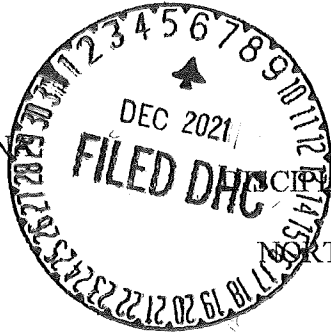


NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
17 DHC 31 R

IN THE MATTER OF)
)
Petition for Stay of)
MARK VAN LANIER GRAY, Attorney)

ORDER DENYING
PETITION FOR STAY

THIS MATTER coming before a Panel of the Disciplinary Hearing Commission for consideration of Petitioner Mark Van Lanier Gray's Petition for Stay filed pursuant to the provisions of the Order of Discipline in this matter dated May 23, 2018 and 27 N.C. Admin. Code 1B §.0118. The Petition for Stay was heard on October 22, 2021. Petitioner was present and represented by Attorney Joshua Walthall. The North Carolina State Bar was represented by Deputy Counsel Margaret Cloutier. The Panel consisted of Chair Shannon R. Joseph, and members James A. Davis, and Valencia Applewhite. Based upon the record and the evidence presented the Panel makes the following:

FINDINGS OF FACT

1. In a consent Order of Discipline filed May 23, 2018, a hearing panel of the Disciplinary Hearing Commission suspended Gray from the practice of law for four years effective thirty days from the date the Order was served on Gray.
2. Gray was served with the Order on June 12, 2018 and the effective date of the Order was July 12, 2018.
3. The Order provides that Gray may apply for a stay of any remaining period of suspension after serving eighteen months of the active suspension and upon compliance with conditions stated in the Order. The Order requires Gray to comply with the procedures set forth in 27 N.C. Admin. Code 1B § .0129(b) in applying for the stay.
4. Gray's Petition for Stay was filed on July 12, 2021.
5. The Office of Counsel for the North Carolina State Bar filed its Objection to Petition for Stay on August 10, 2021.
6. This hearing was held pursuant to the provisions of 27 N.C. Admin. Code 1B §.0118(d).

7. The Order requires that to be eligible for a stay of the remaining period of suspension Gray must establish by clear, cogent, and convincing evidence compliance with the conditions of the Order, including that:

- (a) Defendant has kept the North Carolina State Bar Membership Department advised of his current business and home addresses and notified the Bar of any change in address within ten days of such change;
- (b) Defendant has responded to all communications from the State Bar, including communications from the Attorney Client Assistance Program, within thirty days of Defendant's receipt of the communication 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 which was pending during the period of suspension;
- (c) At the time of his petition for stay, 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;
- (d) At the time of his petition for stay, there is no deficit in Defendant's completion of mandatory Continuing Legal Education (CLE) hours, in reporting such hours or in payment of any fees associated with attendance at CLE programs;
- (e) During the active suspension that preceded the motion for stay, Defendant has completed two hours of CLE regarding trust accounting and at least one of the two hours shall be a course taught by the Trust Account Compliance Counsel for the North Carolina State Bar;
- (f) During the active suspension that preceded the motion for stay, Defendant has filed state and federal tax returns for all tax years on a timely basis and timely paid all amounts owed for those tax years to the taxing authorities;
- (g) Defendant has executed any written waivers and releases necessary to authorize the Office of Counsel to confer with the Internal Revenue Service or the N. C. Department of Revenue for the purpose of determining if Defendant has cooperated and complied with all requirements of this Order;
- (h) Defendant has provided to the Office of Counsel copies of all correspondence, including summaries of oral communications, sent to or received by him or his representative from any taxing authority during the period of active suspension;
- (i) 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;

- (j) Defendant properly wound down his law practice and complied with the requirements of 27 N.C. Admin. Code 1B § .0128; and
- (k) Defendant has paid the costs and fees of the proceeding as reflected on the statement of costs served upon Defendant by the Secretary of the State Bar within thirty days of service of that statement upon Defendant.

8. By the terms of the Order, the burden of proof is on Gray to show by clear, cogent, and convincing evidence that he complied with the provisions set forth in the Order.

9. As of July 12, 2021 when Gray filed the Petition for Stay, Gray's address on record with the North Carolina State Bar Membership Department was 108 N. Elm Street, Greensboro, NC, Gray's business address. Gray did not provide his home address to the Membership Department until October 12, 2021.

10. As of July 12, 2021 when Gray filed the Petition for Stay, Gray had not taken the substance abuse/mental health CLE hour for 2017 and owed the CLE Department of the North Carolina State Bar a noncompliance fee of \$125.00 for 2017. Gray took the required substance abuse/mental health CLE on September 29, 2021 and mailed the \$125.00 owed to the CLE Department on September 30, 2021.

11. During the active suspension, Gray's 2018 and 2019 tax returns were due. Gray timely filed an extension request for his federal and state tax returns, extending the deadlines to October 15, 2019 for his 2018 returns, and to October 15, 2020 for his 2019 returns.

12. Gray provided evidence with his petition and testified at the hearing that he filed his 2018 federal return on November 25, 2019. He also submitted a copy of his 2018 tax returns into evidence at the hearing which tended to show that his 2018 federal and state tax returns were filed on or about July 18, 2020.

13. In his July 12, 2021 Petition for Stay, Gray provided evidence that he paid a portion of his 2018 federal and state tax obligations on or about October 8, 2020. Gray has provided no evidence as to when he paid the remaining portion of his 2018 federal and state tax obligations.

14. At the hearing, Gray submitted into evidence copies of his 2019 federal and state tax returns which tended to show that those tax returns were filed on October 28, 2020. Gray has provided no evidence as to when he paid his 2019 federal and state tax obligations.

15. As of July 12, 2021 when Gray filed the Petition for Stay, Gray had not provided written waivers and releases necessary to authorize the Office of Counsel to confer with the IRS or NC Department of Revenue regarding Gray's compliance with the requirements of the Order. On or about October 13, 2021, Gray provided to the Office of

Counsel a release authorizing the IRS and NC Department of Revenue to provide information to the Office of Counsel upon written request.

16. As of July 12, 2021, when Gray filed the Petition for Stay, Gray provided an affidavit signed by him stating that he wound down his law practice in compliance with 27 N. C. Admin. Code 1B §.0128. However, the affidavit stated that Gray contacted his clients by telephone and had personal conversations with them informing them of his suspension and reasons therefor. The affidavit stated that on or about May 27, 2021, Gray mailed letters via certified mail to the clients he represented at the time of his suspension informing them of the motion/petition for reinstatement. Gray did not provide copies of records of steps taken as proof of compliance with Rule .0128.

17. Rule .0128 provides that disbarred or suspended members of the North Carolina State Bar will promptly notify clients of the disbarment or suspension by certified mail, return receipt requested. The Rule further provides that a disbarred or suspended member must show that he or she has fully complied with the provisions of the order disbaring or suspending the member by affidavit filed within ten days of the effective date of the order of discipline. Finally, the Rule provides that a disbarred or suspended member will keep and maintain records of the various steps taken under the Rule so that, upon any subsequent proceedings, proof of compliance with the Rule will be available.

Based on the foregoing Findings of Fact, the Hearing Panel makes the following

CONCLUSIONS OF LAW

1. All parties are properly before the Disciplinary Hearing Commission and the Disciplinary Hearing Commission has jurisdiction over Petitioner, Mark Van Lanier Gray, and the subject matter of this proceeding.

2. Gray has not shown by clear, cogent, and convincing evidence that he has complied with the conditions required to apply for a stay of the remaining portion of the suspension set forth in the June 12, 2018 Consent Order of Discipline as follows:

- (a) Gray failed to timely provide his home address to the Membership Department of the North Carolina State Bar.
- (b) Gray had a deficit in completion of mandatory Continuing Legal Education hours and in the payment of fees associated therewith at the time of his petition for stay.
- (c) Gray failed to timely file federal and state tax returns for all tax years during the suspension and to timely pay all amounts owed for those tax years to the taxing authorities.

- (d) At the time of his petition, Gray failed to execute written waivers and releases necessary to authorize the Office of Counsel to confer with the Internal Revenue Service or the NC Department of Revenue for the purpose of determining if Gray has cooperated and complied with all requirements of the Consent Order of Discipline.
- (e) Gray did not properly wind down his practice pursuant to Rule .0128 in that he did not promptly or timely notify all of his clients in writing of his suspension and reasons therefore as required by Rule .0128 or keep and maintain records of steps taken as proof of compliance with Rule .0128.

NOW, THEREFORE, it is hereby ordered that Gray's Petition for Stay is DENIED.

Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Panel, this 6th day of December, 2021.



SHANNON R. JOSEPH, CHAIR
HEARING PANEL