



NORTH CAROLINA  
WAKE COUNTY

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
09 DHC 5

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THE NORTH CAROLINA STATE BAR, )  
Plaintiff )  
v. )  
MARK L. BIBBS, Attorney, )  
Defendant )

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CONSENT ORDER

Defendant, Mark L Bibbs ("Bibbs" or "Defendant"), was ordered to appear and show cause why the stay of the suspension imposed by the Order of Discipline entered in this case on September 25, 2009 should not be lifted and the suspension activated. This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Harriett Smalls, Chair, Fred M. Morelock, and Karen Ray pursuant to 27 N.C.A.C. Chapter 1B §.0114(x). Plaintiff was represented by Margaret Cloutier. Defendant was represented by Alan M. Schneider.

Based on the pleadings and the consent of the parties, the Hearing Panel hereby finds by the greater weight of the evidence as follows:

1. The DHC has jurisdiction to hear this matter pursuant to 27 N.C.A.C. Chapter 1B § .0108(a)(1) and § .0109(1).
2. On September 25, 2009, the DHC entered an order finding that Bibbs had violated the Rules of Professional Conduct in several respects.
3. The September 25, 2009 Order of Discipline (hereinafter "Order") suspended Bibbs's license to practice law for one year and stayed the suspension for three years on condition that Bibbs comply with the requirements set out in the order.
4. The Order of Discipline was served on Bibbs's attorney on September 28, 2009.
5. Bibbs has failed to comply with a number of the conditions of the stay of the suspension of his license as follows:

a. The Order requires Bibbs to abstain from the consumption of any alcohol during the period of stay. Bibbs has consumed alcohol on the following occasions:

i) on or about February 10, 2010 when he was present in the Wilson County Courthouse while under the influence of an impairing substance believed to be alcohol;

ii) on or about March 15, 2010 when he fell in his office and was seriously injured; and

iii) within reasonable proximity to June 6, July 20, September 6, October 18, 2011, and January 24, February 24 and February 27, 2012, when random alcohol screening tests showed positive results for the biomarkers of alcohol in his urine.

b. The Order requires Bibbs to comply with the monitoring requirements of FirstLab Professional Health Monitoring Program, which requirements include contacting the program administrator on a daily basis. Bibbs failed to properly contact the program administrator on thirty occasions.

#### CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction of Defendant and over the subject matter of this proceeding.

2. Defendant failed to comply with the following conditions of the stay of his suspension contained in the Order:

a. That he abstain from the consumption of alcohol during the period of stay; and

b. That he comply with the monitoring requirement of FirstLab Professional Health Monitoring Program that he contact the program administrator daily.

3. Such violations warrant activation of a portion of the suspension and, if Defendant successfully applies for further stay, extension of the period of stay of suspension for some length of time and under such conditions sufficient to demonstrate that Defendant is able to maintain his sobriety.

Based on the forgoing Findings of Fact and Conclusions of Law, the Hearing Panel enters the following:

#### ORDER

1. The stay of Defendant's suspension is lifted and three months of the one-year suspension previously imposed is activated. Pursuant to Rule .0124(c) of the North Carolina State Bar Discipline and Disability Rules, this order and the suspension imposed herein are effective 30 days after service of this order upon Defendant. Defendant must comply with the obligations of a suspended attorney under Rule .0124 of the North Carolina State Bar Discipline and Disability Rules and the requirements of the Order of Discipline and as amended herein.

2. After serving the activated three months of his suspension, Defendant may apply to have the remainder of the one-year suspension stayed by petitioning for reinstatement to active status as stated in paragraph 3 on page 6 of the Order of Discipline. In seeking a stay, Defendant must comply with the requirements of Rule .0125(b) of the North Carolina State Bar Discipline and Disability Rules and the requirements for reinstatement contained in paragraph 3 and its subparagraphs on pages 6 and 7 of the Order of Discipline. If Defendant applies for a stay of the suspension prior to the expiration of the one-year suspension, the period of sobriety reflected in paragraph 3(d) shall equal the length of active suspension.

3. If Defendant is granted a stay of the suspension prior to the expiration of the one-year suspension period, Defendant's newly imposed stay shall be in effect for two years and be subject to, and contingent upon compliance with, the terms of the stayed suspension in the September 25, 2009 Order of Discipline and the following additional conditions:

a. The number of screens for the metabolites of alcohol required through the FirstLab Professional Health Monitoring Program shall be increased to thirty-five per year.

b. For any screening for the metabolites of alcohol that FirstLab reports as non-negative (that is, positive, adulterated, substituted, or invalid), the State Bar shall promptly notify Defendant and request a review of the test by FirstLab's medical review officer to determine if any alternative medical explanations exist for the non-negative results. Such review shall be at Defendant's expense and Defendant shall fully participate in such medical review services.

c. In the event the medical review process results in a report of a test confirmed positive for the metabolites of alcohol, the stay shall be lifted and the one-year suspension activated as follows:

i. The State Bar shall promptly notify Defendant of the reviewer's report and such notification shall begin the thirty-day wind down period provided in Rule .0124 of the Discipline and Disability Rules. Defendant shall comply with all requirements of Rule .0124.

ii. The remaining portion of the one-year suspension shall become effective on the thirty-first day following notification to Defendant of the reviewer's report.

iii. Within ten days of notification to Defendant of the reviewer's report, Defendant may file a petition challenging the accuracy of the test. Defendant must attach to the petition documentary evidence or affidavit of a medical professional that tends to show that the initial testing or reviewer's report is in error, inaccurate, or otherwise unreliable.

iv. The issues raised in Defendant's petition will be heard at a hearing scheduled as soon as practicable following the filing of the petition. Defendant shall have the burden of showing by the greater weight of the evidence that the initial testing or reviewer's report is in error, inaccurate, or otherwise unreliable.

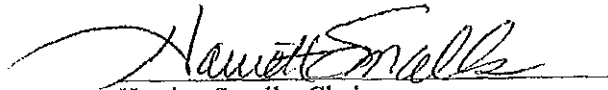
vi. The filing of Defendant's petition with the accompanying documentation will toll the wind-down period and the effective date of the suspension until the hearing is held.

4. If Defendant is not issued a stay prior to the expiration of the one-year suspension period, then before Defendant may be reinstated to active status he must satisfy the requirements of Rule .0125(b) of the North Carolina State Bar Discipline and

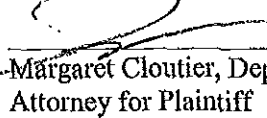
Disability Rules and all requirements for reinstatement contained in paragraph 5 and its subparagraphs on pages 11 and 12 of the Order of Discipline.

Signed by the undersigned Chair of the Disciplinary Hearing Panel with the consent of the other Hearing Panel members.

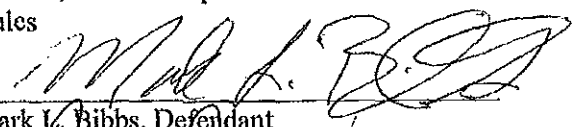
Dated this 30<sup>th</sup> day of November, 2012.

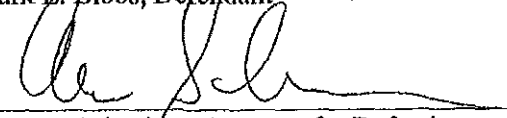
  
Harriett Smalls, Chair  
Disciplinary Hearing Panel

CONSENTED TO:

  
Jennifer A. Porter, Deputy Counsel, for  
Margaret Cloutier, Deputy Counsel  
Attorney for Plaintiff

By signing this Consent Order Defendant knowingly and voluntarily, with advice of counsel, waives the procedures set forth in Rule .0114(x) of the Discipline and Disability Rules

  
Mark L. Bibbs, Defendant

  
Alan M. Schneider, Attorney for Defendant