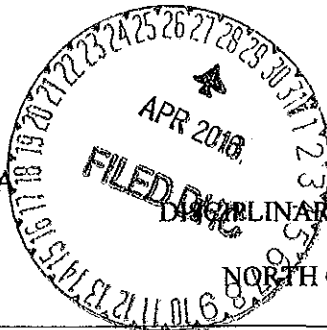


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
16 DHC 5

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

JOHN M. HOLMES, Jr., Attorney,

Defendant

CONSENT ORDER  
OF DISCIPLINE

THIS MATTER was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Steven D. Michael, Chair, Shirley L. Fulton, and Bradley Lail pursuant to 27 N.C. Admin. Code 1B § .0114. Plaintiff, the North Carolina State Bar, was represented by Carmen Hoyne Bannon. Defendant, John M. Holmes, Jr., was represented by Alan M. Schneider. Defendant waives a formal hearing in this matter and both parties stipulate and consent to the entry of this order and to the discipline imposed. Defendant waives any right to appeal this consent order or to challenge in any way the sufficiency of the findings.

Based upon the consent of the parties, the Hearing Panel finds by clear, cogent and convincing evidence, 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 promulgated thereunder.
2. Defendant, John M. Holmes, Jr., was admitted to the North Carolina State Bar in August 2004, and is an Attorney at Law 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. Holmes was properly served with the summons and complaint in this matter.
4. During the relevant period referred to herein, Holmes was actively engaged in the practice of law in Sanford, Lee County, North Carolina.

5. On 9 August 2013, Holmes took his lawfully prescribed medications of Adderall during the day and Trazadone at night. He had not previously taken Trazadone, which should not be combined with alcohol. Holmes consumed a moderate amount of alcohol in the evening and went to sleep. Holmes has no recollection of the events that followed and are described below. However, based on the reports of others, Holmes stipulates to these facts and accepts full responsibility for his actions.
6. Early in the morning of 10 August 2013, Holmes was at the City Limits Saloon in Raleigh. When Holmes was informed that he would not be served any additional alcohol due to his level of intoxication, he became disruptive and was asked to leave the bar.
7. Outside the bar, a Wake County Sheriff's Deputy tried to help Holmes find a cab to take him home. When Holmes became belligerent, the Deputy attempted to place Holmes in custody. Holmes resisted, twice kicking the Deputy in the shin.
8. Holmes was subsequently taken to the Wake County Detention Center by Raleigh Police. He was combative during transport.
9. Holmes's disruptive behavior continued when he arrived at the detention center. Due to his behavior and intoxication, the detention center nurse referred Holmes to Wake Medical Center for evaluation.
10. Several law enforcement officers were present while Holmes was evaluated at Wake Med's emergency department, providing security due to Holmes's combative and disruptive conduct.
11. In the ER, Holmes urinated on the floor. Hospital staff then provided Holmes with a plastic receptacle to be used as a urinal.
12. Due to Holmes's continued combative and disruptive behavior, he was placed in an isolation room and given an injection of Haldol, which he resisted. After he received the injection, Holmes stated that he needed to urinate again. When the nurse handed Holmes the plastic receptacle that he had used as a urinal, Holmes threw it and the container hit an ER nurse, soaking her uniform.
13. As a result of the conduct described above, Holmes was charged with multiple criminal offenses in Wake County Superior Court.
14. On 31 August 2015, Holmes pled guilty to the following criminal offenses arising from the events of 10 August 2013: two misdemeanor counts of assault on a government official, one misdemeanor count of attempted assault on emergency department personnel, and one misdemeanor count each of second degree trespass, intoxicated and disruptive, and resisting a public officer.

Based upon the foregoing Findings of Fact, and the consent of the parties, the Hearing Panel makes the following

### CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Disciplinary Hearing Commission has jurisdiction over Defendant, John M. Holmes, Jr., and over the subject matter of this proceeding.

2. Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-28(b)(1) and (b)(2) in that Defendant violated § 84-28(b)(1) and the Rules of Professional Conduct in effect at the time of his actions as follows:

- (a) By assaulting law enforcement officers and medical personnel and by resisting arrest, Defendant engaged in criminal conduct reflecting adversely on his fitness as a lawyer in violation of Rule 8.4(b);
- (b) By assaulting law enforcement officers, resisting arrest, and interfering with officers' performance of their duties, Defendant engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d); and
- (c) By pleading guilty to various criminal acts, including assault on a government official and resisting a public officer, Defendant was convicted of criminal offenses showing professional unfitness, subjecting him to discipline pursuant to N.C. Gen Stat. § 84-28(b)(1).

Based upon the foregoing Findings of Fact and Conclusions of Law, and the consent of the parties, the Hearing Panel finds by clear, cogent, and convincing evidence the following

### ADDITIONAL FINDINGS REGARDING DISCIPLINE

- 1. Defendant has a history of alcohol abuse.
- 2. Defendant was under the influence of lawfully prescribed medications and alcohol at the time of the events described above. Due to the combined effects of these substances, Defendant has no memory of these events.
- 3. Defendant engaged in belligerent and potentially dangerous behavior while under the influence of alcohol and prescribed medications.
- 4. After the events described above, Defendant sought treatment for his alcohol abuse. He successfully completed a 28 day substance abuse treatment program at Hope Valley Treatment Center.
- 5. Defendant no longer drinks alcohol, and is committed to continued sobriety.
- 6. For the criminal offenses described above, Defendant was sentenced to an active 60 day term with eighteen months supervised probation upon his release.

7. Defendant's arrest, and the conduct for which he was arrested, was the subject of multiple media reports which mentioned that Defendant is an attorney. Defendant's conduct caused harm to the standing of the profession in the eyes of the public.

8. In 2010, Defendant was censured by the Disciplinary Hearing Commission for violations of the Rules of Professional Conduct.

9. Defendant has fully cooperated with the State Bar's investigation and in reaching a resolution in these proceedings.

Based upon the Findings of Fact, Conclusions of Law, Additional Findings Regarding Discipline, and the consent of the parties, the Hearing Panel makes the following

#### ADDITIONAL CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has carefully considered all of the different forms of discipline available to it. In addition, the Hearing Panel has considered all of the factors enumerated in Rule .0114(w) of the Discipline and Disability Rules of the State Bar, 27 N.C. Admin. Code 1B § .0114(w)

2. The Hearing Panel concludes the following factors from Rule .0114(w)(1) warrant consideration of suspension of Defendant's license:

- (a) negative impact of defendant's actions on the public's perception of the profession;
- (b) negative impact of the defendant's actions on the administration of justice; and
- (c) effect of defendant's conduct on third parties.

3. The Hearing Panel has carefully considered all of the factors enumerated in Rule .0114(w)(2) and concludes that none of the factors requiring consideration of disbarment are present in this case.

4. The Hearing Panel has carefully considered all of the factors enumerated in Rule .0114(w)(3) and determines that the following factors are applicable:

- (a) Prior discipline;
- (b) Multiple offenses;
- (c) Effect of physical or mental impairment on the conduct in question;
- (d) Interim rehabilitation;
- (e) Cooperative attitude toward the proceedings;
- (f) Remorse; and

(g) Imposition of other penalties or sanctions.

5. The Hearing Panel has considered admonition, reprimand and censure as potential discipline but finds that any sanction less than suspension would fail to acknowledge the seriousness of the offenses committed by Defendant.

6. In light of Defendant's criminal acts and the significant harm and potential harm resulting from Defendant's misconduct, the Hearing Panel concludes that a suspension of Defendant's license, stayed upon compliance with conditions, is the only discipline that:

- (a) will adequately protect the public;
- (b) acknowledges the seriousness of the offenses Defendant committed; and
- (c) sends a proper message to attorneys and the public regarding the conduct expected of members of the Bar of this State.

Based upon the foregoing Findings of Fact, Conclusions of Law, Additional Findings and Conclusions Regarding Discipline, and with the consent of the parties, the Hearing Panel enters the following

#### ORDER OF DISCIPLINE.

1. Defendant, John M. Holmes, Jr., is hereby suspended from the practice of law for three years, effective 30 days from service of this order upon Defendant.

2. The three year suspension is stayed for a period of three years as long as Defendant complies, and continues to comply during the period of the stay, with the following conditions:

- (a) Defendant shall abstain from the consumption of any alcohol during the period of stay;
- (b) Defendant shall abstain from the consumption of any controlled substance other than medications as prescribed by his treating physician;
- (c) Defendant shall enroll in the Soberlink real-time alcohol monitoring system, which testing shall be administered at random intervals 4 times a day between the hours of 7:00 am and 10:00 pm. Defendant shall submit to such testing at the selected times. Defendant will arrange for the Soberlink monitoring service to report to the State Bar any failure of Defendant to take the test and any positive test result. Defendant shall also arrange for the State Bar to have access to Soberlink's Monitoring Web Portal. Defendant will sign all releases or documents necessary to comply with this paragraph and shall not revoke such release(s) during the period of stay;

- (d) Within 30 days of the date of this order, Defendant shall be evaluated by clinician approved by the Office of Counsel who specializes in treatment of substance abuse and addiction. The evaluating clinician shall not be a provider from whom Defendant has, or will, receive ongoing treatment. Within 30 days of the evaluation, the evaluating clinician shall submit to the Office of Counsel a written report of the results of the evaluation, to include treatment recommendations. Defendant will sign all necessary releases or documents to authorize the evaluating clinician to release the report, and to otherwise respond to requests for information from the Office of Counsel about the evaluation. The costs associated with compliance with this paragraph shall be at Defendant's sole expense;
- (e) Defendant shall comply with all treatment recommendations of the evaluating clinician. The provider(s) from whom Defendant receives the recommended treatment shall provide to the Office of Counsel quarterly reports indicating the nature of the ongoing treatment and Defendant's compliance with treatment. The reports will be due by January 15, April 15, July 15, and October 15 during the period of the stay. It is Defendant's obligation to ensure that the reports are timely submitted. Defendant will sign all necessary releases or documents to authorize the treating clinician(s) to make these reports, and to otherwise respond to requests for information from the Office of Counsel about Defendant's condition and treatment. The costs associated with compliance with this paragraph shall be at Defendant's sole expense;
- (f) Within twelve months after the effective date of this order, Defendant shall attend at least 3 hours of Continuing Legal Education (CLE) on the topic of substance abuse. This requirement shall be in addition to Defendant's standard CLE obligations.
- (g) Defendant shall provide the Office of Counsel with his current street address (not at P.O. Box) and phone number, and will advise the State Bar in writing of any changes in his contact information within 10 days of such change(s);
- (h) Defendant shall respond to all letters of notice and requests for information from the State Bar by the deadlines stated in the communication;
- (i) Defendant shall timely pay all State Bar membership dues and Client Security Fund assessments;
- (j) Defendant shall timely comply with his State Bar CLE requirements and will pay all fees and costs assessed by the applicable deadline;

(k) Defendant shall not violate any federal or state laws, other than minor traffic violations;

(l) Defendant shall not violate any provision of the North Carolina Rules of Professional Conduct; and

(m) Defendant shall pay the costs of this proceeding within 30 days of service of the statement of costs upon him by the Secretary of the State Bar.

3. Defendant is taxed with the administrative fees and costs of this action as assessed by the Secretary, which shall be paid within 30 days of service of the notice of costs upon Defendant.

4. If the stay of the suspension is lifted at any time and the suspension of Defendant's law license is activated for any reason, before seeking reinstatement of his license to practice law, Defendant must show by clear, cogent and convincing evidence that he has complied with each of the following conditions:

(a) Submitted his license and membership card to the Secretary of the State Bar within 30 days after the effective date of the order suspending his law license;

(b) Complied with all provisions of 27 N.C.A.C. Chapter 1, Subchapter B, Section .0124 of the State Bar Discipline & Disability Rules on a timely basis;

(c) Demonstrated that at the time of his application for reinstatement he is not suffering from any addiction, disability or condition that would impair his current ability to competently engage in the practice of law;

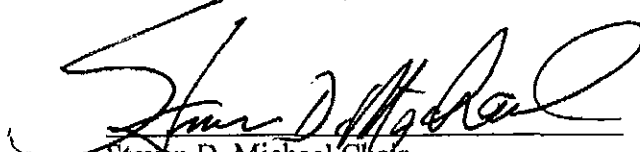
(d) Demonstrated that he has abstained from all alcohol and illicit drug use or consumption and has not taken any prescription drugs or controlled substances other than as authorized by his treating physician for at least one year preceding the filing of his petition for reinstatement. This requirement will apply regardless of when the stay is lifted and regardless of whether enforcement of this provision extends the period of suspension of Holmes's law license beyond the three year stay period set out herein;

(e) Provided the Office of Counsel with releases authorizing and instructing his medical, psychological and mental health care providers to provide to the Office of Counsel all medical records relating to his evaluation, prognosis, care or treatment, including substance abuse and mental health evaluations, and authorizing and instructing such providers to respond to requests for information by the Office of Counsel; and

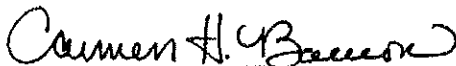
(f) Paid all outstanding membership fees, Client Security Fund assessments and costs assessed by the DHC or the State Bar and complied with all continuing legal education requirements imposed by the State Bar.

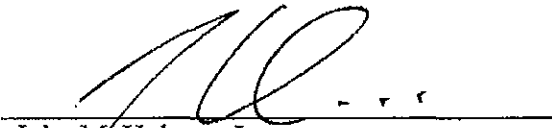
5. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C.A.C. 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout any period of stayed suspension.

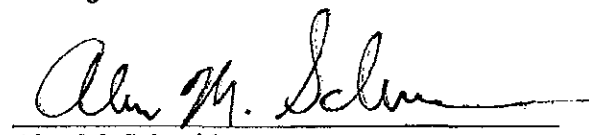
28<sup>th</sup> Signed by the Chair with the consent of the other Hearing Panel members, this the day of April, 2016.

  
Steven D. Michael Chair  
Disciplinary Hearing Panel

CONSENTED TO BY:

  
Carmen Hoyne Bannon  
Attorney for Plaintiff

  
John M. Holmes, Jr.  
Defendant

  
Alan M. Schneider  
Attorney for Defendant