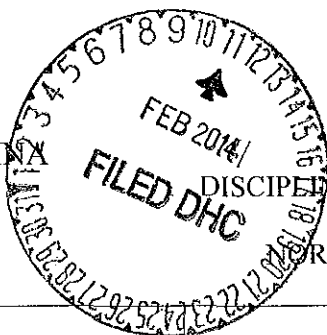


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE  
 DISCIPLINARY HEARING COMMISSION  
 OF THE  
 NORTH CAROLINA STATE BAR  
 13 DHC 24

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

WILLIAM R. SHILLING, Attorney,

Defendant

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

THIS MATTER was considered by a hearing panel of the Disciplinary Hearing Commission composed of Ronald R. Davis, Chair, Donald C. Prentiss and Karen B. Ray pursuant to 27 N.C. Admin. Code 1B § .0114 of the Rules and Regulations of the North Carolina State Bar. Plaintiff, the North Carolina State Bar, was represented by Barry S. McNeill, Deputy Counsel. Defendant, William R. Shilling, was represented by Gregory F. Boyer, of Franklin, North Carolina. Defendant waives a formal hearing in this matter and both parties stipulate and consent to the entry of this Order and to the discipline imposed. Defendant waives any right to appeal this consent Order or to challenge in any way the sufficiency of the findings.

Based upon the consent of the parties, the hearing panel hereby makes, 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, William R. Shilling (“Shilling” or “Defendant”), was admitted to the North Carolina State Bar on September 17, 2004, 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 Rules of Professional Conduct.
3. During all of the relevant periods referred to herein, Shilling was engaged in the practice of law in the State of North Carolina and maintained a law office in Franklin, Macon County, North Carolina.

4. Shilling married Cheryl Ann Fox (Cheryl Shilling) on August 19, 1999.
5. Shilling and Cheryl Shilling are the parents of a son (minor son), who was 13-years-old as of February 2013.
6. The Shilling family resided in Franklin, North Carolina.
7. Shilling sometimes drank alcohol excessively at his residence, and became verbally abusive of his wife and minor son when he did so.
8. Following a domestic dispute in 2011 in which Shilling threatened Cheryl Shilling and caused her and their minor son to leave their residence, Cheryl Shilling, upon the advice of an attorney, began recording Shilling's abusive outbursts.
9. Shilling was unaware at the time that Cheryl Shilling was making the recordings referenced in Paragraph 8 above, and Paragraphs 11 and 20 below.
10. On February 13, 2013, during a domestic dispute at the Shillings' residence over his minor son's homework, Shilling destroyed his minor son's cellphone and threatened to physically assault his minor son, including multiple threats to punch his minor son in the face causing injury.
11. Cheryl Shilling recorded Shilling's threats to their minor son on February 13, 2013, and the recordings confirm the threats made by Shilling to his minor son referenced in Paragraph 10 above.
12. On the morning of February 14, 2013, Shilling admonished his minor son about not using his time wisely to study for a scheduled test at school that day.
13. Shilling warned his minor son that he was leaving momentarily and that if his minor son did not accompany him, then his minor son would have to walk to school.
14. As Shilling threatened to punish his minor son severely if the minor son did not receive a perfect grade on the scheduled test, Shilling cornered his minor son inside the front door of their residence.
15. Shilling said to his minor son, "Keep mumbling, [minor son], I'll break that jaw so they'll [have to] wire it shut. Swear to [expletive], God."
16. When his minor son attempted to extricate himself from the corner, using his arm to try to push past Shilling, Shilling punched his minor son in the abdomen with his fist, shoving his minor son against the wall.
17. The punch by Shilling left a red mark on his minor son's abdomen.
18. After the assault, the minor son refused to leave with Shilling and be transported by Shilling to his school.
19. Before Shilling left the residence, he said to his minor son, "I think maybe this weekend you and I should place everything you own in the front yard, pour gasoline on it and burn it, except for your mattress, including the dog."

20. Cheryl Shilling recorded Shilling's threats to their minor son on February 14, 2013, and the recordings confirm the threats made by Shilling to his minor son referenced in Paragraphs 15 and 19 above.

21. After Shilling left the residence in his vehicle, Cheryl Shilling telephoned Emergency 911.

22. During the 911 telephone call, Cheryl Shilling reported that Shilling had punched their minor son.

23. A Deputy Sheriff was dispatched to the Shilling residence.

24. When Shilling returned to the residence, Cheryl Shilling telephoned Emergency 911 again because Shilling attempted to enter the bedroom where she and her minor son barricaded themselves.

25. The Deputy Sheriff arrived while Cheryl Shilling was on the telephone with the 911 dispatcher.

26. The Emergency 911 telephone calls made by Cheryl Shilling were recorded.

27. In neither of Cheryl Shilling's February 14, 2013 telephone calls to Emergency 911, referenced in Paragraphs 21-26, did Cheryl Shilling state that Shilling had not struck their minor son.

28. Shilling was arrested on charges of misdemeanor child abuse in violation of N.C. Gen. Stat. § 14-318.2 and communicating threats in violation of N.C. Gen. Stat. § 14-277.1 on February 14, 2013, in *State v. William Shilling*, No. 13-CR-50192 (Macon County District Court).

29. During a custodial interview with investigating law enforcement officers on the day after his arrest, Shilling stated that he had pushed his minor son in retaliation for the minor son pushing him first, but Shilling denied hitting or punching his minor son.

30. During the custodial interview referenced in Paragraph 29 above, Shilling denied ever telling his wife, Cheryl Shilling, or his minor son that he was going to punch his minor son.

31. During the custodial interview referenced in Paragraphs 29 and 30 above, Shilling denied that he had threatened to burn his minor son's belongings and dog.

32. Shilling's statements during the custodial interview referenced in Paragraphs 29, 30, and 31 above were false.

33. On May 9, 2013, Shilling pled guilty in Macon County District Court to misdemeanor child abuse in violation of N.C. Gen. Stat. § 14-318.2, and misdemeanor communicating threats in violation of N.C. Gen. Stat. § 14-277.1, in *State v. William Shilling*, No. 13-CR-50192 (Macon County District Court).

34. Shilling received a 60 day suspended sentence upon his guilty pleas referenced in Paragraph 30 above, and was placed on unsupervised probation for 18 months.

35. On May 9, 2013, Shilling and his wife, Cheryl Shilling, consented to the entry of a Domestic Violence Protection Order (DVPO) in *Cheryl A. Shilling v. William R. Shilling*, No. 13-CVD-109 (Macon County District Court), requiring, among other things, that Shilling not have contact with Cheryl Shilling and that Shilling not harass Cheryl Shilling.

36. On July 19, 2013, a warrant issued for Shilling's arrest in *State v. William Shilling*, No. 13-CR-051039 (Macon County District Court), charging Shilling with violation of the May 9, 2013 DVPO referenced in Paragraph 35 above.

37. On or about October 2, 2013, Shilling was tried in Macon County District Court, and was found guilty of violating the May 9, 2013 DVPO referenced in Paragraph 35 above, but appealed his conviction to Macon County Superior Court.

38. On October 29-30, 2013, Shilling was tried by jury in Macon County Superior Court, and on October 30, 2013 the jury found Shilling guilty of violating a valid DVPO in violation of N.C. Gen. Stat. § 50B-4.1(A).

39. On October 30, 2013, the presiding judge sentenced Shilling in *State v. William Shilling*, No. 13-CRS-051039 (Macon County Superior Court), to 75 days in custody, but suspended that sentence placing Shilling on supervised probation for 18 months, and imposing an additional intermediate punishment for contempt of 15 days in custody, to be served by Shilling within 90 days.

40. On October 30, 2013, the presiding judge also found that Shilling violated the conditions of his probation imposed on May 9, 2013, and modified the conditions of probation to require that Shilling's probation be supervised instead of unsupervised.

41. On October 30, 2013, Shilling gave notice of appeal of his conviction of violating a valid DVPO, but subsequently withdrew the notice of appeal in January 2014.

42. On or about May 20, 2013, in responding to a grievance filed against him by the State Bar (No. 13G0146), Shilling stated that during the February 14, 2013 argument with his minor son, his minor son pushed him first and Shilling retaliated by pushing his minor son.

43. Shilling also stated in his response, referenced in Paragraph 42 above, that his wife, Cheryl Shilling, had admitted during her February 14, 2013 telephone call to Emergency 911 that Shilling had not struck their minor son.

44. Shilling's statements made in his grievance response to the State Bar, referenced in Paragraphs 42 and 43 above, 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 Defendant, William R. Shilling, and the subject matter of this proceeding.
2. Domestic violence by a lawyer is serious misconduct that reflects adversely on a lawyer's fitness to practice law.
3. Shilling'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 committing misdemeanor child abuse in violation of N.C. Gen. Stat. § 14-318.2, and misdemeanor communicating threats in violation of N.C. Gen. Stat. § 14-277.1, Defendant committed criminal acts that reflect adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b);
  - (b) By making false statements to the investigating law enforcement officers, Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), and engaged in conduct that is prejudicial to the administration of justice in violation of Rule 8.4(d); and,
  - (c) By making false statements during the State Bar's grievance investigation, Defendant knowingly made false statements of material fact in violation of Rule 8.1(a) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation 8.4(c).

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 has substantial experience in the practice of law.
2. Defendant's misconduct did not occur in connection with his representation of any clients.
3. Defendant's arrests, trials, and convictions received extensive publicity in the media.
4. Defendant violated a lawful and valid DVPO.

5. Defendant timely served the 15 days in custody for having violated the DVPO.

6. Defendant's only discipline, to date, is an Admonition dated May 6, 2013 in *In re William R. Shilling*, No. 13G0140, in which he was found to have violated Rule 7.1(a)(1) for misleadingly advertising on his website that he was endorsed by the State Bar, and Rule 7.4(b)(3) for advertising that he was a child welfare law specialist without including proper language.

45. Defendant previously represented the Macon County Department of Social Services (MCDSS), but MCDSS ended that association following his arrest on the child abuse charge.

46. Defendant self-reported to the Lawyer Assistance Program (LAP) on February 21, 2013, and has been compliant to date with the recommendations made in his LAP contract.

47. Defendant is participating in therapy with Martha Teater, a licensed counselor, for anger management issues, and Ms. Teater reports that she is satisfied with his progress.

48. Defendant's church pastor reports that he has observed a significant life change in Defendant, and that he is thankful to have Defendant as a church participant.

49. Defendant understands the significance of his misconduct and is remorseful for the harm and potential harm that his conduct caused Cheryl Shilling, his minor son, and the public's perception of the legal profession.

50. Defendant enjoys a reputation of being a competent attorney.

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. Admin. Code 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. Prior disciplinary offense;
- b. Defendant engaged in a pattern of misconduct;
- c. Effect of any personal or emotional problems on the conduct in question;
- d. Defendant is remorseful for his conduct;
- e. Defendant's reputation;

- f. The vulnerability of the victims;
- g. Defendant's substantial experience in the practice of law; and,
- h. Defendant received imposition of criminal penalties.

2. The hearing panel has carefully considered all of the factors enumerated in 27 N.C. Admin. Code 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. Circumstances reflecting Defendant's lack of honesty, trustworthiness, or integrity;
- b. Defendant's actions had a potential negative impact on the public's perception of the legal profession;
- c. Defendant's conduct had a negative impact on the administration of justice; and,
- d. Defendant's conduct included acts of dishonesty, misrepresentation, deceit, or fabrication.

3. The hearing panel has also carefully considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0114(w)(2) of the Rules and Regulations of the North Carolina State Bar and concludes that although acts of dishonesty or misrepresentation are present in this case, disbarment is not necessary in order to protect the public.

4. The hearing panel has considered all other forms of discipline available and concludes that 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.

5. The hearing panel finds and concludes that the public will be adequately protected by imposing a period of active suspension which is subject to being stayed in part upon Defendant's compliance with conditions designed to ensure protection of the public and to ensure Defendant's 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 of Defendant, William R. Shilling, is hereby suspended for two years. This Order will be effective 30 days after service of the Order upon 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 the effective date of this Order.

3. Defendant shall comply with the wind down provisions contained in 27 N.C. Admin. Code 1B § .0124 of the Rules and Regulations of the North Carolina State Bar. 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. Within 15 days of the effective date of this Order Defendant shall provide the State Bar with an address and telephone number at which clients seeking return of files can communicate with Defendant and obtain such files, and Defendant shall promptly return all files to his clients upon request.

5. Defendant is taxed with the costs and administrative fees of this action as assessed by the Secretary. Defendant shall be served with a statement of costs and fees. Defendant shall pay the amount assessed within thirty days of service of the statement of costs and fees upon him.

6. One year from the effective date of this Order, Defendant may file a verified petition for a stay of the remaining period of his suspension demonstrating by clear, cogent and convincing evidence that, in addition to complying with the general provisions for reinstatement contained in 27 N.C. Admin. Code 1B § .0125 of the Rules and Regulations of the North Carolina State Bar, Defendant has complied during his suspension with the following conditions:

- a. Defendant, at his own expense, continued counseling with Counselor Martha Teater, and/or any other board-certified psychiatrist, psychologist, or counselor (hereafter "Therapist") approved by the State Bar's Office of Counsel and the Lawyer's Assistance Program (LAP), and followed and complied with the course of treatment prescribed by the Therapist. The Therapist shall provide monthly reports to the State Bar confirming Defendant is following the recommendations of the Therapist. The Therapist shall notify the State Bar if Defendant fails to follow the recommendations of the Therapist. Defendant shall ensure these reports and notifications are made. Defendant will sign all necessary releases or documents to allow such reports and notifications, to allow the Therapist to provide documents from Defendant's treatment to the State Bar, and to allow the Therapist to discuss Defendant's participation and treatment with the Office of Counsel of the State Bar, and shall not revoke the release during the period of suspension;
- b. Defendant instructed his Therapist to notify the Office of Counsel and LAP immediately in writing if, at any point during the active period of his



suspension, Defendant ceases to be a patient or otherwise fails to comply with the course of treatment prescribed by the Therapist;

- c. Defendant executed a written waiver authorizing LAP to confer with the Office of Counsel for purposes of determining if Defendant has cooperated with LAP, has complied with the terms of the LAP contract, and has complied with the terms of this order. If, during the suspension, Defendant fails to cooperate with LAP, fails to comply with his LAP contract, or fails to follow the treatment recommendation of his Therapist or any successor Therapist approved by the Office of Counsel and LAP, LAP shall immediately report such failure to the Office of Counsel;
- d. Defendant properly wound down his law practice and complied with the terms of 27 N.C. Admin. Code 1B § .0124 of the Rules and Regulations of the North Carolina State Bar;
- e. Within 15 days of the effective date of this Order Defendant provided the State Bar with an address and telephone number at which clients seeking return of files could communicate with Defendant and obtain such files, and that Defendant promptly returned all files to his clients upon request;
- f. Defendant kept the Membership Department of the State Bar informed of his current information for his physical address (not a Post Office box), telephone number, and e-mail address throughout the period of his suspension;
- g. Defendant accepted all certified mail from the State Bar sent to the address on record with the Membership Department of the North Carolina State Bar throughout the period of the suspension;
- h. Defendant responded to all letters of notice and requests for information from the North Carolina State Bar by the deadline stated therein with full and complete responses and all requested documentation throughout the period of his suspension;
- i. Defendant has come into compliance with any outstanding continuing education or membership obligations at the time of the filing of his petition for reinstatement;
- j. Defendant did not violate any of the Rules of Professional Conduct in effect during the period of the suspension;
- k. Defendant did not violate any laws of the State of North Carolina or of the United States during the period of the suspension; and

1. Defendant paid all costs and fees of this proceeding as assessed by the Secretary within thirty days of service of the statement of costs and fees upon him.

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

8. Defendant may file a petition seeking a stay of the remaining period of his suspension and demonstrating compliance with the conditions stated in Paragraph 6 above up to 30 days prior to the end of the first year of the two year suspension, but the stay shall not be lifted and Defendant shall not be reinstated until the end of that first year of the two year suspension.

9. If the State Bar does not file an objection to Defendant's petition for a stay of the remainder of his suspension as described in 27 N.C. Admin. Code Chapter 1B, Section .0125(b)(6), then pursuant to Section .0125(b)(5) 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, including the conditions set out in paragraph 11 below.

10. If the State Bar files an objection to Defendant's petition for a stay of the remainder of his suspension as described in 27 N.C. Admin. Code Chapter 1B, Section .0125(b)(6), then pursuant to Section .0125(b)(7) the Secretary shall refer the matter to the Chair of the Disciplinary Hearing Commission (DHC). The Chair of the DHC shall appoint a hearing panel and set the matter for hearing as described in Section .0125(b)(7). The Chair of the DHC shall appoint as members of the hearing panel the members entering this Order if practicable.

11. If Defendant is granted a stay of his suspension, the stay of his suspension will remain in effect only if Defendant complies, and continues to comply, with the following conditions:

- a. Defendant, at his own expense, continued counseling with Counselor Martha Teater, and/or any other board-certified psychiatrist, psychologist, or counselor (hereafter "Therapist") approved by the State Bar's Office of Counsel and the Lawyer's Assistance Program (LAP), and followed and complied with the course of treatment prescribed by the Therapist. The Therapist shall provide monthly reports to the State Bar confirming Defendant is following the recommendations of the Therapist. The Therapist shall notify the State Bar if Defendant fails to follow the recommendations of the Therapist. Defendant shall ensure these reports and notifications are made. Defendant will sign all necessary releases or documents to allow such reports and notifications, to allow the Therapist

to provide documents from Defendant's treatment to the State Bar, and to allow the Therapist to discuss Defendant's participation and treatment with the Office of Counsel of the State Bar, and shall not revoke the release during the period of stayed suspension;

- b. Defendant instructed his Therapist to notify the Office of Counsel and LAP immediately in writing if, at any point during the stayed suspension, Defendant ceases to be a patient or otherwise fails to comply with the course of treatment prescribed by the Therapist;
- c. Defendant executed a written waiver authorizing LAP to confer with the Office of Counsel for purposes of determining if Defendant has cooperated with LAP, has complied with the terms of the LAP contract, and has complied with the terms of this order. If, during the stayed suspension, Defendant fails to cooperate with LAP, fails to comply with his LAP contract, or fails to follow the treatment recommendation of his Therapist or any successor Therapist approved by the Office of Counsel and LAP, LAP shall immediately report such failure to the Office of Counsel;
- d. Defendant kept the Membership Department of the State Bar informed of his current information for his physical address (not a Post Office box), telephone number, and e-mail address throughout the period of his stayed suspension;
- e. Defendant accepted all certified mail from the State Bar sent to the address on record with the Membership Department of the North Carolina State Bar throughout the period of his stayed suspension;
- f. Defendant responded to all letters of notice and requests for information from the North Carolina State Bar by the deadline stated therein with full and complete responses and all requested documentation throughout the period of his stayed suspension;
- g. Defendant complied with continuing education or membership obligations throughout the period of his stayed suspension;
- h. Defendant did not violate any of the Rules of Professional Conduct in effect during the period of his stayed suspension; and,
- i. Defendant did not violate any laws of the State of North Carolina or of the United States during the period of his stayed suspension.

12. Unless Defendant's obligations under this Order are modified by further order of the Disciplinary Hearing Commission ("DHC"), Defendant's obligations under this Order end two years from the effective date of the Order provided there are no

motions or show cause proceedings pending alleging lack of compliance with the conditions of the stay of the suspension. Pursuant to 27 N.C. Admin. Code 1B § .0114(x) of the Rules and Regulations of the North Carolina State Bar, the DHC retains jurisdiction until all conditions of the stay of the suspension have been met. If a motion or show cause proceeding alleging lack of compliance with the conditions for the stay of the suspension is pending when the period of the stay of the suspension would otherwise have terminated, the DHC retains the jurisdiction and ability to lift the stay of the suspension and activate the one year suspension in whole or in part if it finds that any of the conditions of the stay have not been met. The stay of the suspension and Defendant's obligation to comply with the conditions for the stay will continue until resolution of any pending motion or show cause proceeding.

13. 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 stated in Paragraph 11 above, then the stay of the suspension of his law license may be lifted as provided in 27 N.C. Admin. Code 1B § .0114(x) of the Rules and Regulations of the North Carolina State Bar.

14. If the stay of the suspension is lifted and the suspension is activated for any reason, Defendant may apply for reinstatement after serving the activated suspension by filing an application for reinstatement demonstrating by clear, cogent, and convincing evidence the following:

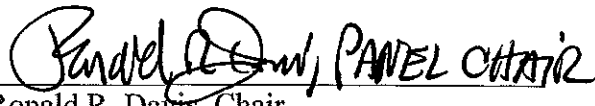
- a. Compliance with the general provisions for reinstatement listed in 27 N.C. Admin. Code 1B § .0125 of the Rules and Regulations of the North Carolina State Bar; and
- b. Compliance with the conditions set out in Paragraph 11 (a) – (i) above.

15. If Defendant does not seek a stay of any active period of his two year suspension, Defendant must provide in his application for reinstatement clear, cogent, and convincing evidence of the following:

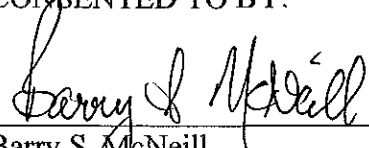
- a. Compliance with the general provisions for reinstatement listed in 27 N.C. Admin. Code 1B § .0125 of the Rules and Regulations of the North Carolina State Bar; and
- b. Compliance with the conditions set out in Paragraph 6 (a) – (l) above.

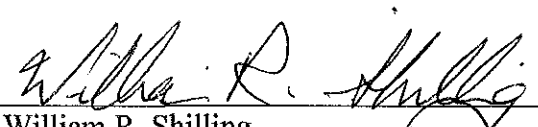
16. Nothing in this Order shall prohibit the State Bar from investigating and, if necessary, pursuing disciplinary action against Defendant for additional misconduct discovered or reported which occurred during the same time period as the conduct addressed in this Order.

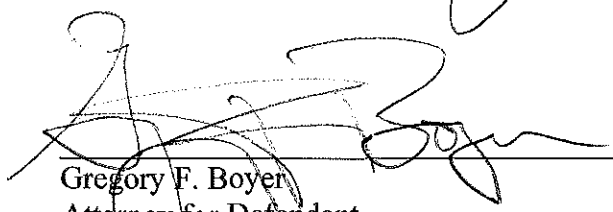
10<sup>th</sup> Signed by the Chair with the consent of the other hearing panel members, this the  
day of February, 2014.

  
Ronald R. Davis, Chair  
Disciplinary Hearing Panel

CONSENTED TO BY:

  
Barry S. McNeill  
Deputy Counsel  
North Carolina State Bar  
Counsel for Plaintiff

  
William R. Shilling

  
Gregory F. Boyer  
Attorney for Defendant