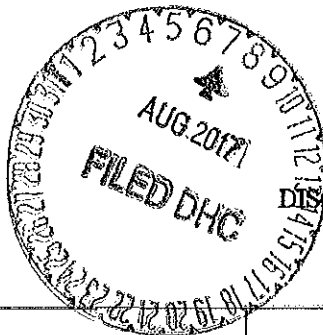


NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
17 DHC 15

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

CLAY A. COLLIER, Attorney,

Defendant

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

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Fred M. Morelock, Chair, and members Stephanie M. Davis and Tyler B. Morris pursuant to 27 N.C. Admin. Code § 1B.0114 of the Rules and Regulations of the North Carolina State Bar. Jennifer A. Porter represented Plaintiff, the North Carolina State Bar. Defendant, Clay A. Collier, was represented by Alan M. Schneider. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Defendant freely and voluntarily waives any and all right to appeal the entry of this consent order of discipline. Based upon the stipulations of fact and the consent of the parties, the Hearing Panel hereby finds by clear, cogent, and convincing evidence the following:

#### FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("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, Clay A. Collier ("Collier"), was admitted to the North Carolina State Bar in 1986, and is, 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. Collier was properly served with process, a hearing in this matter was set, and the matter came before the Hearing Panel with due notice to all parties.

4. During all or part of the relevant periods referred to herein, Collier was engaged in the practice of law in the State of North Carolina and maintained a law office in Wilmington, New Hanover County, North Carolina.

5. Collier unlawfully and willfully failed to file his state individual income tax returns for calendar years 2009, 2010, 2011, 2013 and 2014 when such tax return was due, as required under N.C. Gen. Stat. § 105-152 (recodified in 2014 as § 105-153.8) and § 105-155.

6. Willful failure to file and pay North Carolina income tax within the time required by law is a violation of N.C. Gen. Stat. § 105-236(a)(9).

7. On February 22, 2017, Collier pled guilty to willful failure to file his state individual income tax returns for years 2009, 2010, 2011, 2013 and 2014.

8. Willful failure to file a tax return is a criminal offense showing professional unfitness as defined by 27 N.C. Admin. Code § 1B.0103 (17).

9. As of April 30, 2012, certain client ledgers, including for two clients attributed to Collier, had negative balances, showing that more funds were disbursed from the trust account for those clients than those clients had in the trust account.

10. The firm's bookkeeper discovered the negative balances while preparing for a May 31, 2012 random audit by the North Carolina State Bar. The negative balances were found to have resulted from bookkeeping and mathematical errors.

11. Several of the overdisbursements had occurred over a year or more prior to May 2012.

12. On or about May 30, 2012, the firm made deposits into the trust account to remedy the overdisbursements, which were credited to the trust account in June 2012.

Based upon the consent of the parties and the foregoing stipulated Findings of Fact, the Hearing Panel enters the following:

#### CONCLUSIONS OF LAW

1. All the parties are properly before the Hearing Panel and the Hearing Panel has jurisdiction over Defendant, Clay A. Collier, and the subject matter.

2. Defendant's conduct, as set out in the stipulated Findings of Fact above, constitutes grounds for discipline as follows:

a. Pursuant to N.C. Gen. Stat. § 84-28(b)(1), for conviction for failure to file a state individual income tax return for the years 2009, 2010, 2011, 2013 and 2014 when such return was due, a criminal offense showing professional unfitness; and

b. Pursuant to N.C. Gen. Stat. § 84-28(b)(2), for engaging in conduct in violation of the Rules of Professional Conduct in effect at the time of his actions as follows:

- (1) By unlawfully and willfully failing to timely file a state income tax return for the years 2009, 2010, 2011, 2013 and 2014, Defendant committed a criminal act that reflects adversely on his honesty, trustworthiness, or fitness 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); and
- (2) By failing to ensure that only funds in the firm's trust account for a specific client were disbursed on behalf of that specific client, including for clients attributed to him, Defendant failed to properly maintain entrusted funds in violation of Rule 1.15-2(a) and allowed entrusted funds to be disbursed in a manner not authorized by or for the benefit of the client in violation of Rule 1.15-2(m)<sup>1</sup>.

Based upon the stipulations of fact and the consent of the parties, the Hearing Panel hereby finds by clear, cogent, and convincing evidence the following

#### ADDITIONAL FINDINGS REGARDING DISCIPLINE

1. Defendant has no prior discipline.
2. Defendant was sentenced in February 2017 to unsupervised probation and community service for his failure to timely file state individual income tax returns.
3. Willful failure to file a tax return is expressly identified in the State Bar's definition of criminal offenses showing professional unfitness. This offense inherently involves a representation to taxing authorities that one did not earn sufficient income to meet the threshold required to file a tax return, which was not accurate in Defendant's case.
4. When lawyers violate the law in their business and personal affairs, it brings disrepute upon the legal profession and undermines public confidence in lawyers.
5. Defendant, who was admitted to the North Carolina State Bar in 1986, has substantial experience in the practice of law.
6. Defendant has been cooperative in this disciplinary process. He has timely and fully responded to inquiries of the State Bar. Defendant has acknowledged the wrongful nature of his conduct, stipulated to the violations of the Rules of Professional Conduct, and consented to this imposition of discipline.
7. Defendant and his law partners experienced profound personal and professional difficulties during the time period at issue in this disciplinary matter.

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<sup>1</sup> Rule 1.15-2(m) was recodified as Rule 1.15-2(u) effective September 30, 2016.

8. Defendant enjoys an excellent reputation in the legal community and the community at large.

9. Defendant was forthright with the agents of the North Carolina Department of Revenue when they approached him about his failure to file individual income tax returns.

10. Defendant focused on curing delinquent firm tax obligations from about 2012 to 2016. Defendant had planned to address his individual income tax filings afterwards. Defendant did not attempt to file state individual income tax returns using estimated income options in the interim.

11. When contacted by an agent of the North Carolina Department of Revenue in September 2016 to present himself for arrest the following day for his failure to file his individual income tax returns, Defendant worked with his accountant to get all overdue individual income tax returns completed and filed before he arrived to present himself for arrest.

12. Defendant paid his outstanding state individual income tax obligation prior to pleading guilty.

13. The negative client balances discovered by the firm in preparation for its May 2012 random audit were few in number, were small in amount, were fully disclosed to the auditor and were remedied in May 2012. The firm provided its reconciliation records through December 2016 to the State Bar pursuant to the State Bar's request, and there were no additional negative client balances from June 2012 through December 2016.

14. There is no evidence that any specific client suffered harm from the inadvertent overdisbursements that resulted in the negative balances found in May 2012.

15. Allowing client funds to be improperly disbursed, even if inadvertently, however, places entrusted funds at risk and erodes the confidence clients place in attorneys who handle their affairs.

Based upon the Findings of Fact, Conclusions of Law, and Additional Findings Regarding Discipline, and the consent of the parties, the Hearing Panel also 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. In addition, the Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code § 1B.0114(w)(3) of the Rules and Regulations of the North Carolina State Bar and determines the following factors are applicable:

- a. Subsection (A), the absence of prior disciplinary offenses;
- b. Subsection (C), the absence of any selfish motive;

- c. Subsection (D), timely good faith efforts to rectify consequences of misconduct;
- d. Subsection (G), multiple offenses;
- e. Subsection (H), effect of personal or emotional problems on the conduct in question;
- f. Subsection (J), interim rehabilitation;
- g. Subsection (K), full and free disclosure to the Hearing Panel and a cooperative attitude toward the proceedings;
- h. Subsection (Q), character and reputation;
- i. Subsection (S), Defendant's experience in the practice of law; and
- j. Subsection (U), imposition of other penalties or sanctions.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code § 1B.0114(w)(2) and concludes no factors are present that would warrant disbarment.

4. The Hearing Panel has carefully considered all of the factors enumerated in 27 N.C. Admin. Code § 1B.0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and determines the following factors warrant suspension of Defendant's license:

- a. Subsection (B), intent to commit acts where the harm or potential harm is foreseeable;
- b. Subsection (E), Defendant's actions potentially had a negative impact on the public's perception of the legal profession.

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

6. Although Defendant's conduct is serious enough to warrant more than a censure it does not warrant an active suspension of his license.

7. A stayed suspension of Defendant's law license is warranted because 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.

8. Furthermore, it is the determination of the Hearing Panel that a stayed suspension is warranted for the protection of the public, the profession, and Defendant's clients, to monitor

Defendant's compliance with tax obligations and continued proper maintenance of entrusted funds.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Findings and Conclusions Regarding Discipline, and based upon the consent of the parties, the Hearing Panel enters the following

#### ORDER OF DISCIPLINE

1. The license of Defendant, Clay A. Collier, is hereby suspended for two years. The suspension under this order shall be stayed for two years as long as Defendant complies and continues to comply with the following conditions:

- a. Defendant shall comply with the terms of all agreements he enters or has entered into with the Internal Revenue Service and/or the North Carolina Department of Revenue;
- b. Defendant shall provide the State Bar with documentation from the Internal Revenue Service (IRS) and/or the North Carolina Department of Revenue, as applicable, showing compliance with the terms of any agreements between Defendant and either entity in effect during this stayed suspension;
- c. Defendant shall execute any written waivers and releases necessary to authorize the Office of Counsel to confer with the Internal Revenue Service and/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 or while this Order is in effect;
- d. Defendant shall timely file his federal and state individual income tax returns along with any associated schedules and attachments thereto;
- e. Defendant shall provide the State Bar with copies of all state and federal individual income tax returns filed during the stay and proof of payment of income taxes. Such returns and/or any requests for extensions or other documents related to the filing and/or payment of Defendant's state or federal individual income tax shall be provided to the State Bar within ten (10) days of the filing of such document(s) with the Internal Revenue Service or the North Carolina Department of Revenue;
- f. Defendant shall timely pay all state and federal tax liabilities, fines, and penalties owed by him;
- g. Defendant shall ensure that his law firm timely complies with all employer and corporate/entity tax obligations, including but not limited to: issuing Schedule K-

l forms; withholding required funds from employee paychecks; properly holding and delivering to the IRS withheld funds; properly and timely reporting withheld taxes on applicable employer returns;

- h. Each quarter Defendant shall provide the Office of Counsel of the State Bar with an accurate three-way quarterly reconciliation compliant with Rule 1.15-3(d)(1) for all trust accounts maintained by Defendant. For each trust account, Defendant shall provide the three-way reconciliation report, a list of clients with respective balances and a total of all client balances for all clients with funds in the trust account, a general trust account ledger, and the bank statements and cancelled checks for the quarterly reconciliation. The quarterly reconciliations are due no later than 30 days after the end of the quarter – for example, the reconciliation for the first quarter of the calendar year (January, February, and March) is due on April 30;
- i. Defendant shall keep the North Carolina State Bar Membership Department advised of his current contact information, including his current business and home addresses (not a P.O. Box) as well as his current telephone number(s), and shall notify the Bar of any change in address or telephone number within 10 days of such change;
- j. Defendant shall respond to all communications from the North Carolina State Bar, including communications from the Attorney Client Assistance Program, within 15 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;
- k. Defendant shall promptly accept service of all certified mail sent to him by the State Bar;
- l. Defendant shall respond to all communications from the Internal Revenue Service and the North Carolina Department of Revenue;
- m. Defendant shall not violate any laws of the State of North Carolina, of any state within the United States, or of the United States;
- n. Defendant shall not violate any provision of the Rules of Professional Conduct;
- o. Defendant shall timely pay the costs and administrative fees of this proceeding taxed to him as set out below; and
- p. Defendant shall pay all Membership dues and Client Security Fund assessments and comply with all Continuing Legal Education requirements on a timely basis.

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

3. Unless Defendant's obligations under this order are modified by further order of the DHC, Defendant's obligations under this order end two years from the date the suspension under this order goes into effect, 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 § .0114(x) of the North Carolina Discipline and Disability Rules, 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 two year 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.

4. If during the stay of the two year suspension Defendant fails to comply with any one or more of the conditions stated in Paragraph 1(a) through 1(p) above, then the stay of the suspension of his law license may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

5. If the stay of the suspension is lifted and the suspension is activated for any reason, Defendant must show by clear, cogent, and convincing evidence that he complied with each of the following conditions before seeking reinstatement:

- a. Defendant submitted his license and membership card to the Secretary of the North Carolina State Bar within thirty days after the entry 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. Admin. Code § 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 is current and in compliance with the terms of any and all payment agreements he entered into with the Internal Revenue Service and/or the North Carolina Department of Revenue;
- d. Defendant provided the State Bar with documentation from the Internal Revenue Service and/or the North Carolina Department of Revenue, as applicable, showing compliance with the terms of any payment agreements he entered into with either of those entities;

- e. Defendant is current with his tax return filing obligations and timely filed and paid any state or federal taxes owed by him, along with any fines, penalties, and/or interest;
- f. Defendant provided the State Bar with copies of all tax returns he filed from the date of entry of this order through the date of his petition for reinstatement, and provided the State Bar with proof that he timely paid any state or federal taxes owed by him, along with any fines, penalties, and/or interest;
- g. If the suspension was activated for Defendant's failure to timely file a return for and/or pay any state and/or federal tax, Defendant rectified the deficiency by filing the return for and/or paying as appropriate the tax(es) at issue, along with any fines, penalties, and interest owed, and provided proof of such to the State Bar;
- h. Defendant kept the North Carolina State Bar Membership Department advised of his current business and home addresses, as well as his current telephone number, and notified the Bar of any change in address or telephone number within 10 days of such change;
- i. Defendant responded to all communications from the North Carolina State Bar, including communications from the Attorney Client Assistance Program, within 15 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;
- j. Defendant promptly accepted all certified mail sent to him by the State Bar;
- k. That at the time of his petition for reinstatement, 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;
- l. That at the time of his petition for reinstatement, 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;
- m. 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, including Defendant's timely filing and payment of federal and state tax obligations;
- n. 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

o. 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.

6. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of the stayed suspension.

17<sup>th</sup> Signed by the Chair with the consent of the other Hearing Panel members, this the day of August, 2017.

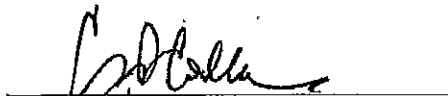


Fred M. Morelock, Chair  
Disciplinary Hearing Panel


CONSENTED TO BY:



Jennifer A. Porter, Deputy Counsel  
Attorney for Plaintiff



Clay A. Collier  
Defendant



Alan M. Schneider  
Attorney for Defendant