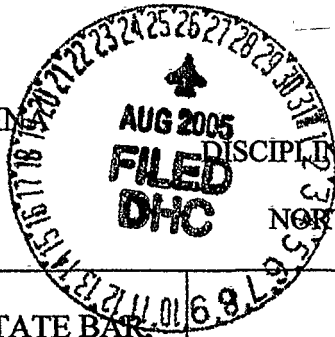


24739

STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
 DISCIPLINARY HEARING COMMISSION
 OF THE
 NORTH CAROLINA STATE BAR
 05 DHC 4

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

DAVID S. HARLESS, Attorney,

Defendant

ORDER TRANSFERRING
 DEFENDANT TO DISABILITY
 INACTIVE STATUS

THIS MATTER came on to be heard and was heard on August 12, 2005 before a hearing committee of the Disciplinary Hearing Commission composed of W. Steven Allen, Sr, Chair; Charles M. Davis and Donald Wilhoit. Jennifer A. Porter represented the North Carolina State Bar. The Defendant, David S. Harless, did not appear. The Defendant was represented by Joel M. Craig. Based upon the pleadings and the evidence presented at trial, the hearing committee hereby enters the following:

FINDINGS OF FACT

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, David S. Harless (Harless), was admitted to the North Carolina State Bar in 1997, 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 or part of the relevant periods referred to herein, Harless did not practice law in North Carolina and resided in the State of West Virginia.
4. Harless has been hospitalized in psychiatric hospitals eight times over the last few years. He was diagnosed with bipolar disorder in 2001. Harless' first hospitalization was at Thomas Memorial Hospital in South Charleston, West Virginia in August 2001. His most recent hospitalization was in March 2005 at Mildred Mitchell Bateman Hospital in Huntington, West Virginia.
5. Harless has bipolar disorder. As a result of his bipolar disorder, there are periods of time during which Harless is in a manic state and displays symptoms of mania. Such symptoms include delusions of reference, delusions of grandeur, and pressured speech. Harless'

delusions of reference and delusions of grandeur centered on his expression that he had a special connection with God and his suggestion that he was Jesus Christ, the Son of God.

6. During the course of the investigation of this matter and through date of trial, Harless sent communications to the State Bar that displayed symptoms of mania, including, but not limited to, letters to staff counsel and his answers to the State Bar's complaint. The letters and his answers contain delusions of reference and delusions of grandeur manifested in Harless' statements that he had a special connection with God and his suggestion that he was Jesus Christ, the Son of God.

7. Harless displayed these manic symptoms in January 2004 in his interaction with Sherry Goodman, an attorney in West Virginia, in October 2004 in his correspondence with Scott Segal, an attorney in West Virginia, and in October 2004 in his interaction with David Fitzwater, an accountant with the Segal Law Firm in West Virginia.

8. Harless' treating psychiatrists at the psychiatric hospitals in which he has been hospitalized have prescribed psychiatric medication to treat his bipolar disorder. Dr. Mukesh Kamdar, the psychiatrist conducting an independent examination of Harless for this proceeding, also recommends medication. Harless generally refuses psychiatric medication and is not in compliance with any treatment regimen. Without such medication and appropriate psychotherapy, Harless lacks insight to the extent that his professional judgment is significantly impaired and he cannot practice law.

CONCLUSIONS OF LAW

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

2. Harless suffers from a physical or mental condition that significantly impairs his professional judgment, performance or competence as a lawyer within the meaning of 27 NCAC 1, Subchapter B, Section .0103(19) of the State Bar's Discipline & Disability Rules.

ORDER

1. Defendant, David S. Harless, 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. Harless shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon him.

3. Harless shall withdraw from any pending client matters immediately upon the effective date of this order and shall follow all applicable laws and disciplinary rules regarding withdrawal, in accordance with 27 N.C.A.C. 1B, § .0124(b) of the North Carolina State Bar Discipline & Disability Rules.

4. The costs of this proceeding are taxed against Harless and the Secretary of the State Bar shall send a statement of costs to Harless. These costs are due upon petition by Harless for reinstatement to active status. The costs taxed to Harless include but are not limited to:

- a. All costs related to the depositions taken in this case, as reflected in the DHC file;
- b. The expert witness fee of Dr. Mukesh Kamdar, the psychiatrist appointed to conduct the independent medical evaluation in this case and who testified pursuant to subpoena in this case; and
- c. All fees of Joel M. Craig, the attorney appointed to represent Harless in this proceeding.

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

- a. He paid the costs of this proceeding taxed against him by this order, as contained in the statement of costs sent to Harless by the Secretary of the State Bar;
- b. He received appropriate medical treatment for his bipolar disorder, has been under the care of a treating psychiatrist for his bipolar disorder for not less than a six month period next preceding his reinstatement petition, and has been in compliance with the treatment regimen prescribed by his psychiatrist, including but not limited to full compliance with any prescriptions for psychiatric medication and with psychotherapy for not less than a six month period next preceding his reinstatement petition;
- c. He is no longer impaired and is competent to practice law;
- d. Permitting him to resume the practice of law within the state will not be detrimental to the integrity and standing of the bar, to the administration of justice, or to the public interest;
- e. He has not engaged in the unauthorized practice of law during his period of inactive status; and
- f. He 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), including, but not limited to, not having committed any criminal acts that reflect adversely on his honesty, trustworthiness or fitness as an attorney, and not having committed any violent crimes.

Signed by the Chair with the consent of the other hearing committee members, this the ~~21st~~ day of August, 2005.



W. Steven Allen, Sr.
Chair, Disciplinary Hearing Committee