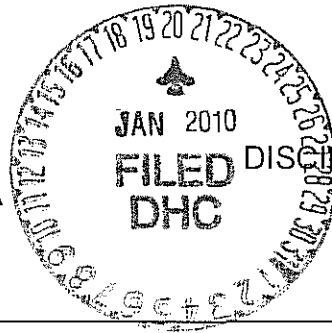


WAKE COUNTY
NORTH CAROLINA



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

THE NORTH CAROLINA STATE BAR
Plaintiff

v.

ROBERT K. TROBICH, ATTORNEY
Defendant

CONSENT ORDER
OF DISCIPLINE

THIS MATTER was considered by a hearing panel of the Disciplinary Hearing Commission composed of C. Colon Willoughby, Jr., Chair, Harriett Smalls and David L. Williams pursuant to 27 N.C.A.C. 1B §.0114 of the Rules and Regulations of the North Carolina State Bar. The Defendant, Robert K. Trobich, was represented by Alan M. Schneider. The Plaintiff was represented by Deputy Counsel Margaret Cloutier. Defendant has agreed to waive 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 discipline imposed. Defendant stipulates that he waives any right to appeal this consent order or challenge in any way the sufficiency of the findings by consenting to the entry of this order.

Based upon the consent of the parties, the hearing panel hereby finds, by clear, cogent and convincing evidence, the following

FINDINGS OF FACT

1. The Plaintiff, the North Carolina 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, Robert K. Trobich (hereinafter "Trobich" or "Defendant"), was admitted to the North Carolina State Bar on September 9, 1988 and is, and was at all times referred to herein, an Attorney at Law licensed to practice in North Carolina, 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 the times relevant herein, Defendant actively engaged in the practice of law in the State of North Carolina and maintained a law office in Charlotte, Mecklenburg County, North Carolina.

4. Defendant represented Tiffany J. Salomon in a civil action in the United States District Court for the Western District of North Carolina captioned *Tiffany Salomon v. County of Lincoln, NC and W. Hal Klutz, Civil No. 5:05CV220-H* (hereafter "the civil action"). Defendant undertook the representation after Salomon had filed a pro se complaint initiating the civil action.

5. On or about June 26, 2007 Defendant was properly served by opposing counsel with Interrogatories and Requests for Production of Documents (hereafter "the discovery requests").

6. Defendant provided copies of the discovery requests to Ms. Salomon through her mother and received in return inadequate responses prepared by Ms. Salomon's mother. Defendant did not have further contact with Ms. Salomon concerning her obligation to respond to the discovery requests.

7. Defendant took no further action regarding the discovery requests and did not send appropriate responses to the opposing parties.

8. On or about September 19, 2007 the United States Magistrate Judge issued an order compelling Ms. Salomon to respond to the discovery requests by October 19, 2007.

9. Defendant was properly served with the order compelling discovery responses.

10. Defendant did not contact Ms. Salomon concerning the court's order compelling her to respond to the discovery requests.

11. Defendant took no action in the civil action regarding the order compelling response to the discovery requests.

12. On or about October 26, 2007 Defendant was properly served by opposing counsel with a Motion to Dismiss For Plaintiff's Failure to Obey Court Order and For Plaintiff's Failure to Prosecute (hereafter "the motion to dismiss").

13. Defendant did not contact Ms. Salomon concerning the motion to dismiss.

14. Defendant took no action regarding the motion to dismiss.

15. On or about November 15, 2007 the United States Magistrate Judge granted the motion to dismiss and dismissed Ms. Salomon's civil action with prejudice.

16. Defendant did not promptly notify Ms. Salomon that her case had been dismissed.

17. In or about March 2008, in response to Ms. Salomon's inquiries, Defendant told Ms. Salomon he could get \$10,500.00 for her to settle the civil action.

18. Ms. Salomon agreed to settle her civil action for that amount. Defendant told Ms. Salomon that he would be in touch with her after the funds were available.

19. Defendant did not and could not settle the civil case with the opposing parties as the civil action had been dismissed by the court.

20. Defendant asserted to Ms. Salomon that he could obtain \$10,500.00 for her in such a manner as to suggest to her that a settlement in that amount was available from the opposing parties.

21. Thereafter Ms. Salomon left numerous phone messages, emails and text messages for Defendant to contact her. Defendant did not respond to Ms. Salomon's messages.

22. In July 2008 Ms. Salomon left a message for Defendant informing him that she had learned that her case had been dismissed.

23. In response to Ms. Salomon's July 2008 message, Defendant told Ms. Salomon that he had her settlement money and arranged to meet with her to give her the money.

24. Defendant told Ms. Salomon that he had dealt directly with one of the opposing parties, rather than through opposing counsel, to negotiate a settlement.

25. Defendant's assertion that he sought settlement of the civil action with the opposing parties was false.

26. On or about July 30, 2008 Defendant gave Ms. Salomon a check for \$10,500.00 drawn on Defendant's operating account.

27. The \$10,500.00 provided by Defendant to Ms. Salomon were Defendant's own funds.

28. Defendant did not inform Ms. Salomon that the funds provided to her were Defendant's own funds and not funds of the opposing parties in settlement of the civil action.

29. Defendant had Ms. Salomon sign a document he told her was a release of all claims Ms. Salomon had against the opposing parties in exchange for the settlement funds.

30. The document Defendant had Ms. Salomon sign included a release of claims Ms. Salomon had against Defendant.

31. Defendant did not advise Ms. Salomon in writing that she could or should consult with another attorney before signing a release of claims against Defendant and did not allow a reasonable time in which she would have opportunity to consult independent counsel.

32. Defendant presented circumstances of the settlement, funds and release to Ms. Salomon in such a manner as to lead Ms. Salomon to believe that Defendant had settled the civil action with, and obtained funds from, the opposing parties and that the release related only to the opposing parties.

33. At no time did Defendant inform Ms. Salomon, in clear unmistakable terms, that Defendant neglected her civil action, that as a result of his neglect the civil action was dismissed by the court, that the opposing parties were not settling the claim, that Defendant was paying his personal funds to her, and that the document she signed released Defendant from any claim she might have against him for his conduct in her civil action.

34. In his response to the North Carolina State Bar, Defendant asserted that he informed Ms. Salomon he had made an error in the case and that he negotiated with Ms. Salomon a settlement of his liability in the amount of \$10,500.00. Specifically, Defendant's response stated: "... I contacted Ms. Salomon, told her there was a problem with the case, ... as there had been an error (mine), but also asked what she would consider a fair settlement of the matter *from me*." (emphasis added).

35. Defendant's statements to the North Carolina State Bar that he informed Ms. Salomon the \$10,500.00 was in settlement of any claims Ms. Salomon may have had against Defendant for his liability to her were false.

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 the Defendant, Robert K. Trobich, and the subject matter of this proceeding.

2. Trobich's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C.G.S. §84-28(b)(2) as follows:

a. by failing to take action regarding the discovery requests, the order compelling response to discovery requests, and the motion to dismiss, Defendant did not act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 and failed to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party in violation of Rule 3.4(d)(2);

b. by failing to inform or advise Ms. Salomon concerning her obligation to respond to discovery requests and the court's order compelling response to the discovery requests, and by failing to inform Ms. Salomon of the motion to dismiss and that the case had been dismissed, Defendant failed to keep his client reasonably informed about the status of the representation and failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in violation of Rule 1.4(a)(3) and (b);

c. by failing to respond to Ms. Salomon's numerous phone messages, emails and text messages, Defendant failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4);

d. by presenting circumstances of the settlement, funds and release to Ms. Salomon in such a manner as to lead Ms. Salomon to believe that Defendant had settled the civil action with, and obtained funds from, the opposing parties and that the release related only to the opposing parties, Defendant engaged in conduct involving misrepresentation in violation of Rule 8.4(c);

e. by giving Ms. Salomon \$10,500.00 of his own funds and having her sign a release of her claims against him, Defendant settled a claim or potential claim for liability with an unrepresented client without advising her in writing of the desirability of seeking legal counsel or providing a reasonable time for her to seek legal counsel in violation of Rule 1.8(h)(2);

f. by making false statements in his response to the North Carolina State Bar, Defendant knowingly made a false statement of material fact to the Bar in connection with a disciplinary matter in violation of Rule 8.1(a), engaged in conduct involving misrepresentation in violation of rule 8.4(c) and knowingly misrepresented facts or circumstances surrounding allegations of misconduct in violation of N.C.G.S. §84-28(b)(3).

Based upon the consent of the parties, the hearing panel also finds by clear, cogent and convincing evidence the following

ADDITIONAL FINDINGS REGARDING DISCIPLINE

1. Defendant misled Ms. Salomon about the settlement, the source of funds, and the release in an attempt to conceal his neglect of her case and prevent her from discovering the true status of her civil action and/or making a claim against Defendant for his conduct in neglecting her civil action.

2. Defendant's conduct prevented Ms. Salomon from being able to proceed with her claim against the opposing parties by trial or settlement.

3. Defendant's conduct prevented Ms. Salomon from obtaining an independent legal opinion concerning her legal rights, including whether \$10,500.00 was an appropriate amount in settlement of her claims against the opposing parties and appropriate as a settlement of her potential claims against Defendant.

4. Defendant's conduct also has the potential to cause significant harm to the standing of the legal profession in the eyes of the public because it shows disregard for his obligations as an attorney and officer of the court. 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.

5. Defendant has been reprimanded by the State Bar on two occasions, in March 2008 and May 2008. The basis for discipline in both instances was Defendant's late response to the State Bar to a Letter of Notice duly served upon him.

6. In this proceeding before the Disciplinary Hearing Commission Defendant fully and freely disclosed the facts and circumstances surrounding the subject of this action and was cooperative in his participation.

7. Defendant has expressed remorse for his conduct and has submitted numerous letters from his peers containing positive expressions concerning his reputation and character.

8. Defendant's practice area over the past thirteen years has been criminal law. The civil case Defendant undertook for Ms. Salomon was outside his area of concentration and his discomfort with the type of action contributed to his neglect of her case. There is no information before the hearing panel that

would indicate Defendant's neglectful and deceitful conduct was routine or repetitive.

9. In response to the dismissal of Ms. Salomon's case, Defendant acknowledged that his heavy caseload of homicide cases, including capital cases, might have contributed to his neglectful conduct. In response to that acknowledgement, in late 2007 Defendant voluntarily requested that he not be appointed to serious felony cases until his caseload became more manageable.

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.A.C. 1B §.0114(w)(3) of the Rules and Regulations of the North Carolina State Bar and finds the following factors are applicable in this matter:

- (a) Defendant's prior disciplinary offenses;
- (b) Defendant's selfish motive;
- (c) Defendant engaged in multiple offenses;
- (d) Defendant's full and free disclosure to the hearing panel and cooperative attitude toward the proceedings;
- (e) Defendant's submission of a false representation to the Grievance Committee;
- (f) Defendant's remorse;
- (g) Defendant's good reputation and evidence of good character; and
- (h) Defendant's substantial experience in the practice of law.

2. The hearing panel has also considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and finds the following factors warrant suspension of Defendant's license:

- (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 is foreseeable;

(c) the circumstances reflect Defendant's lack of honesty;

(d) Defendant elevated his own interest above that of his client;

(e) Defendant's actions potentially had a negative impact on the public's perception of the legal profession;

(f) Defendant's client's ability to achieve the goals of the representation was impaired; and

(g) Defendant's acts of dishonesty, misrepresentation and deceit.

3. Any sanction less than suspension 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.

4. Although acts of misrepresentation are present in this case, as delineated §.0114(w)(2)(A), the circumstances of this case do not warrant disbarment in order to protect the public.

5. For the nature of Defendant's deceitful conduct and the protection of the public this panel would consider an active suspension of Defendant's license to practice law if it were not for the evidence of the apparent isolated incidence of his conduct regarding his handling of Ms. Salomon's case and his voluntary effort to control his caseload at the time of the dismissal of Ms. Salomon's case. Given those circumstances, the hearing panel finds and concludes that the public will be adequately protected by suspension of Defendant's license, stayed for a period of time with conditions imposed upon Defendant designed to ensure protection of the public and Defendant's continued compliance with the Rules of Professional 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. The license to practice law in the State of North Carolina of Defendant Robert K. Trobich is hereby suspended for two years from the date this Order of Discipline is served upon him. The period of suspension is stayed for three years as long as Defendant complies and continues to comply with the following conditions:

a. No later than thirty days from the effective date of this order, Defendant shall contract with a licensed North Carolina attorney who maintains a private law practice in the judicial district in which Defendant maintains his practice to serve as a practice monitor. Defendant will first secure the approval of his proposed practice monitor by the Office of Counsel of the North Carolina State Bar, which approval will not be unreasonably withheld. Defendant will personally meet with his practice monitor at least once each calendar quarter, beginning in January 2008, during the stayed suspension. Defendant will keep the monitor apprised of all open and pending client matters and the status of all such matters. By each April 15, July 15, October 15, and January 15 during the stayed suspension, Defendant will deliver to the Office of Counsel written reports signed by the practice monitor confirming that the meetings are occurring and that Defendant is reporting on the status of Defendant's client matters to the practice monitor and that the practice monitor is satisfied with the status of such client matters. Defendant will be solely responsible for all costs associated with the monitoring of his law practice;

b. During each year of the stayed suspension, Defendant shall complete at least six hours of Continuing Legal Education (CLE) approved by the Board of Continuing Legal Education earned by attending courses of instruction devoted exclusively to ethics. These requirements shall be in addition to any CLE required of every active member of the Bar as enumerated in 27 N.C.A.C. 1D §.1518;

c. Defendant shall not violate any state or federal laws or any provisions of the Rules of Professional Conduct during the period of the stayed suspension;

d. Defendant shall respond to all State Bar requests for information by the earlier of the deadline stated in the communication or within 30 days, as required by Rule 8.1(b) of the Rules of Professional Conduct;

e. Defendant shall timely comply with all State Bar membership and Continuing Legal Education requirements; and

f. Defendant shall keep the North Carolina State Bar membership department advised of his current home and business street (not P.O. Box) addresses and telephone numbers.

2. If the stay granted herein is revoked or the suspension of Defendant's license is activated for any reason, before seeking reinstatement of his license to practice law, Defendant must show by clear, cogent and convincing evidence that he has complied with each of the following conditions:

a. Submitted his license and membership card to the Secretary of the North Carolina State Bar within thirty days after the date of the order lifting the stay and/or activating the suspension of his law license;

b. Complied with all provisions of 27 N.C.A.C. 1B § .0124 of the State Bar Discipline and Disability Rules on a timely basis following the order lifting the stay and/or activating the suspension of his law license;

c. Within the twelve months preceding his petition for reinstatement, completed at least six hours of Continuing Legal Education (CLE) approved by the Board of Continuing Legal Education earned by attending courses of instruction devoted exclusively to ethics. These requirements shall be in addition to any CLE required by the Rules and Regulations of the North Carolina State Bar;

d. Paid all due and owing membership fees, Client Security Fund assessments and costs assessed by the DHC or the State Bar and complied with all continuing legal education requirements imposed by the State Bar; and

e. Complied with the conditions set forth in Paragraph 1(c) through (f) above.

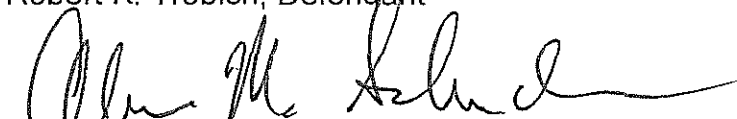
3. Defendant is taxed with the costs of this action as assessed by the Secretary which shall be paid within thirty days of service of the notice of costs upon the Defendant.

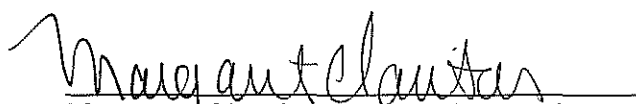
Signed by the undersigned Chair of the hearing panel with the full knowledge and consent of the other Panel members, this the 13 day of January, 2010.


C. Colon Willoughby, Jr., Chair
Disciplinary Hearing Panel

CONSENTED TO:


Robert K. Trobich, Defendant


Alan M. Schneider, Attorney for Defendant


Margaret Cloutier, Deputy Counsel
Attorney for Plaintiff