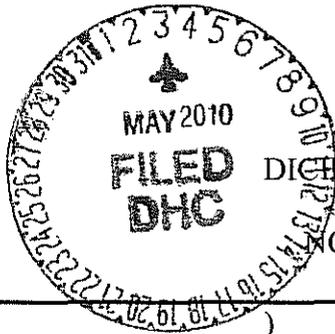


NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
09 DHC 18

THE NORTH CAROLINA STATE BAR )  
Plaintiff, )  
v. )  
NIKITA V. MACKEY, Attorney, )  
Defendant. )

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND CONSENT ORDER  
OF DISCIPLINE

This matter was considered by a hearing panel of the Disciplinary Hearing Commission composed of the Chair, Tommy Jarrett, Harriett Smalls, and Joe Castro. Katherine E. Jean and William N. Farrell represented Plaintiff, the North Carolina State Bar. Defendant, Nikita V. Mackey, was represented by Alan M. Schneider. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Defendant knowingly, freely and voluntarily waives any and all right to appeal the entry of this consent order of discipline. Based upon the stipulations of fact and the consent of the parties, the hearing panel hereby finds by clear, cogent, and convincing evidence the following

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar (hereinafter "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, Nikita V. Mackey (hereinafter "defendant" or "Mackey"), was admitted to the North Carolina State Bar on August 26, 2003, and is an Attorney at Law licensed to practice in North Carolina, 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. Defendant was employed by the Charlotte-Mecklenburg Police Department (formerly the Charlotte Police Department) as a police officer from about October 1989 until about June 2003.
4. On or about December 27, 2002, defendant signed and submitted an application (hereinafter "the application") to the Board of Law Examiners of the State of North Carolina (hereinafter "BOLE") to be permitted to take the North Carolina Bar Exam.

5. Question number 13 of defendant's application to the BOLE asked defendant: "Have you failed to file any personal local, state, or federal income tax return, or failed to pay any taxes due? If YES, give full details below and furnish documentation showing that taxes are current."

6. Defendant answered "no" to question number 13 of the application and wrote "none" as to details and documentation.

7. In his BOLE application defendant failed to disclose and failed later to supplement that he failed to fully pay Federal income taxes for the years 1997, 1999 and 2002 at the times such taxes were due.

8. In his BOLE application defendant failed to disclose and failed later to supplement that he failed to fully pay State income taxes for the years 1999 and 2002 at the times such taxes were due.

9. Question number 18(a) of defendant's application to the BOLE asked defendant: "Have you ever had a complaint filed against you personally, or as a member of a professional association, or corporation, or any legal entity in any civil, criminal or administrative forum alleging fraud, deceit, misrepresentation, forgery or professional malpractice. If YES, list details below."

10. Defendant answered "no" to question number 18(a) of the application and wrote "none" as to the details.

11. In or about December 1991, defendant was suspended without pay for being untruthful to the Chain of Command Review Board at the Charlotte Police Department during an official administrative investigation regarding his improper conduct at an off duty security job.

12. In his BOLE application, defendant failed to disclose that he had been suspended without pay for being untruthful to the Chain of Command Review Board of the Charlotte Police Department during an official administrative investigation regarding his improper conduct at an off duty security job in December 1991.

13. On or about October 21, 2002, defendant was the subject of an official administrative investigation of the Charlotte-Mecklenburg Police Department.

14. On or about October 21, 2002, defendant was verbally and in writing advised of his "Employee Disciplinary Interview Advice of Rights" as part of an official administrative investigation into the "abuse of comp. time" and inclusion of false information on "daily duty status reports."

15. In his BOLE application, defendant failed to disclose and failed later to supplement that he was the subject of an official administrative investigation by the Charlotte-Mecklenburg Police Department.

16. Question number 25 of defendant's application to the BOLE gives defendant an opportunity to make a full disclosure as to any other incident or occurrence in his life which is not otherwise referred to in the application which he would like to acknowledge in the interest of full disclosure. The application states as follows: "FULL DISCLOSURE: Is there any other incident or occurrence in your life which is not otherwise referred to in this application which you would like to acknowledge in the interest of full disclosure? It is crucial that you honestly and fully answer all questions, regardless of whether you believe the information is relevant. If YES, give full details below."

17. Defendant answered "no" to question number 25 of the application and wrote "none" under details.

18. In his December 2002 BOLE application, defendant failed to disclose and failed later to supplement that he was suspended without pay for being untruthful to the Chain of Command Review Board at the Charlotte Police Department regarding his improper conduct at an off duty security job in December 1991. In the BOLE application defendant also failed to disclose and later supplement that he was the subject of an official administrative investigation of the Charlotte-Mecklenburg Police Department.

19. On or about February 24, 2003, defendant was suspended without pay and cited to the Civil Service Board with the recommendation that his employment with the Charlotte-Mecklenburg Police Department be terminated.

20. Defendant failed to provide a supplement to his BOLE application disclosing that he had been suspended without pay and that a recommendation had been made that his employment with the Charlotte Police Department be terminated.

21. Question number 49 of defendant's application to the BOLE asks defendant to handwrite that he understands that the application is a continuing application as follows: "THE FOLLOWING PARAGRAPH IS TO BE COPIED BY THE APPLICANT IN THE APPLICANTS USUAL HANDWRITING IN THE SPACE PROVIDED. I understand that this application is a continuing application and must give correctly and fully the information herein sought as of the date of my taking the North Carolina Bar Examination. I will, therefore, notify the Board as to any change in respect to any matter regarding which information is herein, and as to any incident which may have any bearing upon the information herein sought."

22. Defendant did not believe he was required to supplement his BOLE application with the information that he was suspended without pay along with a recommendation that his employment be terminated because only the Civil Service Board had the authority to terminate his employment.

23. Defendant resigned his employment with the police department before the Civil Service Board acted on the recommendation that his employment be terminated.

24. Defendant now recognizes that he should have disclosed to the Board of Law Examiners that he was the subject of an official administrative investigation of the police department at the time he submitted his application to the BOLE and should have later supplemented his application regarding his suspension and recommendation of termination.

25. On November 29, 2006, Morris Chisholm (hereinafter "Chisholm") retained defendant for a fee of \$1,000 to represent him in the uncontested adoption of Chisholm's then seventeen year old stepdaughter.

26. Defendant filed the adoption petition and all required paperwork on or about December 13, 2006 with the Clerk of Court of Mecklenburg County.

27. At the time of the filing, the minor child was approximately four months short of her eighteenth birthday, April 15, 2007, which was the last day the child was legally eligible to be adopted as a minor.

28. Between the time defendant was retained in November 2006 and April 15, 2007, the deadline for the minor's adoption, defendant failed to reasonably consult and communicate with Chisholm.

29. Communication with Chisholm was critical in this case because defendant knew that the adoption had to be completed by a date certain or it could not occur.

30. The adoption was not finalized before April 15, 2007, such that the child could not be adopted as a minor.

31. Chisholm did not learn the adoption did not occur until July 2007, when his wife called the Clerk of Court's office and was advised by that office that there was no adoption.

32. Defendant failed to advise Chisholm that the adoption had not occurred.

33. Chisholm filed a small claims action against defendant for the attorney fees he paid in connection with the failed adoption.

34. The court entered judgment in favor of Chisholm against defendant in the sum of \$1,000.00.

35. During the calendar years 2003, 2004, 2005 and 2006, defendant received sufficient income to require him to file Federal and State income tax returns.

36. For each of these tax years, defendant knew the deadlines for the filing of his Federal and State income tax returns.

37. Defendant failed to timely file Federal and State income tax returns for years 2003, 2004, 2005 and 2006 at the times required by State and Federal law.

38. When defendant did file the State and Federal tax returns for the years 2003, 2004, 2005 and 2006, he was due a refund for each of these years or did not owe taxes for those years.

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

#### CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction over the defendant, Nikita V. Mackey, and the subject matter.

2. Defendant's conduct, as set forth in the Findings of Fact above, constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-24(b)(2) in that defendant violated the Rules of Professional Conduct as follows:

- a. Defendant failed to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter and knowingly failed to respond to a lawful demand for information from an admissions or disciplinary authority in violation of Rule 8.1(b) by failing to disclose in his application to the North Carolina Board of Law Examiners and failing to later supplement his BOLE application with the following information:
  1. His failure to timely pay Federal income taxes for the years 1997, 1999 and 2002 when due;
  2. His failure to timely pay State income taxes for the years 1999 and 2002 when due;
  3. His failure, up and until the date of taking the Bar Examination, to disclose that he owed past due income taxes;
  4. That he was, at the time of his December 2002 BOLE application and thereafter, the subject of an existing official administrative investigation of his conduct by the Charlotte-Mecklenburg Police Department; and

5. His suspension for being untruthful to the Chain of Command Review Board of the Charlotte Police Department during an official administrative investigation of his improper conduct at an off duty security job in December 1991.
- b. Defendant failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 by failing to complete and obtain the adoption;
- c. Defendant failed to keep his client reasonably informed in violation of Rules 1.4(a)(3) and 1.4(a)(4); and
- d. Defendant engaged in dishonest conduct in violation of Rule 8.4(c) by failing to timely file the required Federal and State income tax returns for years 2003, 2004, 2005 and 2006.

Based on the foregoing Findings of Fact and Conclusions of Law 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)(1) and (3) of the Rules and Regulations of the State Bar and finds the following factors are applicable.

- a. Circumstances reflecting the defendant's lack of honesty, trustworthiness, or integrity;
- b. Negative impact of defendant's actions on the client's or the public's perception of the profession;
- c. Acts of dishonesty, misrepresentation, deceit, or fabrication;
- d. Multiple offenses;
- e. A pattern of misconduct;
- f. Cooperative attitude during the Disciplinary Hearing Commission procedure;
- g. Remorse; and
- h. Recognition of the wrongfulness of the conduct.

3. Defendant's conduct caused significant harm to the legal profession in that his acts bring the legal profession into disrepute.

4. The Hearing Panel has considered lesser alternatives and finds that a censure, reprimand, or admonition would not be sufficient discipline because of the gravity of the actions and potential harm to the public and the legal profession caused by defendant's conduct.

5. The Hearing Panel finds that discipline short of an active suspension would not adequately protect the public for the following reasons:

- a. Defendant's conduct reflects adversely on his trustworthiness or fitness as a lawyer.
- b. Entry of an order imposing less severe discipline would fail to acknowledge the seriousness of the misconduct and would send the wrong message to applicants to the BOLE, attorneys and public regarding the conduct expected of applicants to and members of the Bar of this State.

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

#### ORDER OF DISCIPLINE

1. The law license of defendant, Nikita V. Mackey, is hereby suspended for three years effective thirty days after service of this Order of Discipline on defendant.

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

3. Defendant shall comply with the wind down provisions contained in 27 N.C.A.C. 1B § .0124, the North Carolina State Bar Discipline and Disability Rules. Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within ten days of the effective date of this Order of Discipline certifying he has complied with the wind down rule.

4. Within fifteen days of the effective date of this Order, defendant will provide the State Bar with a street address and mailing address at which clients seeking return of their files and records in defendant's possession or control may obtain such files and records and at which the State Bar may serve any notices or other matters upon him.

5. After the completion of one year of active suspension of his license, defendant may apply for a stay of the balance of the suspension upon filing a petition

with the Secretary of the North Carolina State Bar at least thirty days before any proposed effective date of the stay and demonstrating the following by clear, cogent, and convincing evidence:

- a. That 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. That defendant has 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 received after the effective date of this Order;
- c. That defendant has not violated the Rules of Professional Conduct or the laws of the United States or any state or local government during his suspension;
- d. That defendant has timely filed his Federal and State income tax returns and timely paid any taxes owed; and
- e. That defendant has properly wound down his law practice and complied with the requirements of 27 N.C.A.C. 1B § .0124, the North Carolina State Bar Discipline and Disability Rules.

6. If defendant successfully seeks a stay of the suspension of his law license, such stay will continue in force only as long as he complies with the following conditions:

- a. Defendant shall keep the North Carolina State Bar Membership Department advised of his current business and home addresses;
- b. 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 participate in good faith in the State Bar's fee dispute resolution process for any petition received during the stay;
- c. Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or any state or local government during his suspension;
- d. Defendant shall timely comply with all State Bar membership and continuing legal education requirements and shall pay all fees and costs assessed by the applicable deadline; and

e. Defendant has timely filed his Federal and State income tax returns and timely paid any taxes owed.

7. If defendant fails to comply with any of the conditions of the stayed suspension provided in paragraph 6 above, the stay of the suspension may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

8. If defendant does not seek a stay of the active portion of the suspension or if some part of the suspension is stayed and thereafter the stay is revoked, defendant must comply with the condition set out in paragraphs 5(a) through (e) above before seeking reinstatement of his license to practice law.

9. Defendant is taxed with the costs of this action as assessed by the Secretary.

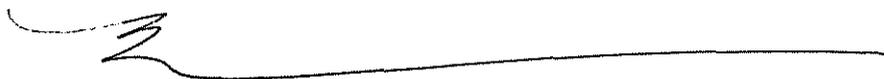
Signed by the Chair of the Hearing Panel with the consent of the other Hearing Panel members, this the 30 day of April, 2010.

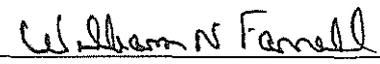
  
Chair, Disciplinary Hearing/Panel

CONSENTED TO:

  
Nikita V. Mackey, Defendant

  
Alan M. Schneider, Attorney for Defendant

  
Katherine E. Jean, Counsel  
Attorney for Plaintiff

  
William N. Farrell, Deputy Counsel  
Attorney for Plaintiff