

STATE OF NORTH CAROLINA

WAKE COUNTY

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
21 DHC 4

<p>THE NORTH CAROLINA STATE BAR,  Plaintiff</p> <p style="text-align: center;">v.</p> <p>BEVERLY BERNIECE COOK, Attorney,  Defendant</p>	<p>CONSENT ORDER OF DISCIPLINE</p>
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This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission (“DHC”) composed of Maya Madura Engle, Chair, and members, Fred W. Devore, III and Jane B. Weathers, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0115(i). Plaintiff was represented by Barry S. McNeill, Deputy Counsel for the North Carolina State Bar (“Plaintiff” or “State Bar”). Defendant, Beverly Berniece Cook (“Defendant” or “Cook”), was represented by Alan M. Schneider, Cheshire, Parker, Schneider & Bryan, PLLC, Raleigh, North Carolina. Both Plaintiff and Defendant stipulate and agree to the findings of fact and conclusions of law recited in this Consent Order of Discipline and to the discipline imposed. Defendant has freely and voluntarily stipulated to the findings of fact and consents to the conclusions of law and entry of the order of discipline. Defendant freely and voluntarily waives any and all right to appeal the entry of this Consent Order of Discipline.

Based upon the pleadings in this matter, the parties’ stipulations of fact, and with the consent of the parties, the Hearing Panel hereby enters 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 was admitted to the North Carolina State Bar on August 21, 1999, 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. During the relevant periods referred to herein, Defendant has been engaged in the practice of law in the State of North Carolina and maintained a law office in Murphy, Cherokee County, North Carolina.

4. From 2014 through 2016 ("tax years"), Defendant's income exceeded the minimum threshold above which an individual is required to file federal and state income tax returns.

5. For these above-identified tax years, Defendant was aware of the deadlines for filing federal and state income tax returns and paying any tax liability.

6. Defendant failed to file, within the times required by law, federal income tax returns showing her tax liability for tax years 2014, 2015, and 2016.

7. Defendant failed to pay, within the times required by law, her federal income tax liability for tax years 2014, 2015, and 2016.

8. Defendant failed to file, within the times required by law, state income tax returns showing her tax liability for tax years 2014, 2015, and 2016.

9. Defendant failed to fully pay, within the times required by law, her state income tax liability for tax years 2014, 2015, and 2016.

10. Defendant's failures to timely file federal and state income tax returns and to timely pay tax liabilities due for the tax years alleged above were willful.

11. Willful failure to file and pay federal income tax within the time required by law is a violation of 26 U.S.C. §7203, which is a misdemeanor.

12. 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), which is a misdemeanor.

13. On June 18, 2019, warrants issued in Wake County District Court by the North Carolina Department of Revenue's Criminal Investigation Unit charging Defendant with three counts of failing to file North Carolina individual income tax returns in the years 2014, 2015, and 2016 in violation of N.C. Gen. Stat. § 105-236(a)(9), *State v. Beverly Berniece Cook*, Nos. 19-CR-211155, -211156, and -211157 (Wake Co. Dist. Ct.).

14. On August 15, 2019, Defendant pled guilty to all three charges of failing to file her North Carolina individual income tax returns.

15. The charges were consolidated for sentencing and Defendant received a fine of \$1,500, imprisonment for 45 days suspended on unsupervised probation for 12 months, 100 hours of community service during the first six months of her probation, and the requirement that proof of her community service be provided to the North Carolina Department of Justice.

Based on the consent of the parties and the foregoing stipulated 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. Defendant's conduct, as set out in the stipulated Findings of Fact above, constitutes grounds for discipline as follows:

I. Pursuant to N.C. Gen. Stat. § 84-28(b)(1), for Defendant's plea of guilty to and conviction of a criminal offense showing professional unfitness; and

II. Pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

a) By willfully failing to timely file federal and state income tax returns for the years 2014, 2015, and 2016, Defendant committed criminal acts that reflect adversely on her honesty, trustworthiness, or fitness as a lawyer in other respects in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c); and,

b) By willfully failing to timely pay federal and state income taxes due for the years 2014, 2015, and 2016, Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

Upon the consent of the parties, the Hearing Panel also finds by clear, cogent, and convincing evidence the following:

**ADDITIONAL FINDINGS REGARDING DISCIPLINE**

1. The findings of fact in paragraphs 1 – 15 above are reincorporated as if set forth herein.

2. Defendant paid the fine and court costs in her criminal action.

3. On or about February 7, 2020, Defendant completed the requisite 100 hours of community service at a local homeless shelter, the Hurlburt Johnson Friendship House.

4. Defendant owes back taxes to the Internal Revenue Service ("IRS") for her personal Federal Individual Income taxes for the years 2006 through 2017 in excess of \$191,000, including interest and penalties.

5. Defendant filed timely extensions to file her Federal and State tax returns in 2014, 2015, and 2016 but she never followed up with filing the tax returns by the extended deadlines.

6. In February 2018, Defendant retained a Certified Public Accountant ("CPA") to assist her with her Federal and State tax delinquency issues.

7. Defendant provided the CPA with the records to prepare her delinquent Federal and State business and individual tax returns for 2014, 2015, and 2016, and requested that the CPA do so.

8. The CPA contacted the North Carolina Department of Revenue ("NCDOR") on Defendant's behalf to work out a payment plan for Defendant's back State Individual Income taxes.

9. On August 28, 2018, Defendant met with agents from the NCDOR at the CPA's office.

10. The CPA had prepared rough drafts of Defendant's delinquent state tax returns but told the agents that she would like to review them before submitting them for filing.

11. The NCDOR agents hand-delivered to Defendant at the time a summons for her corporate and withholding returns for the period January 1, 2012 through August 28, 2018, and for her individual state income tax returns for the period of January 1, 2015 through December 21, 2017.

12. Defendant retained legal counsel to represent her during the NCDOR investigation and to resolve her delinquent Federal and State tax issues.

13. Defendant cooperated with the NCDOR investigation and, through the CPA's assistance, filed her delinquent state tax returns in October 2018.

14. On November 5, 2018, Defendant paid to the NCDOR via cashier's checks the sum of \$17,557 in payment of all individual state income taxes owed for the tax years 2012, 2014, 2015, 2016, and 2017, as well as an additional \$540 in state franchise taxes owed.

15. By filing her delinquent state tax returns and making the payments of state income taxes owed, Defendant hoped that the NCDOR would not charge her criminally for the non-filings in the years 2014, 2015, and 2016.

16. The NCDOR filed the criminal non-filing charges in June 2019 and Defendant turned herself in on the charges, booked on the three counts of misdemeanor non-filing.

17. The CPA prepared for Defendant and Defendant timely filed her 2017, 2018, and 2019 tax returns.

18. On February 2, 2020, Defendant executed an installment agreement with the IRS, which has been approved by the IRS, for repayment of all delinquent Federal taxes, fees, penalties, and interest.

19. Beginning December 28, 2020, the IRS automatically withdraws \$500 per month from Defendant's banking account toward the overall IRS debt owed by Defendant.

20. On February 11, 2020, Defendant paid to the NCDOR the additional sum of \$4,067.93 to cover all NCDOR penalties and interest due for all tax years through 2017.

21. Defendant is on track to timely file her Federal and State tax returns for 2020.

22. At present, Defendant is current with all of her Federal and State individual income tax filings, as well as her Business S Corporation returns on behalf of her law practice, Beverly B. Cook, P.C.

23. Defendant and her ex-husband engaged in compulsive gambling and a financial lifestyle above their incomes.

24. As a result of a separation agreement with her ex-husband in 2006, Defendant received the majority of the marital assets and all of the marital debt, including approximately \$35,000 in unsecured loans and credit cards, along with a preexisting personal student loan.

25. Along with her continued gambling, the recession beginning in 2008 contributed to Defendant's financial stress.

26. Defendant reinvested any winnings from gambling into additional gambling.

27. Any winnings by Defendant from gambling were offset by Defendant's losses from gambling.

28. On October 2, 2015, Defendant voluntarily banned herself from going to and gambling at the Harrah's Casino in Cherokee, North Carolina.

29. Under the terms of the self-exclusion from the Harrah's Casino, the five-year self-exclusion will not be reinstated unless and until Defendant requests its removal after the end of the five-year term.

30. After she executed the self-exclusion from the Harrah's Casino, Defendant continued her gambling activity periodically at sweepstake businesses in Cherokee County.

31. Defendant consulted a professional about her gambling issues and desire for recovery.

32. Defendant attempted to locate a gambler's anonymous group in her area but was unsuccessful.

33. Defendant's primary care physician prescribed her a drug for her depression and anxiety.

34. Defendant has taken the prescription drug regularly since it was prescribed for her in March 2018.

35. In 2018, Defendant ceased her gambling activities for six weeks before resuming for two more days and then stopping on April 23, 2018.

36. Defendant has been diagnosed with depression and anxiety but has never been professionally diagnosed with compulsive gambling disorder.

37. Defendant has not consulted or contracted with the State Bar's Lawyer's Assistance Program ("LAP").

38. Defendant is not under professional care or counseling for her gambling issues.

39. Defendant has used her experience to encourage others to quit compulsive gambling.

40. Defendant is remorseful for what she allowed gambling to do to her life and career.

41. Defendant has a reputation in her community of good character and professional diligence.

42. Defendant has been cooperative during the investigatory process.

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 REGARDING DISCIPLINE**

1. 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.

2. In addition, the hearing panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0116(f)(3) of the Rules and Regulations of the North Carolina State Bar and finds the following factors are applicable in this matter:

- (C) Absence of dishonest motive;
- (F) Defendant engaged in multiple offenses;
- (G) Effect of personal or emotional problems on the conduct;
- (J) Defendant has undergone interim rehabilitation;
- (K) Cooperative attitude toward the proceeding;
- (P) Defendant is remorseful for her conduct; and,

(Q) Defendant has a reputation in her community for good character and professional diligence.

3. The hearing panel has carefully considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0116(f)(1) of the Rules and Regulations of the North Carolina State Bar and finds the following factors warrant suspension of Defendant's license:

(E) Defendant's actions had a potential negative impact on the public's perception of the legal profession.

4. The hearing panel has also carefully considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0116(f)(2) of the Rules and Regulations of the North Carolina State Bar, does not find any factors warranting consideration of disbarment, and concludes that disbarment is not necessary in order to protect the public.

5. The hearing panel has considered all other forms of discipline available and concludes, for the following reasons, that any sanction less than suspension would fail to acknowledge the seriousness of the offenses committed by Defendant, would not adequately protect the public, and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar.

- a. The factors under 27 N.C.A.C. 1B §.0116(f)(1) and (f)(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 attorneys and the public regarding the conduct expected of members of the Bar in this State; and,
- c. A suspension with appropriate conditions, such as requiring Defendant to undergo therapy and periodic reporting by that therapist to the State Bar, will assure Defendant's progress and compliance with treatment and professional norms.

6. Defendant should be taxed with the administrative fees and costs of this action.

Based upon the foregoing Findings of Fact and Conclusions of Law and the Additional Findings of Fact 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, Beverly Berniece Cook, is hereby suspended for three (3) years. This Order will be effective 30 days after service of the Order upon Defendant.

2. Defendant's three (3) 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, engages counseling with a therapist, and/or any other board-certified psychiatrist, psychologist, or gambling counselor (hereafter "Therapist") approved in advance by the State Bar's Office of Counsel, 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 (April 10, July 10, October 10, and January 10), to the State Bar and to the LAP Clinical Director (with a copy to Defendant) confirming Defendant is following the recommendations of the Therapist. The Therapist shall notify the State Bar and the LAP Clinical Director 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 the LAP Clinical Director, and to allow the Therapist to discuss Defendant's participation and treatment with the Office of Counsel of the State Bar and the LAP Clinical Director, and shall not revoke the releases during the period of the stayed suspension;
- b. Defendant instructs her Therapist to notify the Office of Counsel and the LAP Clinical Director 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. During the entirety of the suspension, Defendant consents to enter into and remain in a long-term recovery contract with LAP and consents to comply with all the terms of her contract and any treatment recommendations from LAP, at Defendant's expense. LAP shall notify the Office of Counsel if Defendant fails to participate in LAP, fails to comply with any of the terms of her long-term recovery contract with LAP, or fails to comply with LAP's treatment recommendations. Defendant will sign all necessary releases or documents to allow such notification and to allow LAP to discuss Defendant's participation and treatment in LAP with the Office of Counsel of the State Bar, and shall not revoke the release during the period of the stayed suspension;
- d. During the entirety of the suspension, Defendant shall not engage in gambling activity of any type, including but not limited to gambling at casinos, sweepstakes business, or activities offered by the North

Carolina Education Lottery, and shall not request the removal of her self-exclusion from Harrah's Casino;

- e. Defendant shall remain current in her installment agreement with the IRS and shall file her returns and pay her Federal and State Income Tax obligations in a timely manner. Defendant shall submit a yearly report to the State Bar's Office of Counsel (due by April 30) reporting the installment amounts and dates paid to the IRS under the installment agreement and certifying the current status of her Federal and State Income Tax returns;
- f. Defendant shall execute any written waivers and releases necessary to authorize the Office of Counsel to confer with the IRS, the NCDOR, or Defendant's CPA for the purpose of determining if Defendant has cooperated and complied with all requirements of this Order and shall not revoke such waivers or releases during the period of stay;
- g. Defendant shall provide to the Office of Counsel copies of all correspondence, including a summary of oral communications, sent to or received by her or her representative from any taxing authority within ten days of receipt;
- h. 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;
- i. Defendant shall pay all Membership dues and Client Security Fund assessments and comply with all CLE requirements on a timely basis;
- j. 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;
- k. Defendant shall not violate any of the Rules of Professional Conduct in effect during the period of the stay;

1. Defendant shall not violate any laws of the State of North Carolina, of any other state, or of the United States during the period of the stay; and
  - m. Defendant shall pay all costs and administrative fees of this proceeding as assessed by the Secretary within thirty (30) days after service of the notice of costs on her.
3. If Defendant fails to comply with any one or more of the conditions of the stay of her suspension provided in paragraphs 2(a)-2(m) above, the stay of suspension may be lifted in accordance with 27 N.C.A.C. 1B § .0118(a).
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 § .0118(b)(2), 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(j) 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 the suspension;
  - c. Complied with all provisions of 27 N.C.A.C. 1B § .0128 on a timely basis;
  - d. Complied with all provisions of 27 N.C.A.C. 1B § 0129(b);
  - e. Not have violated any of the Rules of Professional Conduct;
  - f. Not have violated any laws of the State of North Carolina, of any other state, 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 him.

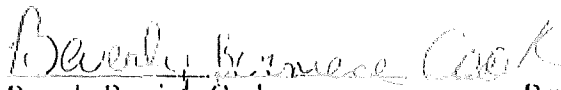
6. Defendant is taxed with the administrative fees and costs of this action as assessed by the Secretary, which shall be paid within ninety (90) days of service of the notice of costs upon Defendant, or as may be extended by the panel for good cause shown by Defendant.

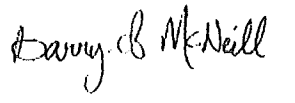
Signed by the undersigned Hearing Panel Chair with the consent of the other Hearing Panel members.


This the 16<sup>th</sup> day of February 2021.

  
Maya Madura Engle, Chair  
Disciplinary Hearing Panel

Agreed and consented to by:

  
Beverly Bernice Cook  
Defendant

  
Barry S. McNeill  
Deputy Counsel  
The North Carolina State Bar

  
Alan M. Schneider  
Counsel for Defendant