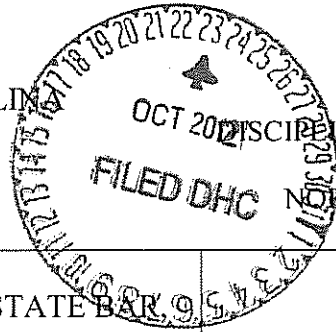


STATE OF NORTH CAROLINA  
WAKE COUNTY



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

THE NORTH CAROLINA STATE BAR

Plaintiff

v.

SUSAN S. McFARLANE, Attorney,

Defendant

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. 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 her 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, Susan S. McFarlane, was admitted to the North Carolina State Bar on 18 August 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's license to practice law in North Carolina was inactive.
4. During calendar years 2005 and 2006 McFarlane's income exceeded the minimum threshold above which an individual is required to file federal and state income tax returns.
5. For these tax years, McFarlane was aware of the deadlines for filing state and federal tax returns and paying any tax liability.

6. Prior to and including 2005 and 2005, McFarlane was married to the owner of a small business and filed joint returns with her husband, which included substantial income and information from her husband's business.

7. Due to bookkeeping problems with her husband's business, he was unable to provide the information necessary for the couple to file accurate and complete joint federal and state returns for tax years 2005 and 2006.

8. As a result of her husband's inability to provide the information needed to file accurate and complete joint federal returns, McFarlane failed to file, within the times required by law, federal income tax returns showing her tax liability for tax years 2005 and 2006.

9. McFarlane failed to pay, within the times required by law, all of her federal income tax liability for tax years 2005 and 2006.

10. As a result of her husband's inability to provide the information needed to file accurate and complete joint state returns, McFarlane failed to file, within the times required by law, state income tax returns showing her tax liability for tax years 2005 and 2006.

11. McFarlane failed to pay, within the times required by law, all of her state income tax liability for tax years 2005 and 2006.

12. McFarlane's failure to timely file federal and state income tax returns and failure to timely pay tax liabilities due for tax years 2005 and 2006, although due to circumstances beyond her control, was willful, in that she could have chosen to file separate returns for those years.

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

14. 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, Susan S. 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 her 2005 and 2006 state and federal income taxes, Defendant committed criminal acts that reflect adversely on her 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. Defendant was not involved in the ownership or management of her husband's business and had no way to obtain the necessary financial information from his business herself.
3. Defendant obtained all available extensions of time from state and federal tax authorities, but as a result of her husband's inability to provide the necessary information she was still unable to meet the extended deadlines for filing. Defendant was not able to file accurate and complete joint tax returns showing her tax liability for tax years 2005 and 2006 until January 2009.
4. Due in part to the substantial penalties and interest assessed as a result of the delay in filing, Defendant did not have the means to pay all of her income tax liability for tax years 2005 and 2006, although a substantial portion of her individual tax liability had been satisfied through wage withholding. McFarlane entered into a voluntary payment plan to complete the remainder of her payment obligations to the IRS.
5. Defendant voluntarily disclosed to the State Bar her failure to timely file and pay taxes in an application for reinstatement from inactive status.
6. Before Defendant voluntarily disclosed to the State Bar the facts recited herein, Defendant had:
  - a. Filed her state and federal returns for tax years 2005 and 2006;
  - 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 her federal and state returns and timely paid all amounts due to the IRS and the North Carolina Department of Revenue, and has complied with all terms and conditions of her repayment plans with both entities.
8. Defendant cooperated fully with the State Bar's investigation of this matter and expressed remorse for her 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) 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 her 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, Susan S. McFarlane, is hereby suspended for one year effective from the date this Order of Discipline is served upon her. 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 her 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 her 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 her suspension;
- f. Defendant shall keep the North Carolina State Bar Membership Department advised of her current business and home addresses and shall notify the Bar of any change in address within ten 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 she 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 her;
- 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 her license to practice law, Defendant must show by clear, cogent and convincing evidence that she has complied with each of the following conditions:

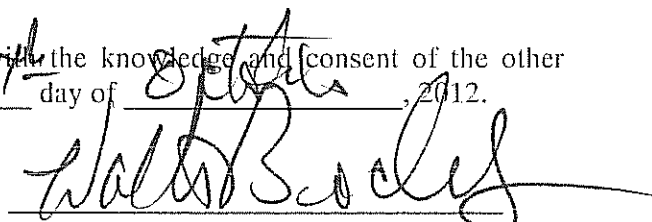
- a. Defendant submitted her license and membership card to the Secretary of the North Carolina State Bar within thirty days after the date of the order lifting the stay and/or activating the suspension of her law license;
- b. Defendant complied with all provisions of 27 N.C.A.C. 1B § .0124 of the State Bar Discipline and Disability Rules following the order lifting the stay and/or activating the suspension of her law license;
- c. Defendant kept the North Carolina State Bar Membership Department advised of her 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 she receives notice after the effective date of this Order;
- e. Defendant promptly accepted all certified mail sent to her 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 her, and including all judicial district dues, fees and assessments.
- g. That at the time of her 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 her suspension;
- i. Defendant has paid the administrative fees and costs of this proceeding as reflected on the statement of costs served upon her 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.

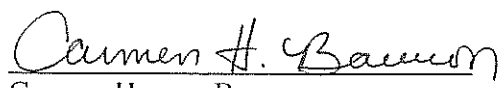
Signed by the undersigned Chair with the knowledge and consent of the other members of the Hearing Panel, this is the 17<sup>th</sup> day of October, 2012.

  
Walter E. Brock, Jr., Chair  
Hearing Panel

CONSENTED TO BY:

  
Richard T. Boyette  
Attorney for Defendant

  
Susan S. McFarlane  
Defendant

  
Carmen Hoyme Bannon  
Attorney for Plaintiff