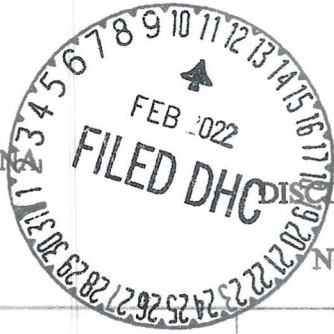


STATE OF NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
19 DHC 9 and 19 DHC 23

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

ORDER  
OF  
DISCIPLINE

This matter was heard on 27 January 2022 before a hearing panel of the Disciplinary Hearing Commission composed of Donald C. Prentiss, Chair, Fred W. DeVore, III, and Kimberly W. Strach pursuant to 27 N.C. Admin. Code 1B.0116 of the Rules and Regulations of the North Carolina State Bar. Savannah B. Perry and G. Patrick Murphy represented Plaintiff, the North Carolina State Bar. Neither Defendant, Nikita V. Mackey, nor counsel on Defendant's behalf were present at the hearing. Defendant was properly served with process and the matter came before the Hearing Panel with due notice to all parties.

Based on the pleadings, the record in this matter, the evidence presented at the hearing, the argument of the Plaintiff, and upon making credibility determinations regarding testimony presented, the Hearing Panel hereby makes 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, Nikita V. Mackey ("Defendant"), was admitted to the North Carolina State Bar in 2003, and is 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 relevant periods referred to herein, Defendant was engaged in the practice of law in the State of North Carolina and maintained a law office in Kings Mountain, Cleveland County, North Carolina.

**19 DHC 9**

**Representation of Client S.W.**

4. On 16 October 2015, S.W. was charged with a misdemeanor offense in Mecklenburg County, file no. 15CR737169.

5. On 8 December 2015, S.W. appeared in district court where she waived her right to counsel and pled guilty to the misdemeanor offense. The presiding judge entered a prayer for judgment continued upon payment of the costs.

6. The case was continued on 12 January 2016 and 11 March 2016 to allow S.W. to pay court costs.

7. S.W.'s fourth court date was set for 23 May 2016.

8. On 6 May 2016, S.W. retained and paid Defendant \$500.00 of his \$750.00 flat fee to appear on her behalf and file a Motion for Appropriate Relief ("MAR") to set aside the court's ruling.

9. On 23 May 2016, Defendant did not appear in district court on behalf of S.W. or seek a continuance on her behalf.

10. Defendant did not file a MAR or otherwise provide the legal services he promised to perform in exchange for his fee.

11. After Defendant failed to appear on S.W.'s behalf on 23 May 2016, Defendant did not respond to S.W.'s communications seeking information about the status of her case.

12. Defendant has not refunded any portion of the \$500.00 unearned fee.

#### Defendant's Administrative Suspension

13. On 19 August 2015, the Board of Continuing Legal Education of the North Carolina State Bar issued a Notice to Show Cause ("the Notice") directing Defendant to file certificates of attendance or an affidavit showing he had complied with his 2014 continuing legal education requirements and pay a \$125.00 non-compliance fee.

14. The Notice informed Defendant that if he failed to timely respond and show satisfactory cause, the Administrative Committee of the North Carolina State Bar, in accordance with Chapter 84 of the General Statutes, could enter an order suspending his license to practice law at its 23 October 2015 meeting.

15. Defendant did not timely comply with the requirements of the Notice.

16. On 20 November 2015, the Secretary of the North Carolina State Bar entered an order administratively suspending Defendant's license to practice law. The suspension was to take effect 30 days after service of the order.

17. On 20 November 2015, the North Carolina State Bar attempted to serve a copy of the order upon Defendant by certified mail, return receipt requested to the address Defendant provided the North Carolina State Bar which was listed in its Membership database.

18. On 21 December 2015, the North Carolina State Bar's 20 November 2015 attempt to serve a copy of the order upon Defendant was returned unclaimed.

19. Pursuant to 27 N.C.A.C. 1D § .0903(d), "A member who cannot, with due diligence, be served by regular or certified mail, designated delivery service, or email shall be deemed served by the mailing of a copy of the order to the member's last known address contained in the records of the North Carolina State Bar."

20. On 11 February 2016, the North Carolina State Bar served Defendant by mailing a copy of the order to the address Defendant provided the North Carolina State Bar which was listed in its Membership database.

21. Defendant's administrative suspension took effect on 14 March 2016.

22. Pursuant to 27 N.C.A.C. 1B § .0128(c), an attorney subject to an active suspension cannot "accept any new retainer or engage as attorney for another in any new case or legal matter of any nature."

23. At or around the same time Defendant's administrative suspension took effect, Defendant undertook to represent D.J. in a tax matter.

24. On 14 March 2016, D.J. paid Defendant \$2,000.00 of Defendant's quoted \$6,000.00 flat fee.

25. On 15 March 2016, Defendant informed D.J. that Defendant was in communication with the Internal Revenue Service on D.J.'s behalf.

26. Defendant did not inform D.J. that Defendant had been administratively suspended from the practice of law.

27. On 17 March 2016, Defendant filed a notarized Reinstatement Petition.

28. Question 2(a) on the Reinstatement Petition read:

2. During the time you were suspended, indicate whether you were:  
(a) Engaged in the practice of law in North Carolina

29. Defendant answered NO.

30. Defendant's response was false.

31. Defendant knew at the time he submitted the response that the response was false.

32. On 22 February 2017, D.J. filed a petition for fee dispute resolution with the North Carolina State Bar Fee Dispute Resolution Program ("FDRP"), file number 17FD0089.

33. On 17 April 2017, the FDRP sent Defendant a Notice of Mandatory Fee Dispute Resolution in file number 17FD0089 by certified mail.

34. Defendant signed the certified mail return receipt.

35. On 1 May 2017, Defendant timely responded to the Notice of Mandatory Fee Dispute Resolution.

36. On 14 June 2017, the State Bar's Facilitator of the FDRP ("the facilitator") asked Defendant to provide a detailed accounting of his time with respect to the fee paid by D.J.

37. Defendant failed to provide a detailed accounting.

38. On 23 June 2017, the facilitator attempted to contact Defendant via telephone. The facilitator left Defendant a voicemail requesting Defendant return her call.

39. Defendant did not return the facilitator's call.

40. On 27 June 2017, the facilitator sent Defendant a letter requesting that Defendant provide a detailed accounting of his time with respect to the fee paid by D.J.

41. The facilitator's letter informed Defendant that, if he did not submit the requested information to the State Bar by 30 June 2017, the facilitator would forward the matter to the grievance department for failure to participate in the fee dispute process.

42. Defendant called the facilitator and asked for an extension to respond. The facilitator agreed to extend Defendant's deadline to 5 July 2017.

43. Defendant failed to provide a detailed accounting to the FDRP by the 5 July 2017 deadline.

Defendant's Failure to Respond to Letters of Notice

44. The State Bar opened three grievance files against Defendant, file numbers 17G0079, 17G0664, and 17G0719.

45. On 11 April 2018, a State Bar investigator personally served Letters of Notice upon Defendant in grievance file numbers 17G0079, 17G0664, and 17G0719.

46. Pursuant to 27 N.C.A.C. 1B § .0112(c), Defendant was required to submit a written, signed response to each Letter of Notice within fifteen days of service.

47. Defendant did not respond to the Letters of Notice within fifteen days.

48. On 2 July 2018, the State Bar sent Defendant three follow-up letters pertaining to grievances referenced in paragraph 45. Each letter noted Defendant's failure to respond to a Letter of Notice and requested a response by 10 July 2018.

49. Defendant failed to respond to the follow-up letters by 10 July 2018.

50. Defendant did not respond to any of the Letters of Notice served upon him in file numbers 17G0079, 17G0664, and 17G0719.

19 DHC 23

Ineffective Assistance of Counsel in Representation of Client N.R.

51. In or around October 2004, Defendant was appointed to represent N.R. in a federal criminal matter before the United States District Court for the Western District of North Carolina ("the District Court").

52. Defendant represented N.R. at trial from 3 April to 21 April 2006.

53. The jury found N.R. guilty of the charges against him.

54. After the jury returned its verdict but before sentencing, N.R. submitted a handwritten letter to the District Court in which he complained about Defendant, alleging, among other things, that Defendant fell asleep during the trial.

55. The District Court subsequently sentenced N.R. to 360 months in prison.

56. On 1 October 2010, N.R. moved, pursuant to 28 U.S.C. § 2255, to have his judgment of conviction and sentence vacated. N.R. raised eleven claims for relief, including ten allegations that Defendant provided ineffective assistance of counsel.

57. The District Court ordered an evidentiary hearing to resolve N.R.'s seventh claim for relief which alleged that Defendant fell asleep during the trial.

58. During the evidentiary hearing, five witnesses testified that Defendant was asleep, appeared to be asleep, or was "nodding off" at some point during the trial.

59. Defendant testified at the evidentiary hearing that he could not recall whether he slept during N.R.'s trial.

60. The District Court issued an order denying and dismissing N.R.'s § 2255 motion.

61. N.R. appealed to the Fourth Circuit Court of Appeals.

62. The Fourth Circuit found it "impossible not to conclude that [Defendant] slept, and was therefore not functioning as a lawyer during a substantial portion of the trial."

63. Holding that a defendant is deprived of his Sixth Amendment right to counsel when his counsel is asleep during a substantial portion of his trial, the Fourth Circuit reversed the District Court's order denying relief under § 2255 and vacated N.R.'s judgment and sentence.

#### Representation of Client M.H.

64. On or about 18 April 2018, M.H. retained Defendant to file an answer on behalf of her company, ICS, in a civil matter.

65. M.H. paid Defendant \$750.00: \$250.00 for a consultation and \$500.00 to file the answer.

66. On 10 May 2018, M.H. sent Defendant a text message asking if Defendant received her email with a copy of the complaint filed against ICS.

67. Defendant did not respond to M.H.'s 10 May 2018 text message.

68. On 17 May 2018, M.H. sent Defendant a text message asking him if everything was done.

69. Defendant did not respond to M.H.'s 17 May 2018 text message.

70. On 18 May 2018, M.H. sent Defendant a text message requesting a status update.

71. Defendant did not respond to M.H.'s 18 May 2018 text message.

72. On 22 May 2018, M.H. sent Defendant a text message which read, "Hello I need to make sure I'm covered will you respond please and let me know."

73. Defendant did not respond to M.H.'s 22 May 2018 text message.

74. Defendant did not file an answer on behalf of ICS.

75. Defendant did not tell M.H. that he failed to file an answer on behalf of ICS.

76. Defendant has not returned any portion of the \$750.00 fee

**Criminal Convictions Resulting from Defendant's Injury to Property of Y.S.**

77. Defendant and Y.S. were married in September 2016.

78. In or around July 2018, Y.S. separated from Defendant and moved to Chattanooga, Hamilton County, Tennessee.

79. On or about 12 June 2019, Defendant went to Y.S.'s apartment complex in Chattanooga, Tennessee.

80. On or about 12 June 2019, Defendant discharged a firearm into Y.S.'s 2009 Toyota FJ Cruiser in the parking lot of the apartment complex.

81. Defendant also slashed a tire of Y.S.'s 2009 Toyota FJ Cruiser in the parking lot of the apartment complex.

82. As a result of the gunshots and slashed tire, the 2009 Toyota FJ Cruiser sustained damage valued in excess of \$2,500.00.

83. In or about June 2019, Defendant fired a gunshot into Y.S.'s residence in Chattanooga, Tennessee.

84. As a result of Defendant damaging Y.S.'s vehicle and residence, in or about December 2019, Defendant was charged by Tennessee authorities with Aggravated Assault (Domestic), Vandalism (felony) and Reckless Endangerment (felony).

85. Pursuant to Tenn. Code Ann. § 39-14-408(b)(1), a person commits the offense of vandalism by knowingly causing damage to any personal property of another knowing that he or she does not have the owner's effective consent. At the time of Defendant's conduct, vandalism was a Class D felony in Tennessee if the damage caused was valued at two thousand five hundred dollars or more but less than ten thousand dollars.

86. On or about 16 June 2020, Defendant pled guilty in Hamilton County court to the charges of, reckless endangerment, docket no. 1788812, assault, docket no. 1788813, and vandalism/malicious mischief, docket no. 1788814, based on the damage he did to Y.S.'s vehicle and residence.

**Criminal Convictions Resulting from Defendant's Injury to Property Belonging to Y.S. and to Property Belonging to Y.S.'s Father**

87. On or about 16 June 2019, Defendant went to Y.S.'s father's home in Caswell County, North Carolina.

88. On or about 16 June 2019, Defendant discharged a firearm into a 2004 Volvo S80 owned by Y.S.'s father and into a 2011 Honda Accord owned by Y.S. willfully and wantonly injuring and damaging the vehicles. At that time, both vehicles were parked in front of the home of Y.S.'s father in Caswell County, North Carolina.

89. As a result of the gunshots, the 2004 Volvo S80 sustained damage valued at approximately \$3,200.00.

90. As a result of the gunshots, the 2011 Honda Accord sustained damage valued at approximately \$8,154.32.

91. In or about June 2019, Defendant fired gunshots into a building, real property, owned by Y.S.'s father in Caswell County, North Carolina, willfully and wantonly injuring and damaging the building.

92. On or about 3 July 2019, Caswell County authorities issued an Arrest Warrant for Defendant in Caswell County case 19 CR 050332 charging Defendant with injury to personal property, in excess of \$200.00, for firing gunshots into the Volvo automobile of Y.S.'s father and injury to real property for firing gunshots into a building owned by Y.S.'s father.

93. Defendant was arrested for the charges in Caswell County case 19 CR 050332 on or about 4 December 2019.

94. Pursuant to N.C. Gen. Stat. § 14-160(a) and (b), at the time of Defendant's conduct it was a Class 2 misdemeanor in North Carolina for a person to willfully and wantonly injure the personal property of another causing damage in an amount in excess of two hundred dollars.

95. Pursuant to N.C. Gen. Stat. § 14-127, at the time of Defendant's conduct it was a Class 1 misdemeanor for a person to willfully and wantonly injure the real property of another.

96. On or about 10 December 2020, Defendant entered a plea of guilty to the crime of injury to personal property, and to the crime of injury to real property in Caswell County District Court case 19 CR 050332.

**Criminal Conduct and Convictions Resulting from Defendant's Forgery  
of Y.S.'s Endorsement on a Check Issued to Y.S., Uttering of the Forged Instrument,  
and Obtaining Property by False Pretenses**

97. In or about June 2019, in the State of North Carolina, Defendant obtained a check from CareGard Warranty Services, Inc. ("CareGard check").

98. The CareGard check was issued to Y.S. as the sole payee in the amount of \$1,500.00.

99. Defendant endorsed the check by forging Y.S.'s signature without the consent, permission, or authority of Y.S.

100. Defendant forged Y. S. 's endorsement onto the CareGard check for the purpose of financial gain and/or with the intent to defraud or injure Y.S.

101. Pursuant to N.C. Gen. Stat. § 14-120, it is a Class I felony in North Carolina for a person to falsely make, forge, or counterfeit an endorsement on an instrument for the sake of gain or with the intent to defraud or injure another.

102. On or about 18 June 2019, Defendant negotiated the CareGard check, depositing it into his personal bank account ending in nos. 2152.

103. Defendant negotiated the check for the purpose of financial gain or with the intent to defraud or injure Y.S.

104. Pursuant to N.C. Gen. Stat. § 14-120, it is a Class I felony in North Carolina for a person to utter an instrument that contains a false, forged, or counterfeit endorsement for the sake of gain or with the intent to defraud or injure another knowing that it was falsely forged or counterfeited or falsely endorsed.

105. On 4 June 2021, Defendant was convicted by a Cabarrus County jury of uttering a forged instrument, the CareGard check, in violation of N.C. Gen. Stat. §14-120.

106. By forging Y.S.'s signature to the CareGard check and depositing it to his personal bank account ending in nos. 2152 and/or depositing the CareGard check knowing it contained a false, forged, or counterfeit endorsement, Defendant acted with intent to cheat or defraud and/or to obtain and/or attempt to obtain the financial benefit of the value of the check.

107. Pursuant to N.C. Gen. Stat. §14-100, it is a Class H felony for a person to obtain or attempt to obtain property with a value of less than \$100,000 by false pretenses.

108. On 4 June 2021, Defendant was convicted by a Cabarrus County jury of obtaining property by false pretenses in violation of N.C. Gen. Stat. §14-100 based on his conduct related to the CareGard check.

### CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the panel has jurisdiction over Defendant, Nikita V. Mackey, 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)(2) in that Defendant violated the Rules of Professional Conduct as follows:

- (a) By failing to appear in district court on behalf of S.W. or file a MAR to set aside the court's ruling in 15CR737169, Defendant failed to act with reasonable diligence and promptness in representing his client in violation of Rule 1.3;
- (b) By failing to respond to S.W.'s attempts to communicate with Defendant about the status of her case, Defendant failed to keep his client reasonably informed about the status of the matter in violation of Rule 1.4(a)(2) and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- (c) By failing to return the unearned portion of S.W.'s fee after he failed to appear in court on her behalf or file a MAR in 15CR737169, Defendant collected a clearly excessive fee in violation of Rule 1.5(a);
- (d) By failing to notify D.J. of his administrative suspension, Defendant failed to consult with his client about a relevant limitation on his ability to handle D.J.'s matter in violation of Rule 1.4(a)(5);
- (e) By accepting \$2,000.00 of new legal fees paid by D.J. during his administrative suspension in violation of 27 N.C.A.C. 1B § .0128(c), Defendant collected an illegal fee in violation of Rule 1.5(a);
- (f) By failing to provide the facilitator with a detailed accounting of his time with respect to the fee paid by D.J., Defendant failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f)(2);
- (g) By maintaining a client relationship, accepting legal fees, and/or communicating with the Internal Revenue Service on behalf of D.J. during his

administrative suspension, Defendant engaged in the unauthorized practice of law in violation of Rule 5.5(a);

- (h) By knowingly providing a false response to Question 2(a) on his notarized Reinstatement Petition, Defendant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);
- (i) By failing to timely respond to the Letter of Notice and the follow-up letter in 17G0079, Defendant knowingly failed to respond to a lawful demand for information from a disciplinary authority in connection with a disciplinary matter in violation of Rule 8.1(b);
- (j) By failing to timely respond to the Letter of Notice and the follow-up letter in 17G0664, Defendant knowingly failed to respond to a lawful demand for information from a disciplinary authority in connection with a disciplinary matter in violation of Rule 8.1(b);
- (k) By failing to timely respond to the Letter of Notice and the follow-up letter in 17G0719, Defendant knowingly failed to respond to a lawful demand for information from a disciplinary authority in connection with a disciplinary matter in violation of Rule 8.1(b);
- (l) By failing to respond to the State Bar's Letters of Notice in grievance files 17G0079, 17G0064, and 17G0719, Defendant failed to answer formal inquiries of the North Carolina State Bar in disciplinary matters in violation of N.C. Gen. Stat. § 84-28(b)(3);
- (m) By sleeping during a substantial portion of N.R.'s trial and providing constitutionally ineffective assistance of counsel which warranted that the Fourth Circuit vacate N.R.'s judgment and sentence, Defendant engaged in conduct that was prejudicial to the administration of justice in violation of Rule 8.4(d);
- (n) By failing to file an answer on behalf of ICS, Defendant failed to act with reasonable diligence and promptness in representing his client in violation of Rule 1.3 and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- (o) By ceasing communication with M.H. and failing to respond to M.H.'s text messages, Defendant failed to keep his client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3) and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- (p) By failing to tell M.H. that he failed to file an answer on behalf of ICS, Defendant failed to keep his client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3);
- (q) By failing to return any portion of the \$750.00 fee after he failed to file an answer on behalf of ICS, Defendant collected a clearly excessive fee in violation of Rule 1.5(a);

- (r) By discharging a firearm into Y.S.'s 2009 Toyota FJ Cruiser in the parking lot of her apartment complex and slashing its tire Defendant committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b), and by entering a guilty plea to the offenses of assault, vandalism, and reckless endangerment in the Tennessee case, Defendant has been convicted of criminal offenses showing professional unfitness in violation of N.C. Gen. Stat. § 84-28(b)(1);
- (s) By discharging a firearm into the 2004 Volvo S80 owned by Y.S.'s father, and by discharging a firearm into real property owned by Y.S.'s father in Caswell County, Defendant committed criminal acts that reflect adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b), and by entering a guilty plea to the offenses of injury to personal property and to the offense of injury to real property in Caswell County case 19 CR 050332, Defendant has been convicted of criminal offenses showing professional unfitness in violation of N.C. Gen. Stat. § 84-28(b)(1);
- (t) By forging Y.S.'s endorsement onto the CareGard check issued to Y.S. as the sole payee for the purpose of financial gain or with the intent to defraud or injure Y.S., Defendant committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on his fitness as a lawyer in violation of Rule 8.4(c);
- (u) By negotiating the CareGard check for the purpose of financial gain or with the intent to defraud or injure Y.S. knowing that the check contained a forged endorsement, Defendant committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b), engaged in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on his fitness as a lawyer in violation of Rule 8.4(c), and by his conviction for the offense of uttering the CareGard check, Defendant was convicted of a criminal felony offense showing professional unfitness in violation of N.C. Gen. Stat. § 84-28(b)(1); and
- (v) By forging Y.S.'s endorsement onto the check issued to Y.S. as sole payee and depositing it into his personal bank account ending in 2152 and/or depositing the check knowing it contained a forged endorsement, with intent to cheat and defraud and/or to obtain the financial benefit of the check, Defendant obtained and/or attempted to obtain property by false pretense and committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b), engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), and by his conviction by a jury for the criminal felony offense of obtaining property by false pretenses, Defendant violated N.C. Gen. Stat. § 84-28(b)(1).

Based upon the foregoing Findings of Fact, Conclusions of Law, and the evidence presented at the hearing, the Hearing Panel makes by clear, cogent, and convincing evidence the following

**ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE**

1. Defendant has substantial experience in the practice of law.

2. Defendant has previously received the following discipline in North Carolina:
- a. Defendant was reprimanded in 2008 for neglecting a client's domestic matter, attempting to collect an excessive fee, and failing to timely respond to and making false statements to the State Bar;
  - b. Defendant was admonished in 2008 for attempting to collect an illegal fee and threatening to expose an alleged affair between a client and Defendant's staff member to gain leverage in a fee dispute;
  - c. Defendant was reprimanded in 2009 for making a false statement regarding his marital status on a bankruptcy petition filed with the bankruptcy court, neglecting a client's criminal matter such that Defendant was held in criminal contempt, and for failing to fully and timely comply with requests and subpoenas from the State Bar; and
  - d. Defendant was suspended in 2010 for three years, with the possibility for a stay after serving one-year of the suspension, for (1) failing to disclose on his application to the board of law examiners or in a supplement to his application his failure to timely file and pay certain state and federal income taxes and the existence of official administrative investigations into his improper conduct while working as a police officer, (2) neglecting an adoption matter, and (3) failing to timely file state and federal income tax returns for the years 2003, 2004, 2005, and 2006.

3. Defendant's actions resulted in significant harm to clients S.W., M.H., and N.R. Defendant never filed a MAR for S.W. and did not return the \$500 fee he was paid. Default was entered against M.H., Defendant did not return the fee she paid, and she had to hire another lawyer to set aside the default and file an answer on her behalf. N.R. was denied his constitutional right to effective assistance of counsel and had to pursue post-conviction relief to set aside his conviction.

4. Defendant's actions with respect to his representation of N.R. also resulted in significant harm to the administration of justice in that N.R.'s conviction and sentence were vacated by the Fourth Circuit, notwithstanding the time and resources expended by the Court and the Department of Justice. His actions with respect to his representation of N.R. also resulted in significant harm to the profession. Media outlets published negative articles related to Defendant's sleeping during the trial and the resulting ineffective assistance, and, rather than acknowledging the wrongful nature of his conduct, Defendant indicated that the allegations and finding that he was asleep during significant portions of the trial were untrue and the result of a political battle.

5. Defendant's actions in discharging a firearm into cars owned by Y.S. and her father and into a home owned by Y.S.'s father resulted in potential significant harm to the public. Aside from Defendant's obvious disregard for property belonging to others, Defendant also showed a reckless disregard for the safety of any other person who may have been around at the time he discharged the firearms.

6. Defendant failed to participate in the disciplinary process in good faith. Defendant violated orders of the disciplinary agency, including an order compelling him to respond to discovery and an amended scheduling order requiring him to participate in a prehearing conference, made false

statements in response to the State Bar's requests for admissions, and failed to appear at the hearing in this case.

7. Defendant's persistent failure to participate in the self-regulation process resulted in potential significant harm to the legal profession as such conduct imposes a threat on the profession's privilege and ability to remain a self-regulating profession.

8. Commission of and conviction for criminal offenses showing professional unfitness, and the knowing misrepresentation of facts or circumstances surrounding allegations of professional misconduct involve conduct specifically and statutorily addressed in rules regulating the legal profession and such conduct is deemed some of the most serious an attorney can commit. = Defendant's conduct in this case involved both the commission of and conviction for criminal offenses showing professional unfitness and knowing misrepresentation of facts or circumstances surrounding allegations of professional misconduct.

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

**CONCLUSIONS WITH RESPECT TO DISCIPLINE**

1. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f) of the Discipline and Disability Rules of the North Carolina State Bar.

2. The Hearing Panel concludes that the following factors from 27 N.C. Admin. Code 1B.0116(f)(1), which are to be considered in imposing suspension or disbarment, are present in this case:

- (A) intent of the defendant to cause the resulting harm or potential harm;
- (B) intent of the defendant to commit acts where the harm or potential harm is foreseeable;
- (C) circumstances reflecting the defendant's lack of honesty, trustworthiness, or integrity;
- (D) elevation of the defendant's own interest above that of the client;
- (E) negative impact of the defendant's actions on client's or public's perception of the profession;
- (F) negative impact of the defendant's actions on the administration of justice;
- (G) impairment of the client's ability to achieve the goals of the representation;
- (H) effect of defendant's conduct on third parties;
- (I) acts of dishonesty, misrepresentation, deceit, or fabrication; and
- (J) multiple instances of failure to participate in the legal profession's self-regulation process.

3. The Hearing Panel concludes that the following factors from 27 N.C. Admin. Code 1B.0116(f)(2), which require consideration of disbarment, are present in this case:

- (A) acts of dishonesty, misrepresentation, deceit, or fabrication;
- (B) impulsive acts of dishonesty, misrepresentation, deceit, or fabrication without timely remedial efforts;
- (C) misappropriation or conversion of assets of any kind to which the defendant or recipient is not entitled, whether from a client or any other source; and
- (D) commission of a felony.

4. The Hearing Panel concludes that the following factors from 27 N.C. Admin. Code 1B.0116(f)(3), which are to be considered in all cases, are present in this case:

- (A) prior disciplinary offenses in this state or any other jurisdiction;
- (C) dishonest or selfish motive;
- (F) a pattern of misconduct;
- (G) multiple offenses;
- (M) bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules and orders of the disciplinary agency;
- (N) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- (O) refusal to acknowledge wrongful nature of conduct; and
- (V) lack of remorse.

5. The Hearing Panel has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension, and disbarment.

6. Defendant's history and pattern of misconduct and refusal to acknowledge the wrongfulness of much of his misconduct demonstrates that he is either unable or unwilling to conform his behavior to the requirements of the Rules of Professional Conduct. Accordingly, if Defendant were permitted to continue practicing law, he would pose a significant risk of continued harm to third parties, clients, the profession, the public, and the administration of justice.

7. The Hearing Panel finds that admonition, reprimand, censure, or suspension would not be sufficient discipline because of the gravity of the harm Defendant caused to third parties, clients, the administration of justice, and the legal profession. Furthermore, the Panel finds that any sanction less than disbarment would not adequately protect the public, 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.

8. The Hearing Panel finds and concludes that the public can only be adequately protected by Defendant's disbarment and the corresponding requirement that Defendant demonstrate rehabilitation and reformation of character before he may be permitted to resume practicing law.

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. Defendant, Nikita V. Mackey, is hereby DISBARRED from the practice of law, effective thirty (30) days after this Order of Discipline is served upon Defendant.

2. Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar within thirty (30) days of the effective date of this Order.

3. Defendant shall comply with the wind down provisions contained in 27 N.C. Admin. Code 1B.0128 of the Rules and Regulations of the North Carolina State Bar. Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within thirty (30) days of the effective date of this Order, certifying he has complied with the wind down provisions.

4. Defendant shall pay the administrative fees and costs of this disciplinary proceeding within thirty (30) days of service of the statement of fees and costs upon him by the Secretary of the North Carolina State Bar.

Signed by the Chair with the consent of the other Hearing Panel members, this the 11 day of February, 2022.

  
Donald C. Prentiss, Chair  
Disciplinary Hearing Panel