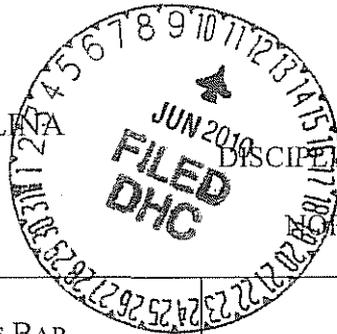


STATE OF NORTH CAROLINA
WAKE COUNTY



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

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

DAVID P. FOLMAR, JR., Attorney,

Defendant

CONSENT ORDER OF DISCIPLINE

This matter came before a hearing panel of the Disciplinary Hearing Commission composed of Tommy W. Jarrett, Chair, Theodore C. Edwards, III and Karen B. Ray. Leonor Bailey Hodge represented Plaintiff. Defendant was represented by Wade M. Smith. Defendant waives a formal hearing in the above referenced 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 his 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 (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, David P. Folmar, Jr. (hereinafter "Defendant"), was admitted to the North Carolina State Bar on August 18, 1989 and at all times referred to herein, possessed a license to practice law 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. Defendant is not now, and was not during the times referred to herein, an active member of the North Carolina State Bar authorized to practice law in North Carolina.

3. During the times relevant herein, Defendant actively engaged in the practice of law as an Assistant United States Attorney for the United States Department of Justice in

its United States Attorney's Offices located in the Eastern District of North Carolina at Raleigh, the Eastern District of Tennessee at Knoxville, the Northern District of Ohio at Cleveland, and the Middle District of North Carolina at Greensboro.

4. Defendant is required to be an active member of a bar of any U. S. jurisdiction in order to practice law as an Assistant United States Attorney.

5. During the times relevant herein, Defendant possessed a license to practice law from two U.S. jurisdictions: Florida and North Carolina. However, from November 14, 2003 through March 2009 Defendant was not an active member of a bar of any U.S. jurisdiction and was not authorized by Florida or North Carolina to practice law.

6. Although Defendant is licensed to practice law by the Florida Bar, Defendant's status with the Florida Bar is retired. Therefore, from November 14, 2003 through March 2009 Defendant was not eligible to practice law pursuant to his Florida license.

7. On or about July 18, 2003, the North Carolina State Bar deposited into the United States Mail, certified mail, return receipt requested, addressed to Defendant, a Notice to Show Cause why he should not be suspended from the practice of law by the North Carolina State Bar for his failure to comply with mandatory Continuing Legal Education requirements.

8. The Notice to Show Cause was mailed to Defendant at his address of record with the North Carolina State Bar Membership Department which, at that time, was 2765 Oakview Circle, Cleveland Ohio.

9. Defendant was suspended from the practice of law on November 5, 2003 pursuant to an Order of Suspension for Failure to Comply with Continuing Legal Education (CLE) Requirements dated November 5, 2003.

10. Defendant became aware of his suspension for failure to comply with CLE requirements in or about early 2004.

11. Defendant knew that he was suspended from the practice of law for his failure to comply with mandatory CLE requirements.

13. Despite the fact that Defendant was suspended from the practice of law, he continued to work as an Assistant United States Attorney, to appear in court on behalf of the United States Attorney and to prosecute cases on behalf of the United States from November 14, 2003 through March 2009.

14. Defendant concealed his suspension from his supervisors.

15. Defendant falsely held himself out to the courts, his colleagues and the public as authorized and qualified to practice law.

16. Defendant knew that he was required to have an active law license in order to prosecute cases as an Assistant United States Attorney.

17. Defendant knew that he had no active law license from November 14, 2003 through March 2009. Despite this fact, Defendant executed "Attorney's Bar Re-Certification" forms on March 22, 2005, March 14, 2006, April 16, 2007, November 6, 2007 and April 15, 2008 falsely certifying to his employer, the United States Department of Justice, that he was an active member of a state bar.

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, David P. Folmar, Jr., 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:

- a. by practicing law as an Assistant United States Attorney while his North Carolina law license was suspended and without being licensed to practice law by any other jurisdiction, Defendant engaged in the unauthorized practice of law in violation of Rule 5.5(a) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d); and
- b. by concealing his suspension from the courts, his supervisors and his colleagues; by executing "Attorney's Bar Re-Certification" forms falsely certifying that he was an active member of a state bar; and by holding himself out to the courts, his colleagues and the public as authorized and qualified to practice law, Defendant 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 enters the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Defendant was suffering from depression and turned to alcohol during the time of his misconduct.

2. Defendant was having personal and family problems during the time of his misconduct.

3. Defendant has sought counseling for his depression.
4. Prior to the occurrence of the misconduct at issue in this case, Defendant's professional reputation among the federal prosecution and defense bars was unblemished.
5. Defendant has the professional reputation of being an honest lawyer.
6. Although Defendant's law license was administratively suspended for failure to comply with mandatory CLE, Defendant always maintained adequate CLE course credit throughout the period of his suspension though he failed to submit the necessary forms.
7. Defendant has exhibited extreme remorse for his misconduct.
8. Defendant was disciplined by the United States Department of Justice Office of Professional Responsibility for his misconduct that is at issue in this case.

Based on the foregoing Findings of Fact, Conclusions of Law and Findings of Fact Regarding Discipline, 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. negative impact of the Defendant's actions on public's perception of the profession;
 - b. negative impact of Defendant's actions on the administration of justice;
 - c. acts of dishonesty, misrepresentation, deceit or fabrication;
 - d. experience in the practice of law;
 - e. the absence of prior disciplinary offenses;
 - f. effect of personal and emotional problems on the conduct in question;

- g. full and free disclosure to the Hearing Panel and cooperative attitude toward the proceedings;
- h. remorse;
- i. character and reputation; and
- j. imposition of other penalties or sanctions.

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

4. Defendant's conduct caused significant prejudice to the administration of justice in that, as a result of Defendant's misconduct, criminal defendants who have been convicted and are incarcerated have filed motions to set aside their convictions. This has resulted in burden on the court and upon Defendant's former colleagues.

5. The Hearing Panel has considered lesser alternatives and finds that a censure, reprimand or admonition would be insufficient discipline because of the gravity of the conduct and potential harm to the administration of justice and the legal profession caused by Defendant's conduct.

6. 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 attorneys about the importance of complying with all administrative licensing requirements and to attorneys 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, Findings of Fact Regarding Discipline and Conclusions of Law Regarding Discipline, the Hearing Panel hereby enters the following:

ORDER OF DISCIPLINE

1. The law license of Defendant, David P. Folmar, Jr., is hereby suspended for five (5) years effective thirty (30) 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 (30) 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.

4. 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 that he has complied with the wind down rule.

5. Within fifteen (15) 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.

6. Defendant shall pay the costs of this proceeding within thirty (30) days of service of the statement of costs upon him by the Secretary of the State Bar.

7. After the completion of eighteen (18) months of active suspension of his license, Defendant may apply for a stay of the remainder of the suspension upon filing a petition with the Secretary of the North Carolina State Bar at least thirty (30) days before any proposed effective date of the stay and demonstrating the following by clear, cogent and convincing evidence the following:

- a. That at the time of the petition Defendant is not suffering from any disability that would impair his ability to practice law.
- b. Defendant has continuously participated in mental health counseling provided by a licensed psychologist or psychiatrist, meeting at least monthly with this counselor;
- c. Defendant has provided the Office of Counsel with releases authorizing and instructing his psychological and mental health care providers to provide the Office of Counsel all medical records relating to his evaluation, prognosis, care or treatment, including psychological and mental health evaluations, and authorizing and instructing such providers to submit to interviews by the Office of Counsel;
- d. 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 (10) days of such change;

- e. Defendant has responded to all communications from the North Carolina State Bar, including communications from the Attorney Client Assistance Program, within thirty (30) 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 he receives notice after the effective date of this Order;
- 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 him, and including all judicial district dues, fees and assessments.
- g. 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 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 his suspension;
- i. 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; and
- j. Defendant has paid the costs of this proceeding as reflected on the statement of costs served upon him by the Secretary of the State Bar.

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

- a. Defendant shall participate in mental health counseling provided by a licensed psychologist or psychiatrist, meeting at least monthly with this counselor; Defendant will authorize and instruct his counselor to provide quarterly written reports to the State Bar confirming Defendant's continued participation in mental health counseling; the first such report shall be submitted to the State Bar thirty (30) days from the initial date of stay of Defendant's suspension; subsequent reports shall be submitted on the first day of the first month of each quarter thereafter; any cost associated with the counseling or reports shall be borne by Defendant;

- b. Defendant shall provide the Office of Counsel with releases authorizing and instructing psychological and mental health care providers to provide the Office of Counsel all medical records relating to his evaluation, prognosis, care or treatment, including psychological and mental health evaluations, and authorizing and instructing such providers to submit to interviews by the Office of Counsel;
- c. Defendant shall keep 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 (10) days of such change;
- d. Defendant shall respond to all communications from the North Carolina State Bar, including communications from the Attorney Client Assistance Program, within thirty (30) 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 he receives notice after the effective date of this Order;
- e. Defendant is current in payment of all Membership dues, fees and costs, including all Client Security Fund assessments and other charges or surcharges that the State Bar is authorized to collect from him, and including all judicial district dues, fees and assessments;
- f. 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; and
- g. 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.

9. If Defendant fails to comply with any of the conditions of the stayed suspension provided in paragraph 8(a) – (g) above, the stay of the suspension may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Panel, this is the 9 day of June, 2010.

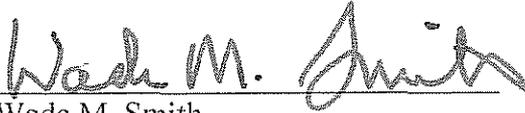


Tommy W. Jarrett, Chair
Hearing Panel

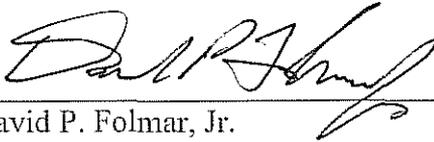
CONSENTED TO BY:



Lleanor Bailey Hodge
Deputy Counsel
The North Carolina State Bar
P.O. Box 25908
Raleigh, NC 27611
Attorney for Plaintiff



Wade M. Smith
Attorney for Defendant



David P. Folmar, Jr.
Defendant