

STATE OF NORTH CAROLINA

WAKE COUNTY

THE NORTH CAROLINA STATE BAR

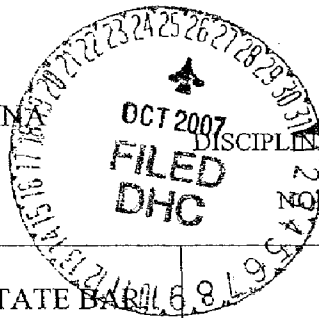
Plaintiff

v.

JONATHAN MARK BROOKS, Attorney,

Defendant

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
06 DHC 29

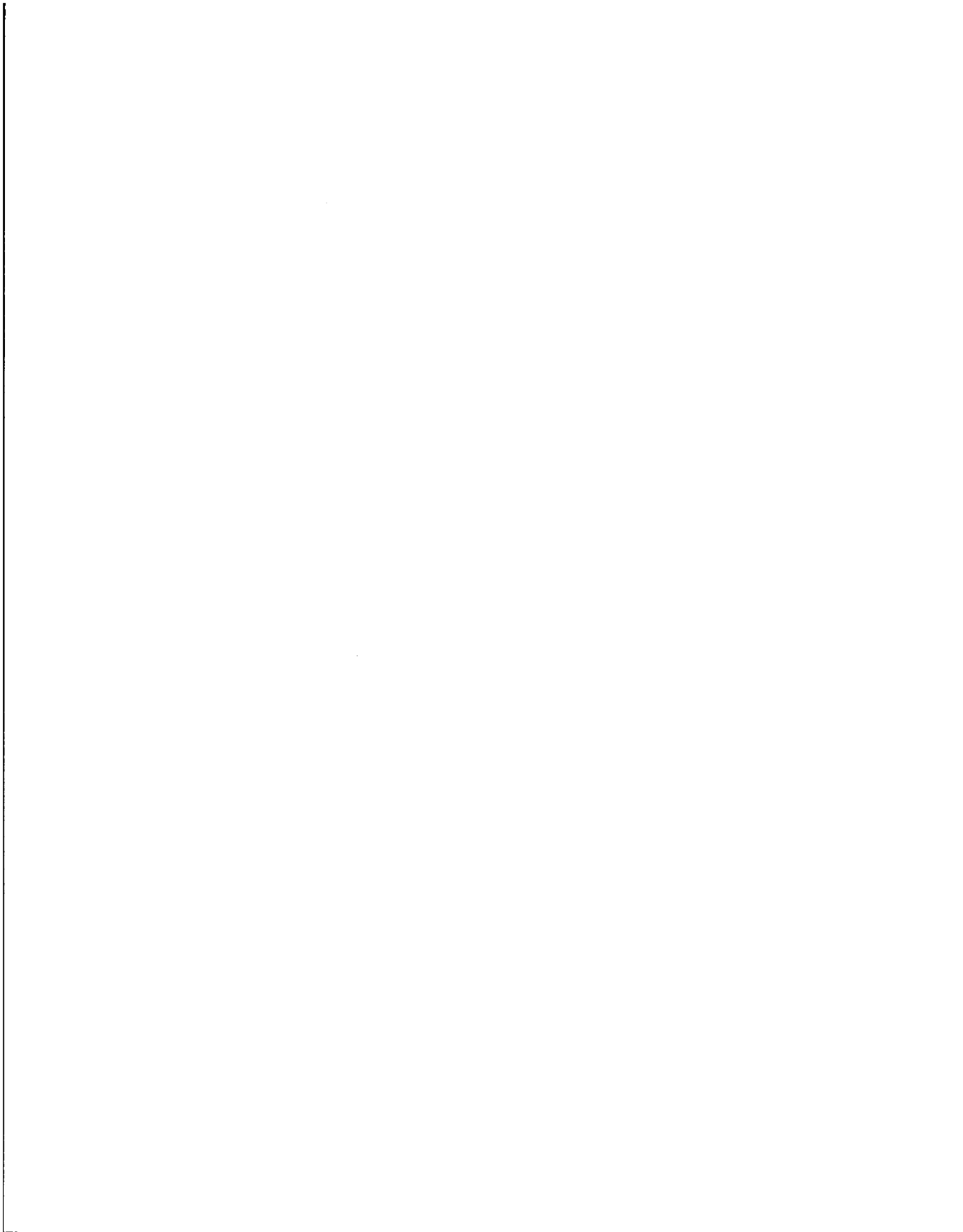


FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER OF DISCIPLINE

This matter was heard on September 20 and 21, 2007 before a hearing committee of the Disciplinary Hearing Commission composed of the Chair, M. Ann Reed, and members C. Colon Willoughby, Jr., and Rebecca Brownlee. Jennifer A. Porter and Carmen K. Hoyme represented Plaintiff, the North Carolina State Bar. Defendant, Jonathan Mark Brooks, was represented by Alan M. Schneider. Based upon the pleadings, the evidence presented at the hearing, and the stipulations of the parties, the hearing committee hereby finds by clear, cogent, and convincing evidence 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, Chapter 1 of Title 27 of the North Carolina Administrative Code ("NCAC").
2. Defendant, Jonathan Mark Brooks (hereinafter "Brooks"), was admitted to the North Carolina State Bar in 1995, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Revised Rules of Professional Conduct.
3. During the times relevant hereto, Brooks was actively engaged in the practice of law in the State of North Carolina and maintained law offices in High Point, Guilford County, North Carolina and in Randleman, Randolph County, North Carolina.
4. Brooks was properly served with process and received due notice of the hearing in this matter.



5. On or about June 18, 2002, Zachary P. Cabon (hereinafter "Cabon") hired Brooks to represent him in matters involving divorce, child custody, child support and equitable distribution.

6. On or about November 12, 2003, Cabon informed Brooks he had engaged the services of another lawyer, and Brooks began preparing a proposed substitution of counsel to send to Cabon's new lawyer, Melissa L. Sams (hereinafter "Sams").

7. Cabon attempted to obtain a copy of his file from Brooks.

8. By letter to Cabon dated November 14, 2003, Brooks stated that he would not forward Cabon's file until "any questions over [his final] invoice" were resolved and Cabon paid "outstanding fees and any costs."

9. On November 17, 2003, Brooks forwarded his final invoice to Cabon. Brooks did not turn over Cabon's file at that time.

10. On or before November 18, 2003, Cabon's subsequent counsel, Melissa L. Sams (hereinafter "Sams"), asked Brooks for Cabon's file.

11. Sams needed Cabon's file in order to finalize and file a consent order regarding custody of Cabon's child. Brooks was aware that Sams needed documents from Cabon's file for this purpose.

12. In response to calls from Cabon that Brooks had not turned over the file, a staff person with the Client Assistance Program of the State Bar called Brooks on November 19, 2003, November 21, 2003, and November 26, 2003 and left messages for Brooks.

13. Despite requests from Cabon and Sams and the contacts from the Client Assistance Program, Brooks delayed releasing the file until December 9, 2003.

14. Sams was able to finalize the consent order for custody and file it on Cabon's behalf within a few days of her receipt of the file.

15. On December 15, 2003, Cabon filed a Petition for Resolution of Disputed Fee with the North Carolina State Bar regarding Brooks' final invoice.

16. Cabon's fee dispute was referred to the 18th Judicial District Bar, which notified Brooks of the fee dispute by certified letter dated January 21, 2004.

17. On April 1, 2004, Cabon and Brooks participated in fee mediation with mediator Andrew S. Lasine (hereinafter "Lasine").

18. The mediation conference resulted in an impasse and Lasine notified Stanley Hammer, Chairman of the 18th Judicial District Bar (hereinafter "Hammer"), that mediation of the fee dispute had been unsuccessful.

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19. On April 1, 2004, Cabon filed an action for breach of contract against Brooks in Guilford County District Court (No. 04 CVD 726) (hereinafter "the case of Cabon v. Brooks").

20. In written correspondence dated April 6, 2004, Hammer sent an Offer of Binding Arbitration (hereinafter "Offer of Arbitration") to Brooks and Cabon. The Offer of Arbitration, which Hammer sent via certified mail, stated:

"The Mediator . . . is of the opinion mediation cannot succeed. Therefore, the mediation portion of the program is concluded. If you both consent, the Committee will conduct a binding arbitration to resolve this matter for you. . . .

If you wish to consent to such Arbitration, please so indicate by signing and returning the attached ARBITRATION AGREEMENT . . . postmarked no later than fourteen (14) days from your receipt of this letter.

Failure to respond in writing by that date will be deemed a refusal to consent to binding Arbitration and if either does not so consent . . . my file will be closed and either will be free to pursue their remedy in court."

21. Cabon received the Offer of Arbitration not later than April 8, 2004. Brooks did not receive it until sometime subsequent to April 29, 2004 and prior to May 5, 2004.

22. Cabon did not sign or return the Arbitration Agreement.

23. After Brooks received the Summons and Complaint in the case of Cabon v. Brooks on April 19, 2004, he sent Hammer a letter dated April 20, 2004 seeking confirmation that the "fee arbitration process" was concluded and a copy of any form Cabon had forwarded electing to not proceed with arbitration.

24. By letter dated April 27, 2004, Hammer responded to Brooks's inquiry. In this letter, Hammer referred to the offer of arbitration and stated that the 15 day period for consent had not run.

25. By letter to Hammer dated April 29, 2004, Brooks stated that he had not received the notice offering arbitration. Brooks asked Hammer to send him a copy of the notice and confirmation of Cabon's receipt of the notice.

26. Brooks did not consent to arbitration in the April 29, 2004 letter he sent to Hammer.

27. On or about April 30, 2004, Hammer made a handwritten notation on Brooks's letter of April 29, 2004, and sent the letter back to Brooks. Hammer's handwritten notation indicated that the documents Brooks had requested were enclosed. In this April 30, 2004 correspondence, Hammer re-sent the Offer of Arbitration and Arbitration Agreement to Brooks.

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28. On May 5, 2004, Brooks mailed a letter to Stanley Hammer requesting a copy of the return receipt showing service on Cabon of the Offer of Arbitration. Brooks did not include any documents with this letter to Hammer.

29. By letter dated May 18, 2004, and sent to Brooks and Cabon via certified mail, Hammer stated "As I have not received confirmation from Mr. Zachary Cabon, and since both parties did not consent to the Arbitration, you are hereby notified that the authority of the Committee has now ended, the Committee's file is now closed, and either party is free to seek relief from the Court."

30. Brooks filed an Answer and Counterclaims in the case of Cabon v. Brooks on or about August 19, 2004. His Answer and Counterclaims included assertions that the dispute was subject to mandatory binding arbitration. On November 8, 2004, Brooks filed a Motion for Partial Summary Judgment and to Enforce Arbitration Agreement and a supporting affidavit. On February 9, 2005, Brooks filed a Notice of Hearing on the Motion to Compel Arbitration in the case of Cabon v. Brooks.

31. Also on February 9, 2005, Brooks filed a Supplemental Affidavit in Support of Motion to Compel Arbitration in the case of Cabon v. Brooks (hereinafter "Supplemental Affidavit").

32. As Exhibit H to this Supplemental Affidavit, Brooks attached what he represented to be a letter he sent to Hammer dated April 29, 2004.

33. Brooks claimed that by this letter, attached as Exhibit H and quoted in the body of the Supplemental Affidavit, he had consented to binding arbitration of the fee dispute.

34. The letter Brooks attached as Exhibit H to his Supplemental Affidavit was not the letter Brooks had sent to Hammer dated April 29, 2004.

35. The letter Brooks attached as Exhibit H to his Supplemental Affidavit included several additional sentences, indicating Brooks's consent to arbitration, which had not appeared in the otherwise identical letter received by Hammer.

36. Brooks quoted these additional sentences in Paragraph 14 of the Supplemental Affidavit. The material quoted in Paragraph 14 did not appear in the version of the letter received by Hammer in 2004.

37. Brooks also attached to the Supplemental Affidavit a signed copy of the Agreement to Arbitration form, marked as Exhibit L. In Paragraph 17 of the Supplemental Affidavit, Brooks stated that he enclosed the signed Agreement to Arbitration in his May 5, 2004 letter to Hammer.

38. The May 5, 2004, letter from Brooks to Hammer did not contain an "enclosures" notation, and made no mention of the Arbitration Agreement. The May 5th letter's single paragraph read:

Vertical line on the left side of the page.

Horizontal line at the top right of the page.

Horizontal line at the bottom left of the page.

Vertical line on the right side of the page.

Please provide me with a copy of the return receipt showing that Mr. Cabon was served with the offer of binding arbitration mailed on April 6, 2004. An ordinary, clear copy of both sides of the receipt is requested. I will pay copy costs if that is necessary.

39. Hammer received Brooks's May 5, 2004, letter, but an Arbitration Agreement signed by Brooks was not enclosed therein.

40. Also attached to Brooks's Supplemental Affidavit was a child custody evaluation report on Cabon containing the evaluating psychologist's impressions of Cabon's personality and the results of psychological assessments performed as part of the custody evaluation.

41. In Paragraph 27 of the Supplemental Affidavit, Brooks quoted two paragraphs from the custody evaluation report. Although the material in Paragraph 27 contained highly sensitive and potentially embarrassing statements about Cabon, it did not include any reference to Cabon's honesty or credibility.

42. Brooks had received this psychologist's evaluation of Cabon in the course of his representation of Cabon.

43. Neither the report as a whole nor the language excerpted and quoted in Paragraph 27 of the Supplemental Affidavit were necessary, admissible, or relevant to any claim or defense on behalf of Brooks in the breach of contract action.

44. On March 15, 2005, the Court entered an Order in the case of Cabon v. Brooks granting Brooks' motion to compel arbitration based upon its finding that the express language of the contract between Brooks and Cabon contained a valid and enforceable arbitration clause.

45. On September 13, 2005, an Arbitration Award was entered in the case of Cabon v. Brooks, awarding Cabon \$932.34 from Brooks and dismissing Brooks's counterclaims against Cabon.

CONCLUSIONS OF LAW

1. All the parties are properly before the hearing committee and the committee has jurisdiction over Defendant, Jonathan Mark Brooks, and the subject matter.

2. 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) as follows:

- (a) By fabricating an altered version of his April 29, 2004 letter to Hammer, Brooks engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);

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- (b) By submitting the fabricated letter to the Court as Exhibit H to the Supplemental Affidavit he filed and by falsely asserting in his Supplemental Affidavit that he had consented to arbitration in his April 29, 2004 letter to Hammer, Brooks made a false statement of material fact to the tribunal in violation of Rule 3.3(a)(1), offered evidence he knew to be false in violation of Rule 3.3(a)(3), engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- (c) By falsely asserting in his Supplemental Affidavit that he had returned the Arbitration Agreement to Hammer, Brooks made a false statement of material fact to the tribunal in violation of Rule 3.3(a)(1), engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- (d) By placing Cabon's psychological evaluation, which was neither admissible nor relevant to any claim or defense in the civil action between Cabon and Brooks, into the public record, Brooks revealed confidential client information in violation of Rule 1.6(a); and
- (e) By failing to promptly turn over Cabon's client file to Cabon or Cabon's subsequent counsel, Brooks failed to protect a client's interests upon termination of the representation by failing to promptly surrender papers and property to which the client was entitled in violation of Rule 1.16(d).

Based upon the foregoing Findings of Fact and Conclusions of Law and the stipulations of the parties, the hearing committee hereby finds by clear, cogent, and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. Brooks' misconduct is aggravated by the following factors:
 - a. Prior disciplinary offenses, to wit: an admonition issued in 2000;
 - b. Dishonest or selfish motive;
 - c. A pattern of misconduct concerning Cabon;

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- d. Multiple offenses;
 - e. Refusal to acknowledge wrongful nature of conduct;
 - f. Vulnerability of the victim, Cabon, whose psychological evaluation Brooks obtained during the course of Brooks' representation of Cabon; and
 - g. Substantial experience in the practice of law.
2. Brooks' misconduct is mitigated by the following factors:
- a. Good character or reputation;
 - b. Remoteness of the prior offense.
3. The aggravating factors outweigh the mitigating factors.
4. Brooks' conduct in disclosing confidential client information had the potential to cause serious harm to his client Cabon.
5. Brooks' conduct in submitting a false document to the Court involved dishonesty and an intent to deceive which has the potential to cause serious harm to a party and to the administration of justice.
6. The hearing committee has considered lesser sanctions and finds that discipline short of suspension would not sufficiently protect the public for the following reasons:
- a. Brooks engaged in conduct involving dishonesty and an intent to deceive;
 - b. Brooks' conduct caused potential significant harm to his client and the administration of justice;
 - c. Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses Brooks committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar of this State.
7. The hearing committee finds that the only sanction in this case that can adequately protect the public is an active suspension of Defendant's license for a period of time.

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

ORDER OF DISCIPLINE

1. Defendant, Jonathan Mark Brooks, is hereby suspended from the practice of law in North Carolina for three years, effective upon entry of this order.

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) of 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, certifying he has complied with the wind down rule.

4. All costs of this action except the State Bar's deposition costs are taxed to Defendant. Defendant must pay the costs within 90 days of service of the statement of costs by the Secretary.

5. After serving one year of the active suspension of his license, Defendant may apply to have the remainder of the suspension stayed by filing a petition with the Secretary of the North Carolina State Bar demonstrating the following by clear, cogent, and convincing evidence:

- a. 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;
- b. That he paid the costs of this proceeding within 30 days of service of the statement of costs upon him;
- c. That he has kept the North Carolina State Bar Membership Department advised of his current business and home address;
- d. That he has responded to all communications from the North Carolina State Bar received after the effective date of this order within 30 days of receipt or by the deadline stated in the communication, whichever is sooner;
- e. That he has not violated the Revised Rules of Professional Conduct or the laws of the United States or any state;

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- f. That he 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. The State Bar does not send membership and CLE notices to members who are suspended so it is Defendant's obligation to contact the appropriate departments on a timely basis, ascertain his financial and CLE obligations during his suspension and to timely satisfy those obligations; and
- g. That at least half of his CLE hours each year during his suspension be in courses related to ethics and professionalism and that some amount of his CLE hours each year include the topic of law office management.

6. The procedures of 27 N.C. Admin. Code Chapter 1, Subchapter B, Section .0125(b) shall govern Defendant's petition for a stay of the remainder of the suspension of his law license.

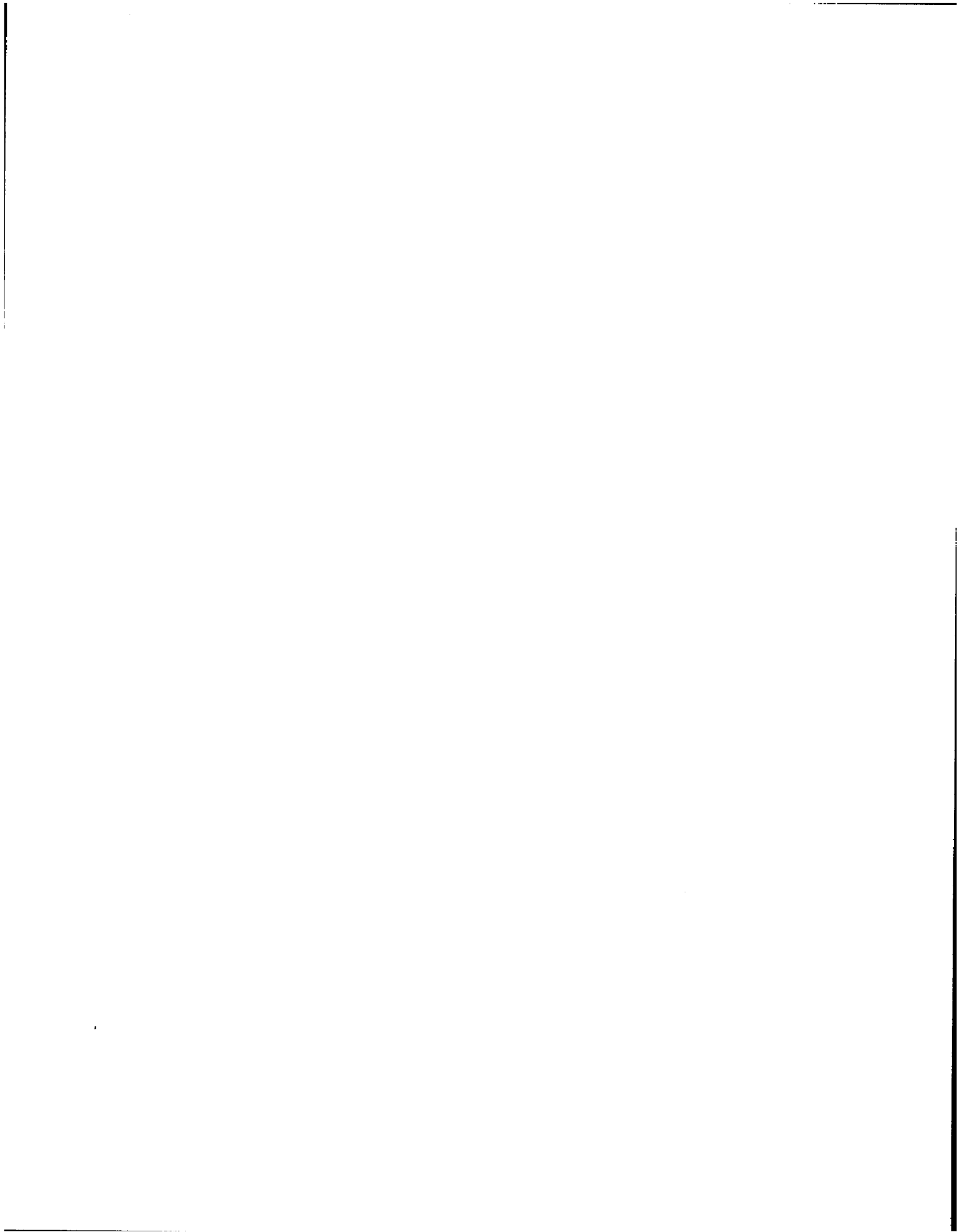
7. If the Secretary finds that Defendant has proven compliance with the conditions of this order by clear, cogent, and convincing evidence, the Secretary shall put into effect the stay of the remaining period of suspension provided for in this Order by reinstating Defendant to active status subject to the terms, conditions, and requirements of this Order of Discipline, with Defendant's active status contingent upon continued compliance with the terms of this Order. Such stay will continue in force only as long as Defendant continues to comply with all conditions in this Order. The Disciplinary Hearing Commission will retain jurisdiction of the matter until all conditions of the Order are satisfied, under 27 N.C. Admin. Code Chapter 1, Subchapter B, Section .0114(x).

8. If Defendant successfully seeks a stay of the suspension of his law license, such stay will continue in force only as long as he continues to comply with the conditions set out in paragraphs 5 (c) – (g) of the Order of Discipline section of this Order.

9. If an order staying any period of this suspension is entered and the Defendant fails to comply with any of the conditions referenced in Paragraph 8 of the Order of Discipline section of this Order, 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.

10. 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 prove each of the matters set out in paragraphs 5 (a) – (g) of the Order of Discipline section of this Order by clear, cogent, and convincing evidence before seeking reinstatement of his license to practice law.

11. 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.

Signed by the Chair with the consent of the other hearing committee members,
this the 25th day of October, 2007.

A handwritten signature in cursive script, appearing to read "M. Ann Reed", written over a horizontal line.

M. Ann Reed, Chair
Disciplinary Hearing Committee

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