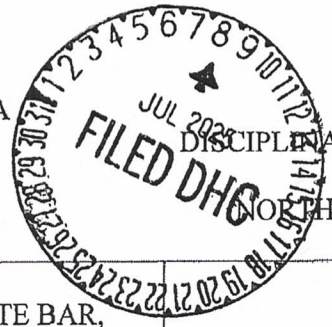
**The North Carolina State Bar v.**
**R. Jonathan Charleston 22 DHC 16**

# THIS ORDER IS STAYED WHILE THE CASE IS ON APPEAL




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| STATE OF NORTH CAROLINA<br><br>WAKE COUNTY | BEFORE THE<br>DISCIPLINARY HEARING COMMISSION<br>OF THE<br>NORTH CAROLINA STATE BAR<br>22 DHC 16 |
| THE NORTH CAROLINA STATE BAR,<br><br>Plaintiff<br><br>v.<br><br>R. JONATHAN CHARLESTON, Attorney,<br><br>Defendant | ORDER OF DISCIPLINE |

THIS MATTER was heard on March 10 - 12, 2025 and June 23, 2025 before a Hearing Panel of the Disciplinary Hearing Commission composed of Jaye P. Meyer, Chair, and members Christon S. Halkiotis and Heath R. Jenkins. G. Patrick Murphy and Robert W. Weston represented Plaintiff, the North Carolina State Bar. Edwin L. West, III, Amy E. Richardson, and Lindsey Barber represented Defendant, R. Jonathan Charleston.

Based upon the pleadings, the stipulated facts, the evidence presented at the hearing, and the arguments of counsel, the Hearing Panel hereby 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, R. Jonathan Charleston ("Defendant"), was licensed to practice law in North Carolina on September 11, 1987 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 the State of North Carolina and maintained a law office in Fayetteville, Cumberland County, North Carolina.

## Background

4. In and before 2016, and at all times relevant to this case, Defendant represented Eastpointe Human Services ("Eastpointe"), a Local Management Entity/Managed Care Organization ("LME/MCO").

5. In 2016, Nash County Commissioners ("Nash County") decided to disengage from Eastpointe and realign with Trillium Health Resources ("Trillium"), another LME/MCO.

6. The effective date for the disengagement from Eastpointe and realignment with Trillium was July 1, 2017.

7. Eastpointe opposed Nash County's decision to disengage from Eastpointe.

8. In 2017, attorney Albert D. Kirby ("Kirby") was in private practice and served as Sampson County's representative on Eastpointe's Board of Directors ("EBD").

9. On February 8, 2017, EBD held a meeting. The meeting included a closed session in which Kirby and Defendant participated. The minutes of that meeting indicate, *inter alia*, that the closed session was "for the purpose of consulting with the Area Board Attorney regarding negotiation of the consolidation of the Area Authority."

10. On May 23, 2017, EBD held a meeting. The meeting included a closed session in which Kirby, Defendant and Jose Coker ("Coker"), an associate attorney in Defendant's law firm, participated. The minutes of that meeting indicate that the purpose of the closed session was, *inter alia*, to discuss litigation and preserve attorney-client privilege.

11. On June 8, 2017, Eastpointe filed a lawsuit against the North Carolina Department of Health and Human Services ("NCDHHS"), Nash County, Trillium, NCDHHS Secretary Mandy K. Cohen, and former NCDHHS Secretary Richard O. Brajer in United States District Court for the Eastern District of North Carolina ("federal case").

12. The lawsuit sought to enjoin the transition of Nash County from Eastpointe to Trillium.

13. Defendant represented Eastpointe in the federal case.

14. W. Dudley Whitley III and Greg Crumpler represented Nash County in the federal case.

15. Michael Wood represented NCDHHS, NCDHHS Secretary Mandy Cohen, and former NCDHHS Secretary Richard Brajer in the federal case.

16. Nicholas Brown and Richard Leissner represented Trillium in the federal case.

17. On June 27, 2017, EBD held a meeting. The meeting included a closed session in which Kirby and Defendant participated. The minutes of that meeting indicate that the purpose of the closed session was, *inter alia*, to discuss litigation and preserve attorney-client privilege.

18. On June 29, 2017, Judge Louise Flanagan dismissed all of Eastpointe's claims in the federal case.

19. On June 30, 2017, Defendant appeared in Sampson County before Superior Court Judge Douglas Parsons ("Judge Parsons") and obtained an *ex parte* TRO against Nash County and other defendants enjoining the transition of Nash County from Eastpointe to Trillium.

20. In the *ex parte* proceeding before Judge Parsons, Defendant failed to produce any certification in writing of Defendant's efforts, if any, to notify opposing counsel of his appearance before Judge Parsons on Eastpointe's motion for a TRO.

21. Judge Parsons granted Eastpointe's motion for a TRO and signed an order drafted by Defendant.

22. Before signing Eastpointe's proposed order, Judge Parsons struck through paragraph 4 that provided: "The undersigned Superior Court Judge presiding shall retain jurisdiction of this matter pending further orders of the Court."

23. After the *ex parte* proceeding before Judge Parsons, Respondent filed a complaint in Duplin County naming as defendants, the NCDHHS, NCDHHS Secretary Mandy K. Cohen, Nash County, Trillium and former NCDHHS Secretary Richard O. Brajer, *Eastpointe Human Services v. North Carolina Department of Health and Human Services, et. al.*, 17 CVS 466 (Duplin County) ("Eastpointe case").

24. Defendants Trillium, NCDHHS and Nash County filed motions to dissolve the TRO.

25. The motions to dissolve the TRO were heard on July 3, 2017, before Superior Court Judge Joshua W. Willey, Jr ("Judge Willey").

26. On July 6, 2017, Judge Willey entered an order dissolving Eastpointe's TRO. In paragraphs 5 and 6 of that order, Judge Willey found as facts:

> a. "Paragraph 164 of the Verified Complaint states that 'With respect to DHHS, Secretary Cohen, and Brajer in his former official capacity, counsel for Eastpointe has made reasonable attempts to contact counsel for the aforementioned defendants to alert them that Eastpointe would be seeking a TRO'; and
>
> b. 'Despite Plaintiff's receipt of calls and email from counsel for NCDHHS that same day, and despite the fact that Plaintiff knew and had accessible the phone numbers and email addresses of counsel for each of the Defendants, at no time prior to the filing of the *ex parte* temporary restraining order did Plaintiff give notice to any of the Defendants that it intended to seek an *ex parte* temporary restraining order in State Court."

27. Judge Willey's order, *inter alia*, found that Judge Parsons lacked jurisdiction to enter the TRO and that Plaintiff "had failed to make reasonable efforts to give notice to Defendants that it was seeking a temporary restraining order."

28. Judge Willey concluded the order stating: "The undersigned Superior Court Judge presiding shall retain jurisdiction of this matter pending further orders of the Court."

29. On September 28, 2017, Plaintiff filed a Motion for Recusal of Judge Willey from the Eastpointe case alleging, *inter alia*, "reasonable concerns regarding Judge Willey's perceived bias against Eastpointe and/or its counsel."

30. In paragraph 5 of Eastpointe's Motion for Recusal, Defendant stated: "Pursuant to an order dated July 6, 2017 and entered July 7, 2017, Judge Willey specifically retained 'jurisdiction of this matter pending further orders of the Court.' Eastpointe reasonably believes that Judge Willey intends to retain jurisdiction of this case until final disposition."

31. On October 29, 2017, Judge Willey denied Defendant's Motion for Recusal.

32. On or about January 22, 2018, Kirby (hereinafter "Judge Kirby") was appointed to and installed as the Senior Resident Superior Court Judge for Judicial District 4A, that included Sampson, Duplin, and Jones Counties.

33. In November 2018, Judge Kirby was unsuccessful in an election to retain his superior court seat and his term of office ended on December 31, 2018.

Rule 2.1 Designation of Eastpointe Case

34. At all relevant times to this case, Rule 2.1 of the General Rules of Practice for the Superior and District Courts provided, in part: "A senior resident superior court judge, chief district court judge, or presiding superior court judge may *ex mero motu*, or on motion of any party, recommend to the Chief Justice that a case or cases be designated as exceptional or complex business."

35. In or about December 2018, Defendant wanted the Eastpointe case to be designated exceptional pursuant to Rule 2.1.

36. Defendant prepared a motion for Rule 2.1 designation of the Eastpointe case.

37. Defendant claims that after talking with his co-counsel, he decided not to file the motion.

38. On or about December 11, 2018, Defendant had *ex parte* communication with Judge Kirby about a Rule 2.1 designation of the Eastpointe case.

39. Before communicating with Judge Kirby about a Rule 2.1 designation for the Eastpointe case, Defendant did not notify any of the lawyers for the defendants in the Eastpointe case that he was going to communicate *ex parte* with Judge Kirby.

40. In his *ex parte* communications with Judge Kirby about a Rule 2.1 designation of the Eastpointe case, Defendant did not inform Judge Kirby that Judge Willey had retained jurisdiction of the Eastpointe case.

41. In his *ex parte* communications with Judge Kirby about a Rule 2.1 designation of the Eastpointe case, Defendant did not inform Judge Kirby that Defendant had filed a Motion for Recusal of Judge Willey that had been denied by Judge Willey.

42. Defendant did not file a motion for Rule 2.1 designation with Judge Willey or otherwise seek to have Judge Willey consider Rule 2.1 designation for the Eastpointe case.

43. At all times that Defendant had *ex parte* communications with Judge Kirby about a Rule 2.1 designation, Defendant knew Judge Kirby had been on Eastpointe's Board of Directors when the federal and state cases were filed, and Judge Kirby had participated in closed sessions of board meetings to discuss the litigation and to protect information about the case pursuant to attorney-client privilege.

44. During his *ex parte* communications with Judge Kirby, Defendant named Judge Mary Ann Tally and Judge John Nobles as options for appointment under Rule 2.1 for the Eastpointe case.

45. Defendant did not notify the lawyers for the defendants in the Eastpointe case prior to suggesting Judge Mary Ann Tally and Judge John Nobles to Judge Kirby as options for appointment under Rule 2.1 in the Eastpointe case.

46. In a follow-up *ex parte* communication with Judge Kirby through Judge Kirby's administrative assistant, Donna E. Herring ("Herring"), on or about December 11, 2018, Defendant sought information from Judge Kirby about the Rule 2.1 designation for the Eastpointe case.

47. After Defendant communicated with Herring, she sent Judge Kirby an email on December 11, 2018, which stated: "Johnathan [sic] Charleston called and wanted to know about the Rule 2.1 in the attached case. He says that he just needs Judge MaryAnn Talley [sic] appointed to the case and then they will get it set up next year. This is the letter I have done, please make the necessary changes and send it back so that I can get it to David Hoke."

48. Judge Mary Ann Tally and Defendant's co-counsel in the Eastpointe case formerly worked in the same law firm.

49. On or about December 11, 2018, Herring drafted a letter to the Honorable Chief Justice Mark D. Martin, c/o Mr. David Hoke, Assistant Director, Administrative Office of the Courts ("Hoke"), that requested a Rule 2.1 designation for the Eastpointe case and stated that Judge Mary Ann Tally had agreed to hear the case.

50. On or about December 18, 2018, Keshia Harris ("Harris"), a legal assistant in Defendant's office, advised Defendant that Judge Kirby had submitted the Rule 2.1 request to Hoke.

51. On or about December 24, 2018, Judge Kirby emailed Defendant a copy of a letter Judge Kirby sent to Hoke requesting Rule 2.1 designation for the Eastpointe case.

52. At or about 11:51 a.m. on December 27, 2018, Herring emailed Defendant an Order of Chief Justice Martin designating the Eastpointe case exceptional under Rule 2.1 and appointing Judge Mary Ann Tally to hear the Eastpointe case. Herring copied Judge Kirby on the email.

53. At or about 1:36 p.m. on December 27, 2018, Defendant forwarded Herring's email referenced in paragraph 52 to his co-counsel.

54. At or about 1:45 p.m. on December 27, 2018, Defendant's co-counsel responded to Defendant's email referenced in the paragraph 53 above with a smiley face, :).

55. On December 27, 2018, a copy of Chief Justice Martin's Order designating the Eastpointe case exceptional was emailed to Judge Mary Ann Tally's office.

56. On December 27, 2018, Kathleen J. Romstadt, a professional assistant in Defendant's law practice, sent an email to Defendant advising him that Judge Kirby needed to talk to him about the Eastpointe case, that Judge Tally was trying to get a feel for what was going on.

57. At all times relevant to this case, Coker was a lawyer associate in Defendant's law firm and assisted Defendant with the Eastpointe case.

58. On December 30, 2018, Judge Kirby sent a text message to Coker stating: "Jose, Donna is no longer with me. Her last day was Friday and she took that day off. My last day is tomorrow December 31, 2018. Please send me the names and email addresses of each of the lawyers in that case involving Eastpoint (sic). I will inform them by way of email that the matter has been designated special under rule 2.1."

59. Approximately one hour later, Coker responded to Judge Kirby, by text: "Will do."

60. On or about December 31, 2018, Coker sent an email to Defendant with an attached draft letter addressed to all the lawyers for the parties in the Eastpointe case bearing Judge Kirby's signature block. The draft letter's purpose was to notify the lawyers in the Eastpointe case via electronic communication of Chief Justice Martin's Order designating the Eastpointe case exceptional under Rule 2.1.

61. At or about 2:46 p.m. on December 31, 2018, Coker sent a text to Judge Kirby stating: "Keshia [Harris] sent you a letter for you to sign and send attaching order."

62. At or about 2:59 p.m. on December 31, 2018, Harris sent an email to Judge Kirby with a copy to Coker and Defendant. The email stated: "Good Afternoon: Please see the attached letter forwarded to you on behalf of Jonathon (sic) Charleston for your signature. Thank you and have a great day."

63. The letter attached to Harris's email referenced in paragraph 62 notified the lawyers in the Eastpointe case of Chief Justice Martin's Order designating it a Rule 2.1 case and assigning Judge Mary Ann Tally.

64. At or about 6:30 p.m. on December 31, 2018, Defendant sent an email to Judge Kirby at the email address *kirbylaw21@gmail.com*. The attachment line of the email indicates that one of the attachments included with the email was: "Kirby letter enclosing 2.1 order".

65. At or about 6:48 p.m. on December 31, 2018, Judge Kirby sent an email from email address *kirbylaw21@gmail.com* to Defendant. The attachment line of the email indicates that one of the attachments of email was: "Kirby letter enclosing 2.1 order." The main text of the email stated: "Attorney Charleston: Attached is a letter and an order from the Chief Justice regarding The Eastpointe case. Please make sure all attorneys of record receive a copy. Thank you: Albert D. Kirby, Jr." The attached letter was signed by Judge Kirby.

66. On January 2, 2019, Defendant sent an email to the lawyers for defendants in the Eastpointe case. An attachment with the email was Judge Kirby's letter designated: "Kirby letter enclosing 2.1 order." The attachment letter was the same as that attached to the emails referenced in paragraphs 64 and 65 above.

67. Text of Defendant's January 2, 2019, email stated: "Gentlemen: Please see attached letter that Judge Albert Kirby requested be forwarded to each of you in connection with the Eastpointe Human Services v. NC Department of Health and Human Services, et al case and attaching the Chief Justices (sic) Order designating this case exceptional pursuant to Rule 2.1 Chief Justice Martin has this case (sic) to Judge Mary Ann Tally. I have copied Ellen Hancox, Cumberland County Trial Court Administrator. RJC"

68. Prior to Defendant's January 2, 2019, email to the lawyers for defendants in the Eastpointe case referenced in paragraph 67 above, Defendant had not given the lawyers for defendants in the Eastpointe case notice that Defendant was communicating *ex parte* with Judge Kirby about a Rule 2.1 designation for the Eastpointe case.

69. On or about January 3, 2019, W. Dudley Whitley III, M. Greg Crumpler and G. Vincent Durham, Jr., lawyers representing defendant Nash County ("Nash County's lawyers"), contacted the North Carolina Administrative Offices of the Courts ("AOC") and were able to have a telephone conversation with Hoke that day.

70. During Nash County's lawyers' telephone conversation with Hoke, Hoke asked whether they had received Judge Kirby's December 11, 2018, letter to AOC asking for Rule 2.1 designation of the Eastpointe case and stating the Judge Mary Ann Tally had agreed to hear the case.

71. Nash County's lawyers advised Hoke that they had not been copied on the December 11, 2018, letter and that they did not know Judge Kirby was asking for Rule 2.1 designation until they received Defendant's email on January 2, 2019.

72. On or about January 3, 2019, Chief Justice Martin reassigned the Eastpointe case from Judge Mary Ann Tally to Judge J. Stanley Carmical.

Based on the foregoing Findings of Fact, 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, R. Jonathan Charleston, and the subject matter of this proceeding.

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 contacting and communicating *ex parte* with Judge Kirby about a Rule 2.1 designation of the Eastpointe case knowing that Judge Kirby had been on Eastpointe's Board of Directors at the time the federal and state actions were filed, Defendant engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);

(b) By engaging in *ex parte* communications with Judge Kirby about a Rule 2.1 designation in the Eastpointe case, Defendant violated Rule 3.5(a)(3);

(c) By failing to notify the lawyers for the defendants in the Eastpointe case before communicating with Judge Kirby about a Rule 2.1 designation for the Eastpointe case, Defendant engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);

(d) By failing to advise Judge Kirby at the time he communicated with Judge Kirby about a Rule 2.1 designation of the Eastpointe case that Judge Willey had stated in his July 6, 2017 order that he retained jurisdiction of the case and had denied Defendant's Motion for Recusal, Defendant failed to inform Judge Kirby of all material facts known to Defendant to enable Judge Kirby to make an informed decision about the process for, and/or Defendant's request for, a Rule 2.1 designation and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d). This failure does not constitute a violation of Rule 3.3(d), as this rule applies to permissible ex parte communications only. As Defendant's *ex parte* communications with Judge Kirby were impermissible, Rule 3.3(d) is inapplicable;

(e) By suggesting to Judge Kirby a judge or judges to be assigned to the Eastpointe case pursuant to a Rule 2.1 designation without notice to or opportunity to be heard by the lawyers for the other parties in the case, Defendant engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d); and

(f) By communicating with Judge Kirby or his office about a Rule 2.1 designation of the Eastpointe case numerous times by email and by text, himself and/or through other persons in Defendant's office, between December 11 and December 31, 2018, without notifying the lawyers for the other parties of the communications, Defendant engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d). Concerning a summary of the case prepared by Defendant's office, because the summary was never transmitted to Judge Tally,

Judge Kirby, or the Administrative Office of the Courts, the preparation of this summary does not constitute a Rule 8.4(d) violation.

Based on the foregoing Findings of Fact and Conclusions of Law, the stipulated facts, and the evidence presented at the hearing, the Hearing Panel hereby finds by clear, cogent and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1 – 72 above are reincorporated as if set forth herein.

2. Defendant's actions were intentionally designed to remove Judge Willey from the Eastpointe case and substitute his preferred judge without involvement of the opposing parties, while withholding from Judge Kirby material information about Judge Willey's stated retention of jurisdiction and his ruling on Defendant's motion to recuse.

3. Comment 8 to Rule 3.5 recognizes that "[a]ll litigants and lawyers should have access to tribunals on an equal basis." Comment 8 further recognizes that when a lawyer has an impermissible *ex parte* communication with a tribunal, it causes harm to the profession by having the effect or giving the appearance of granting undue advantage to one party.

4. The orderly and efficient resolution of legal issues and the concept of judicial impartiality are compromised when a lawyer fails to provide adequate notice to all parties and lawyers involved in a legal proceeding before communicating *ex parte* with the tribunal.

5. Defendant's *ex parte* communications with Judge Kirby took place over several weeks in December 2018 and effectuated a significant improper surprise on the opposing parties. Those communications caused significant harm to the administration of justice by directly affecting the regular process for the appointment of judges and by causing the Chief Justice to revoke Judge Tally's appointment and appoint Judge Carmical. Defendant's conduct also has the potential to cause significant harm to the administration of justice and the public by eroding the public's confidence that parties have equal access to the tribunal.

6. When a lawyer refuses to acknowledge the wrongful nature of his conduct, there is potential significant harm to clients, the administration of justice, the profession, and the public because the refusal creates concern about the potential for repeat of the misconduct.

7. In his responses during the grievance investigation, his written discovery responses during this action, and in his deposition and hearing testimony in this action, Defendant expressed a lack of remorse for his misconduct and a refusal to acknowledge the wrongful nature of his misconduct.

8. Defendant's lack of remorse and refusal to acknowledge the wrongful nature of his misconduct extended to assigning blame to others around him.

9. Defendant's lack of remorse and refusal to acknowledge the wrongful nature of his misconduct extended to his DHC testimony claiming that he felt the State Bar hunted him like a dog during the disciplinary process, that "[his] truth" was that he had not engaged in the misconduct, and that he did not feel he had violated any ethical rules.

10. Defendant has been an actively licensed attorney in North Carolina since 1987 and has never been disciplined by the State Bar during that time.

11. Defendant presented evidence of his good character and good reputation in his home community.

12. The Hearing Panel finds by clear, cogent, and convincing evidence the facts contained in the conclusions set out below of the applicable factors regarding discipline from those listed in 27 N.C. Admin. Code 1B.0116(f).

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 has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension and disbarment.

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

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B .0116(f)(1) and determines that none of the factors in that subsection are applicable in this matter.

4. The Hearing Panel considered the factors listed in 27 N.C. Admin. Code 1B.0116(f)(2) of the Rules and Regulations of the North Carolina State Bar and determines that none of the factors in that subsection are applicable in this matter.

5. The Hearing Pane has considered all of the factors enumerated in 27 N.C. Admin. Code 1B .0116(f)(3) of the Rules and Regulations of the North Carolina State Bar and determines that the following factors are applicable in this matter:

a. Factor (A), absence of prior disciplinary offenses in this state or any other jurisdiction;

b. Factor (C), dishonest motive;

c. Factor (O), refusal to acknowledge wrongful nature of conduct;

d. Factor (P), lack of remorse;

e. Factor (Q), character or reputation; and

f. Factor (S), degree of experience in the practice of law.

6. The Hearing Panel considered all of the disciplinary options available to it and carefully evaluated the factors relating to the imposition of a suspension or stayed suspension. In light of all the evidence, the Hearing Panel concluded that discipline short of censure would not adequately protect the public. Imposition of a lesser discipline would fail to acknowledge the seriousness of the offenses Defendant committed and would send the wrong message to members of the Bar 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, Findings of Fact Regarding Discipline, and Conclusions of Law Regarding Discipline, the Hearing Panel hereby enters the following:

## ORDER OF DISCIPLINE

1. Defendant, R. Jonathan Charleston, is hereby CENSURED.

2. Defendant shall pay the administrative fees and costs of this proceeding as assessed by the Secretary of the North Carolina State Bar. Defendant must pay the costs within 30 days of service upon him of the statement of costs by the Secretary.

Signed by the Chair with the consent of the other Hearing Panel members, this the 8 day of July, 2025.

Jaye P. Meyer, Chair
Disciplinary Hearing Panel