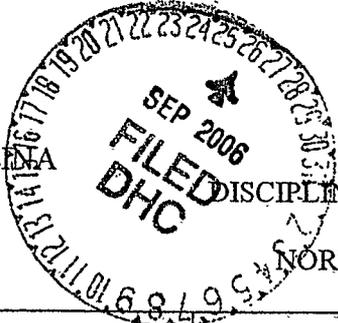


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STATE OF NORTH CAROLINA

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

WAKE COUNTY

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

RODNEY S. TOTH, Attorney,

Defendant

ORDER

Defendant, Rodney S. Toth ("Toth" or "Defendant") was ordered to appear and show cause why the stay of the suspension imposed by the Order of Discipline entered in this case on August 11, 2005 should not be lifted and the suspension activated. This matter was considered by a Hearing Committee of the Disciplinary Hearing Commission composed of Stephen E. Culbreth, Chair, and members M. Ann Reed and H. Dale Almond pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). The Plaintiff was represented by Jennifer A. Porter. The Defendant was represented by Alan M. Schneider. Based upon the stipulations of fact and the consent of the parties, the Hearing Committee hereby finds by clear, cogent, and convincing evidence the following:

FINDINGS OF FACT

1. On August 11, 2005, a Consent Order of Discipline was entered in this matter. The Order was served on Defendant on September 22, 2005.
2. The Consent Order of Discipline imposed a ninety (90) day suspension stayed for three years. The stay of the suspension was conditioned upon compliance with the conditions stated in the order.
3. The condition listed in paragraph 2b of the Order of Discipline states as follows:

Successfully comply with the monitoring requirements of the National Confederation of Professional Services or other service agreed to by the parties, at Defendant's expense. Such monitoring will include a drug screen and a breath test for alcohol each month. The monitoring agreement will require the monitoring service to report any failure of Defendant to take a test and any positive test result to the North Carolina State Bar, and Defendant will sign any necessary releases or documents to allow such reporting. Failure to enter into a monitoring relationship with

the National Confederation of Professional Services or other service agreed to by the parties and consistent with this order within sixty (60) days of service of this order or a positive test result shall cause any stay of suspension to be immediately dissolved; (emphasis in the original)

4. Given the service date of September 22, 2005, Toth was required to enter into a monitoring relationship with the National Confederation of Professional Services (NCPS) or other service agreed to by the parties and consistent with the Order of Discipline no later than November 21, 2005.

5. Toth did not enter into a monitoring relationship with the NCPS by November 21, 2005.

6. The parties did not agree that Toth could be monitored by an alternate service.

7. Toth has not entered into a monitoring relationship with any entity as of the date of the entry of this order.

8. The August 11, 2005 Order of Discipline also required Toth to regularly attend Alcoholic Anonymous ("AA") meetings and regularly meet with a sponsor. The Order required Toth to have the sponsor certify monthly to the State Bar that Toth was attending AA meetings and to have the sponsor submit a monthly report to the State Bar certifying daily contacts with Toth and reporting actions taken that month to comply with the AA program. These certifications and reports from the sponsor were to begin on the 60<sup>th</sup> day following service of the order, and were to be submitted monthly thereafter by the 20<sup>th</sup> day of each month.

9. Given the service date of September 22, 2005, Toth was required to have his sponsor submit the first certification and first monthly report no later than November 21, 2005, with monthly certifications and reports due by the 20<sup>th</sup> day of each subsequent month.

10. The State Bar did not receive any certifications or reports from any sponsor for Toth, including no initial report or initial certification by November 21, 2005 and no monthly certification or monthly report by December 20, 2005 or by January 20, 2006.

11. After the State Bar filed its Motion for Order to Show Cause on February 13, 2006, Toth had a sponsor submit reports by e-mail regarding Toth's participation in AA and Toth's contact with the sponsor as follows: on February 19, 2006 for November 2005 through January 2006; on March 9, 2006 for February 2006; on April 15, 2006 for March 2006; on May 12, 2006 for April 2006; and on June 17, 2006 for May 2006.

12. In the e-mail dated June 17, 2006, which reported Toth's AA participation for May 2006, Toth's sponsor stated he would no longer be working with or sponsoring Toth.

13. Toth has not identified another sponsor to the State Bar to replace this sponsor.

14. Toth has not had any sponsor submit reports for him regarding his AA participation for the months of June, July, and August 2006.

15. The August 11, 2005 Order of Discipline required Toth to identify the clients for whom he still held funds in his trust account and the amounts held per client and to provide documentation to the State Bar by the 90<sup>th</sup> day after service of the order on Toth showing the identification of the trust account funds per client.

16. Given the service date of September 22, 2005, Toth was required to have submitted this identification of client trust account funds no later than December 21, 2005.

17. Toth did not submit this identification of client funds to the State Bar by December 21, 2005 and has not done so as of the date of this order.

18. Toth has received from the State Bar the information it was able to ascertain regarding identification of funds in his trust account.

19. Despite receipt of this information, Toth has not provided any documentation to the State Bar of his identification of the funds in his trust account nor has he disbursed the funds in his trust account.

20. Toth is required by the Order of Discipline to pay all State Bar membership dues and Client Security Fund assessments on a timely basis

21. Toth has not paid his membership dues or assessments for years 2004, 2005, or 2006.

22. Toth is required by the Order of Discipline to comply with CLE requirements on a timely basis during the period of the stay of his suspension.

23. Although Toth did attend some CLE courses, Toth failed to satisfy requirements to obtain credit for the courses and thus failed to comply with CLE requirements for 2005. Additionally, he failed to pay \$446.46 in outstanding fines.

24. Toth is required by the Order of Discipline to keep his address of record current with the State Bar and to accept certified mail sent to him by the State Bar.

25. Defendant's address in the State Bar's membership records is 3220 Prosperity Church Road, #201, Charlotte, NC 28269.

26. The State Bar sent Defendant certified mail in June 2006 to Defendant's address of record, the Charlotte, North Carolina address. This mail was returned to the State Bar marked "unclaimed."

27. Toth does not live in Charlotte, North Carolina. Toth currently lives in Florida.

28. A Florida mailing address was provided to the State Bar for Toth of 1300 Washington Ave., Miami Beach, FL 33119.

29. Mail sent by regular mail to this Florida address in February 2006 was returned to the State Bar with the notification that Toth had moved and left no address.

#### CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee and the committee has jurisdiction over the Defendant and the subject matter of this proceeding.

2. The Defendant, Rodney S. Toth, has failed to comply with the following conditions of the stay of his suspension contained in the Consent Order of Discipline previously entered in this case:

- a. Toth failed to enter into a monitoring relationship with the National Confederation of Professional Services or other service agreed to by the parties within sixty (60) days of service of the Order;
- b. Toth failed to have a sponsor provide the certifications and reports of Toth's daily contact with the sponsor and Toth's participation in AA meetings as specified in the order within the deadlines specified in the Order, to wit: the first certification/report due on the sixtieth (60<sup>th</sup>) day after service of the Order and then montly reports due by the twentieth (20<sup>th</sup>) day of each month thereafter.
- c. Toth failed to timely pay all State Bar Membership dues and Client Security Fund assessments due during the period of the stay;
- d. Toth failed to comply with all Continuing Legal Education requirements during the period of the stay;
- e. Toth failed to maintain a current working mailing address of record with the North Carolina State Bar;
- f. Toth failed to accept certified mail sent to him by the State Bar;

g. Toth failed to identify the funds remaining in his attorney trust account by the ninetieth (90<sup>th</sup>) day following service of the Order; and

h. Toth failed to disburse the funds in his attorney trust account and/or initiate escheat procedures as appropriate by the 120<sup>th</sup> day following service of the Order.

Based upon the stipulations and the documents of record in this file, the Hearing Committee hereby enters the following:

#### CONCLUSIONS REGARDING DISCIPLINE

1. Toth's failure to timely disburse the funds in his trust account held on behalf of clients caused actual harm to his clients. His continued failure to disburse those funds causes ongoing harm to those clients.

2. Toth's failure to maintain a current address with the State Bar and failure to accept certified mail from the State Bar thwarts the ability of the State Bar to carry out its function of regulating the profession.

3. Toth's consumption of alcohol directly contributed to the misconduct in which the Hearing Committee found he had engaged, as listed in the Consent Order of Discipline entered in this case on August 11, 2005.

4. The conditions requiring continued recovery treatment through AA and requiring accountability through a monitoring service are necessary to protect the public and future clients of Toth.

5. Toth should not be in an active membership status and able to practice law in North Carolina unless and until he is in compliance with the conditions stated in the Consent Order of Discipline.

Based upon the foregoing findings of fact and conclusions of law and the conclusion regarding discipline, the Hearing Committee enters the following:

#### ORDER

1. The stay of the ninety (90) day suspension imposed in the Consent Order of Discipline previously entered in this case is hereby lifted and the active suspension is hereby activated. This activation is effective as of the date of the hearing in this matter, September 22, 2006.

2. In order to seek reinstatement to active status Defendant must show by clear, cogent, and convincing evidence that he has complied with all of the conditions listed as prerequisites to seeking reinstatement in the Consent Order of Discipline previously entered in this case, with the following clarification:

a. Paragraph 3.h. under the Order section of the Consent Order of Discipline requires Defendant to show that he has abstained from all

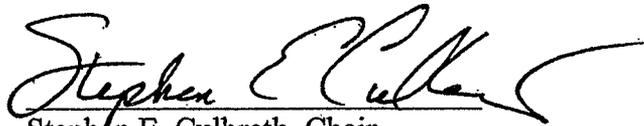
alcohol use or consumption for a period of at least one year preceding his petition for reinstatement. This requirement shall not be construed to mean that the one year time period starts on the date of this order.

b. Paragraph 3.h. under the Order section of the Consent Order of Discipline requires Defendant to show this one year of abstinence from alcohol by successful compliance with the requirements of a monitoring service. The Hearing Committee expects that Defendant will enter into a monitoring relationship and will be in compliance with the requirements of that monitoring service during this suspension. If Defendant can show that he entered into a monitoring relationship and has been in compliance with the requirements of the monitoring service during this suspension, the Hearing Committee may be willing to consider modifying this condition for reinstatement to allow proof of abstinence other than proof through a monitoring service for period(s) of time prior to Defendant's entry into the monitoring agreement.

3. It is the understanding of the Hearing Committee that a case in which Defendant provided legal services has settled and that Defendant and another attorney who also provided legal services in the case are entitled to attorney's fees. Defendant's entitlement to an attorney fee is based on legal services he provided prior to being suspended under this Order. This situation is analogous to the situation described Rule 5.4(a)(3) where a lawyer who undertakes to complete unfinished business of a deceased or disbarred lawyer may pay to the estate of the deceased lawyer or to the disbarred lawyer that portion of the legal fee that fairly represents the services rendered by the deceased or disbarred lawyer. Likewise, Defendant's share of the legal fee for services rendered prior to this suspension may properly be disbursed to him.

Signed by the undersigned Chair of the Disciplinary Hearing Committee with the consent of the other Hearing Committee members.

This the 26 day of September 2006.

  
Stephen E. Culbreth, Chair  
Disciplinary Hearing Committee