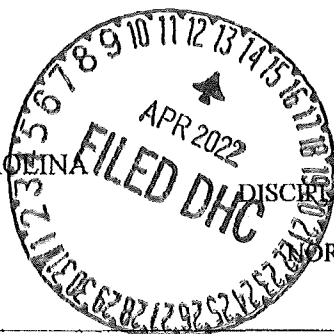


STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
21 DHC 11

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

THOMAS O. HARPER, III, Attorney,

Defendant

CONSENT ORDER OF
DISCIPLINE

THIS MATTER was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Fred W. DeVore, III, Chair, James A. Davis, and Holly Audette pursuant to 27 N.C. Admin. Code 18.0114. J. Cameron Lee represented Plaintiff, the North Carolina State Bar. Douglas J. Brockner and Dauna L. Bartley represented Defendant, Thomas O. Harper, III.

Defendant waives a formal hearing in this matter and the parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Defendant consents to entry of this order of discipline and freely and voluntarily waives any right to appeal this consent order or to challenge in any way the sufficiency of the findings contained herein.

Based upon the pleadings, the parties' stipulations of fact, and with 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 ("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, Thomas O. Harper, III, was admitted to the North Carolina State Bar in 1995, and is, and was at all relevant periods 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. Defendant was admitted to the Georgia State Bar in 1996.

4. During all or part of the relevant periods referred to herein, Defendant was engaged in the practice of law in the State of Georgia and maintained a law office in Atlanta, Fulton County, Georgia.

5. During the calendar years 2013, 2014, 2015, 2016, and 2017, Defendant's income exceeded the minimum threshold above which an individual is required to file federal and Georgia state income tax returns.

6. For the calendar years 2013, 2014, 2015, 2016, and 2017, Defendant was aware of the deadlines for filing federal and Georgia state income tax returns and paying any tax liability.

7. Defendant failed to file, within the times required by law, federal income tax returns for tax years 2013, 2014, 2015, 2016, and 2017.

8. Defendant failed to file, within the times required by law, Georgia state income tax returns for tax years 2013, 2014, 2015, 2016, and 2017.

9. Defendant failed to pay, within the times required by law, his federal income tax liability for tax years 2013, 2014, 2015, 2016, and 2017.

10. Defendant failed to pay, within the times required by law, his Georgia state income tax liability for tax years 2013, 2014, 2015, 2016, and 2017.

11. Willful failure to file federal income tax within the time required by law in violation of 26 U.S.C. § 7203 is a misdemeanor offense.

12. Willful failure to file and pay Georgia income tax in violation of Ga. Code Ann. § 48-1-6(a)(3) is a misdemeanor offense.

13. On 11 August 2016, Defendant's ex-wife, K. Harper, obtained a Family Violence Protection Order ("FVPO") against Defendant.

14. The FVPO was effective until 10 August 2017.

15. The terms of the FVPO prohibited Defendant from having "any contact, direct, indirect or through another person with [K. Harper], by telephone, fax, e-mail or any other means of communication."

16. In or around December of 2016 and January of 2017, Defendant sent more than twenty e-mails (the "e-mails") to K. Harper.

17. In some of the e-mails, Defendant threatened K. Harper with legal action and made derogatory statements about her.

18. As a result of these emails from months prior, on 18 April 2017, K. Harper filed a complaint against Defendant for felony aggravated stalking with the Atlanta Police Department (APD).

19. On 28 June 2017, a Fulton County Magistrate issued a warrant for Defendant's arrest for aggravated stalking.

20. Pursuant to Ga. Code Ann. § 16-5-91, it is a felony offense for a person to contact another person "in violation of a temporary protective order ... without the consent of the other person for the purpose of harassing or intimidating the other person."

21. On 1 July 2017, APD Officer Herbert responded to a call at the home of K. Harper's friend, E. Smith.

22. Upon Officer Herbert's arrival, E. Smith told Officer Herbert that Defendant had come onto her property while intoxicated and, after being told to leave, had written "Fuck U" on E. Smith's front door and had refused to leave the property.

23. E. Smith also told Officer Herbert about the warrant for Defendant's arrest for aggravated stalking.

24. Officer Herbert arrested Defendant on the warrant for felony aggravated stalking and for the additional charge of misdemeanor criminal trespass regarding the incident at E. Smith's home.

25. On 20 December 2018, Defendant pleaded guilty to three counts of misdemeanor stalking and one count of misdemeanor criminal trespass in *State of Georgia v. Thomas O. Harper, III* 17SC154759 (Fulton County Superior Court). The three felony charges of aggravated stalking against Defendant were dismissed in connection with his guilty plea to the misdemeanor offenses.

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

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Disciplinary Hearing Commission has jurisdiction over Defendant, Thomas O. Harper, III, 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)(2) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of his actions as follows:

(a) By failing to timely file and pay his 2013, 2014, 2015, 2016 and 2017 federal income taxes in violation of 26 U.S.C. § 7203 and by failing to file and pay his

2013, 2014, 2015, 2016 and 2017 Georgia state income taxes in violation of Ga. Code Ann. § 48-1-6(a)(3), Defendant committed criminal acts that reflect adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rule 8.4(b); and

(b) By willfully violating the terms of the FVPO without K. Harper's consent and by trespassing on E. Smith's property, Defendant committed criminal acts that reflect adversely on Defendant's fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

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

ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1-25 are reincorporated as if fully set forth herein.
2. The State Bar is voluntarily dismissing the first claim for relief in the complaint wherein it alleged, inter alia, that Defendant engaged in the unauthorized practice of law in violation of Rule 5.5(a). The legal service Defendant provided to the North Carolina clients was limited to advice regarding like-kind exchanges of real property under Section 1031 of the United States Internal Revenue Code. Accordingly, the State Bar cannot prove the violations in paragraphs (a)-(c) of the complaint.
3. The public expects that attorneys will abide by the law. Defendant's conduct showed disregard for his obligation to obey the laws of the United States and of the State of Georgia, and caused significant harm to the profession, to the public, and to the administration of justice.
4. Willful failure to file tax returns is expressly identified in the non-exhaustive list of crimes contained in 27 N.C. Admin. Code 1B § .0103(17), the definition of criminal offenses reflecting professional unfitness.
5. Defendant's conduct had the potential to cause significant harm to the standing of the legal profession in the eyes of the public. When lawyers violate the law in their personal affairs, it brings disrepute upon the legal profession and undermines public confidence in lawyers.
6. Defendant voluntarily reported all the misconduct at issue in this matter to the State Bar, which was the sole basis for opening the grievance, and has been cooperative throughout the disciplinary process.
7. For each of the tax years described herein, Defendant filed requests for extensions of time to file his tax returns whereupon he acknowledged his estimated tax liability for the corresponding tax year.

8. Defendant has accepted responsibility for and acknowledged the wrongful nature of his misconduct as evidenced by his stipulation to the Rule violations enumerated in this order and by his consent to the discipline imposed by this order.

9. As a result of Defendant's criminal conduct set forth in Findings of Fact 13-25, Defendant spent two and a half months in the Fulton County Jail.

10. During the period described herein, Defendant was experiencing personal problems, including his very contentious divorce and subsequent child custody dispute. The resulting stress – both personal and financial – and uncertainty significantly contributed to Defendant's misconduct.

11. During the period described herein, and because of the stress and strain described in the foregoing paragraph, Defendant began abusing alcohol and prescription medication. Defendant's substance abuse significantly contributed to Defendant's misconduct.

12. Defendant has taken steps to address his past substance abuse, including participating in intensive outpatient treatment, which he completed in 2017.

13. Defendant has an excellent reputation in his community as evidenced by various character letters submitted by members of the Wake County, North Carolina and Fulton County, Georgia legal communities.

14. Defendant has no prior professional discipline.

15. Defendant has retained the services of a tax attorney, voluntarily disclosed to Federal and State tax authorities his failure to file tax returns during the period described herein, and complied with the tax authorities' directives regarding delinquent filings.

CONCLUSIONS WITH RESPECT TO DISCIPLINE

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

2. The Hearing Panel considered all the factors enumerated in 27 N.C.A.C. 1B.0116(f)(1) and concludes that the following factors warranting consideration of suspension of Defendant's license are applicable in this case:

(a) Factor (B): Intent of the Defendant to commit acts where the harm or potential harm is foreseeable;

(b) Factor (E): Negative impact of Defendant's actions on client's or public's perception of the profession;

(c) Factor (F): Negative impact of Defendant's actions on the administration of justice; and

(d) Factor (H): Effect of Defendant's conduct on third parties.

3. The Hearing Panel has considered all the factors enumerated in 27 N.C.A.C. 1B.0116(f)(2) and concludes that none of the factors warranting disbarment are applicable in this case.

4. The Hearing Panel has considered all the factors enumerated in 27 N.C.A.C. 1B.0116(f)(3) and concludes that the following factors are applicable in this case:

(a) Factor (A): Absence of prior disciplinary offenses;

(b) Factor (D): Timely good faith efforts to make restitution or to rectify consequences of misconduct;

(c) Factor (G): Multiple offenses;

(d) Factor (H): Effect of any personal or emotion problems on the conduct in question;

(e) Factor (I): Effect of any physical or mental disability or impairment on the conduct in question;

(f) Factor (J): Interim rehabilitation;

(g) Factor (K): Full and free disclosure to the hearing panel and cooperative attitude toward the proceedings;

(h) Factor (O): Remorse;

(i) Factor (Q): Excellent character and reputation; and

(j) Factor (U): Imposition of other penalties or sanctions.

5. The Hearing Panel has considered lesser alternatives and finds that a censure, reprimand, or admonition would be insufficient discipline because of the significant harm or potential harm to the public, the administration of justice, and legal profession caused by Defendant's misconduct.

6. The Hearing Panel finds that, though Defendant's conduct is serious enough to warrant more than a censure, it does not warrant an active suspension of Defendant's law license.

7. The Hearing Panel finds that a stayed suspension of Defendant's law license adequately protects the public, acknowledges the seriousness of his misconduct, and sends the proper message to lawyers and to the public about the conduct expected from members of the Bar of this State.

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

ORDER OF DISCIPLINE

1. Defendant, Thomas O. Harper, III, is hereby suspended from the practice of law for two years, effective thirty days from service of this Order upon Defendant.
2. Defendant is taxed with the costs and administrative fees of this action as assessed by the Secretary. Defendant shall pay the costs and administrative fees associated with this action within thirty days of service of notice of costs and administrative fees upon Defendant.
3. The two-year suspension is stayed for a period of two years so long as Defendant complies, and, during the period of the stay, remains in continuous compliance with the following conditions:
 - (a) Defendant shall execute all written waivers and releases necessary to authorize the Internal Revenue Service, the Georgia Department of Revenue, the North Carolina Department of Revenue, and the Department of Revenue of any other jurisdiction in which Defendant is obligated to file and/or pay taxes to release information to the Office of Counsel ("OOC") relating to Defendant's compliance or noncompliance with tax laws and his compliance or noncompliance therewith for the purpose of determining whether Defendant has cooperated and complied with all requirements of this Order. Defendant shall not revoke these waivers and releases at any time during the period of the stay;
 - (b) During the period of the stay, Defendant shall timely file his federal and state income tax returns, along with any associated schedules and attachments thereto, and shall provide proof of these filings to the OOC within thirty days of filing;
 - (c) During the period of the stay, Defendant shall timely satisfy all of his obligations to pay taxes, fines, penalties, interest, and estimated taxes assessed against him;
 - (d) Within thirty days of the effective date of this order, Defendant shall be evaluated by a clinician approved by the OOC who specializes in treatment of substance abuse and addiction. The evaluating clinician shall not be a provider from whom Defendant has received or will receive ongoing treatment. Within thirty days of the evaluation, the evaluating clinician shall submit to the OOC a written report of the results of the evaluation, to include treatment recommendations. Defendant will sign all necessary releases and other documents authorizing the evaluating clinician to release the report to the OOC and to respond to requests for information from the OOC about the evaluation. Defendant shall be solely responsible for paying all costs associated with compliance with this paragraph;

(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 OOC quarterly reports detailing the nature of the ongoing treatment and detailing Defendant's compliance or noncompliance with the treatment recommendations of the evaluating clinician. The reports will be due by January 15, April 15, July 15, and October 15 for the duration of any treatment recommended to Defendant by the evaluating clinician. It shall be Defendant's obligation to ensure that the reports are timely submitted. Defendant shall sign all releases and other documents authorizing the treating clinician(s) to make these reports available to the OOC and to respond to requests for information from the OOC about Defendant's condition, treatment, and compliance or noncompliance with the treatment recommended by the clinician. Notwithstanding the disclosures to the OOC pursuant to this Order, the records and information provided concerning Defendant's evaluation, any diagnosis, treatment, and potential treatment shall remain confidential and not become a public record, unless and until there are additional proceedings before the DHC. Defendant shall be solely responsible for paying all costs associated with compliance with this paragraph;

(f) Within twelve months of the effective date of this order, Defendant shall attend at least three 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 keep the State Bar's Membership Department advised of his current business and home addresses and shall notify the Bar of any change in address within ten days of such change. Defendant's current business address must be a street address, not a post office box or drawer;

(h) Defendant shall promptly accept service of all certified mail sent to him by the State Bar and shall respond to all communication from the State Bar within 30 days of receipt of such communication or by the deadline stated in the communication, if such a deadline is provided;

(i) Defendant shall timely pay all State Bar membership dues, fees, and costs, including all Client Security Fund assessments and other charges or surcharges the State Bar is authorized to collect from him, including all judicial district dues, fees, and assessments;

(j) Defendant shall timely comply with his State Bar CLE requirements and shall pay all fees and costs assessed by the applicable deadline;

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

(l) Defendant shall not violate any provision of the North Carolina Rules of Professional Conduct, or any provision of the Rules of Professional Conduct for any other jurisdiction in which he is practicing law; and

(m) Defendant shall timely comply with paragraph 2 of this Order of Discipline.

4. If for any reason the stay of the suspension is lifted and the suspension of Defendant's law license is activated, before seeking reinstatement of his law license, Defendant must show by clear, cogent, and convincing evidence that he:

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

(b) Properly wound down his North Carolina law practice and timely complied with all provisions of 27 N.C.A.C. Chapter 1, Subchapter B, Section .0128 following entry of the order activating the suspension of his law license, including proper disbursement of any funds held in trust for any client or third party remaining in his trust account;

(c) Complied with all of the conditions contained in paragraph 3 of this order;

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

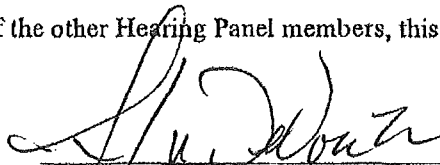
(e) Paid all outstanding membership fees, Client Security Fund assessments and costs assessed by the DHC or the State Bar, and complied with all CLE requirements imposed by the State Bar;

(f) Did not engage in the practice of law in North Carolina during the period of active suspension;

(g) Did not violate the North Carolina Rules of Professional Conduct, the Rules of Professional Conduct of any other jurisdiction in which he is practicing law, or the laws of the United States or of any state or local government (except minor traffic violations) during his suspension; and

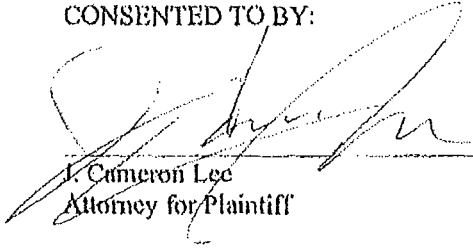
(h) Complied with any other conditions for reinstatement imposed by the Hearing Panel pursuant to the order lifting the stay of the suspension of Defendant's law license.

12 Signed by the Chair with the consent of the other Hearing Panel members, this the day of Apr. 1, 2022.

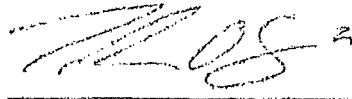

Fred W. DeVore, III, Chair
Disciplinary Hearing Panel

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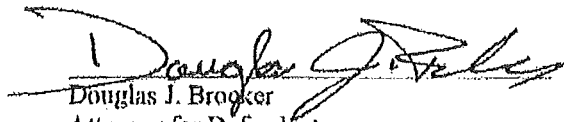
CONSENTED TO BY:



J. Cameron Lee
Attorney for Plaintiff



Thomas O. Harper, III
Defendant



Douglas J. Brooker
Attorney for Defendant