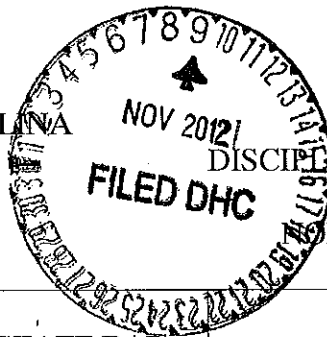


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE

DISCIPLINARY HEARING COMMISSION
OF THE

NORTH CAROLINA STATE BAR

12 DHC 28

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

STEVEN H. McFARLANE, Attorney,

Defendant

CORRECTED
CONSENT ORDER OF
DISCIPLINE

This matter came before a hearing panel of the Disciplinary Hearing Commission composed of Walter E. Brock, Jr., Chair, William M. Claytor, and Joe Castro. Carmen Hoyme Bannon represented Plaintiff. Richard T. Boyette represented Defendant. A Consent Order of Discipline was entered in this matter on 23 October 2012. This Corrected Consent Order of Discipline is substituted for the 23 October 2012 order because Defendant's middle initial was incorrect throughout the original Consent Order of Discipline. This Corrected Order is substantively identical to the original, and is retroactively effective as of the filing date of the original order.

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 consent order. The parties consent to the discipline imposed by 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 by consenting to the entry of this order.

Based on the foregoing and on 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, 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, Steven H. McFarlane, was admitted to the North Carolina State Bar on 15 December 1989 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 the relevant period referred to herein, McFarlane was actively engaged in the practice of law in Louisburg, Franklin County, North Carolina.

4. During calendar years 2005, 2006, 2007, and 2008, McFarlane's income exceeded the minimum threshold above which an individual is required to file federal and state income tax returns.

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

6. McFarlane failed to file, within the times required by law, federal income tax returns showing his tax liability for tax years 2005, 2006, 2007, and 2008.

7. McFarlane failed to pay, within the times required by law, his federal income tax liability for tax years 2005, 2006, 2007, and 2008.

8. McFarlane failed to file, within the times required by law, state income tax returns showing his tax liability for tax years 2005, 2006, 2007, and 2008.

9. McFarlane failed to pay, within the times required by law, his state income tax liability for tax years 2005, 2006, 2007, and 2008.

10. McFarlane's failure to file federal and state income tax returns and failure to timely pay tax liabilities due for tax years 2005, 2006, 2007, and 2008 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.G.S. § 105-236(a)(9).

Based on the foregoing Findings of Fact, the Hearing Panel enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, Steven H. McFarlane, and over the subject matter.

2. Defendant's conduct, as set forth in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-24(b)(2) in that Defendant violated the Rules of Professional Conduct as follows: By failing to timely file and pay his state and federal income taxes for tax years 2005, 2006, 2007, and 2008, Defendant committed criminal acts that reflect adversely on his trustworthiness or fitness as a lawyer in violation of Rule 8.4(b).

Based upon the foregoing Findings of Fact and Conclusions of Law and the consent of the parties the Hearing Panel enters the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Defendant has no prior professional discipline.

2. Due to bookkeeping errors dating back to 2005, the financial records for Defendant's small business did not accurately reflect the business's income and expenditures. In order to submit accurate income information to tax authorities, Defendant had to review and correct these records.

3. Although Defendant obtained all available extensions from the IRS and N.C. Department of Revenue and sought assistance in reviewing and organizing the necessary business records, Defendant was unable to complete and file his 2005 and 2006 income tax returns until January of 2009, was unable to file accurate and complete 2007 income tax returns until November 2009, and was unable to file accurate and complete 2008 income tax returns until March, 2010.

4. Due in part to substantial penalties and interest which were imposed as a result of late filing, Defendant did not have sufficient means to pay, within the times required by law, his income tax liability for tax years 2005, 2006, 2007, and 2008. McFarlane instead entered into voluntary payment plans to complete his payment obligations to the IRS and N.C. Department of Revenue.

5. McFarlane's delay in filing federal and state income tax returns and his resulting inability to timely pay the substantial penalties and interest assessed together with his tax liabilities due for tax years 2005, 2006, 2007, and 2008, while not done with any intent to avoid his tax obligations, was willful in that he was solely responsible for the bookkeeping errors which led to delays in filing accurate and complete federal and state returns.

6. Before the facts recited herein came to the attention of the State Bar, Defendant had:

- a. Filed his state and federal returns for tax years 2005, 2006, 2007, and 2008;
- b. Entered into payment plans with the IRS and N.C. Department of Revenue for payment of back taxes, interest, and penalties; and
- c. Begun making timely payments to the tax authorities under the payment plans.

7. Since the 2009 tax year, and continuing through the present, Defendant has timely filed his federal and state returns, timely paid all amounts due to the IRS and the North Carolina Department of Revenue, and complied with all terms and conditions of his repayment plans with both entities.

8. Defendant cooperated fully with the State Bar's investigation of this matter and expressed remorse for his conduct.

9. When lawyers violate the law in their business and personal affairs, it brings disrepute upon the legal profession and undermines public confidence in lawyers.

Based on the foregoing Findings of Fact, Conclusions of Law, Findings of Fact Regarding Discipline, and the consent of the parties, the Hearing Panel 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 considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(2) and concludes no factors are present that would warrant disbarment.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(1) and (3) of the Rules and Regulations of the State Bar and finds the following factors are applicable:

- a. negative impact of the defendant's actions on public perception of the profession;
- b. experience in the practice of law;
- c. no prior disciplinary offenses;
- d. timely good faith efforts to make restitution or to rectify consequences of misconduct;
- e. full and free disclosure to the hearing panel and cooperative attitude toward the proceedings; and
- f. remorse.

4. 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.

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

6. 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.

Based on the foregoing Findings of Fact, Conclusions of Law, Findings of Fact and Conclusions of Law Regarding Discipline, and the consent of the parties, the Hearing Panel hereby enters the following:

ORDER OF DISCIPLINE

1. The law license of Defendant, Steven H. McFarlane, is hereby suspended for two years effective from the date this Order of Discipline is served upon him. The period of suspension is stayed for two years as long as Defendant complies and continues to comply with the following conditions:

- a. 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 period of stay;
- b. Defendant shall timely file during the period of stay his federal and state income tax returns along with any associated schedules and attachments thereto and shall provide proof of these filings to the Office of Counsel within 30 days of filing;
- c. Defendant shall timely pay all state and federal tax liabilities, fines, and penalties accrued during the stay period;
- d. Defendant shall comply with the terms of his existing payment plans with the IRS and N.C. Department of Revenue for payment of back taxes, interest, and penalties during the stay period;
- e. 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;
- f. Defendant shall keep the North Carolina State Bar Membership Department advised of his current business and home addresses and shall notify the Bar of any change in address within ten (10) days of such change;
- g. Defendant shall respond to all communications from the North Carolina State Bar, including communications from the Attorney Client Assistance Program, within thirty days of receipt or by the deadline stated in the communication, whichever is sooner, 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;
- h. Defendant shall promptly accept service of all certified mail from the State Bar that is sent to him;
- i. Defendant shall respond to all communications from the Internal Revenue Service and the North Carolina Department of Revenue; and

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

2. If Defendant fails to comply with any of the conditions of the stayed suspension provided in paragraph 1(a) – (j) above, the stay of the suspension may be lifted as provided in 27 N.C.A.C. 1B § .0114(x).

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

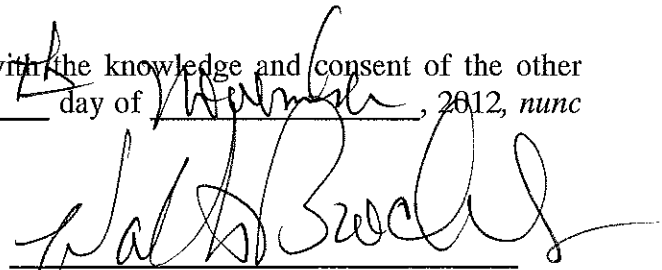
- a. Defendant submitted his license and membership card to the Secretary of the North Carolina State Bar within thirty days after the date of the order lifting the stay and/or activating the suspension of his law license;
- b. Defendant complied with all provisions of 27 N.C.A.C. 1B § .0124 of the State Bar Discipline and Disability Rules following the order lifting the stay and/or activating the suspension of his law license;
- c. Defendant kept the North Carolina State Bar Membership Department advised of his current business and home addresses and notified the Bar of any change in address within ten days of such change;
- d. Defendant responded to all communications from the North Carolina State Bar, including communications from the Attorney Client Assistance Program, within thirty days of receipt or by the deadline stated in the communication, whichever is sooner, and has participated 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;
- e. Defendant promptly accepted all certified mail sent to him by the State Bar;
- f. That at the time of his petition for stay, Defendant is current in payment of all Membership dues, fees and costs, including all Client Security Fund assessments and other charges or surcharges the State Bar is authorized to collect from him, and including all judicial district dues, fees and assessments.
- g. That at the time of his petition for stay, there is no deficit in Defendant's completion of mandatory Continuing Legal Education (CLE) hours, in reporting of such hours or in

payment of any fees associated with attendance at CLE programs.

- h. 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;
- i. 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;
- j. 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.

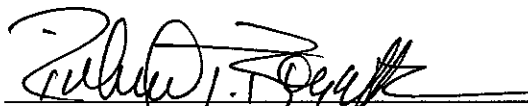
4. Defendant is taxed with the administrative fees and costs of this action as assessed by the Secretary which Defendant shall pay within thirty days of service of the notice of costs upon Defendant.

Signed by the undersigned Chair with the knowledge and consent of the other members of the Hearing Panel, this is the 12 day of November, 2012, *nunc pro tunc* 23 October 2012.



Walter E. Brock, Jr., Chair
Hearing Panel

CONSENTED TO BY:



Richard T. Boyette
Attorney for Defendant



Steven H. McFarlane
Defendant



Carmen Hoyme Bannon
Attorney for Plaintiff