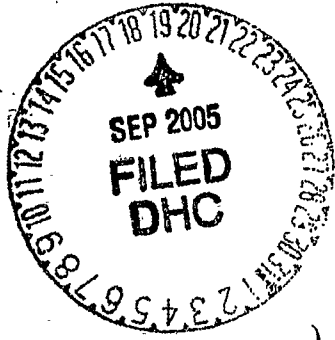


13341

NORTH CAROLINA

WAKE COUNTY



BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR 05 DHC 22

The North Carolina State Bar, Plaintiff

v.

Durryl D. Taylor, Attorney, Defendant

Order of Discipline

This matter was heard on the 11th day of August, 2005, before a Hearing Committee of the Disciplinary Hearing Commission composed of the Chair, F. Lane Williamson, and members Michael A. Grace, and Marguerite P. Watts, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). The Plaintiff was represented by David R. Johnson. The defendant was present and represented himself. An Entry of Default was entered in this matter on July 11, 2005 and, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(f), all allegations in the Plaintiff's Complaint were thereby deemed admitted by the Defendant. Based upon the record, the allegations in the Complaint deemed admitted, the evidence introduced at the hearing, and the reasonable inferences drawn therefrom, by clear, cogent, and convincing evidence the Hearing Committee hereby makes the following:

Findings of Fact

1. 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, Durryl D. Taylor, (hereinafter "Defendant"), was admitted to the North Carolina State Bar on March 21, 1986, and is, and was at all times referred to herein, an

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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 all of the relevant periods referred to herein, Defendant was actively engaged in the private practice of law in the town of Marshall, Madison County, North Carolina.

4. The complaint in this action was filed on May 24, 2005. Summons was also issued on May 24, 2005.

5. The summons and complaint in this action was served on the Defendant in person by the Sheriff of Madison County on June 7, 2005.

6. An answer or responsive pleading by the Defendant was due by June 28, 2005, twenty days after service of the complaint.

7. Defendant did not file an answer or responsive pleading in this action.

8. The Secretary of the North Carolina State Bar entered the Defendant's default for failure to file an answer or responsive pleading on July 11, 2005, in accordance with the Rules of the North Carolina State Bar.

9. The Defendant was duly served with notice of the date, time, and place of this hearing as well as Plaintiff's motion for an Order of Discipline pursuant to the Rules of the North Carolina State Bar.

10. Defendant was present and participated in the hearing of this matter. Defendant made no motion to set aside the entry of default or offer any grounds for such a motion.

11. In or about June, 2004, Defendant established an attorney-client relationship with Stephanie Mainer (hereafter "Mainer"). Mainer paid Defendant \$200.00 and Defendant undertook to represent Mainer on a pending charge of passing a stopped school bus.

12. Defendant obtained a continuance of Mainer's case without Mainer's knowledge or consent and could not or would not tell Mainer her new court date, instead placing the burden on Mainer to contact the courthouse to determine her new court date.

13. Before August 23, 2004, Mainer telephoned and had others telephone Defendant to inform Defendant that Mainer's new court date was August 23, 2004 at 9:00 a.m. Defendant indicated that Defendant would appear on Mainer's behalf on August 23, 2004 at 9:00 a.m. Defendant obtained a waiver of appearance from Mainer, instructed Mainer that Mainer did not need to appear in the courtroom for her case, and instructed Mainer to go to the courthouse late in the day on August 23, 2004, to pay her fine and costs.

14. Defendant did not appear on behalf of Mainer when Mainer's case was called by the court at 9:00 a.m. on August 23, 2004. As a result, Mainer was called and failed.

15. Defendant assured Mainer that Defendant would take the necessary steps on August 24, 2004, to have the called and failed entry stricken. Defendant did not take such steps.

16. Mainer and others acting on Mainer's behalf placed numerous telephone calls to Defendant asking Defendant to correct Defendant's mistake and demanding that Defendant provide Mainer with a copy of Mainer's file. Defendant did not respond to these telephone calls and did not provide Mainer a copy of Mainer's file.

17. Thereafter, Mainer contacted the Assistant District Attorney herself and was able to resolve the matter to her satisfaction without the aid of Defendant.

18. On or about February 9, 2002, Defendant established an attorney-client relationship with Lester Stanley (hereafter "Stanley"). Stanley paid \$3000.00 to Defendant and Defendant undertook to file a claim or other proceeding against the estate of Florence Turner in Buncombe County based upon services provided to the deceased before her death by Stanley and his spouse.

19. On or about May 17, 2002, Defendant filed the claim against the estate. The estate denied the claim. Defendant took no action to further pursue the claim against the estate. Defendant did not tell Stanley he would not pursue the matter further.

20. Defendant has failed and refused to return the unearned fee or the unearned portion of the \$3000.00 fee to Stanley.

21. Stanley made numerous, repeated efforts to communicate with Defendant to learn the status of Stanley's legal matter. Defendant failed and refused to respond to Stanley's communications and failed to keep Stanley informed of the status of Stanley's legal matter.

22. On or about November 17, 2003, Defendant received Notification of Mandatory Fee Dispute Resolution, informing Defendant that Stanley had filed a petition for resolution of a dispute fee with the North Carolina State Bar and informing Defendant of his duty to respond to the petition within 15 days. Defendant did not respond within the required 15-day period. On or about December 18, 2003, Defendant received a Second/Final Letter of Notification of Mandatory Fee Dispute Resolution. Defendant did not respond to the second notice.

23. As a result of Defendant's failure to respond to the fee dispute resolution petition, Plaintiff initiated a grievance file against Defendant. On or about February 6, 2004, Defendant received a Letter of Notice from the Chair of the Grievance Committee regarding the grievance filed by Plaintiff against Defendant relating to Defendant's attorney-client relationship with Stanley. By Bar rule, Defendant was required to respond to the Letter of Notice within 15 days of receipt. Defendant did not respond to the Letter of Notice within the 15-day period as required.

24. On or about March 6, 2004, Plaintiff sent a second notice to Defendant informing Defendant of his obligation to respond to the grievance. Defendant did not respond to the grievance.

25. On or about July 19, 2004, Stanley filed a grievance against Defendant concerning the same matters as described in the fee dispute petition Stanley had previously filed. On September 2, 2004, Defendant received a Letter of Notice from the Chair of the Grievance Committee regarding the grievance filed by Stanley against Defendant. By Bar rule, Defendant was required to respond to the Letter of Notice within 15 days of receipt. Defendant did not respond to the Letter of Notice within the 15-day period as required.

26. On or about February 21, 2002, Defendant established an attorney-client relationship with Nicole Serralta (hereafter "Serralta"). Serralta paid Defendant \$200.00 and Defendant undertook to represent Serralta in a traffic case.

27. Serralta requested Defendant complete and return to her a 1 page form which would enable Serralta to obtain a refund of legal fees from the American Automobile Association (hereafter AAA). Serralta told Defendant that she needed Defendant to return the form as soon as possible.

28. Defendant did not inform Serralta of the outcome of her court case and did not return the completed AAA form to Serralta.

29. Serralta made numerous telephone calls to Defendant, none of which was answered or returned, and sent Defendant two letters, one by certified mail, to which Defendant did not respond, requesting that Defendant return the completed AAA form to Serralta.

30. Defendant has never provided Serralta the completed AAA form.

31. On or about July 26, 2002, Defendant received a Notification of Mandatory Fee Dispute Resolution relating to a petition for resolution of a dispute fee filed by Serralta. Defendant did not respond to the July 26, 2002, Notification. On or about August 13, 2002, Plaintiff sent Defendant a second notice of Serralta's petition and requested that Defendant respond within 10 days of Defendant's receipt of the August 13, 2002, letter. On September 10, 2002, Plaintiff sent Defendant a third request that Defendant provide a response to Serralta's petition and informed Defendant that failure to provide a response within 10 days would result in a grievance being filed against Defendant. Defendant provided no response to any of these notifications.

32. On or about September 3, 2002, Defendant received a Letter of Notice from the Chair of the Grievance Committee regarding the grievance filed by Serralta against Defendant. By Bar rule, Defendant was required to respond to the Letter of Notice within 15 days of receipt. Defendant did not respond to the Letter of Notice within the 15-day period as required.

33. On or about September 20, 2002, Plaintiff sent Defendant a letter reminding Defendant of his obligation to respond to Serralta's grievance and requesting Defendant's response by October 4, 2002. After two deadlines for his response had passed, Defendant requested and was granted an extension of time until October 21, 2002, to respond to the grievance. Defendant finally provided a response to the grievance by facsimile on October 29, 2002.

34. On or about August 28, 2003, Defendant established an attorney-client relationship with Don Kelly (hereafter "Kelly"), a resident of Oklahoma. Through Kelly's Oklahoma attorney, Jeff McConnell (hereafter "McConnell"), Kelly paid Defendant a fee of \$150.00 and Defendant undertook to represent Kelly in a traffic case with a court date of September 24, 2003.

35. Defendant did not inform Kelly or McConnell of the outcome of the case. McConnell telephoned Defendant's office thirty or more days after the court date and was informed by Defendant's office that the case was concluded, that Kelly had been allowed to plead guilty to a lesser charge, and that the court taxed court costs totaling \$260.00 to Kelly.

36. In or about December, 2003, Kelly received a Notice of Failure to Appear on the charge for which Defendant was retained to represent Kelly and learned that Defendant had not in fact appeared on Kelly's behalf and had not resolved the case on the terms represented by Defendant or on any other terms.

37. McConnell made numerous attempts over a period of several days to reach Defendant by telephone and by facsimile. McConnell was seeking to have Defendant take action to avoid prejudice to Kelly. Defendant did not respond to any of these communications.

38. McConnell thereupon contacted the Assistant District Attorney himself and was able to resolve the matter on behalf of Kelly. Defendant has not returned any portion of Kelly's fee.

39. In or about August, 2003, Defendant failed and refused to file reports required by law to be filed with the North Carolina Employment Security Commission (hereafter "ESC"). A tax auditor for the ESC made repeated efforts to obtain the reports from Defendant, to which efforts Defendant did not respond. Due to Defendant's failure to respond to the tax auditor, a criminal warrant was issued charging Defendant with violation of N.C.G.S. 96-18(b) and 96-4(g)(1). After the warrant was issued, Defendant provided the required reports to the ESC and the criminal case was dismissed.

40. On or about November 17, 2003, Defendant received a Letter of Notice from the Chair of the Grievance Committee informing Defendant that, as a result of the warrant which had been issued against Defendant, Plaintiff had initiated a grievance against Defendant. By Bar rule,

Defendant was required to respond to the Letter of Notice within 15 days of receipt. Defendant did not respond to the Letter of Notice within the 15-day period as required.

41. On or about December 5, 2003, Plaintiff sent Defendant a letter reminding Defendant of the pending grievance and of Defendant's obligation to provide a written response by December 15, 2003.

42. On December 17, 2003, Defendant made a written request for extension of time in which to provide a response to the grievance. This request was denied.

43. Defendant never submitted a written response to the grievance.

44. In or about November, 2003, Defendant established an attorney-client relationship with JoAnn El-Sheikh (hereafter "El-Sheikh"). El-Sheikh paid Defendant \$500.00 and Defendant undertook to represent El-Sheikh in a dispute with El-Sheikh's mortgage company.

45. Defendant rescheduled El-Sheikh's hearing without informing El-Sheikh, represented to El-Sheikh that he had communicated with the mortgage company when he had not done so, and did not attend El-Sheikh's rescheduled hearing. Defendant did nothing further on behalf of El-Sheikh.

46. Defendant did not communicate with El-Sheikh, did not return telephone calls from El-Sheikh, did not respond to written communications from El-Sheikh, and refused El-Sheikh's demands that Defendant return the \$500.00 fee and return El-Sheikh's files.

47. On or about July 12, 2004, Defendant received a Notification of Mandatory Fee Dispute Resolution informing Defendant that El-Sheikh had filed a petition for resolution of a fee dispute and informing Defendant of his obligation to respond to the petition within 15 days. Defendant did not respond to the petition within the required 15-day period.

48. On or about July 27, 2004, Plaintiff sent Defendant a Second/Final Letter of Notification of Mandatory Fee Dispute Resolution with respect to El-Sheikh, reminding Defendant of the petition and of Defendant's obligation to provide a response. Defendant did not accept service of the July 27, 2004, letter.

49. Plaintiff initiated a grievance against Defendant arising out of Defendant's attorney-client relationship with El-Sheikh. On or about September 2, 2004, Defendant received a Letter of Notice from the Chair of the Grievance Committee informing Defendant that a grievance had been initiated as a result of Defendant's attorney-client relationship with El-Sheikh. By Bar rule, Defendant was required to respond to the Letter of Notice within 15 days of receipt. Defendant did not respond to the Letter of Notice within the 15-day period as required.

50. On or about September 22, 2004, Plaintiff sent Defendant a second letter informing Defendant that Plaintiff had not received Defendant's response to the El-Sheikh grievance and requesting that Defendant provide a response by October 1, 2004.

51. Defendant has never provided a response to the El-Sheikh grievance.

Based upon the foregoing **Findings of Fact**, the Hearing Committee enters the following:

#### **Conclusions of Law**

1. All parties are properly before the hearing committee and the committee has jurisdiction over Durrill D. Taylor and the subject matter. By appearing and participating in the proceedings without objection, Defendant waived any and all defects in the service of the summons and complaint and in the notice of the hearing.

2. The Defendant'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) in that the conduct violated the Revised Rules of Professional Conduct in effect at the time of the conduct as follows:

(a) By failing to provide the necessary services to represent his clients Mainer, Stanley, Kelly, and El-Sheikh in their respective court cases, including but not limited to, failing to inform Mainer of her court date; failing to appear at scheduled court dates on behalf of Mainer, Kelly, or El-Sheikh; permitting Mainer and Kelly to be called and failed and failing to take the steps necessary to have the called and failed entry stricken; and failing to prosecute Stanley's claim to a conclusion, and by failing to provide Serralta with a completed form for reimbursement of her fee by AAA, Defendant failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 of the Revised Rules of Professional Conduct;

(b) By failing to communicate with Mainer, Stanley, Serralta, Kelly, or El-Sheikh on a timely basis concerning their respective matters, including failing to respond to numerous messages, faxes, and letters sent by those clients, Defendant failed to reasonably consult with a client about the means by which the client's objectives were to be accomplished, failed to keep a client reasonably informed about the status of a legal matter, failed to promptly comply with reasonable requests for information, 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 Rules 1.4(a) and (b) of the Revised Rules of Professional Conduct;

(c) By failing to promptly refund to Mainer, Stanley, Kelly, and El-Sheikh the fees paid by them in advance after not providing the agreed-upon legal services, Defendant collected a clearly excessive fee in violation of Rule 1.5(a) of the Revised Rules of Professional Conduct and failed to refund an advance payment of a fee that was not earned upon termination of employment in violation of Rule 1.16(d) of the Revised Rules of Professional Conduct.

(d) By failing to respond to the notices of mandatory fee dispute resolution after Mainer, Stanley, and El-Sheikh filed fee dispute petitions, Defendant failed to participate in good faith in the fee dispute resolution process of the North Carolina State Bar in violation of Rule 1.5(f) of the Revised Rules of Professional Conduct.

(e) By failing to respond to the Letters of Notice issued by the Chair of the Grievance Committee within the deadline established by the rules with respect to the grievances involving Defendant's conduct in representing Mainer, Stanley, Serralta, Kelly, and El-Sheikh and with respect to his failure to timely file required reports with the Employment Security Commission, Defendant failed to timely respond to inquiries by the Bar in violation of Rule 8.1 of the Revised Rules of Professional Conduct and N.C. Gen. Stat. § 84-28(b)(3).

(f) By representing to McConnell that Defendant had appeared on behalf of Kelly and had reached a resolution of Kelly's legal matter when he had not appeared and had not reached a resolution of Kelly's legal matter, Defendant engaged in conduct

involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) of the Revised Rules of Professional Conduct.

(g) By failing to submit reports required by governmental authorities in violation of N.C.G.S. 96-18(b) and 96-4(g)(1), Defendant committed a criminal act that reflects adversely on Defendant's honesty, trustworthiness or fitness as a lawyer, in violation of Rule 8.4(b) of the Revised Rules of Professional Conduct.

Based upon the foregoing **Findings of Fact** and **Conclusions of Law**, and upon clear, cogent, and convincing evidence and the reasonable inferences drawn therefrom, the hearing committee hereby makes these additional

#### **Findings of Fact Regarding Discipline**

1. Defendant received a reprimand from the Grievance Committee in January 2004 for similar conduct to that involved in the instant matter, including neglect of the client's legal matter, failure to communicate, and failure to timely respond to the Grievance Committee.
2. Defendant has made no effort to refund or reimburse Mainer, Stanley, Kelly, or El-Sheikh for any part of the unearned fees he collected from them.
3. Defendant engaged in multiple violations of the Rules of Professional Conduct involving representation of multiple clients.
4. Defendant testified that he had seen a psychiatrist on July 26, 2005 and was now undergoing treatment for depression, including medication. Defendant also indicated that he had recently had a substance abuse problem involving opiates, but was undergoing treatment for this problem as well. Defendant provided no medical records, diagnosis, or prognosis to substantiate his testimony. Defendant also testified that he had problems with alcohol abuse. Defendant admitted that he had not provided any information to the Plaintiff concerning his recent treatment until he arrived for the hearing. Defendant did not assert that he was disabled or move for any finding of disability.

Based on the **Findings of Fact and Conclusions of Law** above and the additional **Findings of Fact Regarding Discipline**, the Hearing Committee makes the following:

**Conclusions with Respect to Discipline**

1. Defendant's misconduct is aggravated by the following factors:
  - (a) A prior disciplinary offense;
  - (b) a pattern of misconduct;
  - (c) multiple offenses involving multiple clients; and
  - (d) substantial experience in the practice of law.
2. Defendant's misconduct is mitigated by the following factors:
  - (a) Personal or emotional problems; and
  - (b) physical or mental disability or impairment.
3. The aggravating factors outweigh the mitigating factors.
4. The Defendant's conduct has caused, and had the potential to cause, significant harm to his clients that are referenced in this order by denying them the opportunity to have their cases heard in accordance with the law and subjecting some of them to potential additional sanctions by the court for failure to appear. Further, Defendant's conduct or misconduct has harmed the standing of the legal profession by undermining his client's trust and confidence in lawyers and the legal system.
5. Additionally, the Defendant's failure to participate in the mandatory fee dispute resolution process and his failure to respond to the letters of notice from the Chair of the Grievance Committee substantially interfered with Bar's ability to regulate attorneys and undermined the privilege of attorneys in this state to remain self-regulating.
6. To that end, the Hearing Committee has carefully considered all of the different forms of sanction available to it and finds that any of the sanctions of less than suspension would not be appropriate in this case. The Hearing Committee has considered lesser alternatives and

finds that a public censure or reprimand would not be sufficient discipline because of the gravity of the harm caused by the conduct of the Defendant to the public and the administration of justice.

7. The Committee finds the Defendant's conduct caused significant harm and significant potential harm to clients and the administration of justice, to the profession, to members of the public, and that more severe discipline is necessary to protect the public. Entry of any Order imposing lesser discipline than suspension would fail to acknowledge the seriousness of the offenses that the Defendant has committed and sends the wrong message to attorneys and the public regarding the conduct expected of members of the Bar. The only sanction in this case that can adequately protect the public is suspension of the Defendant's license for a period of time.

Based upon the foregoing **Findings of Fact, Conclusions of Law** and the **Findings of Fact Regarding Discipline**, and the **Conclusions with Respect to Discipline**, the Hearing Committee enters the following:

#### **Order of Discipline**

1. The Defendant's license to practice law in the State of North Carolina is hereby suspended for five years effective thirty days after service of this Order of Discipline on the 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 service of this order upon Defendant.

3. Defendant shall comply with the wind down provisions contained in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124(b), the North Carolina State Bar Discipline & Disability Rules. Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within 10 days of the effective date of this Order of Discipline certifying he has complied with the wind down rule.

4. If he has not already done so, within fifteen (15) days of the effective date of this order, Defendant will provide the State Bar with an address at which clients seeking return of

their files and records in Defendant's possession or control may obtain such files and records and at which the State Bar may serve any notices or other matters upon him.

5. After the completion of two (2) years of active suspension of his license, Defendant may apply for a stay of the balance of the suspension upon filing a motion with the Disciplinary Hearing Commission in this matter at least thirty (30) days before any proposed effective date of the stay and demonstrating the following by clear, cogent, and convincing evidence:

(a) That during the period of suspension of his law license he has continued with all prescribed medical treatments as determined by his psychiatrist or other mental health professional for his depression, substance abuse, and any other mental health problems that have been diagnosed by such medical care providers at Defendant's sole expense. Defendant may elect to have his treatment program supervised by the North Carolina State Bar Lawyer Assistance Program. If he does so elect, he will cooperate fully with the Lawyer Assistance Program to develop an appropriate treatment program under the supervision of the Lawyer Assistance Program, and will comply with the requirements of such treatment program. If he does not elect to have his treatment program supervised by the Lawyer Assistance Program, Defendant, at his expense, will direct his psychiatrist to directly provide quarterly reports to the Office of Counsel describing in detail his current treatment regimen, compliance, and prognosis or treatment plan for the next quarter within 15 days of the end of each calendar quarter (i.e., by January 15, April 15, July 15, and October 15). The Defendant will execute written waivers and releases authorizing the Office of Counsel to confer with the Lawyer Assistance Program and/or with Defendant's psychiatrist or other medical care providers for the purpose of determining if the defendant has cooperated with the Lawyer Assistance Program and complied with all requirements of the program and treatment prescribed. The Defendant will not revoke the waivers and releases.

(b) That he has received a medical evaluation from a qualified psychiatrist or other mental health professional approved by the Office of Counsel of the North Carolina State Bar made within six (6) months before the filing of his motion to stay the balance of his suspension that has determined that Defendant has no current mental or psychological

impairment that would affect his ability to practice law and comply with the Rules of Professional Conduct or cause harm to the public if he is allowed to resume the practice law. The medical evaluation shall be obtained at Defendant's expense. Defendant will serve a copy of such evaluation on the Office of Counsel of the North Carolina State Bar with his motion to stay the balance of the suspension.

(c) That he has received a medical evaluation from a qualified psychiatrist or other mental health professional approved by the Office of Counsel of the North Carolina State Bar made within six (6) months before the filing of his motion to stay the balance of his suspension that has determined that Defendant has no current chemical, drug, or alcohol dependence that would affect his ability to practice law and comply with the Rules of Professional Conduct or cause harm to the public if he is allowed to resume the practice law. The medical evaluation shall be obtained at Defendant's expense. This evaluation may be made by the same person who conducted the evaluation required in subsection 5(b) above. Defendant will serve a copy of such evaluation on the Office of Counsel of the North Carolina State Bar with his motion to stay the balance of the suspension.

(d) That Defendant has served the Office of Counsel of the North Carolina State Bar with all necessary and appropriate releases and medical authorizations for the Office of Counsel to review his medical reports, medical records, psychological evaluations or mental health evaluations and interview his treating medical care providers with his motion to stay the balance of the suspension, including his continuing treatment required by subsection 5(a) and his evaluations preceding his application for a stay required by subsections 5(b) and (c). Defendant may not revoke any of these releases. Any charges by the medical care providers for providing the reports and responding to information requests by the Office of Counsel of the North Carolina State Bar will be at Defendant's expense.

(e) That Defendant has satisfactorily completed a law office management course approved by the Office of Counsel of the North Carolina State Bar at his own expense and has paid the costs thereof.

(f) That Defendant will have made restitution in the amount of \$200 to Stephanie Mainer, \$3,000 to Lester Stanley, \$200 to Nicole Serralta, \$150 to Don Kelly (or his attorney), and \$500 to JoAnn El-Sheikh.

(g) That he has participated in good faith in the North Carolina State Bar's fee dispute resolution process for any petition received after the effective date of this order and has refunded all fees that were determined to be subject to refund by the mediation process.

(h) That Defendant has made all required reports and paid any taxes that may be due to the Employment Security Commission, including those for periods for which he is currently delinquent.

(i) That he has opened both a regular business operating account and a separate attorney trust account that conforms to the requirements of the Rules of Professional Conduct.

(j) That he has kept the North Carolina State Bar Membership Department advised of his current business and home address.

(k) That he has responded to all communications from the North Carolina State Bar within 30 days of receipt or by the deadline stated in the communication, whichever is sooner.

(l) That he has not violated the Revised Rules of Professional Conduct or the laws of the United States or any state during his suspension.

(m) That he properly wound down his law practice and complied with the terms of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the State Bar Discipline & Disability Rules.

(n) That he has paid all Membership dues and Client Security Fund assessments and complied with all Continuing Legal Education (CLE) requirements on a timely basis as if still in practice during the suspension.

(o) That if the stay is granted, he has asked a member of the North Carolina State Bar who is in good standing who practices law in Madison County or any county where he proposes to practice, and who has been approved by the North Carolina State Bar, to serve as his monitor and that the selected monitor has agreed to so serve and agreed to submit monthly reports to the Office of Counsel of the State Bar. Defendant will pay the cost, if any, charged by the monitor for this supervision. If the monitor requires a fee to be paid in advance or a retainer to be paid at the inception of this monitoring relationship, Defendant will have paid that prior to submitting his petition for a stay or for reinstatement.

(p) That he has paid the costs of this proceeding within thirty (30) days of service of the statement of costs upon him.

6. If Defendant successfully seeks a stay of the suspension of his law license, such stay will continue in force only as long as he complies with the conditions set out in paragraphs 5(a) and (g) through (p) above and with the following additional conditions:

(a) That he provide reports at his own expense consistent with the requirements of paragraph 5(a) to the Office of Counsel of the North Carolina State Bar by the 15<sup>th</sup> day of the month following each calendar quarter (i.e. January 15, April 15, July 15, and October 15) during the period of the stay.

(b) That he meet once a week with his monitoring attorney to whom he will report the status of all current client matters, cooperate with the mentor attorney and provide any information the mentor attorney deems reasonably necessary to ensure that Defendant is handling all client matters in a timely fashion, is responding promptly to his clients, and has received and disbursed all client funds appropriately, including amounts received as fees. The Defendant will be solely responsible for any cost of this arrangement.

(c) That the monitoring attorney submits monthly reports to the Office of Counsel of the State Bar by the 10<sup>th</sup> of each month.

7. If an order staying any period of this suspension is entered and the Defendant fails to comply with any one or more of the conditions referenced in Paragraphs 5 or 6, then the stay

of the suspension of his law license may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

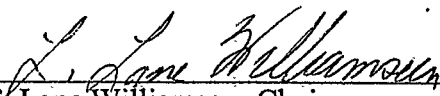
8. If Defendant does not seek a stay of the active portion of the suspension of his law license or if some part of the suspension is stayed and thereafter the stay is revoked, Defendant must comply with the conditions set out in paragraphs 5(a) – (p) above before seeking reinstatement of his license to practice law.

9. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of the stayed suspension.

10. The Defendant will pay all costs of this proceeding permitted by law within thirty (30) days of service of notice of the amount of costs as assessed by the Secretary.

Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Committee.

This the 15<sup>th</sup> day of September, 2005

  
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F. Lane Williamson, Chair  
Disciplinary Hearing Committee