



STATE OF NORTH CAROLINA

WAKE COUNTY

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

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

DANIEL REID FULKERSON, Attorney,
Defendant

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

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Allison C. Tomberlin, Chair, R. Lee Farmer, and Cindy L. Marelli pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0115(i). Plaintiff was represented by Brian P.D. Oten. Defendant, Daniel Reid Fulkerson, represented himself. Defendant waives a formal hearing in this matter. The parties stipulate and agree to the findings of fact and conclusions of law recited in this order, and consent to the discipline imposed by this order. By consenting to the entry of this order, Defendant knowingly, freely, and voluntarily waives his right to appeal this consent order or to challenge in any way the sufficiency of the findings and conclusions herein.

Based upon the pleadings in this matter, the parties' stipulations of fact, and with the consent of the parties, the Hearing Panel hereby enters 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, Daniel Reid Fulkerson, was admitted to the North Carolina State Bar on 23 March 2002 and is an Attorney at Law 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 part of the relevant periods referred to herein, Fulkerson was actively engaged in the private practice of law in the city of Hickory, Catawba County, North Carolina. On 16 June 2015, Fulkerson transferred to inactive status with the North Carolina State Bar.

4. Fulkerson was properly served with process in this matter.

5. Fulkerson failed to file, within the times required by law, federal income tax returns showing his tax liability for tax years 2010 through 2016.

6. Fulkerson failed to file, within the times required by law, state income tax returns showing his tax liability for tax years 2010 through 2016.

7. Fulkerson failed to pay, within the times required by law, his federal income tax liability for tax years 2010 through 2016.

8. Fulkerson failed to pay, within the times required by law, his state income tax liability for tax years 2010 through 2016.

9. For these tax years, Fulkerson was aware of the deadlines for filing state and federal tax returns and paying any tax liability.

10. Fulkerson's failure to file federal and state income tax returns and failure to timely pay income tax liabilities due for tax years 2010 through 2016 was willful.

11. Willful failure to file and pay federal income tax within the time required by law is a violation of 26 U.S.C. § 7203.

12. Willful failure to file and pay North Carolina income tax within the time required by law is a violation of N.C. Gen. Stat. §§ 105-236(a)(8) & (9).

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, Daniel Reid Fulkerson, and over the subject matter of this proceeding.

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 failing to timely file his federal and state income tax returns for tax years 2010 through 2016, and by failing to timely pay federal and state income tax liabilities for tax years 2010 through 2016, Defendant committed criminal acts that reflect adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b).

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 no prior discipline.
2. When lawyers violate the law in their business and personal affairs, it brings disrepute upon the legal profession and undermines public confidence in lawyers.

3. Prior to the initiation of this action, Defendant hired an accountant to assist in the preparation and filing of taxes for 2010 - 2016. To date, those tax filings remain delinquent due to Defendant's inability to pay the accountant for the extensive amount of work necessary to complete the returns. Defendant has, however, timely filed his state and federal tax returns for tax year 2017.

4. Defendant's delay in filing his state and federal taxes and his delay in paying state taxes was willful in that he was solely responsible for complying with his known personal tax obligations.

5. Prior to August 2013, Defendant engaged in substance abuse – namely, alcohol and pain medications – that culminated with him attending a residential substance abuse rehabilitation program in August 2013. As a result of his substance abuse, Defendant abandoned his law practice and his clients, causing significant harm or potential significant harm to his clients at the time of his abandonment. Defendant's substance abuse also caused significant turmoil in his personal and professional life, and contributed to Defendant's misconduct described herein. Stemming from his abandonment of his law practice, the Client Security Fund reimbursed two claims submitted by Defendant's former clients totaling \$4,450.00.

6. Following his completion of the rehabilitation program, Defendant chose not to return to the practice of law and transferred to inactive status with the North Carolina State Bar in 2015. Defendant has since petitioned to return to active status with the State Bar. In April 2018, the State Bar Council granted Defendant's petition to return to active status conditioned upon resolving the present disciplinary matter with less than an active suspension and coming into compliance with all membership obligations, including reimbursing the Client Security Fund for the amount previously disbursed to Defendant's former clients as mentioned in paragraph 6 above. As of the date of this order, Defendant has not yet satisfied all outstanding membership obligations to render him eligible for a return to active status with the North Carolina State Bar, including reimbursing the Client Security Fund.

7. Defendant currently resides in Croatia. Defendant is aware of his addiction and the impact it can have on the lives of his clients and third parties. Defendant reports that he has not consumed alcohol or any other controlled substance other than medications prescribed by a physician since July 2015.

8. Defendant cooperated fully with the State Bar's investigation of this matter.

9. Defendant, who was admitted to the North Carolina State Bar on 23 March 2002, has substantial experience in the practice of law.

Based upon the Findings of Fact, Conclusions of Law, and Additional Findings Regarding Discipline, and with the consent of the parties, 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, including admonition, reprimand, censure and suspension.

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

- a. Defendant's lack of prior disciplinary offenses;
- b. The effect of any personal or mental disability or impairment on the conduct in question;
- c. Full and free disclosure to the Hearing Panel and cooperative attitude toward the proceedings; and
- d. Defendant's experience in the practice of law.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0116(f)(2) and concludes no factors are present that would warrant disbarment.

4. The Hearing Panel has carefully considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0116(f)(1) of the Rules and Regulations of the North Carolina State Bar and determines the following factors warrant suspension of Defendant's license:

- a. Defendant's actions potentially had a negative impact on the public's perception of the legal profession.

5. The Hearing Panel has considered lesser alternatives and finds that a censure, reprimand or admonition would be insufficient discipline because of the significant potential harm to the legal profession caused by Defendant's conduct.

6. Although Defendant's conduct is serious enough to warrant more than a censure it does not warrant an active suspension of his license.

7. A stayed suspension of Defendant's law license is warranted because entry of an order imposing less severe discipline would fail to acknowledge the seriousness of the misconduct and would send the wrong message to attorneys and the public about the conduct expected of members of the Bar of this State. However, any stayed suspension, including the conditions imposed therein, should be tolled until Defendant returns to active status with the State Bar to ensure the effectiveness of and Defendant's compliance with such conditions, and to ensure the public remains protected.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Findings and Conclusions Regarding Discipline, and based upon the consent of the parties, the Hearing Panel enters the following

ORDER OF DISCIPLINE

1. The law license of Defendant, Daniel Reid Fulkerson, is hereby suspended for two years. This order shall be effective upon filing. However, because Defendant is currently inactive with the State Bar and cannot return to active status until satisfying his pending membership requirements as dictated by the Administrative Committee of the North Carolina State Bar Council – including reimbursing the Client Security Fund – the period of suspension and the stay outlined below is tolled until Defendant returns to active status with the North Carolina State Bar.

2. Defendant is taxed with the costs and administrative fees of this action. Defendant shall pay the costs and administrative fees of this proceeding as assessed by the Secretary within 60 days of service of the statement of costs and administrative fees upon him.

3. Upon Defendant's return to active status, the two-year suspension shall go into effect, and the suspension is stayed for two years as long as Defendant complies, and continues to comply during the period of the stay, with the following conditions:

- a. Within the first 90 days of the stay period, Defendant shall finalize and file all outstanding federal and state income tax returns along with any associated schedules and attachments thereto. Within the first 180 days of the stay period, Defendant shall pay all outstanding federal and state income taxes owed. Defendant shall provide proof of these filings and payments to the Office of Counsel within 30 days of filing and/or issuance;
- b. During the stay period, Defendant shall timely file all required federal and state income tax returns and pay all state and federal tax liabilities, fines, and penalties accrued;
- c. Defendant shall respond to all communications from the Internal Revenue Service and the North Carolina Department of Revenue;
- d. Defendant shall execute any written waivers and releases necessary to authorize the Office of Counsel to confer with the Internal Revenue Service or the North Carolina Department of Revenue for the purpose of determining whether Defendant has cooperated and complied with all requirements of this Order. Defendant will not revoke these waivers and releases at any time during the stay period;
- e. Defendant shall abstain from the consumption of alcohol or any controlled substance other than medications as prescribed by his treating physician. Defendant shall submit to a random drug test initiated at the State Bar's request within 24 hours of receiving the request at a location determined by the State Bar. All expenses of such random drug test(s) shall be borne by Defendant;
- f. Within the first 30 days of the stay period, Defendant shall execute a 2-year contract with the Lawyer's Assistance Program (LAP), and Defendant shall provide a copy of his LAP contract to the Office of Counsel. Defendant shall comply with and complete the terms of his LAP contract. Defendant shall sign a

written release authorizing the Office of Counsel to communicate with LAP/LAP personnel about Defendant's participation in LAP and Defendant's compliance with this LAP contract, and authorizing the Office of Counsel to obtain copies of records relating to his participation in and compliance with LAP. If Defendant is referred to a third-party treatment provider through LAP or if Defendant engages with a third-party treatment provider during the stay period, Defendant shall simultaneously sign a written release authorizing the Office of Counsel to communicate with such treatment provider(s) and authorizing the Office of Counsel to obtain copies of records relating to his treatment, including medical records. Defendant shall not revoke such releases. Defendant shall comply with any request for information concerning his participation in and compliance with LAP or concerning his pursuit or receipt of treatment from a third-party treatment provider within 10 days of receiving such a request. The costs associated with Defendant's compliance with this paragraph shall be at Defendant's sole expense;

- 1) Alternatively, should Defendant continue to reside outside of the United States when he returns to active status with the State Bar, Defendant can satisfy the requirements of paragraph 3(f) by demonstrating his regular participation in a similar program offering support services for substance abuse issues, addiction, and recovery. Defendant shall sign any release(s) required to allow the Office of Counsel to communicate with and obtain records from any such program concerning Defendant's participation and compliance with the program, and Defendant shall not revoke such release(s). Upon returning to North Carolina, Defendant shall comply with the entirety of paragraph 3(f).
- g. Defendant shall keep the North Carolina State Bar Membership Department advised of his current contact information, including his current business and home addresses (not a P.O. Box) as well as his current telephone number(s), and shall notify the Bar of any change in address or telephone number within 10 days of such change;
- h. Defendant shall respond to all communications from the North Carolina State Bar, including communications from the Attorney Client Assistance Program, within 15 days of receipt or by the deadline stated in the communication, and shall participate in good faith in the State Bar's fee dispute resolution process for any petition of which he receives notice after the effective date of this Order;
- i. Defendant shall promptly accept service of all certified mail from the State Bar that is sent to him;
- j. Defendant shall timely comply with all State Bar membership and Continuing Legal Education requirements;
- k. Defendant shall timely pay the costs and administrative fees of this action as described below; and
- l. Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or of any state or local government during his suspension.

4. If during the stay of the suspension Defendant fails to comply with any one or more of the conditions stated above, then the stay of the suspension of his law license may be lifted as provided in § .0118(a) of the North Carolina State Bar Discipline and Disability Rules.

5. 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 a petition pursuant to Rule .0129(b) of the North Carolina State Bar Discipline and Disability Rules (27 N.C. Admin. Code 1B.0129) demonstrating compliance with the requirements therein as well as the following requirements by clear, cogent, and convincing evidence:

- a. Defendant properly wound down his law practice and complied with the terms of 27 N.C. Admin. Code 1B.0128 of the State Bar Discipline & Disability Rules;
- b. Defendant has filed all required federal and state income tax returns and paid all state and federal tax liabilities, fines, and penalties accrued;
- c. Defendant kept the North Carolina State Bar Membership Department advised of his current business and home addresses, as well as his current telephone number, and notified the Bar of any change in address or telephone number within 10 days of such change;
- d. 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;
- 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 the suspension;
- f. Defendant has come into compliance with any outstanding CLE or membership obligations at the time of the filing of his petition for reinstatement, including but not limited to payment of all Client Security Fund assessments and other charges or surcharges the State Bar is authorized to collect from him;
- g. Defendant has not violated the Rules of Professional Conduct or the laws of the United States or of any state or local government during his suspension, including Defendant's timely filing and payment of federal and state tax obligations;
- h. Defendant has paid the administrative fees and costs of this proceeding as reflected on the statement of costs served upon him by the Secretary of the State Bar; and
- i. Defendant has complied with any other conditions deemed necessary for reinstatement imposed by the Hearing Panel pursuant to the order lifting the stay of the suspension of Defendant's law license.


6. If the stay of suspension is lifted and the suspension is activated for any reason, and if Defendant fails to fully comply with 27 N.C. Admin. Code 1B § .0128 and the Court appoints a trustee to wind down any portion of Defendant's practice, Defendant shall reimburse the State

Bar for all expenses incurred by the State Bar in winding down Defendant's practice. Such expenses may include, but are not limited to, storage facility fees, rent payments, moving expenses, charges for secure disposal of client files, postage or other mailing expenses, and compensation paid to the trustee and/or the trustee's assistant for time and travel associated with the trusteeship. After the Court has discharged the trustee, the State Bar shall send an invoice of wind-down expenses to Defendant at Defendant's last known address of record with the North Carolina State Bar. Defendant shall not be eligible for reinstatement until he has reimbursed the State Bar for all wind-down expenses incurred.

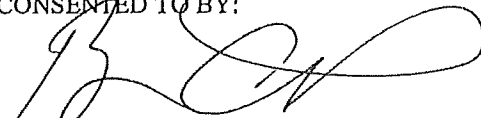
7. Unless Defendant's obligations under this Order are modified by further order of the DHC, Defendant's obligations under this Order end two years from the effective date of the Order provided there are no motions or show cause proceedings pending alleging lack of compliance with the conditions of the stay of the suspension. Pursuant to § .0118(a) of the North Carolina Discipline and Disability Rules, 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 two 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 such pending motion or show cause proceeding.


8. 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.

Signed by the Chair with the consent of the other Hearing Panel members, this the 26 day of June, 2018.


Allison C. Tomberlin, Chair
Disciplinary Hearing Panel

CONSENTED TO BY:


Brian P.D. Oten
Deputy Counsel
North Carolina State Bar
Attorney for Plaintiff


Daniel Reid Fulkerson
Defendant