chair of this hearing panel entered an order compelling Defendant to complete the evaluation by 26 September 2008.

25. On 2 October 2008, Defendant filed a motion to continue the hearing in this matter because the psychological evaluation was not complete. Defendant's motion to continue was granted and the hearing was postponed to 5 December 2008 for the purpose of completing the evaluation. The order granting Defendant's motion to continue noted that "Defendant bears the responsibility for the delay in the completion of his psychological examination," and further admonished Defendant "that no further continuances shall be allowed, absent extraordinary circumstances."

26. As of the 5 December 2008 hearing, Defendant had not completed the psychological testing recommended by the examining clinician, and the psychological evaluation ordered by this panel was therefore incomplete.

27. Although the evaluating clinician was unable to render a clinical diagnosis of Defendant, his testimony indicated that there are significant concerns regarding Defendant's current condition which require further inquiry.

28. Defendant's treating therapists based their diagnoses in part on the severity of Defendant's circumstances from 2004 onward. Defendant's PTSD features in particular stemmed both from childhood abuse and events during and after his marriage, separation, and divorce.

29. Defendant self-reported his mental health issues to judges involved with his cases, the Appellate Defender who had appointed him to those cases, and to the Bar at various times relevant to this matter. Defendant accepted responsibility for his omissions and failures, both client-related and with respect to responding to the Bar.

30. Defendant conceded in his testimony that he was disabled during a period of time that spanned from 2004 to 2006, but Defendant contested that he was disabled after 2006.

31. Defendant's pattern of behavior after 2006, which has been virtually identical to his behavior from 2004 to 2006, suggests an ongoing inability to carry out his professional responsibilities due to an unspecified, but persistent, mental condition.

32. In order to protect the public, it is necessary for Defendant to identify and obtain appropriate treatment for the mental condition that has rendered him unable to fulfill his professional responsibilities.

#### CONCLUSIONS OF LAW

1. The Disciplinary Hearing Commission has jurisdiction over Defendant and over the subject matter of this proceeding.

2. Defendant suffers from a mental condition (or conditions) that significantly impairs his professional judgment, performance, or competency to act as an attorney, and he is therefore disabled within the meaning of 27 N.C.A.C. 1B § .0103(19), and should be transferred to disability inactive status pursuant to 27 N.C.A.C. 1B § .0118.

#### ORDER

1. Defendant, Paul C. Pooley, is hereby transferred to disability inactive status in accordance with North Carolina General Statute 84-28(g) and 27 N.C.A.C. 1B § .0118(b)(6).

2. The disciplinary action filed by Plaintiff is stayed until such time as Defendant is reinstated to active status.

3. The costs of this proceeding are taxed against Defendant and the Secretary of the State Bar shall send a statement of costs to Defendant. These costs are due within two years after entry of this order, or upon petition by Defendant for reinstatement to active status, whichever is earlier. The costs taxed to Defendant include but are not limited to all fees associated with Dr. Nathan Strahl's evaluation of Defendant and testimony provided pursuant to subpoena in this case.

4. Upon application for reinstatement to active status, in addition to complying with the requirements of 27 N.C.A.C. 1B § .0125(c), Defendant must show by clear, cogent, and convincing evidence that he:

- a. Paid the costs of this proceeding, as contained in the statement of costs provided by the Secretary of the State Bar, within the time frame set forth in paragraph 3, above;
- b. Underwent a diagnostic mental health evaluation that included the completion of at least one empirically-validated psychometric instrument, which must include but need not be limited to the MMPI-2. The purposes of this evaluation shall be: (1) to determine Defendant's current diagnoses based on DSM criteria; and (2) to recommend a course of treatment for Defendant based thereon, if warranted by the evaluation and any resulting diagnoses. The diagnostic testing, interpretation of results, and recommendations shall be performed by a clinician selected by Defendant and approved by the State Bar. Defendant shall provide the results of the evaluation and his treatment plan, if any, for review by the State Bar;
- c. Has complied with any treatment recommendations (including but not limited to medication and/or psychotherapy) generated as a result of the diagnostic evaluation described in paragraph (b), for a sufficient period of time to improve his condition and functioning, as indicated by his treatment provider;
- d. Is no longer disabled and is competent to practice law;
- e. Has not engaged in the unauthorized practice of law during his period of inactive status;
- f. Has not engaged in any conduct during the period of his inactive status that would constitute grounds for discipline under N.C. Gen. Stat. 84-28(b); and
- g. Has accepted all certified mail and has responded to all letters and other communication from the North Carolina State Bar within the time period stated therein.

5. The provision contained in 27 N.C.A.C. 1B § .0125(c) requiring that one year elapse between entry of this order and Defendant's application for reinstatement shall not apply. Instead, Defendant may apply for reinstatement upon compliance with the conditions contained in paragraph 4, above.

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

Signed by the Chair with the consent of the other hearing panel members, this is  
the 30<sup>th</sup> day of January, 2009.

F. Lane Williamson  
F. Lane Williamson, Chair  
Chair, Disciplinary Hearing Panel