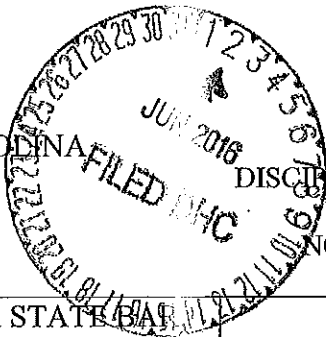


STATE OF NORTH CAROLINA

WAKE COUNTY

THE NORTH CAROLINA STATE BAR



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
15 DHC 54

Plaintiff

v.

JOHN BROOKS REITZEL, JR., Attorney,

Defendant

ORDER OF DISCIPLINE

THIS MATTER was heard on April 29, 2016 before a Hearing Panel of the Disciplinary Hearing Commission composed of R. Lee Farmer, Chair, and members William O. King and Patti Head. Joshua T. Walthall and Barry McNeill represented Plaintiff, the North Carolina State Bar. Defendant, J. Brooks Reitzel, Jr., was present and represented by Dudley A. Witt and David B. Freedman.

Based upon the pleadings, the stipulated facts, and the evidence admitted at the hearing, the Hearing Panel hereby finds 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, John Brooks Reitzel, Jr. ("Reitzel" or "Defendant"), was admitted to the North Carolina State Bar on August 14, 1971, and is, and was at all times referred to herein, an attorney at law licensed to practice 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 High Point, Guilford County, North Carolina and, as detailed herein, in at least two counties in South Carolina.

4. In August of 2010, North Carolina residents W. B. and J. B.<sup>1</sup>, facing financial challenges and possible foreclosures on their homes, contacted Defendant about

<sup>1</sup> All client names have been abbreviated to protect their identities.

providing them with legal services in defending against these foreclosures and assistance in restructuring their finances.

5. W. B. and J. B. engaged Defendant to represent their legal interests in the foreclosures and the restructuring of their finances.

6. W. B. and J. B. paid Defendant to provide them with legal representation in South Carolina.

7. Among other homes and properties, W. B. and J. B. owned a condominium unit at Kiawah Island, South Carolina ("Kiawah Condo"), which was over-encumbered by a mortgage held by Citimortgage, Inc.

8. In June of 2011, Citimortgage initiated a foreclosure proceeding in Charleston County, South Carolina on the Kiawah Condo; Citimortgage intended to not only sell the Kiawah Condo by foreclosure, but to also recover a deficiency judgment against W. B. and J. B.

9. W. B. and J. B. did not learn of the foreclosure proceeding on their Kiawah Condo until they were served with the Summons and Complaint at their home in North Carolina on July 20, 2011.

10. On July 21, 2011, Defendant sent a letter to the law firm representing Citimortgage advising the firm that he would be assisting W. B. and J. B. in the South Carolina foreclosure proceeding of their Kiawah Condo as W. B. and J. B.'s legal representative.

11. On August 15, 2011, Defendant filed an answer to the foreclosure complaint on behalf of W. B. and J. B. in the Charleston County Court of Common Pleas in South Carolina; Defendant drafted and signed this answer as the attorney representing W. B. and J. B.

12. No attorney licensed to practice law in South Carolina reviewed or co-signed the answer with Defendant before its filing in South Carolina.

13. Defendant served a copy of his cover letter and W. B. and J. B.'s answer upon counsel for Citimortgage.

14. On October 21, 2011, the Honorable Kristi Lea Harrington of the Charleston County Court of Common Pleas entered an Order of Default against W. B. and J. B. because Judge Harrington deemed W. B. and J. B.'s answer to the complaint to have been invalidly filed as it was submitted by an attorney not licensed to practice law in South Carolina.

15. On November 1, 2011, Defendant, acting on behalf of and as the legal representative of W. B. and J. B., wrote to Judge Harrington inquiring as to how and why the Order of Default had been entered on October 21, 2011 when he had filed a timely answer on behalf of W. B. and J. B.

16. On November 3, 2011, one of Citimortgage's attorneys sent Defendant a letter inquiring about Defendant's qualifications to practice law in South Carolina since it appeared that Defendant was not licensed to practice law in that state.

17. On November 8, 2011, Defendant replied to the November 3, 2011 letter from one of Citimortgage's attorneys via letter stating that while he was not licensed in South Carolina, he nonetheless "frequently practice[s] in South Carolina in civil matters . . . involving foreclosure proceedings and deficiency claims." Defendant noted that he has never faced an "objection from counsel for secured creditors or substitute trustees in such proceedings" but that if Citimortgage is now raising such an objection, he will inform his clients of the objection and "allow them to make the decision as to [their] position going forward."

18. Defendant had no further communications with the South Carolina courts, Judge Harrington, Citimortgage's attorneys, or Citimortgage during 2012 or 2013.

19. In January 2015, an Order of Sale and Disbursement was entered by the Court, thereby concluding the foreclosure proceeding of W. B. and J. B.'s Kiawah Condo in South Carolina.

20. On February 11, 2015, after the South Carolina Office of Disciplinary Counsel ("SCODC") investigated a complaint against Defendant for engaging in the unauthorized practice of law in South Carolina, the South Carolina Supreme Court accepted a consent agreement between Defendant and the SCODC that permanently barred Defendant from seeking any form of admission to practice law in South Carolina without first obtaining an order from the South Carolina Supreme Court allowing him to seek admission.

21. In January 2013, S.B.S., a South Carolina resident, was served with a complaint for foreclosure regarding her home in Horry County, South Carolina.

22. In February 2013, Defendant held out to S.B.S. that he could provide her with legal services and representation related to the foreclosure of her South Carolina home.

23. In February 2013, S.B.S. retained Defendant to help her through the foreclosure process.

24. S.B.S. paid Defendant to provide her with legal representation in South Carolina.

25. On behalf of S.B.S., Defendant drafted a Response to the Complaint for Foreclosure and filed it with the Horry County Clerk of Superior Court in South Carolina on February 11, 2013; Defendant did not sign the Response because he incorrectly thought, after being challenged in the W.B. and J.B. matter, that he avoided the unauthorized practice of law in South Carolina by only preparing the Response for S.B.S.

26. Throughout the foreclosure process, Defendant communicated with the Court, S.B.S.'s creditor, and S.B.S.'s creditor's attorneys on behalf of and in representation of S.B.S.

27. On November 24, 2014, Defendant signed an "Agreement for Discipline by Consent" with the South Carolina Office of Disciplinary Counsel ("SCODC"); this agreement was submitted to the South Carolina Supreme Court.

28. Defendant affirmed the following provision of the Agreement: "The Lawyer [Defendant] admits that, in the past, he has assisted other clients in preparing and filing responses in foreclosure and similar matters in South Carolina without association of local counsel and without seeking *pro hac vice* admission."

29. On November 24, 2014, Defendant also signed and submitted to the South Carolina Supreme Court an affidavit that stated: "The matters admitted in the attached Agreement and the facts stated in this Affidavit are true."

30. Defendant had not "frequently practice[d] in South Carolina in civil matters . . . involving foreclosure proceedings and deficiency claims."

31. Except for the single instance referenced in Paragraphs 26 and 27 above in which Defendant drafted on behalf of S.B.S. a Response to the Complaint for Foreclosure and filed it with the Horry County Clerk of Superior Court in South Carolina on February 11, 2013, Defendant had not "assisted other clients in preparing and filing responses in foreclosure and similar matters in South Carolina[.]"

32. Defendant is not licensed to practice law in South Carolina. Pursuant to the laws of the State of South Carolina, attorneys not licensed to practice law in South Carolina may not draft legal documents or represent parties in matters litigated in the Courts of that State without leave granted by its Courts. Engaging in the unauthorized or unlicensed practice of law in violation of S.C. Code § 40-5-310 is a felony. Defendant violated S.C. Code § 40-5-310.

33. On February 11, 2015, after the SCODC investigated a complaint against Defendant for engaging in the unauthorized practice of law in South Carolina, the South Carolina Supreme Court accepted a consent agreement between Defendant and the SCODC that permanently barred Defendant from seeking any form of admission to practice law in South Carolina without first obtaining an order from the South Carolina Supreme Court allowing him to seek admission.

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

#### CONCLUSIONS OF LAW

1. All of the parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, J. Brooks Reitzel, Jr. and 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. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

- a) By holding himself out as able to represent W. B. and J. B. and S.B.S. and to provide them with legal services in South Carolina matters, Defendant made false or misleading communications about himself or his services in violation of Rule 7.1(a);
- b) By practicing law in South Carolina when he was not licensed to do so, Defendant engaged in the unauthorized practice of law in violation of Rule 5.5(a);
- c) By charging and collecting fees to engage in the practice of law in South Carolina when he was not licensed to practice in that state, Defendant charged and collected an illegal fee in violation of Rule 1.5(a);
- d) By practicing law in South Carolina when he was not licensed to do so, in violation of S.C. Code § 40-5-310, Defendant committed a felonious criminal act in South Carolina that reflects adversely on Defendant's honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b);
- e) By falsely claiming that he frequently practiced in South Carolina in foreclosure matters, Defendant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c); and
- f) By falsely averring to the South Carolina Supreme Court in an Agreement and in an Affidavit that he had assisted "other clients" in addition to W. B. and J. B. with foreclosure matters when he had not assisted more than one such client, Defendant made a false statement of material fact to a tribunal or failed to correct a false statement of material fact made to a tribunal in violation of Rule 3.3(a) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c).

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Panel hereby finds by clear, cogent and convincing evidence the following additional

#### FINDINGS OF FACT REGARDING DISCIPLINE

- 1. The findings of fact in paragraphs 1 – 33 are reincorporated as if set forth herein.
- 2. Defendant has four (4) prior instances of public discipline: a two-year stayed suspension in 1997, a reprimand in 1998, a stayed suspension in 2000, and a reprimand in 2008.

3. Defendant was debarred by the South Carolina Supreme Court for the acts that led to the discipline imposed in this order.

4. Defendant has indicated remorse.

5. Defendant has been licensed to practice law in North Carolina since 1971. With his degree of experience, Defendant should have known better than to engage in the acts that led to the discipline imposed in this order.

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

#### CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(1), (2) and (3) of the Rules and Regulations of the State Bar, and concludes that the following factors are applicable:

##### 27 N.C.A.C. 1B § .0114(w)(1)

- a. Factor (B), Intent of the defendant to commit acts where the harm or potential harm is foreseeable;
- b. Factor (E), Negative impact of defendant's actions on client's or public's perception of the profession;
- c. Factor (F), Negative impact of the defendant's actions on the administration of justice;
- d. Factor (G), Impairment of the client's ability to achieve the goals of the representation;
- e. Factor (H), Effect of defendant's conduct on third parties; and
- f. Factor (I), Acts of dishonesty, misrepresentation, deceit, or fabrication.

##### 27 N.C.A.C. 1B § .0114(w)(2)

- a. Factor (A), Acts of dishonesty, misrepresentation, deceit, or fabrication; and
- b. Factor (D), Commission of a felony under the laws of South Carolina.

##### 27 N.C.A.C. 1B § .0114(w)(3)

- a. Factor (A), Prior disciplinary offenses in this state or any other jurisdiction;

- b. Factor (G), Multiple offenses;
- c. Factor (K), Full and free disclosure to the hearing panel or cooperative attitude toward the proceedings;
- d. Factor (N), Submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- e. Factor (P), Remorse;
- f. Factor (S), Degree of experience in the practice of law;
- g. Factor (U), Imposition of other penalties or sanctions in South Carolina; and
- h. Factor (V), Other factors found to be pertinent to the consideration of the discipline to be imposed:
  - a) The actions of the Defendant were not the result of inadvertence or inattention; and
  - b) The Defendant has exhibited a lack of respect for the Rules of Professional Conduct.

2. Although the Hearing Panel determined two of the factors under 27 N.C.A.C. 1B § .0114(w)(2) to be present, the Hearing Panel concluded that disbarment was not warranted in light of all of the circumstances of the case.

3. The Hearing Panel considered all of the disciplinary options available to it and determined that imposition of a suspension is appropriate.

4. The Hearing Panel considered all lesser sanctions and concluded that discipline short of an active suspension would not adequately protect the public. Imposition of a lesser discipline would fail to acknowledge the seriousness of the offenses Defendant committed and would send the wrong message to members of the Bar and the public regarding the conduct expected of members of the Bar of this State.

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

#### ORDER OF DISCIPLINE

1. Defendant, J. Brooks Reitzel, Jr., is hereby suspended from the practice of law for four years, effective 30 days from service of this Order upon Defendant. This suspension may be stayed after a period of two years, as set forth in paragraph 5 below.

2. Defendant shall comply with the wind down provisions of 27 N.C.A.C. 1B § .0124 of the State Bar Rules.

3. Within 15 days of the effective date of this Order, Defendant shall provide the State Bar's Office of Counsel with an address and telephone number at which clients seeking return of files can communicate with Defendant and obtain such files, and Defendant shall promptly provide client files to all clients who request return of their files.

4. Defendant shall pay the administrative fees and costs of this proceeding, including the costs of all depositions, as assessed by the Secretary of the North Carolina State Bar within 90 days after service of the statement of costs on him.

5. No less than two years after the effective date of this Order, Defendant may seek a stay of the remaining period of suspension by filing a verified petition with the Executive Director of the State Bar demonstrating by clear, cogent and convincing evidence that Defendant has met all requirements for reinstatement set out in 27 N.C.A.C. 1B § .0125(b), and has complied with each of the following:

- a. Defendant paid all administrative fees and costs of this proceeding as assessed by the Secretary within 90 days after service of the statement of costs on him;
- b. Defendant maintained all of his annual CLE requirements as required by the State Bar;
- c. Defendant completed three hours of CLE ethics education per year of the suspension – stayed and active – in addition to his normal CLE requirements as set forth in 27 N.C.A.C. 1D § .1518;
- d. Defendant ensured that the three additional CLE hours were reported to the State Bar Continuing Legal Education department and were included on his State Bar CLE report;
- e. Defendant provided documentation of completion of the three additional CLE hours to the Office of Counsel each year when he submitted his annual CLE report to the State Bar Continuing Legal Education department;
- f. Defendant did not violate any state or federal laws or any provisions of the Rules of Professional Conduct during the period of the stayed suspension;
- g. Defendant responded to all State Bar requests for information as required by Rule 8.1(b) of the Rules of Professional Conduct by the earlier of the deadline stated in the communication or within 30 days of receipt;
- h. Defendant timely complied with all State Bar membership and Continuing Legal Education requirements; and
- i. Defendant kept the North Carolina State Bar membership department advised of his current home and business street (no P.O. Box) addresses and telephone numbers.



6. If Defendant obtains a stay of his suspension pursuant to paragraph 5 of this Order of Discipline, he must comply with all of the following conditions, or the stay of the suspension of his law license may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules:

- a. Defendant shall maintain all of his annual CLE requirements as required by the State Bar;
- b. Defendant shall complete three hours of CLE ethics education per year of the suspension – stayed and active – in addition to his normal CLE requirements as set forth in 27 N.C.A.C. 1D § .1518;
- c. Defendant shall ensure that the three additional CLE hours are reported to the State Bar Continuing Legal Education department and are included on his State Bar CLE report;
- d. Defendant shall provide documentation of completion of the three additional CLE hours to the Office of Counsel each year when he submits his annual CLE report to the State Bar Continuing Legal Education department;
- e. Defendant shall not violate any state or federal laws or any provisions of the Rules of Professional Conduct during the period of the stayed suspension;
- f. Defendant shall respond to all State Bar requests for information as required by Rule 8.1(b) of the Rules of Professional Conduct by the earlier of the deadline stated in the communication or within 30 days of receipt;
- g. Defendant shall timely comply with all State Bar membership and Continuing Legal Education requirements; and
- h. Defendant shall keep the North Carolina State Bar membership department advised of his current home and business street (no P.O. Box) addresses and telephone numbers.


7. Unless Defendant's obligations under this Order are modified by further order of the DHC, Defendant's obligations under this Order end four 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 § .0114(x) 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 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. If the stay of the suspension is lifted and the suspension is activated for any reason, the DHC may enter an Order imposing such conditions as it deems necessary for the reinstatement of Defendant's license at the end of the suspension. Furthermore, Defendant must have complied with each of the following conditions precedent to reinstatement before he can be reinstated to the active practice of law:

- a. Submitted his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days from the effective date of the order activating his suspension;
- b. Complied with all provisions of 27 N.C.A.C. 1B, § .0124 of the North Carolina State Bar Discipline and Disability Rules on a timely basis;
- c. Paid any outstanding disciplinary administrative fees and costs; and
- d. Within 15 days of the effective date of an order activating the suspension Defendant shall have provided the State Bar with an address and telephone number at which clients seeking return of files could communicate with Defendant and obtain such files, and Defendant shall have promptly returned all files to clients upon request.

9. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C.A.C. 1B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of the stayed suspension.

Signed by the Chair with the consent of the other Hearing Panel members, this the 1st day of June 2016.



R. Lee Farmer

Chair, Disciplinary Hearing Panel