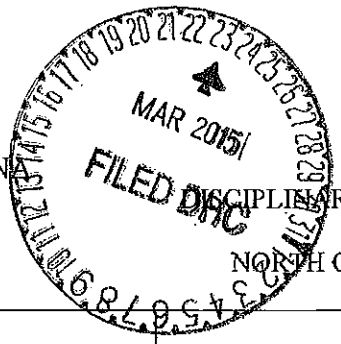

STATE OF NORTH CAROLINA WAKE COUNTY	BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR 14 DHC 34
THE NORTH CAROLINA STATE BAR, Plaintiff v. REID C. JAMES, Attorney, Defendant	ORDER OF DISCIPLINE

THIS MATTER came on for hearing and was heard by a hearing panel of the Disciplinary Hearing Commission composed of Barbara B. Weyher, Chair, Donald C. Prentiss, and Michael S. Edwards pursuant to 27 N.C. Admin. Code 1B § .0114 of the Rules and Regulations of the North Carolina State Bar. Plaintiff, the North Carolina State Bar, was represented by Deputy Counsel Brian P.D. Oten and Lauren P. Suber, a legal intern certified to practice pursuant to 27 N.C. Admin. Code 1C § .0200 *et seq.* Defendant, Reid C. James, was not present at the hearing and was not represented by counsel.

On Plaintiff's motion, judgment by default was granted as to the findings of fact and conclusions of law by Order dated 24 February 2015. The findings of fact and conclusions of law as established by the 24 February 2015 order of default judgment are recited herein (through paragraph (n) below).

Based upon the pleadings and admissions pursuant to 27 N.C. Admin. Code 1B § .0114(f), and the evidence presented at the hearing, the hearing panel hereby finds by clear, cogent, and convincing evidence the following

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("Plaintiff" or "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, Reid C. James ("Defendant" or "James"), was admitted to the North Carolina State Bar on 11 February 1982 and is, and was at all times referred to herein, 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. During part of the relevant period referred to herein, James was actively engaged in the practice of law in the State of North Carolina and maintained a law office in Gastonia, Gaston County, North Carolina.

4. As of 26 July 2013, James was suspended from the practice of law in the State of North Carolina pursuant to the Order of Discipline issued by the Disciplinary Hearing Commission in case number 12 DHC 4 dated 12 June 2013 (hereinafter "12 DHC 4").

5. Defendant was properly served with process and received due notice of the hearing in this matter.

6. In or around January 2007, James represented Dana Peeler's ("Peeler") estranged husband in a domestic action.

7. On or about 2 February 2007, James agreed to prepare the Qualified Domestic Relations Order ("QDRO") pursuant to a consent order filed in Gaston County District Court, file no. 06 CVD 486.

8. James failed to prepare and failed to file the QDRO.

9. Over the next years, Peeler made numerous inquiries with James requesting an update on the status of the QDRO and requesting James prepare and file the QDRO.

10. James never prepared and never filed the QDRO.

11. On or about 26 April 2013, Peeler filed a grievance against James with the State Bar, grievance file no. 13G0373.

12. On or about 22 August 2013, the State Bar sent James a Letter of Notice by certified mail regarding grievance file no. 13G0373. James received this Letter of Notice on or about 24 August 2013.

13. James was required to respond to the Letter of Notice within fifteen days of receipt.

14. James failed to respond to the Letter of Notice as required.

15. In or around January 2013, Donald Sebastian ("Sebastian") retained James for representation in an adoption case. Sebastian paid James $1,000.00.

16. Throughout the representation, Sebastian made numerous inquiries with James requesting an update on the status of his case.

17. James did not respond to Sebastian's inquiries.

18. Sebastian eventually located James at James's office and inquired about the status of his case. James told Sebastian that he was working on Sebastian's case.

19. James misrepresented the extent of his efforts on Sebastian's case to Sebastian.

20. James failed to take any action on Sebastian's behalf and failed to resolve the matter for which he was retained.

21. On 26 July 2013, James was actively suspended from the practice of law in North Carolina pursuant to the Order of Discipline in 12 DHC 4.

22. James failed to notify Sebastian of his suspension from the practice of law.

23. James failed to return any unearned portion of James's fee in Sebastian's matter prior to or after being suspended from the practice of law.

24. James failed to surrender Sebastian's client file prior to or after being suspended from the practice of law.

25. Sebastian obtained his client file from James's law office without James's assistance.

26. On or about 8 August 2013, Sebastian filed a grievance against James with the State Bar, grievance file no. 13G0682.

27. On or about 22 August 2013, the State Bar sent James a Letter of Notice by certified mail regarding grievance file no. 13G0682. James received this Letter of Notice on 24 August 2013.

28. James was required to respond to the Letter of Notice within fifteen days of receipt.

29. James failed to respond to the Letter of Notice as required.

30. In or around March 2013, Ashley Fraley ("Fraley") retained James to modify a parenting agreement. Fraley paid James $500.00.

31. James failed to take any action on Fraley's behalf and failed to resolve the matter for which he was retained.

32. Beginning in or around June 2013, Fraley and Fraley's mother made multiple inquiries with James requesting a status update on the parenting agreement.

33. James did not respond to Fraley's or Fraley's mother's inquiries.

34. James failed to notify Fraley of his suspension from the practice of law pursuant to the Order of Discipline in 12 DHC 4.

35. James failed to return any unearned portion of James's fee in Fraley's matter prior to or after being suspended from the practice of law.

36. James failed to surrender Fraley's client file prior to or after being suspended from the practice of law.

37. Fraley obtained her client file from James's law office without James's assistance.

38. On or about 4 September 2013, Fraley filed a grievance against James with the State Bar, grievance file no. 13G0793.

39. On or about 13 September 2013, the State Bar sent James a Letter of Notice by certified mail regarding grievance file no. 13G0793. James received this Letter of Notice on 18 September 2013.

40. James was required to respond to the Letter of Notice within fifteen days of receipt.

41. James failed to respond to the Letter of Notice as required.

42. In or around May 2013, Theodore and Vickie Townsend ("the Townsends") retained James for representation in a child custody matter. The Townsends paid James $1,500.00 for the representation.

43. James failed to take any action on the Townsends' behalf and failed to resolve the matters for which he was retained.

44. In or around late July 2013, the Townsends inquired with James about the status of their child custody matter.

45. James did not respond to the Townsends' inquiry.

46. James failed to notify the Townsends of his suspension from the practice of law pursuant to the Order of Discipline in 12 DHC 4.

47. James failed to return any unearned portion of James's fee in the Townsends' matter prior to or after being suspended from the practice of law.

48. James failed to surrender the Townsends' client file prior to or after being suspended from the practice of law.

Based upon the foregoing Findings of Fact, the panel enters the following

CONCLUSIONS OF LAW

1. All parties are properly before the hearing panel and the panel has jurisdiction over Defendant, Reid C. James, and the subject matter of this proceeding.

2. James'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) & (3) as follows:

(a) By failing to prepare and failing to file the QDRO as agreed upon by the parties, James failed to act with reasonable diligence and promptness in representing his client in violation of Rule 1.3, failed to make reasonable efforts to expedite litigation consistent with the interests of the client in violation of Rule 3.2, and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);

(b) By failing to respond to the State Bar's Letter of Notice regarding grievance file no. 13G0373, James failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b);

(c) By failing to pursue Sebastian's matter after receiving payment for representation and by keeping all of the fee paid by Sebastian despite failing to provide the legal services for which he was retained, James failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 and collected a clearly excessive fee in violation of Rule 1.5(a);

(d) By informing Sebastian that he was working on Sebastian's case when he had made no progress, James engaged in conduct involving dishonesty, deceit or misrepresentation in violation of Rule 8.4(c);

(e) By failing to timely respond to Sebastian's inquiries and otherwise keep Sebastian informed about the status of his matter, James failed to keep his client reasonably informed about the status of the matter and failed to promptly comply with reasonable requests for information in violation of Rules 1.4(a)(3) & 1.4(a)(4);

(f) By failing to provide Sebastian with a copy of his client file and by failing to return any unearned fees when he was suspended from the practice of law, James failed to surrender property to which his client was entitled upon termination of the representation in violation of Rule 1.16(d);

(g) By failing to respond to the State Bar's Letter of Notice regarding grievance file no. 13G0682, James failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b);

(h) By failing to pursue Fraley's matter after receiving payment for representation and by keeping all of the fee paid by Fraley despite

failing to provide the legal services for which he was retained, James failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 and collected a clearly excessive fee in violation of Rule 1.5(a);

(i) By failing to timely respond to Fraley's inquiries and otherwise keep Fraley informed about the status of her matter, James failed to keep his client reasonably informed about the status of the matter and failed to promptly comply with reasonable requests for information in violation of Rules 1.4(a)(3) and 1.4(a)(4);

(j) By failing to provide Fraley with a copy of her client file and by failing to return any unearned fees when he was suspended from the practice of law, James failed to surrender property to which his client was entitled upon termination of the representation in violation of Rule 1.16(d);

(k) By failing to respond to the State Bar's Letter of Notice regarding grievance file no. 13G0793, James failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b);

(l) By failing to pursue the Townsends' matter after receiving payment for representation and by keeping all of the fee paid by the Townsends despite failing to provide the legal services for which he was retained, James failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 and collected a clearly excessive fee in violation of Rule 1.5(a);

(m) By failing to timely respond to the Townsends' inquiries and otherwise keep the Townsends informed about the status of their matter, James failed to keep his client reasonably informed about the status of the matter and failed to promptly comply with reasonable requests for information in violation of Rules 1.4(a)(3) and 1.4(a)(4); and

(n) By failing to provide the Townsends with a copy of their client file and by failing to return any unearned fees when he was suspended from the practice of law, James failed to surrender property to which his client was entitled upon termination of the representation in violation of Rule 1.16(d).

Based upon the foregoing facts and conclusions of law, and upon the evidence and arguments presented at the hearing concerning appropriate discipline, the hearing panel hereby finds by clear, cogent, and convincing evidence the following

ADDITIONAL FINDINGS REGARDING DISCIPLINE

1. Defendant, who was licensed to practice law in North Carolina in 1982, has substantial experience in the practice of law.

2. In 2013, Defendant was suspended by this Commission for a period of five years in case number 12 DHC 4 based upon Defendant's failure to properly handle, safeguard, and monitor entrusted client funds.

3. Defendant's conduct, to wit: severe and widespread neglect of client matters, failure to communicate with clients, failure to notify his clients of his suspension and of their need to retain counsel, and failure to return to his clients their client files and/or the unearned portions of the fees they paid to Defendant caused significant harm to his clients and their abilities to resolve their legal matters. Defendant's misrepresentations and client neglect caused significant confusion and frustration amongst his clients. Defendant's conduct impaired his clients' abilities to achieve the goals of their respective representations by causing unnecessary delay in their cases and by depriving his clients of their limited financial resources available to afford legal representation.

4. Defendant's clients were vulnerable victims of his misconduct. His clients were unfamiliar with the legal process and had limited financial resources. His clients had paid and relied upon Defendant to protect or pursue their legal rights.

5. Defendant's conduct also had a negative effect on third parties. Defendant's conduct prevented an opposing party from obtaining an order awarding her additional funds that were rightfully hers as a result of a domestic proceeding and unnecessarily delayed the adoption or custody determination of at least two children whose lives and legal statuses remain unsettled.

6. Defendant's repeated instances of client neglect and failure to respond to the Bar comprise multiple offenses and constitute a pattern of misconduct. Defendant's receipt of fees from clients, his refusal to carry out the representations for which he was retained, and his refusal to refund any unearned portion of the fees collected from his clients evidence his selfish and dishonest motives and show that Defendant elevated his own interests above those of his clients in that Defendant sought to gain, maintain, and benefit from his clients' confidence. Defendant's failure to refund unearned fees demonstrates Defendant's indifference to making restitution.

7. Defendant demonstrated an intentional and sometimes impulsive pattern of making misrepresentations to at least one of his clients concerning the true status of his client's legal matter, and Defendant never made any attempt to correct his misrepresentations. Defendant also knew of his suspension in 12 DHC 4, yet Defendant intentionally refused to notify his clients of their need to obtain new counsel, to provide his clients with their client files, and to refund any unearned portion of their paid fees. The conduct established in this case – ranging from his repeated client neglect to his intentional misrepresentations – demonstrates Defendant's intent to commit acts where the harm to his clients was foreseeable as well as Defendant's intent to cause the significant harm suffered by his clients. Defendant's conduct reflects Defendant's lack of honesty, trustworthiness, or integrity.

8. Defendant's conduct caused significant harm to the legal profession. Defendant's neglect, failure to communicate with clients, failure to resolve the matters for which he was retained, and repeated misrepresentations regarding the true status of his clients' legal matters caused his clients to feel their trust had been betrayed. Some of Defendant's former clients expressed a sense of distrust of the legal profession in general due to Defendant's conduct.

9. Defendant's conduct caused significant harm to the standing of the profession in the eyes of his clients and has the potential to cause significant harm to the standing of the profession in the eyes of the public because it shows his disregard for his duties as an attorney. Such erosion of public confidence in attorneys tends to sully the reputation of, and fosters disrespect for, the profession as a whole. Confidence in the legal profession is a building block for public trust in the entire legal system.

10. Defendant's conduct caused significant harm to the public and to the administration of justice by unnecessarily delaying resolution of his clients' cases. Justice is achieved when all matters are timely pursued and resolved; justice is impeded by attorneys who knowingly abandon their clients and their duties as an attorney, leaving their clients' cases and their clients' interests in an unnecessarily uncertain status such as that created by Defendant.

11. Defendant caused significant harm to the profession by repeatedly failing to respond to multiple State Bar inquires and otherwise failing to participate in the grievance process. Additionally, Defendant failed to participate in the present proceeding in any manner, including his failure to file an answer, his failure to appear at the hearing, and his failure to appear for duly-noticed depositions of witnesses that took place in Defendant's home county. Defendant's conduct demonstrates his continued refusal to participate in the self-regulation process, his bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with the rules or orders of the disciplinary agency, and his refusal to acknowledge the wrongful nature of his conduct. Such conduct interferes with the State Bar's ability to regulate its members and undermines the profession's privilege to remain self-regulating.

12. Defendant is a danger to the public due to his repeated neglect of client matters, repeated and intentional misrepresentations, and ongoing refusal to participate in the self-regulation process. Defendant's inability or unwillingness to comply with the Rules of Professional Conduct requires this panel to impose discipline upon Defendant as the only means to adequately acknowledge the wrongfulness of his conduct and protect the public.

Based upon the Findings of Fact, Conclusions of Law, and Additional Findings Regarding Discipline, the hearing panel also enters the following

CONCLUSIONS REGARDING DISCIPLINE

1. The hearing panel has carefully considered all of the different forms of discipline available to it. In addition, the hearing panel has considered all of the factors

enumerated in 27 N.C. Admin. Code 1B § .0114(w)(3) of the Rules and Regulations of the North Carolina State Bar and concludes that the following factors are applicable in this matter:

a. Defendant's prior disciplinary offense;

b. Defendant's dishonest or selfish motive;

c. Defendant's indifference to making restitution;

d. Defendant's pattern of misconduct;

e. Defendant's multiple offenses;

f. Defendant's bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with the rules or orders of the disciplinary agency;

g. Defendant's refusal to acknowledge the wrongful nature of his conduct;

h. The vulnerability of the victims of Defendant's conduct; and

i. Defendant's substantial experience in the practice of law.

2. The hearing panel has carefully considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0114(w)(2) of the Rules and Regulations of the North Carolina State Bar and concludes that the following factors are present and warrant disbarment:

a. Defendant's acts of dishonesty, misrepresentation, deceit, or fabrication; and

b. Defendant's impulsive acts of dishonesty, misrepresentation, deceit, or fabrication without timely remedial efforts.

3. The hearing panel has carefully considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and finds the following factors warrant disbarment:

a. Defendant's intent to cause the resulting harm or potential harm

b. Defendant's intent to commit acts where the harm or potential harm was foreseeable;

c. Circumstances reflecting Defendant's lack of honesty, trustworthiness, or integrity;

d. Elevation of Defendant's own interests above that of his clients;

e. Defendant's actions had a negative impact on his clients' or the public's perception of the legal profession;

f. Defendant's actions had a negative impact on the administration of justice;

g. Defendant's conduct impaired his clients' ability to achieve the goals of their respective representations;

h. The effect of Defendant's conduct on third parties;

i. Defendant's acts of dishonesty, misrepresentation, deceit, or fabrication; and

j. Defendant multiple instances of failure to participate in the legal profession's self-regulation process, including his failure to participate in the present proceeding and attend the hearing in this matter.

4. The hearing panel has considered all other forms of discipline available and concludes that any sanction less than disbarment would fail to acknowledge the seriousness of the offenses committed by Defendant, would not adequately protect the public, and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar.

5. The hearing panel concludes that disbarment is the only discipline that will adequately protect the public from future transgressions by Defendant for the following reasons:

a. The nature and extent of Defendant's conduct – namely, Defendant's severe and widespread neglect of his clients' cases, including his collection of fees and failure to complete the tasks for which he was retained;

b. Defendant's repeated failure to participate in the State Bar's regulatory process;

c. The nature and extent of Defendant's prior discipline; and

d. The significant harm caused by Defendant's conduct and the significant potential harm resulting from Defendant's conduct.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Findings Regarding Discipline, the hearing panel enters the following

ORDER OF DISCIPLINE

1. Defendant, Reid C. James, is hereby DISBARRED. This Order is effective 30 days after service of the Order upon Defendant.

2. Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following the date of this Order. To the extent not already completed, Defendant shall comply with the wind down provisions contained in Rule .0124 of the North Carolina State Bar Discipline and Disability Rules, located at 27 N.C. Admin. Code 1B § .0124.

3. Defendant shall pay the costs and administrative fees of this proceeding as assessed by the Secretary, including the costs of all depositions as well as the costs of all video recordings and transcriptions of depositions taken in this case, within 30 days of service of the statement of costs and administrative fees upon him.

4. Within 15 days of the effective date of this Order, Defendant shall provide the State Bar with an address and telephone number at which clients seeking return of files can communicate with Defendant and obtain such files.

5. Defendant shall promptly return client files to clients upon request, within 5 days of receipt of such request. Defendant will be deemed to have received any such request 3 days after the date such request is sent to Defendant if the request is sent to the address Defendant provided the State Bar pursuant to the preceding paragraph.

Signed by the Chair with the consent of the other hearing panel members, this the 23rd day of March, 2015.

Barbara B. Weyher, Chair
Disciplinary Hearing Panel