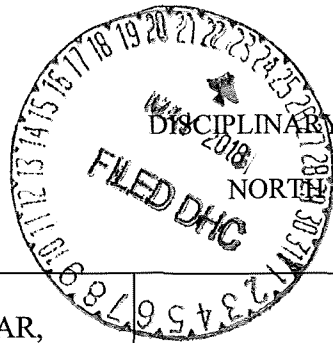


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
17 DHC 31

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

MARK V. GRAY, Attorney,
Defendant

CONSENT ORDER

THIS MATTER was considered by a hearing panel of the Disciplinary Hearing Commission composed of Beverly T. Beal, Chair, Richard V. Bennett and Christopher R. Bruffey. Plaintiff, the North Carolina State Bar, was represented by Margaret Cloutier. Defendant Mark V. Gray was represented by Dudley A. Witt and David B. Freedman. 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 on the foregoing and with 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, Mark V. Gray ("Defendant"), was admitted to the North Carolina State Bar on August 21, 1982 and is, and was at all times referred to herein, an attorney at law licensed to practice law 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 or part of the relevant periods referred to herein, Defendant was engaged in the practice of law in the State of North Carolina and maintained a law office in Greensboro, Guilford County, North Carolina.
4. From 1997 through 2013, Defendant's income exceeded the minimum threshold above which an individual is required to file federal and state income tax returns.

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

6. Defendant failed to file, within the times required by law, federal income tax returns showing his tax liability for tax years 1997 through 2005.

7. Defendant failed to pay, within the times required by law, his federal income tax liability for tax years 1997 through 2005.

8. Defendant failed to file, within the times required by law, state income tax returns showing his tax liability for tax years 1997 through 2007.

9. Defendant failed to fully pay, within the times required by law, his state income tax liability for tax years 1997 through 2007.

10. Between 2004 and 2009, Defendant filed the delinquent returns for tax years 1997 through 2007 but did not pay his tax obligations at that time.

11. Defendant properly and timely filed his federal and state income tax return for tax year 2008, but did not properly and timely paid his tax obligations for that year.

12. Despite extensive communications with the IRS between 2004 and 2007, Defendant again failed to file, within the times required by law, federal income tax returns showing his tax liability for tax years 2009 through 2013.

13. Defendant failed to pay, within the times required by law, his federal income tax liability for tax years 2008 through 2013.

14. Defendant failed to file, within the times required by law, state income tax returns showing his tax liability for tax years 2009 through 2013.

15. Defendant failed to pay, within the times required by law, his state income tax liability for tax years 2008 through 2013.

16. Defendant's failure to file federal and state income tax returns and failure to timely pay tax liabilities due for the tax years alleged above was willful.

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

18. 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)(9), which is a misdemeanor.

19. Between January 1, 2013 and October 31, 2015 (hereinafter "the audit period") Defendant maintained a client trust account with NewBridge Bank, account number ending in the digits 0288 (hereinafter the "trust account").

20. Defendant used the trust account as a general trust account in which Defendant deposited and disbursed client funds.

21. On several occasions during the audit period, Defendant disbursed funds from the trust account for specific clients before depositing funds from or for those clients into the trust account.

22. During the audit period, Defendant did not promptly remove earned fees from the trust account.

23. During the audit period, Defendant maintained client ledgers that did not always accurately state the receipts and disbursements for each client and the current balance of funds held for each client. Defendant did not prepare and keep a ledger card for his own funds that Defendant held in the trust account.

24. During the audit period, Defendant failed to properly total the individual client balances in his trust account and compare the total with the bank statement balance for the trust account at least quarterly.

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the DHC has jurisdiction over Defendant 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) in that Defendant violated the Rules of Professional Conduct as follows:

- (a) By willfully failing to timely file federal and state income tax returns for the years 1997 through 2007 and 2009 through 2013, and by failing to pay federal and state income taxes due for the years 1997 through 2007 and 2009 through 2013, Defendant committed criminal acts that reflect adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);
- (b) By disbursing money from his trust account for clients before depositing funds for the benefit of those clients, thereby disbursing to or for clients funds from the trust account to which those clients were not entitled, Defendant failed to disburse entrusted funds only in accordance with Rule 1.15 in violation of Rule 1.15-2(a), failed to promptly deposit entrusted funds into a trust account in violation of Rule 1.15-2(b), and failed to promptly pay or deliver to the client, or to third persons as directed by the client, any entrusted property belonging to the client to which the client is currently entitled in violation of Rule 1.15-2(m);
- (c) By failing to promptly remove earned fees from the trust account thereby commingling his earned fees with the entrusted funds of his clients, Defendant did not hold entrusted property separate from the property of the lawyer in violation of Rule 1.15-2(a);

- (d) By failing to maintain client ledger cards that correctly reflected funds held in trust for his clients and for himself, Defendant did not maintain ledgers containing a record of receipts and disbursements for each person or entity from whom and for whom funds are received and showing the current balance of funds held in the trust account for each such person or entity in violation of Rule 1.15-3(b)(5); and
- (e) By failing to total the individual client balances and reconcile the total with the adjusted bank statement balance for the account as a whole at least quarterly, Defendant failed to conduct required quarterly reconciliations in violation of Rule 1.15-3(d)(1);

Based upon consent of the parties, the Hearing Panel also finds by clear, cogent and convincing evidence the following:

ADDITIONAL FINDINGS REGARDING DISCIPLINE

1. Defendant failed to file his federal and state income tax returns for fifteen years, a substantial period of time.
2. Between 2004 and 2009, Defendant filed his delinquent returns and brought the federal and state filings current up to tax year 2008. However, Defendant again failed to timely file his federal and state tax returns for tax years 2009 through 2013.
3. Between 2006 and 2014 Defendant did not pay any money to the IRS to apply to his delinquent accumulated federal tax obligations despite having adequate income to make substantial partial payments toward the debt owed to the IRS.
4. Between 2014 and 2018 Defendant brought current his tax obligations to the N.C. Department of Revenue.
5. Between 2015 and 2018, Defendant made substantial payments to the IRS toward his delinquent tax obligations. However, Defendant still owes a significant indebtedness to the IRS.
6. While Defendant was not prosecuted for his violations of the criminal codes in federal or state courts, his conduct nonetheless constitutes both federal and state criminal offenses.
7. Willful failure to file a tax return is expressly identified in the State Bar's definition of criminal offenses showing professional unfitness. This offense inherently involves a representation to taxing authorities that one did not earn sufficient income to meet the threshold required to file a tax return, which was not accurate in Defendant's case. Defendant's failure to file his federal income tax returns created the foreseeable potential harm of misleading the Department of the Treasury in its administration of the Internal Revenue Code regarding Defendant's income and any income tax due from Defendant. Similarly, his failure to file his state income tax returns created the foreseeable potential harm of misleading the N.C. Department of Revenue in its administration of the N.C. State tax code regarding Defendant's income and any income tax due from Defendant.
8. When lawyers violate the law in their personal affairs, it brings disrepute upon the legal profession and undermines public confidence in lawyers.

9. Defendant's failure to file returns and pay his tax obligations demonstrates not only a disregard for the laws of this state and country but for the civic duty shared by all as a foundation of our democracy.

10. Keeping accurate client ledgers and conducting quarterly reconciliations are the lynchpins of proper trust account maintenance and protection of entrusted funds. Defendant's continued failure to properly reconcile his trust account and failure to maintain proper trust account records demonstrates a pattern of misconduct and demonstrates Defendant's intent to commit acts in which the potential harm is foreseeable.

11. Defendant's conduct placed entrusted funds at risk and had the potential to cause significant harm to the standing of the profession in the eyes of the public because it shows his disregard for his duties as an attorney. Such erosion of public confidence in attorneys tends to sully the reputation of, and fosters disrespect for, the profession as a whole. Confidence in the legal profession is a building block for public trust in the entire legal system.

12. Defendant fully cooperated with the State Bar throughout the disciplinary process.

13. Defendant has substantial experience in the practice of law, having been licensed since 1982.

14. Defendant has prior professional discipline. In May 1992 Defendant was censured for inadequate preparation of a case and failing to deposit entrusted funds in a trust account. In May 1995 Defendant was reprimanded for a fee splitting arrangement.

15. The Hearing Panel has considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension, and disbarment, in considering the appropriate discipline to impose in this case.

Based upon the foregoing Findings of Fact and Conclusions of Law and with the consent of the parties, the Hearing Panel also finds by clear, cogent and convincing evidence the following:

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has 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 concludes that the following factors are present:

- (a) Intent of Defendant to commit acts where the harm or potential harm is foreseeable;
- (b) Negative impact of Defendant's actions on client's or public's perception of the profession;
- (c) Circumstances reflecting Defendant's lack of honesty, trustworthiness or integrity;
- (d) Negative impact of Defendant's actions on the public's perception of the profession;

- (e) Negative impact of Defendant's actions on the administration of justice; and
- (f) Acts of dishonesty, misrepresentation, deceit, or fabrication.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B .0116(f)(2) and concludes that while the factor of acts of dishonesty, misrepresentation, or fabrication is present, it does not warrant disbarment in this instance.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code. 1B .0116(f)(3) and concludes the following factors are applicable in this matter:

- (a) Prior disciplinary offenses in this state or any other jurisdiction;
 - (b) Remoteness of prior offenses;
 - (c) Dishonest or selfish motive;
 - (d) A pattern of misconduct;
 - (e) Multiple offenses;
 - (f) Full and free disclosure to the hearing panel or cooperative attitude toward the proceedings; and
 - (g) Degree of experience in the practice of law having practiced since 1982.
4. Defendant should be taxed with the administrative fees and costs of this action.

5. The Hearing Panel has considered lesser alternatives and finds that a public censure, reprimand, or admonition would not be sufficient discipline because of the gravity of the potential harm to Defendant's clients, and the potential significant harm Defendant's conduct caused to the public, the administration of justice, and the legal profession.

5. The Hearing Panel has considered all lesser sanctions and finds that discipline short of suspension would not adequately protect the public, the profession and the administration of justice for the following reasons:

- (a) The factors under Rule.0116(f) that are established by the evidence in this case are of a nature that support imposition of suspension as the appropriate discipline;
- (b) Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses Defendant committed and would send the wrong message to attorneys and to the public regarding the conduct expected of members of the Bar of this state; and

- (c) Protection of the public requires that Defendant not be permitted to resume the practice of law unless and until he demonstrates that he understand his obligations as a citizen and an attorney.

6. Defendant's conduct, if continued or tolerated by the Bar, poses significant potential harm to the profession.

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

ORDER OF DISCIPLINE

1. The license of Defendant, Mark V. Gray, is hereby suspended for four years, effective thirty days from the date of service of this order upon him.

2. Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than thirty days following the effective date of this Order.

3. Defendant shall comply with the wind down provisions contained in Rule .0128 of the North Carolina State Bar Discipline and Disability Rules. As provided in Rule .0128(d), Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within ten days of the effective date of this Order, certifying that he has complied with the wind down rule.

4. If Defendant fails to fully comply with 27 N.C. Admin. Code 1B § .0128, 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 a trustee and/or a trustee's assistant for time and travel associated with the trusteeship. 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.

5. Defendant shall pay the costs and administrative fees of this proceeding as assessed by the Secretary, including the costs of all depositions and transcriptions of depositions taken in this case, within thirty days of service of the statement of costs and administrative fees upon him.

6. Within thirty 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 to obtain such files. Defendant shall promptly return all files to clients upon request.

7. Defendant shall file state and federal tax returns for all future tax years on a timely basis and shall timely pay all amounts owed for those tax years to the taxing authorities.

8. After eighteen months of active suspension, Defendant may apply for a stay of the remaining period of the suspension upon filing a motion in the cause as provided in 27 N.C. Admin. Code 1B §.0118(c) and demonstrating by clear, cogent and convincing evidence that, in addition to

complying with the general provisions for reinstatement listed in 27 N.C. Admin. Code 1B §.0129(b), the Defendant has complied with the following conditions:

- (a) Defendant has 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;
- (b) Defendant has responded to all communications from the State Bar, including communications from the Attorney Client Assistance Program, within thirty days of Defendant's receipt of the communication 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 which was pending during the period of suspension;
- (c) 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;
- (d) 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 such hours or in payment of any fees associated with attendance at CLE programs;
- (e) That during the active suspension that preceded the motion for stay, Defendant has completed two hours of CLE regarding trust accounting and at least one of the two hours shall be a course taught by the Trust Account Compliance Counsel for the North Carolina State Bar;
- (f) That during the active suspension that preceded the motion for stay, Defendant has filed state and federal tax returns for all tax years on a timely basis and timely paid all amounts owed for those tax years to the taxing authorities;
- (g) Defendant has executed any written waivers and releases necessary to authorize the Office of Counsel to confer with the Internal Revenue Service or the N. C. Department of Revenue for the purpose of determining if Defendant has cooperated and complied with all requirements of this Order;
- (h) Defendant has provided to the Office of Counsel copies of all correspondence, including summaries of oral communications, sent to or received by him or his representative from any taxing authority during the period of active suspension;
- (i) 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;
- (j) Defendant properly wound down his law practice and complied with the requirements of 27 N.C. Admin. Code 1B § .0128; and

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- (k) Defendant has paid the costs and fees of this proceeding as reflected on the statement of costs served upon Defendant by the Secretary of the State Bar within thirty days of service of that statement upon Defendant.

9. If Defendant successfully petitions for a stay of his suspension, the applicable suspension of Defendant's law license shall be stayed as long as that Defendant complies and continues to comply with the following conditions:

- (a) Defendant is current in payment of all Membership dues, fees, assessments and costs, including all Client Security Fund assessments and other charges or surcharges that the State Bar is authorized to collect from Defendant, including all judicial district dues, fees and assessments;
- (b) That there is no deficit in Defendant's completion of mandatory CLE hours, in reporting of such hours, or in payment of any fees associated with attendance at CLE programs;
- (c) Defendant files state and federal tax returns on a timely basis during each year of the stay and timely pays all amounts owed for those tax years to the taxing authorities. Defendant shall provide written proof of filing and payment to the Office of Counsel within ten days of filing each return or request for extension and within ten days of each payment;
- (d) That at least ninety days before the end of the stayed suspension, Defendant has paid all accrued indebtedness assessed for prior tax years by the IRS and/or N.C. Department of Revenue;
- (e) Defendant executes 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 if Defendant has cooperated and complied with all requirements of this Order and does not revoke such waivers or releases during the period of stay;
- (f) Defendant provides to the Office of Counsel copies of all correspondence, including a summary of oral communications, sent to or received by him or his representative from any taxing authority within ten days of receipt;
- (g) During the stayed suspension, Defendant shall personally perform the three-way reconciliations of all bank accounts into which are deposited any funds which Defendant is required to hold in trust for the benefit of any client or third party using the reconciliation method described in the State Bar Lawyer's Trust Account Handbook using the reconciliation form provided therein. Defendant shall provide the three-way reconciliation report and all appropriate supporting documentation to the Certified Public Accountant (CPA) as provided below within fifteen days of the end of each quarter;

- (h) Defendant shall engage the services of a CPA to audit his trust account on a quarterly basis to ensure Defendant's compliance with the Rules of Professional Conduct relating to trust accounts.
- i. The CPA must submit quarterly a written report to the Office of Counsel concerning whether Defendant's reconciliations and trust account records and activities comply with the Rules of Professional Conduct, including but not limited to report of any accounting irregularities and any deviation from the requirements of the Rules of Professional Conduct, with a copy of the report sent simultaneously to Defendant. The CPA's reports are due no later than thirty days after the end of each quarter (each January 30, April 30, July 30, and October 30 during the period of stay). It is Defendant's sole responsibility to ensure the CPA completes and submits the reports as required herein;
 - ii. If any of the CPA reports note any irregularities or deficiencies, Defendant shall take all remedial action necessary to bring the trust account into compliance with the Rules of Professional Conduct and shall provide proof of the remedial action and compliance to the CPA and to the Office of Counsel of the State Bar within fifteen days of the date of the CPA's report;
 - iii. All CPA evaluations, reports, and services referred to herein will be completed and submitted at Defendant's sole expense; and
 - iv. Failure of Defendant to ensure the CPA submits any report required by this Order shall be grounds to lift the stay and activate the suspension.
- (i) 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;
- (j) Defendant shall keep the State Bar Membership Department advised of his current business address. Defendant shall notify the State Bar of any change of address within ten days of such change. His current business address must be a street address, not a post office box or drawer;
- (k) Defendant shall respond to all communications from the State Bar, including communications from the Attorney Client Assistance Program, within thirty days of receipt of such communication or by the deadline stated in the communication, whichever is sooner;
- (l) Defendant shall participate in good faith in the State Bar's fee dispute resolution process for any petition which is pending during any stay of the suspension.

10. If Defendant fails to comply with any one or more of the conditions of the stay of suspension provided in paragraphs 9 (a) – (l) above, the stay of suspension may be lifted in accordance with 27 N.C. Admin. Code 1B § .0118(a).

11. If Defendant successfully petitions for a stay of his suspension, Defendant's obligations governing the stay under this Order end after the applicable period of the stay provided there are no

motions or show cause proceedings pending alleging lack of compliance with the conditions of the stay of the suspension as provided in Rule .0118(a) of the North Carolina Discipline and Disability Rules.

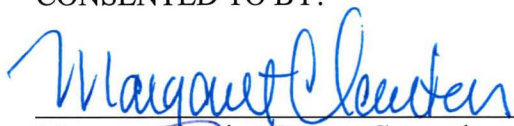
12. If Defendant does not seek a stay of the suspension of his law license or if some part of the suspension is stayed and thereafter revoked, that Defendant must comply with the conditions set out in paragraphs 8(a) – (k) above and the provisions of 27 N.C. Admin. Code 1B § .0129 before seeking reinstatement of his license to practice law. Defendant must also show that he has fully paid all accrued indebtedness assessed for prior tax years to the IRS and/or N.C. Department of Revenue. Defendant must provide in the petition for reinstatement clear, cogent and convincing evidence showing compliance with the provisions of this paragraph.


13. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code 1B § .0118(a) throughout the period of the suspension, any stay thereof.

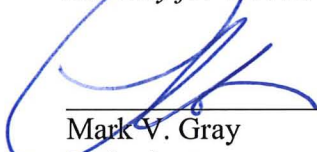
Signed by the Chair with the consent of the other hearing panel members, this the 23rd day of May, 2018.


Beverly T. Beal, Chair
Disciplinary Hearing Panel

CONSENTED TO BY:


Margaret Cloutier, Deputy Counsel
Attorney for the North Carolina State Bar


Dudley A. Witt
Attorney for Defendant


Mark V. Gray
Defendant