

STATE OF NORTH CAROLINA

WAKE COUNTY

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

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

J. BRANDON GRAHAM, Attorney,

Defendant

ORDER OF DISCIPLINE

THIS MATTER was heard on 24 February 2020, before a hearing panel of the Disciplinary Hearing Commission composed of Allison C. Tomberlin, Chair, Maya Madura Engle, and Ronald C. Brinson. Joshua T. Walthall and J. Cameron Lee represented Plaintiff, the North Carolina State Bar. Alan M. Schneider represented Defendant, James Brandon Graham. Based upon the pleadings, the stipulated facts, and the evidence introduced 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, (“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, James Brandon Graham, (“Defendant”) was admitted to the North Carolina State Bar in 2002, and is, and was at all times material hereto, an attorney licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the State Bar, and the Rules of Professional Conduct.
3. During all or part of the relevant period referred to herein, Defendant was engaged in the practice of law in the State of North Carolina and was employed as an Assistant District Attorney in the Gaston County District Attorney’s Office.
4. Defendant was properly served with process and the matter came before the Hearing Panel with due notice to all parties.
5. On 22 April 2018, Graham was stopped by Waxhaw Police officers (“officers”) for speeding and other minor traffic violations.

6. During the course of the traffic stop, police officers asked Graham various questions about where he was heading, what he was doing, and whether or not he had drugs or drug paraphernalia in his vehicle.

7. Graham told the officers that he did not have any drugs or drug paraphernalia in his vehicle.

8. During the traffic stop, officers conducted a search of Graham's vehicle.

9. During the search of Graham's vehicle, K9 Officer Mills discovered that Graham had a syringe loaded with narcotics in the passenger area of his car.

10. Following a complete search of Graham's vehicle, additional drug paraphernalia was discovered including a white belt that officers believed was used as a tourniquet as well as 11 additional syringes, 6 of which contained a brownish color liquid and 3 of which contained a clear liquid.

11. Officers tested the liquids on camera with field test kits for heroin and methamphetamine.

12. The liquids contained in the 11 syringes tested positive for both heroin and methamphetamine.

13. Accordingly, Graham's statement to the police officers that he did not have drugs or drug paraphernalia in his vehicle at the time of the traffic stop was untruthful.

14. As a result of the conduct described above, Graham was arrested and charged with felony possession of heroin, felony possession of methamphetamine, misdemeanor possession of drug paraphernalia, and several minor traffic violations.

15. On 1 May 2018, Defendant voluntarily enrolled in the in-patient program at Cornerstone Recovery in Louisville, Tennessee.

16. On 31 July 2018, Defendant successfully completed the Cornerstone Recovery in-patient Program.

17. On 1 October 2018, Defendant pleaded guilty to Felony Possession of Methamphetamine in State v. James Brandon Graham, No. 18CR51990 (Union County District Court). The State voluntarily dismissed the remaining charges.

18. The crime to which Graham pled guilty is a criminal offense showing professional unfitness as defined in 27 N.C. Admin. Code 1B § .0103(17).

19. The Union County District Court, without entering judgment and with Defendant's consent, deferred further proceedings and placed Defendant on supervised probation for 12 months pursuant to N.C. Gen Stat § 90-96(a).

20. On 22 April 2019, with Defendant's consent, the Chair of the DHC filed a Consent Order of Interim Suspension suspending Defendant's license until the conclusion of all disciplinary proceedings relating to this matter.

21. On 15 May 2019, pursuant to Defendant's fulfillment of the terms and conditions of probation, the court dismissed the criminal charge of Felony Possession of Methamphetamine in State v. James Brandon Graham, No. 18CR51990.

Based upon the foregoing Findings of Fact, 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 and the subject matter of this proceeding.

2. The foregoing facts establish grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(1) in that, by pleading guilty to Felony Possession of Methamphetamine in violation of N.C. Gen. Stat. § 90-95(a)(3), Defendant tendered a plea of guilty to a criminal offense showing professional unfitness.

3. 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 as follows:

- (a) By possessing heroin, methamphetamine, and drug paraphernalia in violation of N.C. Gen. Stat § 90-95(a)(1) and N.C. Gen. Stat § 90-113.22(a), Defendant committed criminal acts that reflect adversely on his fitness as a lawyer in violation of Rule 8.4(b); and,
- (b) By initially denying that there were controlled substances or contraband in his vehicle, Defendant engaged in conduct involving a misrepresentation that reflects adversely upon his fitness as a lawyer in violation of Rule 8.4(c).

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

### **ADDITIONAL FINDINGS REGARDING DISCIPLINE**

- 1. Defendant was licensed to practice law in North Carolina in 2002.
- 2. The public expects that attorneys will abide by the law. This is especially so when the lawyer in question is an assistant district attorney — a public citizen who plays a pivotal role in the administration of the criminal justice system. Defendant's conduct showed disregard for his obligation to obey the laws of this State and caused significant harm to the profession and to the

public's perception of the profession through the betrayal of the trust placed in him both as an attorney and as an assistant district attorney.

3. Defendant was an officer of the court and an assistant district attorney tasked with enforcing the law. He placed his struggle with addiction and depression above the law he was tasked with enforcing, which created the potential for significant harm to the administration of justice in each criminal case he prosecuted while abusing controlled substances

4. Defendant's conduct resulted in public criminal charges, causing significant harm to the public's perception of the profession.

5. Defendant accepted responsibility for his actions and acknowledged the wrongful nature of his conduct by pleading guilty to felony possession of methamphetamine and successfully complying with the terms of a 90-96 conditional discharge. All criminal charges against Defendant have been dismissed.

6. Defendant has no prior record of discipline.

7. Defendant's addiction and felony conviction were the product of a years-long battle with severe depression.

8. Defendant has made significant efforts to recover from his battle with depression and substance abuse: he completed a two-month in-patient treatment program for substance abuse; is actively engaged in counseling and out-patient therapy; sought medical treatment to combat his depression; regularly attends Narcotics Anonymous ("NA") meetings; and has surrounded himself with supportive family, friends, and colleagues within the Gaston County legal community. These efforts demonstrate his commitment to long-term recovery.

9. Defendant is a person of high character and has an excellent reputation in his community, as evidenced by various character letters submitted by members of the Gaston County legal community.

10. Defendant's substance abuse did not adversely impact his performance as an Assistant District Attorney in Gaston County.

11. Defendant has acknowledged that his conduct violated the Rules of Professional Conduct and is remorseful for his actions.

12. Defendant acknowledges his need for and willingly accepts the mandated, structured accountability ordered herein.

Based upon 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 has carefully considered all of the factors enumerated in 27 N.C. Admin. Code 1B .0116(f)(1) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are present which warrant suspension of Defendant's license:

- (a) Factor (B): Intent of Defendant to commit acts where the potential harm was foreseeable;
- (b) Factor (C): Circumstances reflecting Defendant's lack of honesty, trustworthiness, or integrity;
- (c) Factor (E): Negative impact of Defendant's actions on the public's perception of the profession;
- (d) Factor (H): Effect of Defendant's conduct on third parties; and
- (e) Factor (I): Acts of dishonesty, misrepresentation, deceit, or fabrication.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B .0116(f)(2) of the Rules and Regulations of the North Carolina State Bar and concludes that the following disbarment factors are present:

- (a) Factor (A): An act of misrepresentation; and,
- (b) Factor (D): Commission of a felony.

4. The presence of two factors under 27 N.C. Admin. Code 1B .0116(f)(2) requires the Hearing Panel to consider disbarment as discipline. The Hearing Panel has considered disbarment and has determined given the circumstances underlying the conduct at issue — Defendant's depression and addiction, and the lengths to which he has gone to address them — that disbarment is not necessary in this case.

5. The Hearing Panel 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 concludes the following factors are applicable in this matter:

- (a) Factor (A): Absence of prior disciplinary offenses in this state or other jurisdictions;
- (b) Factor (D): Timely good faith efforts to rectify the consequences of Defendant's misconduct;
- (c) Factor (G): Multiple offenses;
- (d) Factor (H): Effect of any personal or emotional 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 (P): Defendant's remorse;
- (i) Factor (Q): Defendant's good character and reputation;
- (j) Factor (S): Degree of experience in the practice of law; and,
- (k) Factor (U): Imposition of other penalties or sanctions.

6. The Hearing Panel has considered all other forms of discipline and concludes that any sanction less than suspension would not be sufficient discipline because of the gravity of the harm to the profession and of the potential harm to the administration of justice and to the public. The Hearing Panel further concludes that any lesser discipline would fail to acknowledge the seriousness of the violations committed by Defendant.

7. For the following reasons, this Hearing Panel finds that an order imposing discipline short of suspension of Defendant's law license would not adequately protect the public, the legal profession, or the administration of justice:

- (a) The factors under 27 N.C. Admin. Code 1B .0116(f)(1) are of a nature that support imposition of suspension as the appropriate discipline;
- (b) Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses Defendant committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar in this State; and
- (c) A suspension with appropriate conditions will protect the public by helping to ensure Defendant's continued sobriety and compliance with treatment; it will also establish various mechanisms to alert the State Bar should Defendant fail to remain sober and in compliance with treatment.

Based upon the foregoing Findings of Fact, Conclusions of Law, Additional Findings Regarding Discipline, and Conclusion Regarding Discipline, the Hearing Panel enters the following:

#### **ORDER OF DISCIPLINE**

1. The law license of Defendant, J. Brandon Graham is hereby suspended for five years, effective upon filing of this Order of Discipline with the Clerk. Defendant will be given credit against this period of suspension for the time he has been suspended from the practice of law since the entry of the Consent Order of Interim Suspension on 22 April 2019.

2. Defendant is taxed with the administrative fees and costs of this action as assessed by the Secretary of the State Bar, which Defendant shall pay within ninety days of service of the notice of costs upon Defendant at his address of record.

3. Defendant shall submit his license and membership card to the Secretary of the State Bar no later than thirty days following the effective date of this Order.

4. Defendant shall file an affidavit with the Secretary of the State Bar within ten days of the effective date of this Order showing that he has fully complied with the provisions of this Order of Discipline, with the provisions of 27 N.C. Admin. Code 1B.0128, and with the provisions of all other state, federal, and administrative jurisdictions to which he is admitted to practice. Defendant's affidavit must also set forth the residence or other address to which communication from the State Bar may be directed. This address must be a street address, not a post office box or drawer.

5. Defendant may apply for a stay of the remaining period of his suspension on 22 April 2020 by filing a motion with the Clerk of the Disciplinary Hearing Commission as provided in 27 N.C. Admin. Code 1B .0118(c). Such motion shall be filed no earlier than 30 days before the first date upon which Defendant is eligible to apply for a stay. In order to be eligible for a stay of the remaining period of suspension, Defendant must demonstrate by clear, cogent, and convincing evidence the following:

- (a) That Defendant properly surrendered his law license and membership card to the Secretary of the State Bar as provided in paragraph three of this Order and filed the affidavit as provided in paragraph four of this Order;
- (b) That Defendant timely complied with all applicable orders of the Disciplinary Hearing Commission;
- (c) That Defendant abstained during the period of suspension from the unauthorized practice of law;
- (d) That Defendant abstained during the period of suspension from conduct constituting grounds for discipline under N.C. Gen. Stat. § 84-28(b);
- (e) That Defendant paid all membership fees, Client Security Fund assessments, and late fees due and owing to the North Carolina State Bar, including any reinstatement fee due under Rule .0904 or Rule .1524 of Subchapter 1D of the rules of the North Carolina State Bar, as well as all attendee fees and late penalties due and owing to the Board of Continuing Legal Education at the time of suspension;
- (f) That Defendant paid the fees and costs of this proceeding as assessed by the Secretary of the North Carolina State Bar within ninety days of notice of the costs being served on Defendant at his address of record;
- (g) That Defendant demonstrated that he does not suffer from any mental or physical condition that would impair his ability to competently engage in the practice of law;
- (h) That Defendant abstained from the consumption of any alcohol and/or illicit drug use or consumption and has not taken any prescription drugs or controlled substances other than as expressly authorized by his treating physician;
- (i) That Defendant has registered for random drug and alcohol monitoring by FSSolutions Professional Health Monitoring Program ("FSSolutions"). The monitoring agreement must require Defendant to submit himself to thirteen drug

testing screens per year and will require the monitoring service to report to the State Bar's Office of Counsel any failure of Defendant to take or pay for the test and any positive test result.

- (j) That Defendant has signed all necessary releases or documents to allow such reporting by FSSolutions, Defendant shall not revoke any such releases or documents through any period during which the suspension is stayed. Defendant shall be solely responsible for all costs associated with such testing and reporting;
- (k) That Defendant attended at least three NA meetings per week beginning ten days from the effective date of this Order and worked with a sponsor willing to make reports of Defendant's attendance to the State Bar. Within fifteen days of the effective date of this Order, Defendant must notify the State Bar of the identity and contact information of his NA program sponsor. Defendant must detail his NA meeting attendance to his sponsor in any manner required by the sponsor. Defendant must authorize and instruct his sponsor to provide monthly written reports to the State Bar identifying the dates on which the sponsor is confident that Defendant attended NA meetings. The first such report shall be submitted to the State Bar thirty days from the effective date of this Order and subsequent reports submitted on the first day of each month thereafter. Defendant shall be solely responsible for all costs associated with the attendance report;
- (l) That Defendant is receiving counseling for his depression and addiction and has complied with all treatment prescribed by his current treating medical and mental health practitioners;
- (m) That Defendant executed written waivers and releases authorizing the Office of Counsel to confer with Defendant's medical or mental health practitioners for the purpose of determining if Defendant has cooperated and complied with recommended treatment and that Defendant has not revoked such releases during the period of suspension;
- (n) That Defendant has kept the State Bar Membership Department advised of his current business and home addresses (not P.O. boxes) and notified the Bar of any change in address within ten days of such change;
- (o) 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 of which he receives notice after the effective date of this Order;
- (p) That Defendant has promptly accepted service of all certified mail that is sent to him by the State Bar;

- (q) That there is no deficit in Defendant's completion of Continuing Legal Education requirements, either in reporting such hours or in payment of any fees associated with attendance at Continuing Legal Education programs; and
- (r) That Defendant complied with the requirements of 27 N.C. Admin. Code 1B .0128 and timely filed an affidavit certifying such compliance with the Secretary of the State Bar.

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

- (a) Defendant remains in counseling and continues to comply with all treatment or other follow-up recommended or prescribed by his current treating physical and/or mental health practitioner(s). Defendant shall provide written releases to the North Carolina State Bar Office of Counsel, authorizing all providers from whom he is receiving ongoing treatment to communicate with the Office of Counsel and to release to the Office of Counsel records relating to his compliance with treatment recommendations. Defendant shall not revoke these releases during the period of the stay;
- (b) Defendant ensures that all medical and mental health providers from whom he is receiving on-going treatment send a semi-annual written report to the Office of Counsel confirming that he is complying with all treatment recommendations. The reports shall be due on January 1 and July 1 during the stay of this suspension;
- (c) Defendant continues to abstain from the consumption of any alcohol and/or illicit drug use or consumption and abstain from taking any prescription drugs or controlled substances other than as expressly authorized by his treating physician during the period of the stay;
- (d) Defendant participates in random drug and alcohol monitoring by FSSolutions as agreed to by the parties and described in paragraph 5, subparagraph (i) above;
- (e) Defendant continues to attend at least three Narcotics Anonymous meetings per week as confirmed by a sponsor as described in paragraph 5, subparagraph (k) above;
- (f) Defendant cooperates with the Office of Counsel and makes appropriate arrangements for an alternate sponsor willing to make reports of Defendant's attendance at NA meetings if needed during the stay of this suspension;
- (g) Defendant remains current in payment of all Membership dues, fees, and costs, including all Client Security Fund assessments and other charges or surcharges that the State Bar is authorized to collect from him, to include all judicial district dues, fees, and assessments;
- (h) Defendant timely complies with his State Bar Continuing Legal Education requirements and pays all fees and costs assessed by the applicable deadline;


- (i) Defendant responds to all communications from the 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 participates in good faith in the State Bar's fee dispute resolution process for any petition of which he receives notice;
- (j) Defendant promptly accepts service of all certified mail that is sent to him from the State Bar;
- (k) Defendant does not violate the Rules of Professional Conduct or the laws of the United States or of any state or local government during the stayed suspension; and
- (l) Defendant keeps the State Bar Membership Department advised of his current business and home addresses. Defendant shall notify the State Bar of any change in address within ten days of such change. His current business address must be a street address, not a P.O. Box or drawer.

7. If Defendant fails to comply with any of the conditions of the stayed suspension provided in paragraph 6(a) through (l), the stay of the suspension may be lifted as provided in 27 N.C. Admin. Code 1B .0118(a).

8. If Defendant does not seek or fails to obtain a stay of the active portion of his suspension, or if some part of the suspension is stayed and thereafter the stay is lifted/revoked, Defendant must comply with the requirements of paragraphs 5(a) through (q), and with all requirements of 27 N.C. Admin. Code 1B .0129(b) before being reinstated to the practice of law.

9. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code 1B.0118 until all conditions of the stay of suspension are satisfied.

Signed by the undersigned Chair with the knowledge and consent of the other members of the Hearing Panel, this is the 30 day of March, 2020.

  
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Allison C. Tomberlin  
Chair, Hearing Panel