

NORTH CAROLINA  
WAKE COUNTY



12168

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
02 DHC 19

THE NORTH CAROLINA STATE BAR,  
Plaintiff

v.

CHARLES E. HESTER, JR.,  
Defendant

INTERIM ORDER  
TRANSERING DEFENDANT  
TO DISABILITY  
INACTIVE STATUS

This matter was heard on the 17<sup>th</sup> day of January 2003, before a hearing committee of the Disciplinary Hearing Commission composed of Carlyn G. Poole, Chair; M. Ann Reed, and Betty Ann Knudsen. Defendant, Charles E. Hester, Jr. was not represented and did not attend the hearing. Douglas J. Brocker represented plaintiff, the North Carolina State Bar. Based upon the pleadings, the evidence, and arguments of the State Bar, the hearing committee hereby enters the following:

#### FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar (hereafter "State Bar"), filed the current complaint against Hester alleging violations of various disciplinary rules.

2. Defendant, Charles E. Hester, Jr. (hereafter, "Hester") was properly served with process in the disciplinary proceeding. Specifically, Hester was served with the summons and complaint in this matter on October 26, 2002 by certified mail, return receipt requested. Hester personally accepted service of the complaint and summons on November 5, 2002. Hester's acceptance was notarized by his mother, Barbetta G. Hester.

3. Hester did not file an answer, and default was entered against him on December 2, 2002, upon motion of the State Bar. The State Bar also filed a motion for entry of an order of discipline on December 2, 2002.

4. The hearing was held with due notice to all parties. Hester received several notices of the hearing date. On November 7, 2002, an order setting the hearing date was sent to Hester's address of record with the State Bar. On December 3, 2002, the State Bar sent Hester a notice of hearing to his address of record. Additionally, between January 10-16, 2003, the State Bar hand-delivered to Hester's record address its proposed stipulations, witnesses, and exhibits and sent him several confirmed facsimile transmissions regarding the hearing date.

5. On January 16, 2003, the afternoon before the scheduled hearing date, Hester sent by facsimile transmittal to Douglas J. Brocker, counsel for the State Bar, a document. In the document, Hester asserted that he was currently not able to function and had not been able to function for over a year. He asserted that he had filed for disability some time ago and that his doctor agreed that he was disabled.

6. Brocker provided the document from Hester to the Hearing Committee at the scheduled hearing date.

7. Hester contends that he is disabled by his current physical and mental conditions, and has raised his alleged disability in the current disciplinary matter.

Based on the foregoing Findings of Fact, the Hearing Committee makes the following:

#### CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Committee and the Committee has jurisdiction over defendant and the subject matter.

2. Defendant, in the pending disciplinary matter, has contended pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, Section .0018(c)(1) of the Disciplinary and Disability Rules of the North Carolina State Bar ("Bar Rules"), that he is disabled within the meaning of Chapter 84-28(g) of the North Carolina General Statutes and Section .0103(19) of the Bar Rules.

3. Section .0018(c)(1) of the Bar Rules and public protection require that Hester immediately be transferred to disability inactive status pending the conclusion of the disability hearing.

4. Pursuant to Section .0118(b)(3), Hester has the burden of establishing by clear, cogent, and convincing evidence that he is disabled within the meaning of Chapter 84-28(g) of the North Carolina General Statutes and Section .0103(19) of the Bar Rules.

5. Evaluations of Hester by both a psychiatrist and an addictions specialist selected by the Committee, pursuant to Sections .0118(c)(2) and (b)(3) of the Bar Rules, would assist it in determining whether Hester is disabled within the meaning of Chapter 84-28(g) of the North Carolina General Statutes and Section .0103(19) of the Bar Rules.

WHEREFORE, based upon the findings of fact and conclusions of law, the Hearing Committee hereby enters the following:

## ORDER TRANSFERRING ATTORNEY TO INACTIVE STATUS

1. Defendant, Charles E. Hester, Jr., is hereby transferred to disability inactive status pending the conclusion of the disability hearing, pursuant to North Carolina General Statute 84-28(g) and section .0118(c)(1) of the Bar Rules.

2. Hester's transfer to disability inactive status is effective immediately upon entry of this order.

3. Hester is prohibited from engaging in any activities that constitute the practice of law under North Carolina law, until a further order of this body is entered transferring him to active status.

4. This clerk is directed to reset this matter for a hearing on the issue of disability within 60 days of entry of the order or as soon thereafter as possible. In addition to the disability matter, the clerk shall set the State Bar's motion for order of discipline for that same date, in the event Hester does not carry his burden of proof on disability.

5. Pursuant to Sections .0118(c)(2) and (b)(3) of the Bar Rules, Hester shall submit to an examination by both Gregory Barrow, M.D, and Sheppard Fountain, M.S.W., C.C.A.S., C.C.S. or if they are not available, a psychiatrist and addictions counselor designated by the Lawyers Assistance Program no later than 15 days from the date of service of this order. The expenses of the examination shall be born by Hester.

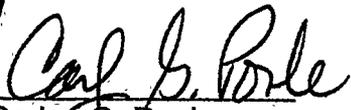
It is further ordered that the designated examining psychiatrist and addictions counselor shall provide to both counsel for plaintiff and defendant a copy of his or her report no less than 15 days before the date of rescheduled hearing date for the disability determination.

Hester shall execute at the time of the examinations releases authorizing the examining psychiatrists and addictions counselor to discuss with and release to plaintiff's counsel and the hearing committee the results and all other related matters regarding the examination.

6. The State Bar and the Clerk may begin serving Hester by mail at the address contained in his January 16, 2003 transmittal – 2009 Mesa Court, Clayton, NC 27520.

7. Hester shall provide to the State Bar within 10 days of service of this order on him all applications which he has filed seeking disability status or benefits, along with any supporting materials or evidence, and orders on such applications, and any other documents in his possession relating to his contention that he is disabled.

Signed by the chair with the consent of the other hearing committee members, this is the 17 day of January, 2003.

  
Carlyn G. Poole  
Chair, Hearing Committee