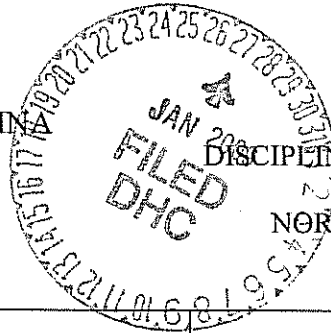


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
08 DHC 3

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

FREDRICK R. PIERCE, Attorney,

Defendant

CONSENT ORDER

This matter was considered by a Hearing Committee of the Disciplinary Hearing Commission composed of T. Richard Kane, Chair, M. H. Hood Ellis, and Pamela U. Weis. Margaret T. Cloutier represented the Plaintiff, the North Carolina State Bar. The Defendant, Fredrick R. Pierce, 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. Defendant freely and voluntarily waives any and all right to appeal the entry of this consent order of discipline. Based upon the stipulations of fact and the consent of the parties, the Hearing Committee makes the following findings of fact by clear, cogent, and convincing evidence:

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, Fredrick R. Pierce, was admitted to the North Carolina State Bar on or about March 24, 2001 and is, and was at all times referred to herein, an attorney licensed to practice law 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. Defendant's license to practice law was suspended for two years effective May 19, 2006, which suspension was stayed for three years upon certain terms and conditions.

4. At all times referred to herein, Defendant was engaged in the practice of law in the State of North Carolina and maintained a law office in the city of Raleigh, Wake County, North Carolina.

5. Defendant was properly served with the summons and complaint in this action.

6. Defendant waived hearing and consented to entry of this Order.

7. On January 19, 2007 Norvej Scott filed a petition for resolution of disputed fee with the North Carolina State Bar pursuant to 27 N.C.A.C. 1D §.0700. Scott's fee dispute petition was designated file number 07FD0033.

8. By letter dated February 13, 2007 Joseph W. Eason (hereinafter "Eason") Chair of the Tenth Judicial District Bar Fee Dispute Resolution Committee notified Defendant of Scott's petition by sending Defendant a copy of the petition and directed Defendant to respond to the petition by March 6, 2007. Defendant received Eason's February 13, 2007 letter by certified mail on February 15, 2007.

9. Defendant failed to respond to Eason's February 13, 2007 letter.

10. By letter dated March 12, 2007 Eason reminded Defendant that his response to Scott's petition had not been received and directed that he respond by March 19, 2007. Defendant received Eason's March 12, 2007 letter by certified mail on March 13, 2007.

11. Defendant failed to respond to Eason's March 12, 2007 letter.

12. After receiving no response to the fee dispute, the Tenth Judicial District Bar Fee Dispute Resolution Committee closed the fee dispute file and referred Defendant's file to the disciplinary department of the North Carolina State Bar where a grievance file was opened and assigned file number 07G0394.

13. On May 17, 2007, pursuant to 27 N.C.A.C. 1B §.0112(b), the Chair of the Grievance Committee sent Defendant a Letter of Notice accompanied by a Substance of the Grievance. Defendant received the Letter of Notice and its attachment by certified mail on June 9, 2007.

14. Pursuant to 27 N.C.A.C. 1B §.0112(c) Defendant was required to respond to the letter of notice within 15 days of receipt.

15. Defendant failed to respond to the letter of notice within 15 days. On July 12, 2007, Respondent delivered to the North Carolina State Bar a response to the Letter of Notice.

16. On May 24, 2007 Glenn Guy filed a petition for resolution of disputed fee with the North Carolina State Bar pursuant to 27 N.C.A.C. 1D §.0700. Guy's fee dispute petition was designated file number 07FD0279.

17. By letter dated June 20, 2007 Joseph W. Eason (hereinafter "Eason") Chair of the Tenth Judicial District Bar Fee Dispute Resolution Committee notified Defendant of Guy's petition by sending Defendant a copy of the petition and directed Defendant to respond to the petition by July 11, 2007. Defendant received Eason's June 20, 2007 letter by certified mail on June 21, 2007.

18. Defendant failed to respond to Eason's June 20, 2007 letter.

19. After receiving no response to the fee dispute, the Tenth Judicial District Bar Fee Dispute Resolution Committee closed the fee dispute file and referred Defendant's file to the disciplinary department of the North Carolina State Bar where a grievance file was opened and assigned file number 07G0850.

20. On August 24, 2007, pursuant to 27 N.C.A.C. 1B §.0112(b), the Chair of the Grievance Committee sent Defendant a Letter of Notice accompanied by a Substance of the Grievance. Defendant received the Letter of Notice and its attachment by certified mail on September 1, 2007.

21. Pursuant to 27 N.C.A.C. 1B §.0112(c) Defendant was required to respond to the letter of notice within 15 days of receipt. Defendant failed to respond to the letter of notice within 15 days.

22. In November 2006 Frances J. Wright engaged Defendant to represent Wright in a pending action for equitable distribution. Wright filed with the North Carolina State Bar a grievance against Defendant to which was assigned file number 07G0847.

23. On August 24, 2007, pursuant to 27 N.C.A.C. 1B §.0112(b), the Chair of the Grievance Committee sent Defendant a Letter of Notice accompanied by a Substance of the Grievance. Defendant received the Letter of Notice and its attachment by certified mail on September 1, 2007.

24. Pursuant to 27 N.C.A.C. 1B §.0112(c) Defendant was required to respond to the letter of notice within 15 days of receipt. Defendant failed to respond to the letter of notice within 15 days.

25. In January 2005 Ronald Mayberry engaged Defendant to represent Mayberry on pending federal criminal charges. Mayberry's criminal matter was tried in Federal Court on June 8, 2006. Mayberry was sentenced on January 29, 2007 and under the Federal Rules of Criminal Procedure Mayberry had ten days during which to file an appeal.

26. On several occasions after the trial and both before and after sentencing Mayberry and/or his wife asked Defendant about filing an appeal. Defendant did not advise Mayberry about his rights pertaining to an appeal.

27. Before terminating his representation of Mayberry, Defendant did not protect Mayberry's rights by filing a notice of appeal on Mayberry's behalf within the time limits.

28. In July 2007 Jermaine Johnson engaged Defendant to represent Johnson for a traffic citation in Wake County District Court. Johnson paid Defendant \$300.00 for the representation.

29. Defendant did not appear in court on Johnson's behalf.

30. In January 2008 Johnson received notification from the North Carolina Department of Motor Vehicles (DMV) that Johnson's driver's license was set to be revoked for his failure to appear in court.

31. Thereafter, Johnson spoke to Defendant about the DMV notice. Defendant asserted to Johnson that Defendant would take care of the matter in court to avoid the suspension of Johnson's license.

32. Defendant did not appear in court on Johnson's behalf to resolve the pending traffic ticket and to resolve the revocation of Johnson's driver's license. In March 2008 Johnson discovered that his driver's license has been suspended by the DMV and that no action had been taken in court on his behalf.

33. On March 25, 2008 Johnson filed a petition for resolution of disputed fee with the North Carolina State Bar pursuant to 27 N.C.A.C. 1D §.0700. Johnson's fee dispute petition was designated file number 08FD0204.

34. By letter dated March 25, 2008 Krista L. Bathurst (hereinafter "Bathurst") Mediator for the North Carolina State Bar Fee Dispute Resolution Program notified Defendant of Johnson's petition by sending Defendant a copy of the petition and directed Defendant to respond to the petition within fifteen days of the date of receipt. Defendant received Bathurst's March 24, 2008 letter by certified mail on April 19, 2008.

35. Defendant failed to respond to Bathurst's March 25, 2008 letter.

36. After receiving no response to the fee dispute, the North Carolina State Bar Fee Dispute Resolution Program closed the fee dispute file and referred Defendant's file to the disciplinary department of the North Carolina State Bar where a grievance file was opened and assigned file number 08G0758.

37. On June 19, 2008, pursuant to 27 N.C.A.C. 1B §.0112(b), Counsel of the North Carolina State Bar sent Defendant a Letter of Notice accompanied by a Substance of the Grievance. Defendant received the Letter of Notice and its attachment by certified mail on June 21, 2008.

38. Pursuant to 27 N.C.A.C. 1B §.0112(c) Defendant was required to respond to the letter of notice within 15 days of receipt. Defendant failed to respond to the letter of notice within 15 days.

39. In November 2003 Michael White engaged Defendant to represent White in a civil action filed in Wake County District Court against White regarding a contract dispute captioned Debra Chavis v. Michael White, docket no. 03 CVD 15034.

40. Defendant did not file a responsive pleading on White's behalf in the civil action and as a result, the Clerk entered default against White. Thereafter, plaintiff's counsel obtained a default judgment against White.

41. Defendant filed motions to set aside the default and to set aside the default judgment, but Defendant's efforts were ultimately unsuccessful.

42. Defendant entered into an agreement with White providing that Defendant would personally pay the money judgment entered in favor of plaintiff and against White. Before entering into the agreement with White to pay the judgment against White, Defendant did not advise White in writing to seek the advice of other legal counsel. Defendant did not pay the entire money judgment against White.

43. White filed with the North Carolina State Bar a grievance against Defendant to which was assigned file number 08G0365. On March 26, 2008, pursuant to 27 N.C.A.C. 1B §.0112(b), the Counsel to the North Carolina State Bar sent Defendant a Letter of Notice accompanied by a Substance of the Grievance. Defendant received the Letter of Notice and its attachment by certified mail on April 19, 2008.

44. Pursuant to 27 N.C.A.C. 1B §.0112(c) Defendant was required to respond to the letter of notice within 15 days of receipt. Defendant failed to respond to the letter of notice within 15 days.

45. On June 18, 2007 Rebecca Loney-Beckford filed a petition for resolution of disputed fee with the North Carolina State Bar pursuant to 27 N.C.A.C. 1D §.0700. Beckford's fee dispute petition was designated file number 07FD0324. By letter dated July 16, 2007 Joseph W. Eason (hereinafter "Eason") Chair of the Tenth Judicial District Bar Fee Dispute Resolution Committee notified Defendant of Beckford's petition by sending Defendant a copy of the petition and directed Defendant to respond to the petition by August 6, 2007. Defendant received Eason's July 16, 2007 letter by certified mail on July 18, 2007.

46. Defendant failed to timely respond to Eason's July 16, 2007 letter in that he submitted a response on August 23, 2007.

47. The mediator assigned to the matter requested additional information from Defendant. Defendant failed to submit the additional information requested by the

mediator, despite assuring the mediator on or about October 9, 2007 he would comply with the mediator's request.

48. On November 5, 2007 Jeff Crawford filed a petition for resolution of disputed fee with the North Carolina State Bar pursuant to 27 N.C.A.C. 1D §.0700. Crawford's fee dispute petition was designated file number 07FD0589.

49. By letter dated November 20, 2007 Joseph W. Eason (hereinafter "Eason") Chair of the Tenth Judicial District Bar Fee Dispute Resolution Committee notified Defendant of Crawford's petition by sending Defendant a copy of the petition and directed Defendant to respond to the petition by December 11, 2007. Defendant received Eason's November 20, 2007 letter by certified mail shortly after November 20, 2007 as Defendant acknowledged to the assigned mediator in a telephone conversation.

50. Although Defendant refunded fees to Crawford, Defendant failed to respond to Eason's November 20, 2007 letter.

51. On July 9, 2008 Reggie Gilchrist filed a petition for resolution of disputed fee with the North Carolina State Bar pursuant to 27 N.C.A.C. 1D §.0700. Gilchrist's fee dispute petition was designated file number 08FD0409.

52. By letter dated July 9, 2008 Krista L. Bathurst (hereinafter "Bathurst") Mediator with the North Carolina State Bar Fee Dispute Resolution Program notified Defendant of Gilchrist's petition by sending Defendant a copy of the petition and directed Defendant to respond to the petition within fifteen days of receipt of the letter.

53. Defendant did not sign for Bathurst's July 9, 2008 letter and the letter was returned by the postal service marked "Unclaimed".

54. Bathurst sent a copy of her July 9, 2008 letter to Defendant by fax on August 4, 2008. On or about August 20, 2008 Bathurst spoke to Defendant on the telephone, during which conversation Defendant acknowledged receiving Bathurst's July 9, 2008 notification of Gilchrist's fee dispute and asserted he would respond to the fee dispute by "this Friday" [August 22, 2008].

55. Defendant failed to respond to Bathurst's July 9, 2008 letter.

Based on the foregoing Findings of Fact, the Hearing Committee makes the following:

CONCLUSIONS OF LAW

1. All the parties are properly before the Hearing Committee and the Committee has jurisdiction over Defendant, Fredrick R. Pierce, and over the subject matter.

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)(2) as follows:

a. by failing to respond to the notices of petition for fee dispute resolution sent by the Tenth Judicial District Fee Dispute Resolution regarding Norvej Scott, Glenn Guy, Rebecca Loney-Beckford, and Jeff Crawford, Defendant failed to participate in good faith with the fee dispute resolution process of the North Carolina State Bar in violation of Rule 1.5(f);

b. by failing to respond to the notices of petition for fee dispute resolution sent by the North Carolina State Bar Fee Dispute Resolution Program regarding Jermaine Johnson and Reggie Gilchrist, Defendant failed to participate in good faith with the fee dispute resolution process of the North Carolina State Bar in violation of Rule 1.5(f);

c. by failing to respond to the Letters of Notice within the time provided by rule regarding Norvej Scott, Glenn Guy, Frances Wright, Jermaine Johnson, and Michael White, Defendant knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b);

d. by failing to perform the legal services for which he was engaged by Glenn Guy, Jermaine Johnson and Michael White, and by failing to advise Mayberry regarding his rights of appeal, Defendant did not act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;

e. by failing to return Glenn Guy's telephone calls or otherwise communicate with Guy, Defendant failed to keep his client reasonably informed about the status of the representation and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(3) and (4);

f. by receiving \$2,500.00 from Guy and \$300.00 from Johnson and not performing the work agreed upon, Defendant charged and collected clearly excessive fees in violation of Rule 1.5(a);

g. by failing to return unearned fees to Guy, Defendant did not take steps reasonably necessary to protect the client's interests in violation of Rule 1.16(d) and did not promptly pay or deliver to the client entrusted property belonging to the client and to which the client was currently entitled in violation of Rule 1.15-2(a) and (m);

h. by failing to file a notice of appeal on Mayberry's behalf before terminating his representation of Mayberry, Defendant did not take steps to protect a client's interest in violation of Rule 1.16(d); and

i. by entering into the agreement with White to pay the judgment against White without advising White in writing to seek the advice of other legal counsel, Defendant entered into a business transaction with a client without advising the client in writing of

the desirability of seeking the advice of independent legal counsel on the transaction in violation of Rule 1.8(a).

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the evidence and the consent of the parties concerning appropriate discipline, the Hearing Committee hereby makes additional

FINDINGS REGARDING DISCIPLINE

1. The Hearing Committee finds the following aggravating factors:

- a. Defendant has engaged in a pattern of misconduct;
- b. Defendant has engaged in multiple offenses; and
- c. Defendant has prior discipline as follows:
 - i. Defendant received an Admonition from the Grievance Committee in file number 04G0987 in January 2005 for a violation of Rule 1.3 of the Revised Rules of Professional Conduct; and
 - ii. Defendant's license was suspended for two years, which suspension was stayed for three years, by Order of the Disciplinary Hearing Commission dated April 13, 2006 for violation of Rules 1.3, 1.4, 1.5, 1.16 and 8.4.

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

- a. Defendant has a cooperative attitude toward this disciplinary proceeding;
- b. Absence of a dishonest or selfish motive; and
- c. Personal or emotional problems.

3. The aggravating factors outweigh the mitigating factors.

4. Defendant has engaged in conduct that has caused significant harm to his clients. Glenn Guy paid Defendant \$2,500.00 for services that were not performed. Defendant returned one-half of those fees to Guy only after the complaint in this matter had been filed. Mr. Mayberry was able to appeal his case only after engaging another attorney to petition the court. Mr. Johnson's license was revoked and he had to pay an additional \$50 to have it restored. Mr. White had a judgment entered against him. None of the clients who attempted to address their concerns through the fee dispute resolution

program were able to resolve their disputes because Defendant failed to participate in the process.

5. Defendant's conduct caused harm to the standing of the legal profession, undermining his clients' trust and confidence in lawyers and in the legal system.

6. Defendant's failure to participate in the mandatory fee dispute resolution process and the grievance process interfered with the State Bar's ability to regulate attorneys which tends to undermine the privileges of lawyers in this state to remain self-regulating.

7. Defendant has previously engaged in similar conduct as set forth in the Consent Order of Discipline in file 05 DHC 42 dated April 13, 2006. Although Defendant's interactions with his clients described above regarding Mr. Guy and Mr. White occurred before the entry of the 2006 order, his interactions with Mr. Mayberry and Mr. Johnson occurred since the entry of that order. In addition, all of the conduct described above regarding Defendant's failure to participate in the fee dispute program and the grievance process occurred after the entry of the April 2006 order. This evidences Defendant's unwillingness to learn from prior discipline and to adhere to the rules and regulations governing the conduct of all attorneys in this state.

8. This Hearing Committee has considered lesser alternatives and finds that a public censure or reprimand would not be sufficient discipline because of the gravity of the harm and potential harm caused by Defendant's conduct to the public and to his clients.

9. For the reasons cited above, this Hearing Committee believes and so finds that an Order of Discipline suspending Defendant's license to practice law is necessary and appropriate to protect the public.

10. In considering the appropriate discipline, the Hearing Committee has considered the personal and emotional issues described by Defendant in his letter to the North Carolina State Bar dated July 11, 2007, introduced at the hearing as Plaintiff's Exhibit 9. The Committee determines that these issues might have contributed to Defendant's conduct and must be addressed by Defendant before he continues in the practice of law.

Based upon the foregoing findings of fact and conclusions of law and based upon the consent of the parties, the Hearing Committee hereby enters the following:

ORDER OF DISCIPLINE

1. Defendant's license to practice law in the State of North Carolina is hereby suspended for four years effective thirty days after service of this Order of Discipline on Defendant.

2. Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than thirty days following service of this Order on Defendant.

3. Defendant shall comply with the wind down provisions contained in 27 N.C.A.C. 1B, §.0124, the North Carolina State Bar Discipline and Disability Rules. Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within ten days of the effective date of this Order of Discipline certifying he has complied with the wind down rule.

4. Within fifteen days of the effective date of this Order, Defendant will provide the State Bar with a street address and mailing address at which clients seeking return of their files and records in Defendant's possession or control may obtain such files and records and at which the State Bar may serve any notices or other matters upon him.

5. After the completion of eighteen months of active suspension of his license, Defendant may apply for a stay of the balance of the suspension upon filing a petition with the Secretary of the North Carolina State Bar at least thirty days before any proposed effective date of the stay and demonstrating the following by clear, cogent and convincing evidence:

a. That Defendant has kept the North Carolina State Bar Membership Department advised of his current business and home addresses and notified the Bar of any change in address within ten days of such change;

b. That Defendant has responded to all communications from the North Carolina State Bar, including communications from the Attorney Client Assistance Program, within thirty days of receipt or by the deadline stated in the communication, whichever is sooner, and has participated in good faith in the State Bar's fee dispute resolution process for any petition received after the effective date of this Order;

c. That Defendant has not violated the Rules of Professional Conduct or the laws of the United States or any state or local government during his suspension;

d. That Defendant has properly wound down his law practice and complied with the requirements of 27 N.C.A.C. 1B, §.0124, the North Carolina State Bar Discipline and Disability Rules;

e. That Defendant has complied with the requirements of 27 N.C.A.C. 1B, §.0125(b), the North Carolina State Bar Discipline and Disability Rules;

f. That within six months of the date of this Order Defendant made restitution to Jermaine Johnson in the amount of \$350.00 representing fees and license restoration costs;

g. That within three months before the filing of his petition applying for stay of his suspension, Defendant has 1) obtained, at his own expense, an evaluation by a qualified psychiatrist or psychologist approved by the Office of Counsel for the purpose of determining if Defendant has any mental, psychological or physical impairment, addiction, substance dependence, personality disorder or other condition or illness that would affect his ability to practice law and comply with the rules of Professional Conduct or cause harm to the public if he is allowed to resume the practice of law, 2) served the North Carolina State Bar with a copy of a written report of the psychiatrist/psychologist with his petition for stay, and 3) executed written waivers and releases authorizing the Office of Counsel to confer with Defendant's psychiatrist/psychologist for the purpose discussing all aspects of the psychiatrist/psychologist's evaluation, report, opinions and recommendations;

h. That Defendant has paid the costs of this proceeding in accordance with the statement of costs within sixty days of service upon him by the Secretary of the North Carolina State Bar; and

i. That Defendant has complied with all provisions of the Order Lifting Stay and Activating Suspension in 05 DHC 42.

6. If Defendant successfully seeks a stay of the suspension of his law license, such stay will continue in force only as long as he complies with the following conditions:

a. Defendant shall keep the North Carolina State Bar Membership Department advised of his current business and home addresses;

b. Defendant shall respond to all communications from the North Carolina State Bar, including communications from the Attorney Client Assistance Program, within thirty days of receipt or by the deadline stated in the communication, whichever is sooner, and participate in good faith in the State Bar's fee dispute resolution process for any petition received during the stay;

c. Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or any state or local government during his suspension;

d. Defendant shall timely comply with all State Bar membership and continuing legal education requirements and shall pay all fees and costs assessed by the applicable deadline;

e. Defendant shall comply with all treatment, if any, prescribed by a psychiatrist and/or psychologist. If any such treatment is recommended, Defendant shall ensure that the mental health professional provides written reports to the State Bar Office of Counsel concerning Defendant's compliance with the treatment plan each quarter during the stayed suspension. The reports shall be due each January 1, April 1, July 1 and October 1 throughout the stayed suspension. All expenses of such treatment and reports shall be borne by Defendant;

f. Defendant shall execute written waivers and releases authorizing the Office of Counsel to confer with Defendant's psychiatrist/psychologist for the purpose of determining if Defendant has cooperated and complied with all requirements of treatment and Defendant shall not revoke such releases during the period of stayed suspension; and

g. Defendant shall comply with all provisions of the Order Lifting Stay and Activating Suspension in 05 DHC 42.

7. If Defendant fails to comply with any of the conditions of the stayed suspension provided in paragraph 6 above, the stay of the suspension may be lifted as provided in §.0114(x) of the North Carolina State Bar Discipline and Disability Rules.

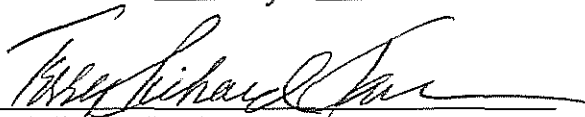
8. If Defendant does not seek a stay of the active portion of the suspension or if some part of the suspension is stayed and thereafter the stay is revoked, Defendant must comply with the conditions set out in paragraphs 5(a) through (i) above before seeking reinstatement of his license to practice law.

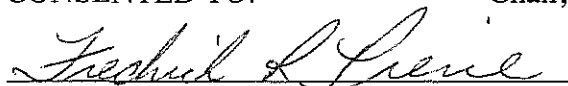
9. The terms of this Order shall run concurrently with the terms of the Order Lifting Stay and Activating Suspension in 05 DHC 42.

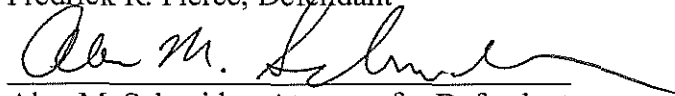
10. Defendant is taxed with the costs of this action as assessed by the Secretary.

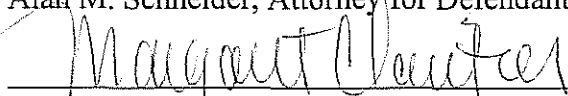
Signed by the Chair of the Hearing Committee with the consent of the other Hearing Committee members, this the 26th day of JANUARY, 2009.

CONSENTED TO:


Chair, Disciplinary Hearing Committee


Fredrick R. Pierce, Defendant


Alan M. Schneider, Attorney for Defendant


Margaret T. Cloutier, Attorney for Plaintiff