

STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
16 DHC 5

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

CONSENT ORDER

JOHN M. HOLMES, Attorney,
Defendant

Defendant, John M. Holmes, was ordered to appear and show cause why the stay of the suspension imposed by the Order of Discipline entered in this case on 28 April 2016 should not be lifted and the suspension activated. This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Donald C. Prentiss, Chair, Shirley L. Fulton, and Bradley Lail pursuant to 27 N.C. Admin. Code 1B § .0114(x). Plaintiff, the North Carolina State Bar, was represented by Carmen H. Bannon. Defendant was represented by Alan M. Schneider. Defendant waives a formal hearing in this matter and both parties stipulate and consent to the findings of fact and conclusions of law recited in this order and to the disposition imposed. By consenting to the entry of this order, Defendant waives any right to appeal this consent order or to challenge in any way the sufficiency of the findings.

Based upon the pleadings and the consent of the parties, the Hearing Panel hereby finds by the greater weight of the evidence the following

FINDINGS OF FACT

1. On 28 April 2016, an Order of Discipline was entered in this matter. The Order was served on Holmes on the same day.
2. The Order of Discipline imposed a three-year suspension of Holmes's law license and stayed the suspension for a period of three years. The stay of the suspension was conditioned upon Holmes's compliance with the conditions stated in the Order.
3. The Order of Discipline provided that Holmes was required to abstain from the consumption of any alcohol during the period of stay. To ensure compliance with this condition, paragraph 2(c) on page 5 of the Order of Discipline also required Holmes to participate in the Soberlink real-time alcohol monitoring system by submitting to

breathalyzer testing at random intervals four times per day. (The conditions described in paragraph 2(c) are referred to hereafter as "the Soberlink requirement.")

4. The Order of Discipline was effective on 29 May 2016. Holmes did not submit to Soberlink breathalyzer testing on the following dates:

- a. June 4th through June 8th;
- b. June 11th and June 12th;
- c. July 5th through July 13th; and
- d. August 2nd through August 31st.

5. In total, during the three and a half months after the Order of Discipline was effective, Holmes missed at least 45 days' worth of Soberlink testing.

6. Holmes has, however, been in compliance with the Soberlink requirement throughout October, November, and December 2016.

7. The Order of Discipline (at page 6, paragraphs 2(d) and (e)) provided that Holmes was required to be independently evaluated by a clinician who specializes in treatment of substance abuse and addiction, and to follow all treatment recommendations of the evaluating clinician.

8. Holmes's evaluating clinician recommended the following treatment:

- a. Psychiatric re-evaluation and ongoing medication management;
- b. Ongoing individual psychotherapy;
- c. Ongoing participation in a support group for recovery from an alcohol use disorder (e.g., Alcoholics Anonymous or Smart Recovery); and
- d. Ongoing participation in a monitoring program (e.g., Soberlink).

9. Holmes has not complied with the recommendation that he participate in a support group for recovery from an alcohol use disorder.

10. The Order of Discipline (at page 6, paragraph 2(e)) provided that Holmes was required to submit to the Office of Counsel quarterly reports from all treatment providers from whom he was receiving mental health or substance abuse treatment.

11. Holmes failed to timely submit the first quarterly reports, which were due on 15 October 2016. The reports were not submitted until 22 November 2016.

12. Holmes is not currently engaged in the practice of law, does not currently have clients, and is not counsel of record in any open cases.

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 Panel has jurisdiction over Defendant, John M. Holmes, and over the subject matter of this proceeding.
2. Holmes failed to comply with the following conditions of the stay of his suspension contained in the Order of Discipline:
 - a. That he submit to breathalyzer testing four times each day during the period of the stay as provided in paragraph 2(c) on page 5;
 - b. That he comply with all treatment recommendations of the evaluating clinician as provided in paragraph 2(e) on page 6; and
 - c. That he ensure his treatment providers timely submit quarterly reports to the Office of Counsel as provided in paragraph 2(e) on page 6.
3. Holmes's non-compliance with the Soberlink requirement undermined the ability of the State Bar to ensure that he is abstaining from alcohol use.
4. These violations warrant lifting the stay and activating of a portion of Holmes's suspension.

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

ORDER

1. The stay of Defendant's suspension is lifted and three months of the three year suspension previously imposed is activated. This order and the suspension imposed herein are effective immediately upon entry of the order.
2. All costs and administrative fees of this action are taxed to Defendant. Defendant must pay the costs of this action within 30 days of service upon him of the statement of costs by the Secretary.
3. 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 that this Order is served upon him.
4. As Defendant is not currently practicing law and does not presently have clients, the wind down provisions contained in Rule .0124 of the North Carolina State

Bar Discipline and Disability Rules are not applicable, and Defendant is not required to file the affidavit described therein.

5. After no less than three months of active suspension, Defendant may apply to have the remainder of the three year suspension stayed by petitioning for reinstatement as described in paragraph 4 on page 7 of the Order of Discipline. In seeking reinstatement, Defendant must comply with the requirements of Rule .0125(b) of the North Carolina State Bar Discipline and Disability Rules and the requirements for reinstatement contained in paragraph 4 (and its subparagraphs) on page 7 of the Order of Discipline. In addition, prior to being reinstated, Defendant must show by clear, cogent and convincing evidence that during the period of active suspension he:

- a. Complied with the Soberlink requirement described in paragraph 2(c) on page 5 of the Order of Discipline;
- b. Participated regularly in a support group for recovery from an alcohol use disorder;
- c. Adhered to his current every-other-week schedule for individual psychotherapy unless and until the therapist recommends a different schedule; and
- d. Submitted timely quarterly reports from his treatment providers to the Office of Counsel, as described in paragraph 2(e) on page 6 of the Order of Discipline.

6. If Defendant is reinstated to active status prior to the expiration of the three year suspension period, Defendant's active status shall be subject to, and contingent upon compliance with, the terms of the stayed suspension set forth in paragraph 2 and its subparagraphs on pages 5-7 of the Order of Discipline.

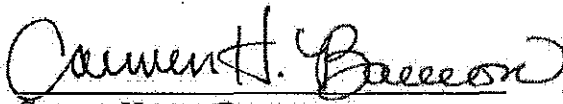
7. If Defendant is not reinstated to active status prior to the expiration of the three year suspension period, then before Defendant may be reinstated to active status he must satisfy the requirements of Rule .0125(b) of the North Carolina State Bar Discipline and Disability Rules and all requirements for reinstatement contained in paragraph 4 and its subparagraphs on page 7 of the Order of Discipline.

Signed by the Chair with the consent of the other Hearing Panel members, this the 11 day of January, 2017.

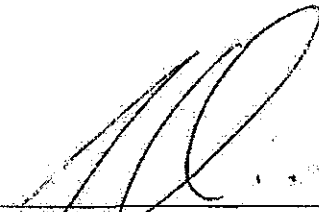


Donald C. Prentiss, Chair
Disciplinary Hearing Panel


CONSENTED TO BY:



Carmen Hoyme Bannon
Deputy Counsel
North Carolina State Bar
Counsel for Plaintiff



John M. Holmes
Defendant



Alan M. Schneider
Counsel for Defendant