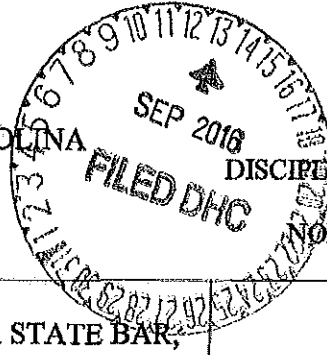


STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
14 DHC 7

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

ORDER OF DISCIPLINE

JENNIFER NICOLE FOSTER, Attorney,

Defendant

THIS MATTER was heard on July 8, 2016 before a Hearing Panel of the Disciplinary Hearing Commission composed of Donald C. Prentiss, Chair, and members Shirley Fulton and Randy A. Moreau, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(m) of the North Carolina State Bar Discipline and Disability Rules. Plaintiff, the North Carolina State Bar ("Plaintiff" or "State Bar") was represented by Barry S. McNeill, Deputy Counsel. Defendant, Jennifer Nicole Foster ("Defendant" or "Foster"), appeared *pro se*.

Based upon the pleadings, the stipulated facts, and the testimony and 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 this proceeding under the authority granted 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, Jennifer Nicole Foster ("Foster" or "Defendant"), was admitted to the North Carolina State Bar on September 8, 1995, 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 of the relevant periods referred to herein, Foster was engaged in the practice of law in the State of North Carolina and practiced in Asheville, Buncombe County, North Carolina.

4. In October 2011, Foster was an organizer and member of a local "Occupy Asheville" movement in Asheville, North Carolina.

5. After arrest warrants were issued for some of the "Occupy Asheville" members, on Saturday, November 5, 2011, at approximately 8:30 p.m. Foster entered the magistrate's office in the Buncombe County Detention Facility ("BCDF").

6. Signage on the outside windows of the magistrate's office referred to the area as a "court" or "courtroom," and a sign inside the magistrate's office area located above the glass-enclosed cubicle work stations for the magistrates read, "Magistrate's Court 28th Judicial District." Signage at the entrance of the BCDF provided directional information to the "Magistrate's Office" and a sign inside the lobby of the BCDF pointed to the "Magistrate."

7. Foster introduced herself to Magistrate Amanda R. Fisher ("Magistrate Fisher"), one of two magistrates on duty at the time, and identified herself as an attorney there on behalf of Occupy Asheville.

8. Foster then asked Magistrate Fisher, "[w]hat the hell is going on around here" regarding the warrants for the Occupy Asheville members.

9. Foster's demeanor was agitated and she spoke in a raised voice.

10. Magistrate Fisher warned Foster that as an attorney she should know that she was in a courtroom and should "watch her language."

11. Foster requested a list of the Occupy Asheville members who had been issued warrants.

12. Magistrate Fisher informed Foster that office policy did not permit her to provide the names of persons with outstanding warrants.

13. When Magistrate Fisher offered to check to see if there was an outstanding warrant for Foster, Foster said, "Okay, fine."

14. Foster provided her name and Magistrate Fisher checked the warrant database for whether there was an outstanding warrant for Foster.

15. Issuing warrants and checking on the status of warrants are part of a magistrate's duties as a judicial official.

16. After Magistrate Fisher reported to Foster that there was not an outstanding warrant for Foster, Foster exclaimed, "[w]hat the fuck is going on around here?"

17. Magistrate Fisher warned Foster that her vulgarity was the second time she had used inappropriate language in the magistrate's courtroom area, and that Magistrate Fisher was "going to have to ask [Foster] to leave."

18. Foster did not immediately exit the magistrate's courtroom area, but repeated the vulgar expletive three or four more times, including "[t]his is fucking ridiculous."

19. As Foster repeated the vulgar expletives and continued to do so while Magistrate Fisher attempted to talk, Magistrate Fisher informed Foster that she was holding Foster in contempt of court.

20. Foster then walked toward the exit door and Magistrate Fisher instructed her to stop, but Foster exited the magistrate's courtroom area, stating as she left, "[w]hat the fuck is going on?" and "[t]his is a bunch of bullshit."

21. Magistrate Fisher considered Foster's use of such vulgarities discourteous and degrading to her as a judicial official performing her duties.

22. Brandon Freeman ("Magistrate Freeman"), now an attorney for Buncombe County, was also a magistrate on duty the evening of November 5, 2011, and was in the rear intake area of the magistrate's courtroom area processing a defendant's criminal matter during the confrontation between Foster and Magistrate Fisher.

23. Magistrate Freeman heard Foster loudly shout vulgarities multiple times and corroborated Magistrate Fisher's testimony about warning Foster that the area was deemed a courtroom, that Foster should watch her language therein, that Magistrate Fisher warned Foster she would be held in contempt if she continued the vulgarities, and that Foster continued to loudly use vulgarities as she exited the magistrate's courtroom area.

24. Magistrate Fisher notified on-duty detention officers in the BCDF to arrest Foster because she was going to hold Foster in contempt of court, and the officers arrested Foster outside the BCDF.

25. When Foster was arrested outside the BCDF, she asked if she was being arrested because she had said "Fuck" to the magistrate.

26. Once Foster had been detained, searched, and processed, the officers escorted Foster back to the Magistrate's office area where Magistrate Fisher informed her that she had been held in direct criminal contempt in violation of N.C. Gen. Stat. § 5A-11 and that Foster would be confined for a period of five days.

27. With Magistrate Freeman present and witnessing Foster's initial appearance, Magistrate Fisher provided Foster with a copy of the direct criminal contempt order.

28. Foster stated to Magistrate Fisher that she did not know the Magistrate's office was a courtroom, and Magistrate Fisher reminded Foster that she had previously warned Foster to watch her language in the magistrate's courtroom area.

29. Foster also asked if Magistrate Fisher was a judicial official.

30. As a result of Foster's behavior in the magistrate's courtroom area, Magistrate Fisher and Magistrate Freeman had to interrupt their other responsibilities that evening in order to prepare the direct criminal contempt order and serve it upon Foster.

31. Approximately 30 minutes after Foster was held in contempt, Foster appealed Magistrate Fisher's contempt order.

32. At the bond hearing on Foster's appeal, Magistrate Fisher imposed a \$10,000 secured bond, designating it as a "cash bond."

33. Foster was unable to raise the cash bond and remained in the custody of the BCDF for approximately 48 hours, until Monday, November 7, 2011.

34. At Foster's initial appearance in Buncombe County Superior Court on Monday, November 7, 2011, Superior Court Judge James U. Downs modified Foster's bond to an unsecured bond and Foster was released from custody.

35. In a social media posting about her contempt conviction prior to her *de novo* appeal in Buncombe County Superior Court, Foster wrote, "[f]unny thing is that, pursuant to the First Amendment, myself, like every one of you, has the right to tell the judge they are a fucking idiot, which I didn't even do in this case . . . innocent I tell you!"

36. In another social media posting about her contempt conviction prior to her *de novo* appeal in Buncombe County Superior Court, Foster also admitted to cursing out of "extreme frustration" and "generally raising hell" in the magistrate's courtroom area before Magistrate Fisher.

37. Foster's *de novo* appeal was heard in Buncombe County Superior Court on December 1, 2011 before Superior Court Judge Downs.

38. Foster represented herself at the contempt trial before Judge Downs.

39. Following the evidence and arguments, Judge Downs made findings of fact in open court, including that Magistrate Fisher was a judicial official; that Foster's conduct was willful; that Foster's conduct was committed during the sitting of the magistrate court, in the court's immediate view and presence; and that such acts impaired the respect of the magistrate court's authority.

40. Judge Downs concluded that Foster's conduct was contemptuous and, like Magistrate Fisher, Judge Downs held Foster in direct criminal contempt of court in violation of N.C. Gen. Stat. § 5A-11(a).

41. Judge Downs ordered that Foster be confined in the BCDF for a period of 48 hours, but awarded Foster credit for the 48 hours she had already spent in the BCDF and therefore Foster was not required to serve additional time in the BCDF.

42. Foster gave notice of appeal of Judge Downs' order finding her in direct criminal contempt of court.

43. On appeal, on May 21, 2013, a panel of the North Carolina Court of Appeals reversed Foster's conviction in *In re Foster*, No. COA12-865 (N.C. Court of Appeals, May 21, 2013) (unpublished), holding that, in violation of N.C. Gen. Stat. § 5A-14(b), Magistrate Fisher did not afford Defendant Foster a summary opportunity to respond before finding her in direct criminal contempt.

44. In reversing Foster's direct criminal contempt conviction, the North Carolina Court of Appeals commented, "we agree that [Foster's] behavior was contemptuous, but since the magistrate failed to comply with the statutory requirements prior to holding [Foster] in contempt, we must reverse." *Id.* (slip op. at 18).

We are, however, very troubled by defendant's use of profanity in the magistrate's office while conducting court-related business despite warnings by the magistrate about the inappropriate language. Such disrespect, particularly by an attorney familiar with proper courtroom practices, is wholly inappropriate. In addition, we are disturbed by defendant's Facebook posts following the incident which evidence her failure to acknowledge the wrongfulness of her conduct - - indeed the posts indicate a very cavalier attitude.

Defendant went so far as to create a Facebook post regarding the incident that stated: "Funny thing is that pursuant to the First Amendment, myself, like every one of you, has the right to tell the judge they are a fucking idiot, which I did not even do in this case. Innocent, I tell you, struck by lightning in this arbitrary system we call American justice." Given defendant is a lawyer practicing in our State's courts, we find defendant's attitude offensive and incomprehensible.

Id. (slip op. at 18).

45. The Attorney General's Office, on behalf of the State, filed in the North Carolina Supreme Court a motion for temporary stay, petition for writ of supersedeas, and petition for discretionary review seeking review of the decision in *In re Foster*.

46. The North Carolina Supreme Court granted the State's motion for temporary stay on June 10, 2013.

47. On August 27, 2013, the North Carolina Supreme Court dissolved the stay and denied the State's petitions for supersedeas and certiorari. *In re Foster*, No. 243P13 (N.C. Supreme Court, Aug. 27, 2013).

48. On November 7, 2014, Foster filed a complaint against Magistrate Fisher and Buncombe County Sheriff Jack Van Duncan in the United States District Court for the Western District of North Carolina. *Foster v. Fisher, et al.*, No. 1:14-CV-292 (W.D.N.C., Nov. 7, 2014) ("*Foster v. Fisher, et al.*").

49. In dismissing Foster's federal lawsuit against Magistrate Fisher and others, United States District Court Judge Martin Reidinger specifically concluded, among other things, that Magistrate Fisher "was performing judicial acts as a magistrate when [Foster] approached her November 5, 2011." *Foster v. Fisher, et al.*, No. 1:14-cv-292-MR-DSC (W.D.N.C., Mar. 9, 2016) (Slip op. at 28).

50. Judge Reidinger further held that “[Foster’s] entire encounter with Defendant Fisher was undertaken in connection with Fisher’s role as a judicial officer within the subject matter jurisdiction accorded magistrates by the State and [Defendant Fisher] is thus entitled to immunity for her acts taken thereby.” *Foster v. Fisher, et al.*, No. 1:14-cv-292-MR-DSC (W.D.N.C., Mar. 9, 2016) (Slip op. at 29).

51. Magistrate Fisher was a judicial official performing judicial acts when Foster confronted Magistrate Fisher in the magistrate’s courtroom area on November 5, 2011.

52. The Hearing Panel finds the testimony of Magistrate Fisher to be consistent with the corroborating testimony of Magistrate Freeman and with contemporaneous notes and statements, and to be more credible than the testimony of Foster.

Based upon the stipulations of the parties, the testimony and evidence introduced at the hearing, and 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 and the subject matter of this proceeding.

2. Rule 3.5(a)(4) prohibits a lawyer from engaging in conduct intended to disrupt a tribunal, including “undignified or discourteous conduct that is degrading to a tribunal” as specified in Rule 3.5(a)(4)(B).

3. Comment 10 to Rule 3.5 states that conduct by a lawyer intended to disrupt a tribunal includes “angry outbursts . . . , as well as . . . bullying, and other attempts to intimidate or humiliate judges, opposing counsel, litigants, witnesses, or court personnel.” Rule 3.5, Comment [10].

4. Rule 1.0(n) defines “tribunal,” for purposes of Rule 3.5(a)(4)(B), as denoting “a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity.”

5. As written, the phrase “acting in an adjudicative capacity” in the first sentence of Rule 1.0(n) modifies only “a legislative body, administrative agency or other body,” and does not modify “Court” or “an arbitrator in a binding arbitration proceeding.”

6. Therefore, it is unnecessary to also show that, for purposes of Rule 3.5(a)(4)(B), a “Court” also was “acting in an adjudicative capacity” or that there was an adversarial hearing ongoing at the time.

7. One of the powers specifically given to a magistrate is the power to punish for direct criminal contempt under N.C. Gen. Stat. § 5A-11. N.C. Gen. Stat. § 7A-292(2).

8. Pursuant to N.C. Gen. Stat. § 7A-273, a magistrate has adjudicative powers in certain misdemeanors and infractions, in addition to having the powers to issue arrest and search warrants and grant bail before trial for any noncapital offenses.

9. North Carolina law recognizes that a magistrate is an officer of the district court, N.C. Gen. Stat. § 7A-170, and in issuing a warrant a magistrate performs a judicial act. *Foust v. Hughes*, 21 N.C. App. 268, 270, 204 S.E.2d 230, 231 (1974).

10. Like judges, state court magistrates enjoy judicial immunity for actions taken in their judicial capacity, such as setting bonds or issuing warrants. *Pressly v. Gregory*, 831 F.2d 514 (4th Cir. 1987).

11. Pursuant to N.C. Gen. Stat. § 7A-173(a), the grounds for suspension or removal of magistrates are the same as for judges of the General Court of Justice, and magistrates must abide by the Code of Judicial Conduct.

12. Every state and federal court which has reviewed the facts relating to the confrontation between Foster and Magistrate Fisher concluded that Magistrate Fisher was performing judicial acts as a judicial official at the time of Foster's contemptuous behavior.

13. On the night in question, Foster went to BCDF to check on the status of arrest warrants, which is one of the official duties of Magistrate Fisher.

14. Foster entered an area clearly designated as the "Magistrate's Court" and announced she was an attorney, suggesting Foster was there on legal business and suggesting that Foster was aware that she was appearing before a government official who performed judicial acts.

15. When Foster was arrested outside the BCDF and asked the arresting officers if her arrest was because she had said "Fuck" to the magistrate, Foster demonstrated a consciousness of her inappropriate behavior toward Magistrate Fisher in the magistrate's courtroom area.

16. Therefore, for purposes of Rule 3.5(a)(4)(B), this panel concludes that Magistrate Fisher meets Rule 1.0(n)'s definition of a "tribunal."

17. Although Foster argues that she did not subjectively believe the magistrate's area was a courtroom and that Magistrate Fisher was a judicial official, the test is not a subjective one; the test is objective, i.e., would a reasonable attorney believe he or she was appearing before a tribunal?

18. By all the objective criteria, Foster knew or reasonably should have known that, under the circumstances, Magistrate Fisher was a tribunal as defined by Rule 1.0(n) and Rule 3.5(a)(4)(B), and that Foster should refrain from engaging in undignified or discourteous conduct that was degrading to Magistrate Fisher.

19. Conduct prejudicial to the administration of justice in violation of Rule 8.4(d) may occur even though the subject of the vulgarities is not a judge or judicial official, and even though the area in question is not a courtroom.

20. 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) as follows:

By using profanity before Magistrate Fisher in the magistrate's courtroom area, and by continuing to do so after being warned by

Magistrate Fisher about her inappropriate language, Defendant engaged in undignified or discourteous conduct that was degrading to a tribunal in violation of Rule 3.5(a)(4)(B), and also engaged in conduct that was prejudicial to the administration of justice in violation of Rule 8.4(d).

Based upon the evidence, the Hearing Panel also enters the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Foster graduated with a *juris doctor* degree from the University of North Carolina at Chapel Hill School of Law in 1995 with Honors.
2. Foster was a member of the Order of the Coif and North Carolina Law Review staff.
3. Following admission to the bar, in 1996-98 Foster served as an appellate staff attorney for the United States Court of Appeals for the Eleventh Circuit in Atlanta, Georgia.
4. In 1998-99, Foster was admitted to the Georgia State Bar and worked in Fulton County, Georgia as an Appellate Public Defender handling criminal appeals.
5. In 1999-2000, Foster worked as a federal *pro se* Law Clerk to the United States District Court for the Northern District of California, in Oakland, California.
6. While in California, Foster was admitted to the California State Bar and worked for a criminal and immigration attorney handling criminal and immigration law post-conviction matters.
7. In 2005, Foster served as a lobbyist and organizer for the People of Faith Against the Death Penalty in North Carolina.
8. In 2005-2006, Foster served as a legal editor for *Immigration Law and Crime*, editing the treatise quarterly.
9. In 2005-2007, Foster worked for *Cogburn & Brazil, P.A.*, an Asheville civil law firm handling motions and appeals.
10. In 2007-2010, Foster served as the *pro bono* administrator for Pisgah Legal Services in Asheville, North Carolina, providing recruitment, event planning, marketing, case referrals, management, public speaking, and e-newsletter communication.
11. In 2009, Foster received the 28th Judicial Bar's *pro bono* award for excellence in leadership.
12. In 2010, Foster founded the National Association for the Reform of Marijuana Laws in North Carolina (NCNORML), helping in events, concert production, and lobbying.

13. On October 1, 2011, Foster and others co-founded "Occupy Asheville," intended for non-violent civil disobedience.

14. Foster has no prior public discipline in North Carolina, Georgia, or California.

15. Foster was administratively suspended by the North Carolina State Bar on December 23, 2013.

16. In seeking reinstatement by the Administrative Committee of the North Carolina State Bar in March 2016, Foster asserted that she had been diagnosed with secondary Post-Traumatic Stress Disorder (PTSD) by her treating psychologist and had been 100% disabled from the practice of law and a functional life until the summer of 2015.

17. In a letter dated April 18, 2016 proffered by Foster to the Administrative Committee in support of her reinstatement, Foster's psychologist confirmed her diagnosis of Foster suffering chronic PTSD, but stated that she was not qualified to comment on Foster's level of competence to practice law.

18. Foster's psychologist also wrote: "In my opinion, [Foster] will need to continue to work with her psychiatrist for medication management and continue to obtain consistent psychological treatment."

19. Foster's arrest and conviction for direct criminal contempt before Magistrate Fisher generated national publicity.

20. The State Bar's Grievance Committee issued Foster a Censure for misconduct in violation of Rule 3.5(a)(4)(B) and Rule 8.4(d), but Foster did not accept the Censure, resulting in the instant Complaint being filed against her in the Disciplinary Hearing Commission.

21. In correspondence with the State Bar's opposing counsel, Foster accused opposing counsel of prosecuting this action against her for political reasons and because of her cannabis activism, of suborning perjury by presenting the testimony of Magistrate Fisher, and threatened further legal action against both opposing counsel and Magistrate Fisher.

22. At the hearing, Foster acknowledged that she had no supporting evidence that this action was politically motivated against her, cited her PTSD as the reason for her accusations, and apologized to opposing counsel.

23. Foster acknowledged at the hearing that she has met with the local District Attorney for the 28th Judicial District to initiate a Grand Jury investigation of Magistrate Fisher and her alleged perjury against Foster, but that the District Attorney had declined to do so.

24. Foster used at least one vulgarity in her e-mail communications with the State Bar's opposing counsel, and at the hearing apologized to opposing counsel for doing so.

25. Foster offered into evidence letters from local attorneys and one elected official attesting to her good character and reputation.

26. The Hearing Panel has carefully 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 on the Findings of Fact and Conclusions of Law above and the additional Findings of Fact Regarding Discipline, the Hearing Panel makes the following:

CONCLUSIONS WITH RESPECT TO DISCIPLINE

1. The Hearing Panel has carefully considered all of the different forms of discipline available to it. In addition, the Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors warrant suspension of Defendant's license:

- (B) Intent of Defendant to commit acts where the harm or potential harm was foreseeable;
- (E) Defendant's actions potentially had a negative impact on the public's perception of the legal profession; and,
- (F) Defendant's actions had a negative impact on the administration of justice.

2. The Hearing Panel has 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 that none of the factors are present or warrant consideration of disbarment.

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

- (A) Absence of prior disciplinary offenses in this state or other jurisdictions;
- (K) Absence of a cooperative attitude toward the proceedings;
- (O) Refusal to acknowledge the wrongful nature of her conduct;
- (P) Defendant's remorse;
- (Q) Defendant's character or reputation; and,
- (S) Defendant's degree of experience in the practice of law

4. The Hearing Panel has considered issuing an admonition, reprimand or censure but concludes that such discipline would not be sufficient discipline because of the gravity of the misconduct at issue, the harm or potential harm Defendant's misconduct caused to the public, the administration of justice, and the legal profession, and because of the Hearing Panel's concern for the protection of the public.

5. A lawyer is an officer of the legal system who is expected to behave with dignity, and who should demonstrate respect for the legal system and those who serve it, "including judges, other lawyers, and public officials," and that lawyers are expected to behave with dignity. Rule 0.1 Preamble: A Lawyer's Professional Responsibilities, Comments [5], [13].

6. The conduct engaged in by Foster breeds disrespect for the courts and for the legal profession; "[d]ignity, decorum, and respect are essential ingredients in the proper conduct of a courtroom, and therefore in the proper administration of justice." Comment 10 to Rule 3.5, *quoting, Attorney Grievance Com'n v. Alison*, 317 Md. 523, 536-38, 565 A.2d 660, 666 (1989).

7. Foster's conduct caused potential significant harm to the administration of justice by breeding disrespect for the courts and the legal profession.

8. Foster's conduct caused actual harm to the administration of justice by interfering with the ability of Magistrates Fisher and Freeman to perform their duties on the night at issue.

9. For the following reasons, this Hearing Panel finds that an order imposing discipline short of suspension of Defendant's law license would not adequately protect the public, the legal profession, or the administration of justice for the following reasons:

- (a) The factors under 27 N.C.A.C. 1B §.0114(w)(1) and (w)(3) that are established by the evidence are of a nature that support imposition of suspension as the appropriate discipline;
- (b) Entry of less serious discipline would fail to acknowledge the seriousness of the offenses Defendant committed and would send the wrong message to prosecutors, attorneys, and the public regarding the conduct expected of members of the Bar in this State; and,
- (c) A stayed suspension with appropriate conditions, such as requiring Foster to continue her therapy with a psychologist and periodic reporting by that psychologist to the State Bar, will assure Defendant's progress and compliance with treatment.

Based upon the foregoing findings of fact and conclusions of law and the findings of fact and conclusion regarding discipline, and based upon the consent of the parties, the Hearing Panel enters the following:

ORDER OF DISCIPLINE

1. Defendant, Jennifer Nicole Foster, is hereby suspended from the practice of law for two years, effective 30 days from service of this order upon Defendant.

2. Defendant's two year suspension is ordered stayed for the duration of the suspension as long as Defendant complies, and continues to comply during the period of the stay with each of the following conditions:

- (a) Defendant, at her own expense, continues counseling with her present psychologist, and/or any other board-certified psychiatrist, psychologist, or counselor (hereafter "Therapist") of her own choosing, and follows and complies with the course of treatment prescribed by her Therapist. The Therapist shall provide quarterly reports, due in the Office of Counsel by the tenth day of each quarter (starting with the first report due on or by October 10, 2016, and then quarterly reports thereafter on or by January 10, 2017, April 10, 2017, July 10, 2017, October 10, 2017, January 10, 2018, April 10, 2018, and July 10, 2018), to the State Bar (with a copy to Defendant) confirming Defendant is following the recommendations of the Therapist. The Therapist shall notify the State Bar if Defendant fails to follow the recommendations and treatment program of the Therapist. Defendant shall ensure these reports and notifications are timely made. Defendant will sign all necessary releases or documents to allow such reports and notifications, to allow the Therapist to provide documents from Defendant's treatment to the State Bar, and to allow the Therapist to discuss Defendant's participation and treatment with the Office of Counsel of the State Bar, and shall not revoke the release during the period of the stayed suspension;
- (b) Defendant instructs her Therapist to notify the Office of Counsel immediately in writing if, at any point during the stayed suspension, Defendant ceases to be a patient or otherwise fails to comply with the course of treatment prescribed by the Therapist;
- (c) Defendant shall timely submit her annual Continuing Legal Education ("CLE") report form to the CLE Department of the North Carolina State Bar each year of the stay and contemporaneously send a copy of the CLE report form to the Office of Counsel of the State Bar to document compliance. "Timely" means by the date specified by the CLE department as the date by which members must submit their annual report forms to avoid assessment of a \$75.00 late filing penalty. Defendant must ensure the Office of Counsel receives a copy of her annual

CLE report form no later than 15 days after it is due to the CLE department of the State Bar each year;

- (d) Defendant shall pay all Membership dues and Client Security Fund assessments and comply with all CLE requirements on a timely basis;
- (e) Defendant shall keep her address of record with the North Carolina State Bar current, accept all certified mail from the North Carolina State Bar, and respond to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication;
- (f) Defendant shall not violate any of the Rules of Professional Conduct in effect during the period of the stay;
- (g) Defendant shall not violate any laws of the State of North Carolina or of the United States during the period of the stay; and
- (h) Defendant shall pay all costs and administrative fees of this proceeding as assessed by the Secretary within ninety (90) days after service of the notice of costs on her, or as may be extended by the panel for good cause shown by Defendant.

3. If Defendant fails to comply with any one or more of the conditions of the stay of his suspension provided in paragraphs 2(a)-2(h) above, the stay of suspension may be lifted in accordance with 27 N.C.A.C. 1B § .0114(x).

4. Defendant's obligations 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. Pursuant to 27 N.C.A.C. 1B § .0114(x), 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 remaining portion of 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.

5. If the stay of the suspension is lifted and the remaining period of suspension is activated for any reason, the following conditions are placed upon Defendant's reinstatement to active status. With any petition Defendant files for reinstatement to active practice, Defendant must demonstrate by clear, cogent, and convincing evidence that she complied with each of the following conditions:

- (a) Complied with 2(a)-2(e) above;

- (b) Submitted her 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 h suspension;
- (c) Complied with all provisions of 27 N.C.A.C. IB § .0124 on a timely basis;
- (d) Complied with all provisions of 27 N.C.A.C. IB § 0125(b);
- (e) Not have violated any of the Rules of Professional Conduct;
- (f) Not have violated any laws of the State of North Carolina or of the United States; and
- (g) Paid all costs of this proceeding as assessed by the Secretary within thirty (30) days of service of the notice of costs upon her.

6. Defendant is taxed with the administrative fees and costs of this action as assessed by the Secretary, which shall be paid within ninety (90) days of service of the notice of costs upon Defendant, or as may be extended by the panel for good cause shown by Defendant.

Signed by the undersigned Hearing Panel Chair with the consent of the other Hearing Panel members.

This the 13 day of September, 2016.


Donald C. Prentiss, Chair
Disciplinary Hearing Panel