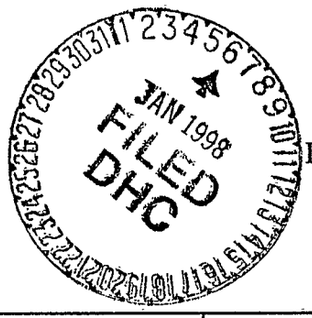

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WAKE COUNTY

NORTH CAROLINA

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
97 DHC 30

THE NORTH CAROLINA STATE BAR, Plaintiff vs. LORELL MADDOX, Attorney, Defendant	CONSENT FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF DISCIPLINE

This matter comes before a hearing committee of the Disciplinary Hearing Commission composed of Franklin E. Martin, Chair, Kenneth M. Smith and Catherine Sefcik. The Plaintiff was represented by Clayton W. Davidson, III, Deputy Counsel. The Defendant, Lorell Maddox was represented by Alan M. Schneider. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order, and to the discipline imposed. Based upon the consent of the parties, the hearing committee enters the following:

FINDINGS OF FACT

1. The Plaintiff, the North Carolina State Bar (the "State Bar") is a body duly organized under the laws of the State of North Carolina and is the proper body to bring this proceeding under the authority granted to it in Chapter 84 of the General Statutes of North Carolina and the rules and regulations of the State Bar promulgated pursuant thereto (the "State Bar Rules and Regulations").

2. The Defendant, Lorell Maddox (the "Defendant"), was admitted to the State Bar on or about August, 1989 and is, and was at all times referred to herein, an attorney at law

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licensed to practice in North Carolina subject to the State Bar Rules and Regulations and the Rules of Professional Conduct of North Carolina.

3. During all or a part of the relevant periods referred to herein, Defendant was engaging in the practice of law in the State of North Carolina and maintained a law office in Wilson, North Carolina.

4. On or about March 26, 1992, Michael J. Wilkinson ("Wilkinson") retained Defendant to represent him for injuries that he incurred in an automobile accident.

5. Wilkinson retained Defendant to bring claims against the other driver for negligence and against General Motors for products liability.

6. Defendant prepared and filed a summons and complaint on the products liability claim, but failed to have the summons and complaint served on General Motors. Defendant did not serve the summons and complaint because she did not believe that the summons and complaint were well grounded in law and fact.

7. The Defendant failed to either renew the summons or have an alias and pluries summons issued, resulting in the products liability claim being barred by the statute of limitations.

8. Wilkinson subsequently hired new counsel, Michael Anderson, who requested on behalf of his client that Defendant return the file.

9. Defendant failed to return the file in response to the requests by either Wilkinson or his new attorney. Defendant, if called, would testify that the file was misplaced in August or September of 1996, and that Defendant has been unable to locate it.

10. Wilkinson filed a grievance with the North Carolina State Bar in August, 1996.

11. On or about June 7, 1995, James Eddie Tyson ("Tyson") was injured in an automobile accident. He retained Defendant to handle the matter.

12. Tyson filed a grievance with the North Carolina State Bar alleging that Defendant failed to return his telephone calls and failed to keep him adequately informed as to the status of the matter. Defendant has denied the allegations of the grievance.

13. Misty Locus ("Locus") retained Defendant to handle a personal injury matter.

14. Locus filed a grievance with the North Carolina State Bar alleging that Locus was subsequently unable to communicate with Defendant about the file, that when Locus went to Defendant's office, Locus discovered that the office had been locked and the telephone disconnected, and that Defendant had not informed Locus of her intention to leave the practice of law, and did not inform Locus of her forwarding address. Defendant has denied the allegations of the grievance.

15. Defendant was being properly notified of the Wilkinson grievance, failed to respond to the grievance, and failed to respond to a follow-up letter from the Office of Counsel of the North Carolina State Bar requesting a response.

16. On or about November 7th, 1996, L. Thomas Lunsford II, Secretary of the North Carolina State Bar, issued a subpoena for Defendant to appear in the offices of the North Carolina State Bar and answer the grievances of Michael J. Wilkinson and Misty Locus.

17. The time for response was extended by agreement of the parties until November 21, 1996, at which time Defendant appeared.

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18. The Tyson grievance was filed in September, 1996. The Locus grievance was filed in October, 1996. Letters of notice for both of these grievances were served on Defendant by hand delivery on November 21, 1996.

19. In addition to the grievance files pending, there were two arbitration files pending at the offices of the North Carolina State Bar, Willie G. Gilyard ("Gilyard") file no. 97G0049(I), and Deborah Blount ("Blount") file no. 97G0050(I).

20. At the November 21, 1996 meeting, Defendant verbally responded to the allegations in all pending grievances and agreed to provide written responses to all pending grievances by December 21, 1996. Defendant failed to provide the responses by that time.

21. At the November 21, 1996 meeting, Defendant agreed to repay all amounts of the fees alleged in the Gilyard and Blount fee disputes. Defendant agreed to contact Gilyard and Blount within seven (7) days following the meeting to arrange for such payment. Defendant failed to do so. Defendant asserts that she was suffering from severe depression at the time that she undertook these agreements, and did not assert her entitlement to the fees alleged.

22. The North Carolina State Bar subsequently instituted grievance proceedings against Defendant for failure to participate in good faith in the Gilyard and Blount fee arbitration matters, file nos. 97G0049(I) and 97G0050(I) (the "Fee Arbitration Grievances").

23. Defendant was served with letters of notice in the Fee Arbitration Grievances on February 3, 1997.

24. Defendant failed to respond to the letters of notice on the Fee Arbitration Grievances.

25. All pending matters with Defendant were placed on the agenda for the April, 1997 meeting of the Grievance Committee, and Defendant was subpoenaed to appear at that meeting to answer all pending matters.

26. Pursuant to Rule .0113(a) of the Discipline and Disability Rules of the North Carolina State Bar, Defendant waived the necessity of finding probable cause in the matters on the agenda. Consequently, the matters were taken off of the Grievance Committee's agenda and Defendant was released from her obligation to appear pursuant to the subpoena.

27. On or about May 9, 1997, Defendant supplied written responses to all pending grievance matters for the first time.

Based on the forgoing findings of fact, the hearing committee enters the following:

CONCLUSIONS OF LAW

The Defendant's foregoing actions constitute grounds for discipline pursuant to NC GEN STAT § 84-28(b)(2) in that the Defendant violated the Rules of Professional Conduct as follows:

1. In violation of Rule 1.1(b) Defendant failed to respond to a lawful demand for information from a disciplinary authority.

2. In violation of Rule 6(b)(3) the Defendant failed to act with reasonable diligence and promptness in handling a client matter in that she agreed to file a claim on behalf of her client and then failed to have the summons and complaint served, and failed to renew the summons which resulted in the running of the statute of limitations as to the claim.

3. In violation of Rules 7.1(a)(1) and Rule 7.2(a)(2) the Defendant failed to seek the lawful objectives of her client, and failed to carry out a contract of employment with her client in that she did not have the complaint for the products liability claim served in sufficient time to

avoid the running of the statute of limitations, and failed to either renew the summons or have an alias and pluries summons issued in the matter.

FINDINGS OF FACT REGARDING DISCIPLINE

1. The Defendant's misconduct is aggravated by the following factors:

   a. a pattern of misconduct;

   b. multiple violations.

2. The Defendant's misconduct is mitigated by the following factors:

   a. absence of a prior disciplinary record prior to the filing of a complaint in this matter;

   b. personal or emotional problems;

   c. the Defendant has been diagnosed with a physical or mental impairment, and a course of treatment has been prescribed;

   d. remorse.

Based on the forgoing findings of fact and conclusions of law and findings regarding discipline and based on the consent of the parties, the hearing committee enters the following:

ORDER OF DISCIPLINE

1. The Defendant is hereby suspended from the practice of law for a period of one year, which suspension shall be stayed for two years provided that the Defendant complies with the following terms and conditions:

   a. The Defendant, at Defendant's expense, shall become a patient of a psychiatrist approved by the office of the counsel of the North Carolina State Bar (the "Doctor"), shall remain a patient during the period of the suspension except as otherwise provided in subparagraph b below, and shall comply with the course of treatment prescribed.

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b. At any point during the period of suspension, the Defendant shall immediately inform the North Carolina State Bar in writing if she ever ceases to be a patient, or otherwise fails to comply with course of treatment prescribed by the Doctor. The Defendant shall further instruct her Doctor to immediately inform the North Carolina State Bar if she ever ceases to be a patient, or otherwise fails to comply with course of treatment prescribed, shall authorize her doctor to release to the North Carolina State Bar information about her status as a patient upon the request of the North Carolina State Bar, and shall further authorize the Doctor to release to the North Carolina State Bar any and all medical records including but not limited to records detailing the course of treatment, any diagnosis, and the Defendant's prognosis. The Defendant shall submit written reports signed by her Doctor providing full details about her course of treatment, diagnosis and prognosis, and certifying that she remains a patient and is complying with the Doctor's prescribed treatment plan. The reports shall be filed at the same time that Defendants quarterly certifications are due under subparagraph f below. If Defendant is discharged by the Doctor prior to the end of the suspension period, then the Defendant shall file a report signed by her doctor indicating that no further treatment is required, and that in the opinion of the Doctor that the Defendant should be allowed to continue in the practice of law.

c. The Defendant shall violate no provisions of the Rules of Professional Conduct.

d. The Defendant shall violate no federal or state laws.

e. The Defendant shall pay all costs of this action within sixty (60) days from the date of this order.

f. The Defendant shall forward to the North Carolina State Bar quarterly certifications on the first day of February, April, July, and October of 1998, and the first day of January, April, July and October of 1999. The certifications shall certify that she is currently in

compliance with all of the terms and conditions of this order, and shall detail any instance of non-compliance that occurred after the date of this order, and that was not disclosed to the North Carolina State Bar by the Defendant in a previous quarterly certification. The first certification shall be due February 1, 1998, or ten days from the entry of this order if the order is not entered before February 1, 1998.

2. The Defendant has an interest in keeping confidential those records that are subject to the physician-patient privilege, which interest overrides any interest of the public in obtaining disclosure of those records. That overriding interest cannot be protected by any measure short of sealing the records so produced. The Office of Counsel of the North Carolina State Bar shall keep confidential all Doctor's reports, or other medical records obtained by the Bar pursuant to subparagraph 1a above, and shall not disclose those records to any person other than employees of the North Carolina State Bar, except pursuant to an order of the Disciplinary Hearing Commission, or other court of competent jurisdiction. The Defendant's consent to this order shall not be deemed to be a waiver of the physician patient privilege for any purpose other than for production of documents and information as required by this consent order.

Signed by the Chair with the consent of the other hearing committee members this 29th day of December, 1997.

Hearing Committee Chair

CONSENTED TO:

Clayton W. Davidson, III
Attorney for the Plaintiff

Alan M. Schneider
Attorney for the Defendant

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