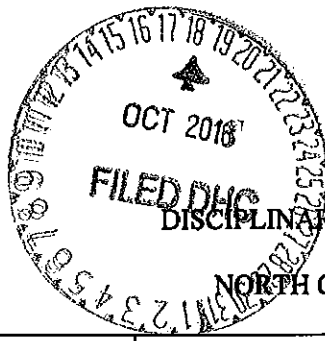


NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
15 DHC 39

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

WARREN BALLENTINE, Attorney,

Defendant

ORDER OF DISCIPLINE

THIS CAUSE was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Fred M. Morelock, Chair, N. Hunter Wyche, Jr., and Warren McDonald on Plaintiff's motion pursuant to 27 N.C.A.C. 1B §.0114(f) of the N.C. State Bar Discipline & Disbarment Rules for an order of discipline based on entry of a Default Judgment against Defendant. G. Patrick Murphy represented Plaintiff. Defendant did not make an appearance in this matter and has failed to respond to any pleadings or motions filed by Plaintiff. After review of the pleadings and the record, the Hearing Panel determines it is appropriate to grant Plaintiff's request for an Order of Discipline.

THEREFORE, based on the pleadings and admissions established by Defendant's default pursuant to 27 N.C.A.C. 1B §.0114(f), and the record in this proceeding the Hearing Panel hereby finds by clear, cogent and convincing evidence the following:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar, is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. Defendant, Warren Ballentine (hereinafter "Defendant" or "Ballentine"), was admitted to the North Carolina State Bar on March 2, 2007, 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. On September 16, 2015, an Order of Interim Suspension was entered against Defendant in *The North Carolina State Bar v. Warren Ballentine*, 15DHC39.

3. The Complaint in this action was filed on January 13, 2016.

4. Defendant was served with process by publication.

5. Defendant failed to file an answer or any responsive pleading by the deadline established by Rule 4(j) of the North Carolina Rules of Civil Procedure.

6. Default was entered against Defendant on July 26, 2016 by the Secretary of the State Bar pursuant to Rule 55 of the North Carolina Rules of Civil Procedure and 27 N.C. Admin. Code 1B §§ .0110(4) and .0114(f).

7. Plaintiff filed a Motion for Judgment by Default on July 28, 2016 and served the motion on that date by depositing a copy of the same in the U.S. Mail in a postage prepaid envelope addressed to Defendant's address of record. In Plaintiff's motion, Plaintiff asked the Hearing Panel to enter an Order of Discipline if Defendant failed to serve a written response to the motion.

8. On or about October 24, 2014, Ballentine was convicted in *United States v. Warren Ballentine*, 13CR0088 (ND Ill) of one (1) count of mail fraud affecting a financial institution in violation of 18 U.S.C. §1341, one (1) count of wire fraud affecting a financial institution in violation of 18 U.S.C. §1343, two (2) counts of bank fraud in violation of 18 U.S.C. §1344 and two (2) counts of making false statements to financial institutions in violation of 18 U.S.C. §1014.

9. On July 21, 2015, Ballentine was sentenced and committed to the custody of the United States Bureau of Prisons for one (1) day and was ordered to serve three (3) years of supervised release with conditions.

Based upon the foregoing FINDINGS OF FACT, the undersigned makes the following:

CONCLUSIONS OF LAW

1. This proceeding is properly before the Hearing Panel, and the Panel has jurisdiction over Defendant and the subject matter of this proceeding.

2. Defendant has failed to file any responsive pleading in this proceeding and a proper entry of default has been entered by the Secretary of the State Bar.

3. 27 N.C. Admin. Code 1B § .0114(f) provides that, upon entry of the defendant's default by the Secretary of the State Bar, the allegations in the complaint will be deemed admitted. The State Bar counsel may then apply to the hearing panel for a default order imposing discipline, and the hearing panel will thereupon enter an order, making findings of fact and conclusions of law based on the admissions, and order the discipline deemed appropriate. The hearing panel may, but is not required, to hear additional evidence before entering an order of discipline.

4. The allegations of Plaintiff's Complaint are deemed admitted.

5. The crimes of which Ballentine was convicted are serious offenses showing professional unfitness under 27 N.C.A.C. 1B § .0103(17) of the State Bar Discipline & Disbarment Rules.

6. Additional evidence is not necessary to determine the appropriate discipline in this proceeding.

7. Defendant's conduct, as set forth in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(1) for convictions of criminal offenses showing professional unfitness, and pursuant to N.C. Gen. Stat. § 84-28(b)(2) for violation of the following Rules of Professional Conduct in effect at the time of the conduct:

- a. By engaging in the criminal conduct for which he was convicted, Ballentine committed criminal acts that reflect adversely upon 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 in violation of Rule 8.4(c).

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Panel hereby finds by clear, cogent and convincing evidence the following additional:

FINDING OF FACTS REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1-9 above are incorporated as if set forth herein.
2. Defendant was convicted of multiple criminal offenses involving dishonesty, fraud, deceit and misrepresentation.
3. It was necessary for Plaintiff to serve Defendant by publication because attempts to serve Defendant by certified mail, voluntary acceptance of service, through the sheriff's department, and by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) were unsuccessful.
4. In the attempt to serve Defendant through the Sheriff of Durham County, the Summons was returned by the Sheriff of Durham County not served. In the box on the Summons used to indicate why service was not accomplished, the following appears: "Person or persons inside residence will not respond to notes or service attempts/have been avoiding service for approx. a year."
5. The perception of the profession in the eyes of the public is negatively affected by an attorney engaging in acts of dishonesty, fraud, deceit or misrepresentation.
6. Defendant's convictions are documented in the public record. The public expects that attorneys will abide by the law and Defendant's conduct demonstrates his disregard for his obligation to do so.

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

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel carefully considered all of the different forms of discipline available to it.

2. The Hearing Panel finds the following factors enumerated in 27 N.C.A.C. 1B § .0114(w)(1) are applicable:

- a. Intent of 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 Defendant's lack of honesty, trustworthiness, or integrity;
- d. Effect of Defendant's conduct on third parties; and
- e. Acts of dishonesty, misrepresentation, deceit, or fabrication.

3. The Hearing Panel finds the following factors enumerated in 27 N.C.A.C. 1B § .0114(w)(2) are applicable:

- a. Acts of dishonesty, misrepresentation, deceit, or fabrication; and
- b. Commission of a felony.

4. The Hearing Panel finds the following factors enumerated in 27 N.C.A.C. 1B § .0114(w)(3) are applicable:

- a. Dishonest or selfish motive;
- b. Multiple offenses; and
- c. Failure to participate in the legal profession's self-regulation process.

5. The factors present under 27 N.C.A.C. 1B § .0114(w)(1) and (2) support imposition of disbarment in this case.

6. Defendant's conviction of felony criminal offenses reflects adversely on Defendant's honesty, trustworthiness or fitness as a lawyer and caused significant harm or potential harm to the public and the public's perception of the legal profession.

7. Defendant's failure to participate in this disciplinary proceeding before the DHC results in potential significant harm to the profession and to the public. The legal profession is entrusted with the privilege of self-regulation. The State Bar can only regulate the profession if its members respond to complaints and participate in its processes. Defendant's failure to respond to the complaint and participate in proceedings before the DHC shows an unacceptable disregard for the regulatory authority of the State Bar. Defendant's failure to participate in the profession's self-regulation impedes effective self-regulation and jeopardizes the privilege of the profession to remain self-regulating.

8. The Hearing Panel has considered lesser alternatives and finds that suspension of Defendant's license or a public censure, reprimand, or admonition would not be sufficient discipline because of the gravity of the actual and potential harm to the public, the administration of justice and the legal profession caused by Defendant's conduct.

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

ORDER OF DISCIPLINE

1. Defendant, Warren Ballentine, is hereby DISBARRED from the practice of law.
2. Defendant shall surrender his North Carolina law license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon Defendant.
3. Defendant shall pay the fees and the costs of this proceeding as assessed by the Secretary of the North Carolina State Bar. Defendant must pay the fees and costs within 30 days of service upon him of the statement of fees and costs by the Secretary.
4. Defendant shall comply with all provisions of 27 N.C.A.C. 1B § .0124 of the North Carolina State Bar Discipline & Disability Rules.
5. Within 15 days of the effective date of this Order Defendant shall provide the State Bar with an address and telephone number at which clients seeking return of files can communicate with Defendant and obtain such files. This address must be a physical address at which Defendant maintains a consistent presence and receives mail. Defendant must keep this information current with the State Bar, providing updated information to the State Bar within 15 days of any change.
6. Defendant shall promptly return client files in his possession, custody, or control to clients upon request, within 5 days of receipt of such request. Defendant will be deemed to have received any such request 3 days after the date such request is sent to Defendant, if the request is sent to the address Defendant provided the State Bar pursuant to the preceding paragraph or to Defendant's address of record with the State Bar if Defendant fails to provide another address pursuant to the preceding paragraph.

Signed by the Chair with the consent of the other Hearing Panel members, this the
18th day of October, 2016.

A handwritten signature in cursive script, appearing to read 'F. Morelock', written over a horizontal line.

Fred M. Morelock, Chair
Disciplinary Hearing Panel