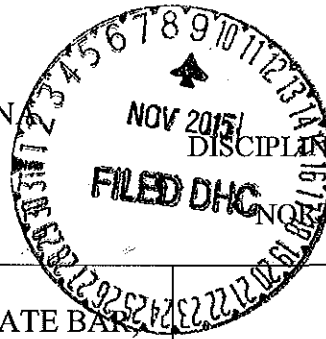


STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
15 BSR 7 & 13 DHC 24

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

WILLIAM R. SHILLING, Attorney,

Defendant

ORDER STAYING REMAINDER OF
SUSPENSION

THIS MATTER was heard on October 16, 2015 by a hearing panel of the Disciplinary Hearing Commission ("DHC") composed of Donald C. Prentiss, Chair, Shirley L. Fulton, and Karen B. Ray pursuant to 27 N.C. Admin. Code 1B § .0125(b)(7) of the Rules and Regulations of the North Carolina State Bar. On July 30, 2015, the Defendant, William R. Shilling ("Defendant" or "Shilling") filed a Verified Petition Seeking Stay of Remaining Suspension ("Petition"). The Plaintiff, the North Carolina State Bar ("State Bar"), pursuant to 27 N.C. Admin. Code 1B §§ .0125(b)(3), (b)(4) and (b)(6), responded in opposition to the Petition. In his Petition, Defendant seeks a stay of the time remaining on his two year suspension pursuant to the consent Order of Discipline ("Order") filed on February 11, 2014. Plaintiff, the North Carolina State Bar, was represented by Barry S. McNeill, Deputy Counsel. Defendant, William R. Shilling, appeared *pro se*.

Based upon the stipulations of the parties and the evidence introduced at the hearing, the hearing panel hereby makes, by clear, cogent and convincing evidence, the following

FINDINGS OF FACT

1. On February 11, 2014, in an Order entered in *The North Carolina State Bar v. William R. Shilling*, No. 13 DHC 24 ("Order"), the Disciplinary Hearing Commission ("DHC") of the State Bar suspended Defendant for two years beginning 30 days from the date of service of the Order upon him.
2. Defendant's counsel accepted service of the Order on behalf of Defendant on February 14, 2014.
3. Defendant's two year suspension under the Order became effective as of March 16, 2014.

4. The Order provided that, after one year from the effective date of the Order, Defendant could file a verified petition for a stay of the remaining period of his suspension.

5. The Order specified that Defendant could file the petition seeking a stay of the remaining period of his suspension up to 30 days prior to the end of the first year of the two year suspension, but that the stay would not be lifted and Defendant would not be reinstated until the end of that first year of the two year suspension.

6. The Order provided in relevant part that, in order to be reinstated, Defendant had to demonstrate in his petition by clear, cogent and convincing evidence that, in addition to complying with the general provisions for reinstatement contained in 27 N.C. Admin. Code 1B § .0125 of the Rules and Regulations of the North Carolina State Bar, he had complied during his suspension with the following conditions:

- a. Defendant paid the costs and administrative fees of this action as assessed by the Secretary within thirty days of service of the statement of costs and fees upon him;
- b. Defendant, at his own expense, continued counseling with Counselor Martha Teater, and/or any other board-certified psychiatrist, psychologist, or counselor (hereafter "Therapist") approved by the State Bar's Office of Counsel and the Lawyer's Assistance Program (LAP), and followed and complied with the course of treatment prescribed by the Therapist. As part of this condition, the therapist was to provide monthly reports to the State Bar confirming Defendant was following the recommendations of the Therapist. Defendant was responsible for ensuring these reports and notifications were made by the Therapist. Defendant was required to sign all necessary releases or documents to allow such reports and notifications, to allow the Therapist to provide documents from Defendant's treatment to the State Bar, and to allow the Therapist to discuss Defendant's participation and treatment with the Office of Counsel of the State Bar;
- c. Defendant instructed his Therapist to notify the Office of Counsel and LAP immediately in writing if, at any point during the active period of his suspension, Defendant ceased to be a patient or otherwise failed to comply with the course of treatment prescribed by the Therapist;
- d. Defendant executed a written waiver authorizing LAP to confer with the Office of Counsel for purposes of determining if Defendant had cooperated with LAP, had complied with the terms of the LAP contract, and had complied with the terms of the Order of Discipline. If, during the suspension, Defendant failed to cooperate with LAP, failed to comply with his LAP contract, or failed to follow the treatment recommendation of his Therapist or any successor Therapist approved by the Office of Counsel and LAP, LAP was to immediately report such failure to the Office of Counsel.

9. On February 21, 2014, the Clerk of the DHC served Defendant with the invoice statement for the costs and administrative fees of this action as assessed by the Secretary.

10. Defendant owed \$1,150.94 in costs and administrative fees to the State Bar.

11. Under the terms of the Order, Defendant was due to pay the costs and administrative fees to the State Bar by Monday, March 24, 2014 (within 30 days of service of the statement of costs and administrative fees).

12. Defendant did not pay the costs and administrative fees by Monday, March 24, 2014, and Defendant did not timely request an extension of time for doing so before the deadline.

13. On April 8, 2014, the Clerk of the DHC ("Clerk") filed a letter from Defendant, dated April 4, 2014, in which Defendant acknowledged receiving the Clerk's invoice dated February 18, 2014, and requested that he be granted a one-year extension of time to pay the \$1,150.94 because he had no income and had had to pay other unspecified fees, fines and costs in connection with his "criminal matter." Defendant stated that he hoped to have the criminal fees, fines and costs paid "within the next few months," and then he intended to pay his CLE and State Bar membership dues before finally being able to pay the disciplinary costs and fees.

14. The Clerk wrote to Defendant on April 8, 2014 about whether he wished to have his April 4, 2014 letter treated as a motion pursuant to N.C. R. Civ. P. 60, and on April 14, 2014 Defendant responded in the affirmative, requesting that the Clerk serve a copy of the April 4, 2014 letter upon staff counsel for the State Bar ("staff counsel").

15. Pursuant to Defendant's directive, the Clerk furnished a copy of Defendant's April 4, 2014 letter to staff counsel.

16. On April 17, 2014, staff counsel filed a response arguing that assuming *arguendo* the hearing panel could modify the original consent order to extend the 30-day time period for Defendant to make the payment of the costs and administrative fees of the disciplinary proceeding, Defendant nevertheless had failed to make the necessary showing under N.C. R. Civ. P. 60(b)(6) for relief.

17. On June 20, 2014, the panel filed an Order denying Defendant's motion for an extension of time to pay the costs and administrative fees ("Order denying motion").

18. Due to his loss of income from his suspension and his other financial obligations, Defendant did not timely pay the costs and administrative fees to the State Bar.

19. As his finances permitted, Defendant made periodic payments on the costs and administrative fees he owed to the State Bar, making a final payment in full to the State Bar on February 18, 2015.

20. Defendant voluntarily began counseling and treatment with therapist Martha Teater of Waynesville, North Carolina on April 12, 2013, and was already seeing Ms. Teater when the Order of discipline was entered in February 2014.

21. Defendant continued treatment with therapist Martha Teater during March, April, and May of 2014.

22. Defendant sought counseling and treatment with Ms. Teater on 20 occasions between April 12, 2013 and May 28, 2014.

23. According to Ms. Teater, she forwarded monthly reports to the State Bar for the months of March, April, and May of 2014 in compliance with the Order.

24. Ms. Teater ceased her treatment of Defendant on July 22, 2014 due to Defendant moving out of state.

25. Defendant did not seek the Office of Counsel's approval of a successor Therapist to Ms. Teater, and the Office of Counsel never gave its approval to such a successor Therapist.

26. The State Bar ceased receiving Ms. Teater's monthly reports after May 2014.

27. The State Bar received no additional reports concerning Defendant's treatment from an approved successor Therapist.

28. Defendant and Ms. Teater indicate that when Ms. Teater ceased seeing Defendant in late May 2014, Defendant's scheduled sessions were on an "as needed" basis.

29. Defendant was compliant with Ms. Teater's recommendations, followed all of her treatment suggestions, and made substantial progress during his treatment by her.

30. When Ms. Teater finished treating Defendant in late May of 2014, she had no significant concerns regarding Defendant resuming the practice of law in North Carolina.

31. Defendant otherwise complied with the general provisions for reinstatement contained in 27 N.C. Admin. Code 1B § .0125 of the Rules and Regulations of the North Carolina State Bar, as well as the other conditions imposed by the Order.

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, William R. Shilling, and the subject matter of this proceeding.
2. Because of his suspension, loss of income, and other financial obligations, Defendant failed to timely pay the costs and administrative fees to the State Bar under the specific terms of the Order, but ultimately did pay the costs and administrative fees in full, and therefore the panel concludes that Defendant substantially complied with the condition of the Order concerning the payment of costs and administrative fees.
3. Although the Order required Defendant to continue monthly treatment with Ms. Teater or another approved therapist, Defendant saw Ms. Teater on a regular basis beginning in April 2013 until his change to an out-of-state residence in June 2014.
4. When Defendant ceased seeing Ms. Teater in late May 2014, Ms. Teater had begun scheduling his sessions on an “as needed” basis, indicating that Defendant had made substantial progress during his treatment.
5. Ms. Teater had no significant concerns for Defendant resuming the practice of law in North Carolina.
6. Ms. Teater provided monthly reports to the State Bar as required by the Order until Defendant ceased his counseling sessions with her by moving his residence out-of-state.
7. Although under the Order Defendant technically should have sought this panel’s permission to cease his treatment sessions with Ms. Teater or another approved therapist, Defendant underwent over 20 sessions of counseling and treatment with Ms. Teater prior to moving his residence out-of-state, including sessions he voluntarily initiated beginning in April 2013 until the Order was entered in February 2014, and therefore the panel concludes that Defendant substantially complied with the conditions of the Order concerning continuing therapy and monthly reporting of such therapy to the State Bar.
8. Defendant has shown by clear, cogent and convincing evidence his compliance and/or substantial compliance with the conditions for staying the remainder of his two-year suspension.

Based upon the foregoing Findings of Fact and Conclusions of Law, the hearing panel enters the following

ORDER

1. A stay of the remaining portion of Defendant's two-year suspension is hereby ordered, and Defendant is hereby reinstated to practice law in North Carolina immediately upon the filing of this Order.

2. The conditions of the Order are modified as follows: the stay of his suspension will remain in effect only if Defendant complies, and continues to comply, with the following conditions:

- a. Defendant kept the Membership Department of the State Bar informed of his current information for his physical address (not a Post Office box), telephone number, and e-mail address throughout the period of his stayed suspension;
- b. Defendant accepted all certified mail from the State Bar sent to the address on record with the Membership Department of the North Carolina State Bar throughout the period of his stayed suspension;
- c. Defendant responded to all letters of notice and requests for information from the North Carolina State Bar by the deadline stated therein with full and complete responses and all requested documentation throughout the period of his stayed suspension;
- d. Defendant complied with continuing education or membership obligations throughout the period of his stayed suspension;
- e. Defendant did not violate any of the Rules of Professional Conduct in effect during the period of his stayed suspension; and,
- f. Defendant did not violate any laws of the State of North Carolina or of the United States during the period of his stayed suspension.

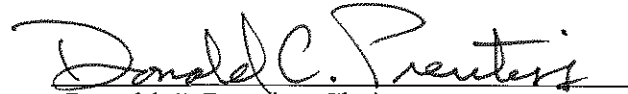
3. Unless Defendant's obligations under the Order are modified by further order of the DHC, Defendant's obligations under this order end two years from the effective date of the Order provided there are no motions or show cause proceedings pending alleging lack of compliance with the conditions of the stay of the suspension. Pursuant to 27 N.C. Admin. Code 1B § .0114(x) of the Rules and Regulations of the North Carolina State Bar, the DHC retains jurisdiction until all conditions of the stay of the suspension have been met. If a motion or show cause proceeding alleging lack of compliance with the conditions for the stay of the suspension is pending when the period of the stay of the suspension would otherwise have terminated, the DHC retains the jurisdiction and ability to lift the stay of the suspension and activate the remaining suspension time in whole or in part if it finds that any of the conditions of the stay have not been met. The stay of the suspension and Defendant's obligation to comply with the conditions for the stay will continue until resolution of any pending motion or show cause proceeding.

4. If an order staying any period of this suspension is entered and the Defendant fails to comply with any one or more of the conditions stated in Paragraph 2 above, then the stay of the suspension of his law license may be lifted as provided in 27 N.C. Admin. Code 1B § .0114(x) of the Rules and Regulations of the North Carolina State Bar.

5. If the stay of the suspension is lifted and the suspension is activated for any reason, Defendant may apply for reinstatement after serving the activated suspension by filing an application for reinstatement demonstrating by clear, cogent, and convincing evidence the following:

- a. Compliance with the general provisions for reinstatement listed in 27 N.C. Admin. Code 1B § .0125 of the Rules and Regulations of the North Carolina State Bar; and
- b. Compliance with the conditions set out in Paragraph 2 (a) – (f) above.

Signed by the Chair with the consent of the other hearing panel members, this the 4 day of November, 2015.


Donald C. Prentiss, Chair
Disciplinary Hearing Panel