

STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
19 DHC 12

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

W. ANDREW LELIEVER, Attorney,

Defendant

CONSENT
ORDER OF DISCIPLINE

THIS MATTER was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Richard V. Bennett, Chair, and members Fred W. DeVore, III and Jane B. Weathers. J. Cameron Lee and Joshua T. Walthall represented Plaintiff, the North Carolina State Bar ("State Bar"). Defendant, W. Andrew LeLiever, represented himself.

The parties stipulate and agree to the findings of fact and conclusions of law recited in this Consent Order. The parties consent to the discipline imposed by this Order. By consenting to this Order, Defendant knowingly, freely, and voluntarily waives his right to appeal this Consent Order or to challenge in any way the sufficiency of the findings contained herein.

Based upon the stipulated facts and upon the consent of the parties, the Hearing Panel hereby finds by clear, cogent, and convincing evidence the following

FINDINGS OF FACT

1. The 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 (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, W. Andrew LeLiever, was admitted to the North Carolina State Bar on 9 November 2007, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Rules of Professional Conduct.

3. During all or part of the relevant periods referred to herein, Defendant was engaged in the practice of law in Raleigh, Wake County; Durham, Durham County; and Sanford, Lee County, North Carolina.

4. Defendant was properly served with process and the matter came before the Hearing Panel with due notice to all parties.

5. In or around February 2017, C. Cowling retained Defendant to file a claim for criminal conversation.

6. On 27 February 2017, Defendant filed the lawsuit on behalf of Cowling.

7. On 7 April 2017, opposing counsel served discovery requests on Defendant.

8. On 24 April 2017, Defendant obtained an extension of time to respond to discovery, up to and including 8 June 2017.

9. Defendant did not serve the discovery responses on opposing counsel by 8 June 2017.

10. Between 8 June 2017 and 17 July 2017, opposing counsel repeatedly asked Defendant for Cowling's discovery responses.

11. Defendant did not respond to opposing counsel's requests.

12. On 17 July 2017, opposing counsel filed a motion to compel and motion for sanctions ("motion to compel").

13. The motion to compel was set for hearing on 9 October 2017.

14. Defendant did not serve the discovery responses on opposing counsel prior to 9 October 2017.

15. On 9 October 2017, the court granted opposing counsel's motion to compel and entered sanctions against Cowling for Defendant's failure to timely comply with the discovery rules.

16. On or about 13 December 2017, Cowling filed a grievance against Defendant with the State Bar.

17. The State Bar opened a grievance against Defendant, file number 17G1302.

18. On 5 February 2018, the State Bar served a Letter of Notice on Defendant by certified mail.

19. Defendant's written, signed response to the Letter of Notice was due within 15 days of his receipt of the Letter of Notice.

20. Defendant did not submit a written, signed response to the Letter of Notice within 15 days of his receipt of the Letter of Notice.

21. On or about 2 March 2018, the State Bar sent Defendant a follow-up letter informing Defendant that his response to the Letter of Notice in file number 17G1302 was past due and requesting that Defendant respond to the Letter of Notice by 9 March 2018.

22. Defendant did not respond to the Letter of Notice until 29 March 2018.

23. On or about 3 June 2016, Defendant made a general appearance on behalf of P. Shaffer in her child support case, Durham County file number 13CVD1627.

24. At the time Defendant made the general appearance in 13CVD1627, Defendant also represented Shaffer in a child custody case, Durham County file number 08CVD0347.

25. On 22 June 2016, Defendant filed a motion ^{for contempt} to modify Shaffer's child support obligations. The motion was set for hearing on 26 September 2016.

26. On 31 October 2016, Defendant appeared on behalf of Shaffer and obtained an order temporarily modifying Shaffer's child support obligations to \$0.00 a month, effective until 13 February 2017 at which time the child support obligation was to revert to the May 4, 2015 obligation. The court set the case for review on 13 February 2017.

27. On 13 February 2017, Defendant appeared on behalf of Shaffer for the scheduled review of the temporary order modifying Shaffer's child support obligations. Defendant made a motion to continue the review. The court continued the case to 13 March 2017.

28. On 13 March 2017, Defendant appeared on behalf of Shaffer and made a motion to continue the review. The court continued the case to 12 May 2017.

29. On 12 May 2017, Defendant did not appear in court on behalf of Shaffer.

30. Though Shaffer knew of 12 May 2017 court date, she did not appear in court on 12 May 2017.

31. Because neither Defendant nor Shaffer appeared in court on 12 May 2017, the Court reinstated a previous order requiring that Shaffer pay \$247.00 a month in child support and \$50.00 a month toward arrears of \$3,660.27.

32. On or about 3 August 2016, Shaffer began working for Defendant as a contract employee, helping Defendant with data entry and document review.

33. Defendant did not transmit the terms of his employment agreement with Shaffer in writing to Shaffer in a manner that could be reasonably understood by Shaffer.

34. Defendant did not advise Shaffer in writing of the desirability of seeking the advice of independent counsel in connection with the employment agreement.

35. Defendant did not obtain Shaffer's informed consent to the employment agreement in writing signed by Shaffer containing the essential terms of the transaction and Defendant's role in the transaction.

36. On 26 September 2016, Defendant appeared on behalf of Shaffer at the hearing on the motion to modify child support. Defendant made a motion to continue the hearing. The court continued the hearing to 31 October 2016.

37. On 5 January 2018, Shaffer filed a grievance against Defendant with the State Bar:

38. The State Bar opened a grievance against Defendant, file number 18G0010.

39. On 5 February 2018, the State Bar served a Letter of Notice on Defendant by certified mail.

40. Defendant's written, signed response to the Letter of Notice was due within 15 days of Defendant's receipt of the Letter of Notice.

41. Defendant did not submit a written, signed response to the Letter of Notice within 15 days of his receipt of the Letter of Notice.

42. On or about 2 March 2018, the State Bar sent Defendant a follow-up letter informing Defendant that his response to the Letter of Notice in 18G0010 was past due and requesting that Defendant respond to the Letter of Notice by 9 March 2018.

43. Defendant did not respond to the Letter of Notice in 18G0010 until 28 March 2018.

44. On 24 May 2017, A. Ford paid Defendant \$1,000.00 to file a motion to modify custody in an on-going domestic case.

45. Defendant had previously represented Ford in matters related to the aforementioned domestic case.

46. On 5 June 2017, Defendant filed the motion to modify custody.

47. Defendant believed that the parties could resolve the child custody issue with a consent order and did not calendar the motion for hearing.

48. Between 5 June 2017 and 7 September 2017, Defendant had several conversations with opposing counsel regarding modification of Ford's then-applicable custody agreement.

49. Defendant did not inform Ford of his discussions with opposing counsel.

50. Between 14 June 2017 and 7 September 2017, Ford attempted weekly to contact Defendant.

51. Defendant did not respond to Ford's attempts at communication.

52. On 29 August 2017, Ford filed a Petition for Resolution of Disputed Fee with the State Bar, file number 17FD0438.

53. On 20 September 2017, the State Bar served Defendant with a Notice of Mandatory Fee Dispute Resolution.

54. Defendant's written, signed response to the Notice of Mandatory Fee Dispute Resolution was due within 15 days of Defendant's receipt of the Notice of Mandatory Fee Dispute Resolution.

55. Defendant did not respond to the Notice of Mandatory Fee Dispute Resolution.

56. On or about 11 October 2017, the State Bar sent Defendant a letter indicating that his response to the Notice of Mandatory Fee Dispute Resolution was past due. The letter informed Defendant that if the State Bar did not receive a response by 18 October 2017, the matter would be referred to the Grievance Committee for further review.

57. Defendant did not respond to the Notice of Mandatory Fee Dispute Resolution.

58. On 9 January 2018, the State Bar opened a grievance against Defendant, file number 18G0023.

59. On 5 February 2018, the State Bar served a Letter of Notice on Defendant by certified mail.

60. Defendant's written, signed response to the Letter of Notice was due within 15 days of Defendant's receipt of the Letter of Notice.

61. Defendant did not submit a written, signed response to the Letter of Notice.

62. On or about 2 March 2018, the State Bar sent Defendant a letter informing Defendant that his response to the Letter of Notice in 18G0023 was past due and requesting that Defendant respond to the Letter of Notice by 9 March 2018.

63. Defendant did not respond to the Letter of Notice in 18G0023 until 28 March 2018

Based on the foregoing Findings of Fact and upon the consent of the parties, the Hearing Panel enters the following:

CONCLUSIONS OF LAW

1. All the parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, W. Andrew LeLiever, and the subject matter.

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

- a. By failing to serve Cowling's discovery responses upon the opposing party by the applicable deadline, Defendant failed to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party in violation of Rule 3.4(d)(2), failed to act with reasonable diligence and promptness in representing his client in violation of Rule 1.3, and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- b. By failing to timely respond to the State Bar's Letter of Notice during its investigation of the grievance filed against Defendant by Cowling, Defendant knowingly failed to respond to a lawful demand for information from the State Bar in connection with a disciplinary matter in violation of Rule 8.1(b);
- c. By failing to appear in court in Shaffer's child support case on 12 May 2017, Defendant failed to act with reasonable diligence and promptness in representing his client in violation of Rule 1.3 and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- d. By entering into an employment agreement with Shaffer without fully documenting the terms of the agreement in writing, without advising Shaffer of the desirability of seeking independent counsel, and without obtaining Shaffer's informed, written consent to the essential terms of the transaction and Defendant's role in it, Defendant entered into a prohibited business transaction with a client in violation of Rule 1.8(a);
- e. By failing to timely respond to the State Bar's Letter of Notice during its investigation of the grievance filed against Defendant by Shaffer, Defendant knowingly failed to comply with a lawful demand for information from the State Bar in connection with a disciplinary matter in violation of Rule 8.1(b);
- f. By failing to inform Ford of his negotiations with opposing counsel and failing to communicate with Ford from 14 June 2017 to 7 September 2017, Defendant failed to reasonably consult with his client about the means by which his client's objectives were to be accomplished and failed to keep his client reasonably informed about the status of his case in violation of Rules 1.4(a)(2) and (3);
- g. By failing to respond to the State Bar's Notice of Mandatory Fee Dispute Resolution, Defendant failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f)(2); and
- h. By failing to timely respond to the State Bar's Letter of Notice during its investigation of the grievance filed against Defendant by Ford, Defendant knowingly failed to respond to a lawful request for information from a disciplinary authority in connection with a disciplinary matter in violation of Rule 8.1(b).

Based on the foregoing Findings of Fact and Conclusions of Law, the stipulated facts, and upon the consent of the parties, the Hearing Panel hereby finds by clear, cogent and convincing evidence the following additional:

ADDITIONAL FINDINGS REGARDING DISCIPLINE

1. Defendant's failure to diligently tend to his clients' cases or, in the case of A. Ford, Defendant's repeated failure to respond to his client's reasonable requests for information, resulted in significant foreseeable harm to his clients, who relied upon Defendant to protect their rights and interests.

2. Defendant's conduct directly interfered with the administration of justice and harmed third parties by delaying the resolution of pending matters.

3. Defendant's conduct has the potential to cause significant harm to the standing of the legal profession in the eyes of the public because it exemplifies Defendant's disregard for his duties as an attorney. Such erosion of public confidence in attorneys tends to sully the reputation of, and foster disrespect for, the legal profession. Confidence in the legal profession is foundational for public trust in the broader legal system.

4. Defendant's repeated failure to timely respond to inquiries from the State Bar during the fee dispute and grievance processes interfered with the State Bar's ability to regulate its members and undermined the profession's privilege to remain self-regulating.

5. Defendant had been practicing law for over a decade at the time he represented the clients cited in this action.

6. Defendant has prior professional discipline as follows:

- a. 2014 – Defendant received a Reprimand for failing to timely and fully comply with various production orders issued by the United States Bankruptcy Court for the Western District of North Carolina, and for minor trust account violations; and
- b. 2015 – Defendant received a Censure for failing to respond to his client's reasonable requests for information, failing to inform his client of a settlement offer in her case, failing to inform his client that her case had been dismissed by the court, and making misrepresentations to his client regarding the status of her case.

7. During the period of time described herein, Defendant was experiencing personal problems, including the turbulent dissolution of his marriage and an equally bitter battle over custody of his five children. The resulting stress and uncertainty significantly contributed to Defendant's misconduct.

8. Defendant reached an informal agreement with client A. Ford whereby Defendant returned one-half of A. Ford's \$1000.00 fee.

9. Defendant acknowledges his misconduct in this case, is remorseful, and has scaled down his practice such that he can be more attentive to the needs of his clients.

Based on the foregoing Findings of Fact, Conclusions of Law, and Additional Findings Regarding Discipline, the Hearing Panel enters the following

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel carefully considered all of the different forms of discipline available to it.

2. The Hearing Panel considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f).

3. The Hearing Panel concludes that the following factors from 27 N.C. Admin. Code 1B.0116(f)(1), which are to be considered in imposing suspension or disbarment, are present in this case:

- a. Factor (B), Intent of Defendant to commit acts where the harm or potential harm is foreseeable;
- b. Factor (E), Negative impact of Defendant's actions on client's and public's perception of the profession;
- c. Factor (H), Effect of Defendant's conduct on third parties; and
- d. Factor (J), Multiple instances of failure to participate in the legal profession's self-regulation process.

4. The Hearing Panel considered the factors listed in 27 N.C. Admin. Code 1B.0116(f)(2), which are factors warranting consideration of disbarment, and concluded no factors in this section of the rule are present in this case.

5. The Hearing Panel concludes that the following factors from 27 N.C. Admin. Code 1B.0116(f)(3), which are to be considered in all cases, are present in this case:

- a. Factor (A), Prior disciplinary offenses in this State;
- b. Factor (C), Absence of dishonest or selfish motive;
- c. Factor (F), A pattern of misconduct;
- d. Factor (G), Multiple offenses;
- e. Factor (H), Effect of any personal or emotional problems on the conduct in question;

- f. Factor (J), Interim rehabilitation;
- g. Factor (K), Full and free disclosure to the Hearing Panel and a cooperative attitude toward the proceedings;
- h. Factor (P), Remorse; and
- i. Factor (S), Degree of experience in the practice of law.

6. The Hearing Panel has considered all of the disciplinary options available to it and has determined that, in light of the significant harm and potential significant harm caused by Defendant's conduct to his clients and the profession, a stayed suspension with conditions designed to ensure Defendant's compliance with his obligations under the Rules of Professional Conduct is appropriate in this case and necessary to protect clients and the public.

7. The Hearing Panel has considered all lesser sanctions and finds that discipline short of a stayed suspension would not adequately protect the public for the following reasons:

- a. Supervision under a stayed suspension is necessary to ensure that Defendant diligently pursues client matters and adequately communicates with his clients; and
- b. Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses Defendant committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar of this State.

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

ORDER OF DISCIPLINE

1. Defendant, W. Andrew LeLiever, is hereby suspended from the practice of law for two years. The effective date of this Order is 30 days from service of this Order upon Defendant pursuant to 27 N.C. Admin. Code 1B.0128(c). This suspension is stayed from its inception subject to the terms set out below.

2. Defendant is taxed with the administrative fees and costs of this proceeding. Defendant shall pay the administrative fees and costs of this proceeding as assessed by the Secretary of the North Carolina State Bar. Defendant shall pay all costs and fees within six months of service of a statement of costs upon him.

3. Defendant's two-year suspension is stayed for two years. The stay of Defendant's suspension of his law license will continue in effect only as long as Defendant complies with the following conditions:

- a. Defendant establishes a set of written client communication procedures for his practice that he will follow to ensure compliance with his obligations under Rule 1.4. No later than 45 days from the effective date of this order, Defendant shall submit these procedures to the Office of Counsel. Defendant shall make any adjustments required by the Office of Counsel to ensure compliance with the Rules of Professional Conduct;
- b. With respect to court-appointed clients, that Defendant complies with any client communication procedures established by the North Carolina Office of Indigent Defense Services;
- c. Each year of the stay, Defendant completes five additional hours of Continuing Legal Education ("CLE") courses on the subject of ethics or professional responsibility. This CLE requirement is in addition to the CLE requirements set out in North Carolina Administrative Code, Title 27, Chapter 1, Subchapter D § .1518. These courses must be completed within the applicable time period for completing the CLE hours required under North Carolina Administrative Code, Title 27, Chapter 1, Subchapter D § .1518 each year of the stay and must be reported on the annual CLE report forms;
- d. Defendant, at his sole expense, arranges for an active member of the North Carolina State Bar who is in good standing and who has been approved by the State Bar Office of Counsel to serve as his practice monitor. The selected monitor must agree to serve and agree to meet with Defendant monthly to review Defendant's cases. Defendant shall meet with the Practice monitor monthly to review all of Defendant's pending cases. The Practice Monitor will supervise all client matters and ensure that Defendant handles them in a timely fashion and that Defendant communicates adequately with his clients. Defendant will ensure that the monitor submits written reports to the Office of Counsel confirming that the meetings are occurring and that the Defendant is meeting deadlines and conferring with clients. The reports shall be received in the office of Counsel each January 15, April 15, July 15, and October 15 for the duration of stayed suspension. Defendant must have made the arrangements for this monitoring attorney and supplied the Office of Counsel with a letter from the monitoring attorney confirming his or her agreement to perform the duties listed above no later than thirty days from service of this Order upon Defendant;
- e. Defendant enters into a written fee agreement with every non-court appointed client and the fee agreement states with specificity the legal work Defendant is undertaking to perform;
- f. Defendant timely complies with his State Bar CLE requirements and pays all fees and costs assessed by the applicable deadline;

- g. Defendant keeps the State Bar's Membership Department advised of his current business address, which address must be a street address, not a post office box or drawer;
- h. Defendant notifies the State Bar of any change of address within 10 days of such change;
- i. Defendant responds to all communications from the State Bar, including communications from the Attorney Client Assistance Program, within 30 days of receipt of such communication or by the deadline stated in the communication, whichever is sooner;
- j. Defendant participates in good faith in the State Bar's fee dispute resolution process for any petition of which he receives notice after the effective date of this Order; and
- k. Defendant does not violate the Rules of Professional Conduct or the laws of the United States or any state or local government.

4. Unless Defendant's obligations under this 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 proceedings pending alleging lack of compliance with the conditions of the stay of the suspension. Pursuant to 27 N.C. Admin. Code 1B.0118, the DHC retains jurisdiction until all conditions of the stay of the suspension have been met. If a motion or 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 two-year suspension 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 such pending motion or proceeding.

5. If during the stay of the suspension Defendant fails to comply with any one or more of the conditions stated above, then the stay of the suspension of Defendant's law license may be lifted as provided in 27 N.C. Admin. Code 1B.0118.

6. 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 a petition pursuant to 27 N.C. Admin. Code 1B.0129 demonstrating compliance by clear, cogent, and convincing evidence with the requirements therein as well as the following requirements:

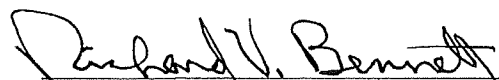
- a. Defendant properly wound down his law practice and complied with the terms of 27 N.C. Admin. Code 1B.0128;

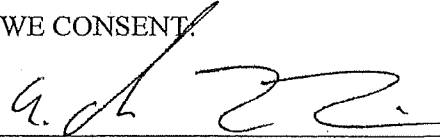
- b. Defendant submitted his law license and membership card to the Secretary of the State Bar no later than 30 days following the effective date of the order lifting the stay;
- c. Within 15 days of the effective date of this Order, Defendant shall have provided the Office of Counsel and the Membership Department of the State Bar with an address and telephone number at which clients seeking return of files can communicate with Defendant and obtain such files. Defendant must have kept this information current with the Membership Department of the State Bar, providing updated information to the State Bar within 15 days of any change;
- d. Defendant shall have promptly returned client files in his possession, custody, or control to clients upon request, within 5 days of receipt of such request. Defendant will be deemed to have received any such request 3 days after the date such request is sent to Defendant if the request is sent to the address Defendant provided the Membership Department of the State Bar pursuant to the preceding paragraph;
- e. Defendant disbursed to the proper recipients all identified client funds in any trust account he maintained upon the termination of his representation by the activation of his suspension;
- f. 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 suspension;
- g. 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 the suspension;
- h. 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 suspension;
- i. Defendant came into compliance with any outstanding continuing education or membership obligations at the time of the filing of his petition for reinstatement;
- j. Defendant did not violate any of the Rules of Professional Conduct in effect during the period of the suspension;
- k. Defendant did not violate any laws of the State of North Carolina or of the United States during the period of the suspension;

- l. Defendant paid all costs and fees of this proceeding as assessed by the Secretary by the date of the filing of his petition for reinstatement; and
- m. If Defendant failed to fully comply with 27 N.C. Admin. Code 1B.0128, Defendant shall reimburse the State Bar for any and all expenses incurred by the State Bar in winding down Defendant's practice. Such expenses may include, but are not limited to, storage facility fees, rent payments, moving expenses, charges for secure disposal of client files, postage or other mailing expenses and compensation paid to any appointed trustee and/or the trustee's assistant for time and travel associated with the trusteeship. The State Bar shall send an invoice of wind-down expenses to Defendant at Defendant's last known address of record with the State Bar. Defendant shall not be eligible for any stay of suspension or reinstatement from suspension until he has reimbursed the State Bar for any wind-down expenses incurred.

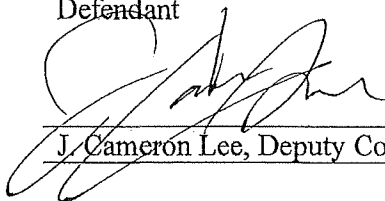
6. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code 1B.0118 until all conditions of the stay of the suspension are satisfied.

Signed by the Chair with the consent of the other Hearing Panel members, this the 6th day of March, 2020.


 Richard V. Bennett, Chair
 Disciplinary Hearing Panel

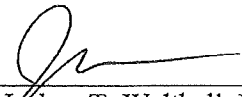
WE CONSENT.

 W. Andrew LeLiever
 Defendant

2/24/20
 Date


 J. Cameron Lee, Deputy Counsel

2/24/2020
 Date

Attorney for Plaintiff



Joshua T. Walthall, Deputy Counsel
Attorney for Plaintiff

2/24/2020

Date