

STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
12 DHC 1

THE NORTH CAROLINA STATE BAR,

Plaintiff,

v.

DENNIS H. SULLIVAN, JR.,

Defendant.

CONSENT ORDER OF DISCIPLINE

This matter came before a hearing panel of the Disciplinary Hearing Commission composed of C. Colon Willoughby, Jr., Chair, Harriett Smalls, and Joe Castro. Mary D. Winstead represented the Plaintiff. Alan M. Schneider represented the Defendant. 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. 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. 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, Dennis H. Sullivan, Jr. (hereinafter "Defendant"), was admitted to the North Carolina State Bar on August 26, 1994 and is, and was at all times referred to herein, 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. During the times relevant herein, Defendant actively engaged in the practice of law in the State of North Carolina and maintained a law office in Wilmington, New Hanover County, North Carolina.

4. During calendar years 2005, 2006, 2007, 2008, and 2009, Defendant received sufficient income to require Defendant to file federal and state individual income tax returns.

5. For each of the tax years 2005, 2006, 2007, 2008, and 2009, Defendant knew the deadlines for the filing of his federal and state income tax returns and for payment of any tax liability.

6. Defendant failed to file within the times required by law his federal and state individual income tax returns showing his tax liability for tax years 2005, 2006, 2007, 2008, and 2009.

7. Defendant failed to pay within the times required by law his federal individual income tax liability due for tax years 2005, 2006, 2008, and 2009.

8. Defendant failed to pay within the times required by law his state individual income tax liability due for tax years 2005, 2006, 2007, 2008, and 2009.

9. Defendant's failure to file the required federal and state individual income tax returns and his failure to timely pay tax liability due for tax years 2005, 2006, 2007, 2008, and 2009 was willful.

10. On 15 June 2011, Defendant pled guilty in Wake County District Court in File Nos. 11CR212068 through 11CR212072 to five counts of willful failure to file North Carolina state individual income tax returns for tax years 2005, 2006, 2007, 2008, and 2009.

11. Defendant received a sentence of 45 days which was suspended for 12 months and Defendant was placed on unsupervised probation for 12 months. As conditions of probation, he was ordered to pay a \$2000 fine and the costs, to perform fifty hours of community service doing pro bono legal work for the indigent, and to timely file and pay his taxes.

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, Dennis H. Sullivan, 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. § 84-28(b)(1) and N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

a. By failing to timely file and pay his state and federal individual income taxes for tax years 2005, 2006, 2007, 2008, and 2009, 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. Defendant's convictions in state court for willful failure to file state individual income tax returns constitute misconduct and grounds for discipline in that willful

failure to file tax returns is a criminal offense showing professional unfitness pursuant to N.C. Gen. State. § 84-28(b)(1) and 27 N.C.A.C. 1B § .0115.

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

FINDINGS OF FACT REGARDING DISCIPLINE

1. Defendant has now filed his 2005, 2006, 2007, 2008, 2009, and 2010 federal and state income tax returns.
2. Defendant has paid the North Carolina state taxes due, interest, and all amounts required to be paid in satisfaction of state civil penalties for 2005, 2006, 2007, 2008, and 2009.
3. Defendant has an installment agreement with the federal government regarding the payment of his federal tax liability, penalties, and interest for 2005 through 2010 and is timely making payments in accordance with the installment agreement.
4. Defendant has paid the fine and court costs that were assessed by the court.
5. Defendant is held in high regard in the New Hanover County legal community.
6. Defendant failed to timely file his individual income tax returns for tax years 2000 and 2001.

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 determines the following factors are applicable:
 - a. circumstances reflecting Defendant's lack of honesty, trustworthiness, or integrity;
 - b. negative impact of Defendant's actions on public's perception of the profession;
 - c. no prior disciplinary offense;
 - d. multiple offenses;

- e. cooperative attitude toward the proceedings;
- f. remorse;
- g. good character and reputation;
- h. substantial experience in the practice of law;
- i. imposition of other penalties or sanctions, and
- j. history of similar conduct in that Defendant previously failed to timely file his tax returns for tax years 2000 and 2001.

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

4. The Hearing Panel has also considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(2) of the Rules and Regulations of the North Carolina State Bar and concludes no factors are present that would warrant disbarment.

5. The Hearing Panel finds that although Defendant's conduct is serious enough to warrant more discipline than a censure, it does not warrant an active suspension of his license.

6. The Hearing Panel finds that a stayed suspension of Defendant's law license is warranted for the following reasons:

- a. Defendant's conduct reflects adversely on his trustworthiness or fitness as a lawyer; and
- 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 and the public about 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, Dennis H. Sullivan, Jr., is hereby suspended for three (3) years effective from the date this Order of Discipline is served upon him. The period of suspension is stayed for five (5) years as long as Defendant complies and continues to comply with the following conditions:

- a. Defendant shall execute 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 whether Defendant has cooperated and complied with all requirements of this Order. Defendant will not revoke these waivers and releases at any time during the period of stay;
- b. Defendant shall timely file during the period of stay his federal and state income tax returns along with any associated schedules and attachments thereto and shall provide proof of these filings to the Office of Counsel within 30 days of filing;
- c. 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;
- d. Defendant shall pay all taxes, penalties, interest and estimated taxes during the stay period; provided, however, that if the defendant enters into an arrangement with the Internal Revenue Service and/or the North Carolina Department of Revenue to pay tax liability pursuant to an installment agreement or some other type of agreement, the execution and compliance with the terms of such an agreement will fulfill the terms of this paragraph concerning payment of tax liability. During the period of the stay, the defendant shall abide by all the terms of and timely make all payments due under any such agreement with the North Carolina Department of Revenue and/or the Internal Revenue Service;
- e. Defendant shall keep the North Carolina State Bar Membership Department advised of his current business and home addresses and shall notify the Bar of any change in address within ten (10) days of such change;
- f. 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;
- g. Defendant shall promptly accept service of all certified mail from the State Bar that is sent to him;
- h. Defendant shall promptly respond to all communications from the Internal Revenue Service and the North Carolina Department of Revenue and shall within 10 days of receipt provide to the Office of Counsel copies of all correspondence concerning his tax obligations that is sent to or received by him from any taxing authority.
- i. Defendant shall timely comply with all State Bar membership and Continuing Legal Education requirements.

2. If Defendant fails to comply with any of the conditions of the stayed suspension provided in paragraph 1(a) – (i) above, the stay of the suspension may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

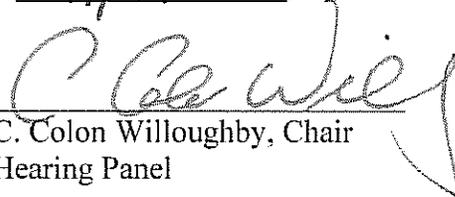
3. If the stay granted herein is lifted or the suspension of Defendant's license is activated for any reason, before seeking reinstatement of his license to practice law, Defendant must show by clear, cogent and convincing evidence that he has complied with each of the following conditions:

- a. Defendant submitted his license and membership card to the Secretary of the North Carolina State Bar within thirty (30) days after the date of the order lifting the stay and/or activating the suspension of his law license;
- b. Defendant complied with all provisions of 27 N.C.A.C. 1B § .0124 of the State Bar Discipline and Disability Rules following the order lifting the stay and/or activating the suspension of his law license;
- c. Defendant 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;
- d. Defendant 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;
- e. Defendant promptly accepted all certified mail sent to him by the State Bar;
- 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, as well as 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 paid the administrative fees and costs of this proceeding as reflected on the statement of costs served upon him by the Secretary of the State Bar; and
- j. Defendant has complied with any other conditions deemed necessary for reinstatement imposed by the Hearing Panel pursuant to the order lifting the stay of the suspension of Defendant's law license.

4. Defendant is taxed with the administrative fees and costs of this action as assessed by the Secretary which Defendant shall pay within thirty (30) days of service of the notice of costs upon the Defendant.

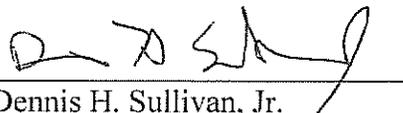
Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Panel, this is the 20 day of April, 2012.


C. Colon Willoughby, Chair
Hearing Panel

CONSENTED TO BY:


Alan M. Schneider
Attorney for Defendant


Mary D. Winstead
Attorney for Plaintiff


Dennis H. Sullivan, Jr.
Defendant