

STATE OF NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
12 DHC 16

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

SHANNON LOVINS, Attorney,

Defendant

CONSENT
ORDER OF DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of M. H. Hood Ellis, Chair, and members Irvin W. Hankins, III and Percy L. Taylor pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff was represented by Jennifer A. Porter. Defendant, Shannon Lovins ("Lovins") was represented by Alan M. Schneider. Both Plaintiff and Defendant stipulate and agree to the findings of fact and conclusions of law recited in this Consent Order and to the discipline imposed. Lovins has freely and voluntarily stipulated to the foregoing findings of fact and consents to the conclusions of law and entry of the Order of Discipline. Lovins freely and voluntarily waives any and all right to appeal the entry of this consent Order of Discipline.

Lovins acknowledges that guilt of the offenses for which she pled guilty and/or was found guilty has been conclusively established for purposes of this disciplinary proceeding. Lovins acknowledges and agrees that the discipline imposed by this Order is appropriate regardless of current disposition or any change in disposition of the criminal charges arising from the conduct identified herein. Lovins acknowledges and agrees that any change in the disposition of the criminal charges identified in the Findings of Fact below will not be a basis for any change in the discipline imposed by this Order.

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, Shannon Lovins was licensed to practice law in North Carolina on March 24, 2001 and is and was at all times referred to herein, an attorney at law, subject to the rules, regulations and Rules of Professional Conduct of the North Carolina State Bar and the laws of North Carolina.

3. During all or part of the relevant periods referred to herein, Lovins was engaged in the practice of law in the State of North Carolina and maintained a law office in Asheville, Buncombe County, North Carolina.

4. Defendant was properly served with process and the matter came before the Hearing Panel with due notice to all parties.

5. On or about February 25, 2011, Lovins pled guilty to the misdemeanor offenses of disorderly conduct in violation of Tenn. Code Ann. § 39-17-305 and possession of marijuana in violation of Tenn. Code Ann. § 39-17-418 in Knoxville, Tennessee.

6. On or about August 16, 2011, Lovins pled guilty in Buncombe County to the misdemeanor offense of intoxicated and disruptive in public in violation of N.C. Gen. Stat. § 14-444 and the court granted her prayer for judgment continued.

7. On April 10, 2012, Lovins pled guilty in Rutherford County, North Carolina, to the following criminal offenses: possession of methadone and heroin, class I felonies, in violation of N.C. Gen. Stat. § 90-95(a)(3); possession of marijuana, a misdemeanor, in violation of N.C. Gen. Stat. § 90-95(d)(4); possession of a Schedule II controlled substance, a misdemeanor, in violation of N.C. Gen. Stat. § 90-95(d)(2); and possession of drug paraphernalia, a misdemeanor, in violation of N.C. Gen. Stat. § 90-113.22. Lovins entered these guilty pleas pursuant to an arrangement allowing for conditional discharge under N.C. Gen. Stat. § 90-96 if she successfully completes the probation imposed thereunder.

8. On August 28, 2012, Lovins was found guilty in Rutherford County, North Carolina of the misdemeanor offense of driving while under the influence of an impairing substance in violation of N.C. Gen. Stat. § 20-138.1, arising out of the same incident which formed the basis for the guilty plea referenced in paragraph 7.

9. Lovins' trust account was audited as part of the State Bar's random audit program in October 2011.

10. Through the random audit, it was discovered that Lovins had engaged in the following during the 12 months preceding the audit:

- (a) Failed to conduct the requisite monthly or quarterly reconciliations of her trust account;
- (b) Commingled funds by leaving her attorney fees in the trust account;

- (c) Overdisbursed funds from the trust account to third parties;
- (d) Failed to use business size checks that contain an auxiliary On-Us field;
and
- (e) Failed to maintain legible copies of the front and back of trust account checks.

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 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 pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:
 - (a) By knowingly possessing marijuana and engaging in disorderly conduct in Knoxville, Tennessee, Lovins engaged in criminal acts that reflect adversely on her honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b);
 - (b) By being intoxicated and disruptive in public in Buncombe County, North Carolina, Lovins engaged in criminal acts that reflect adversely on her honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b);
 - (c) By driving under the influence of alcohol and knowingly possessing several illegal substances, including methadone, heroin, marijuana, and drug paraphernalia, in Rutherford County, North Carolina, Lovins engaged in criminal acts that reflect adversely on her honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b);
 - (d) By failing to reconcile her trust account monthly and quarterly, Lovins failed to conduct the requisite reconciliations of her trust account in violation of Rule 1.15-3(d);
 - (e) By keeping her earned attorney's fees in her trust account, Lovins failed to segregate her funds from entrusted funds in violation of Rule 1.15-2(f);
 - (f) By disbursing funds from her trust account on behalf of clients in excess of what she had received into her trust account for those clients, Lovins failed to properly maintain and disburse entrusted funds in violation of Rules 1.15-2(a), (j), and (m);

- (g) By using business size checks that did not contain an auxiliary On-Us field for her trust account, Lovins failed to use checks with the required format and content in violation of Rule 1.15-3(a); and
- (h) By maintaining copies of only the front of trust account checks, Lovins failed to maintain legible copies of the front and back of trust account checks in violation of Rule 1.15-3(b)(2)(A).

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

FINDINGS OF FACT REGARDING DISCIPLINE

1. Lovins' criminal conduct and her status as an attorney were known to the public, both through court records and the internet.
2. Lovins' conduct included use of illegal, mind-altering, and addictive substances.
3. Lovins engaged in dangerous and destructive behavior, such as driving under the influence and being disruptive and disorderly, while in possession of and/or while under the influence of such substances.
4. Lovins' failure to follow proper trust account management and record-keeping procedures resulted in mishandling of entrusted funds.
5. There is no evidence that Lovins' failure to follow proper trust account management procedures was the result of dishonesty or was for self-gain.
6. Lovins has no prior discipline.
7. Lovins has been cooperative with the State Bar's investigation of the conduct described herein.
8. 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.

Based on the Findings of Fact and Conclusions of Law above and the additional Findings of Fact Regarding Discipline, and with the consent of the parties, 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. In addition, the Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors warrant suspension of Defendant's license:

- (a) Intent of Defendant to commit acts where the harm or potential harm is foreseeable;
- (b) Negative impact, and potential negative impact, on the client's or public's perception of the legal profession; and
- (c) Effect, and potential effect, of Defendant's conduct on third parties.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(2) of the Rules and Regulations of the North Carolina State Bar, and concludes one factor, commission of a felony, is present and could be a basis for disbarment, but that disbarment is not warranted here given the nature, facts, and circumstances of the conduct in this case.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(3) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are applicable in this matter:

- (a) Defendant engaged in multiple offenses;
- (b) Defendant engaged in a pattern of misconduct;
- (c) Defendant's full and free disclosure to the Hearing Panel and cooperative attitude toward the proceedings;
- (d) Defendant's remorse; and
- (e) Defendant has practiced law in North Carolina for 11 years.

4. The criminal conduct in which Defendant engaged directly reflects upon her fitness to engage in the profession of an attorney and counselor at law. Her conduct also reflects negatively upon the legal profession.

5. Defendant's failure to properly maintain, manage, and handle entrusted funds betrays a vital trust clients and the public place in attorneys and the legal profession.

6. Defendant's conduct, if continued or tolerated by the Bar, poses potential significant harm to future clients and the profession.

7. The Hearing Panel has considered issuing an admonition, reprimand or censure but concludes that such discipline would not be sufficient discipline because of the gravity of the potential harm to the clients. The Panel further concludes that such discipline would fail to acknowledge the seriousness of the offenses committed by Defendant and send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

8. This Hearing Panel has considered lesser alternatives and concludes that a suspension is necessary to adequately protect the public from future misconduct by Defendant.

9. For these reasons, this Hearing Panel finds that an order imposing discipline short of suspension of Defendant's law license would not be appropriate.

Based upon the foregoing Findings of Fact and Conclusions of Law and the 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. Defendant, Shannon Lovins, is hereby suspended from the practice of law for five years, effective 30 days from service of this Order upon Lovins.

2. Defendant shall submit her 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 comply with the wind down provisions contained in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124(b) of the North Carolina State Bar Discipline & Disability Rules. Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within 10 days of the effective date of this Order, certifying she has complied with the wind down rule.

4. 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, and Defendant shall promptly return all files to her clients upon request.

5. Defendant shall pay the administrative fees and costs of this disciplinary proceeding within 30 days of service of the statement of fees and costs upon her.

6. After serving two years of the active suspension of her license, Defendant may be eligible to apply to have the remainder of the suspension stayed if she meets the conditions set out below. Defendant must be in compliance with these conditions at the time of her petition as well as at the time of the effective date of any stay of her suspension. Defendant must prove compliance with these conditions by clear, cogent,

and convincing evidence. After two years from the effective date of this Order, Defendant may apply to have the remainder of the suspension stayed by filing a petition with the Secretary of the North Carolina State Bar demonstrating the following:

- (a) That she properly wound down her law practice and complied with the terms of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the State Bar Discipline & Disability Rules;
- (b) That she paid the fees and costs of this proceeding within 30 days of service of the statement of fees and costs upon her;
- (c) That within 15 days of the effective date of this Order Defendant provided the State Bar with an address and telephone number at which clients seeking return of files could communicate with Defendant and obtain such files, and that Defendant promptly returned all files to her clients upon request;
- (d) That Defendant complied with all terms and conditions of any order of the court pertaining to her guilty pleas and convictions;
- (e) That Defendant is not incarcerated at the time of the filing of her petition;
 - i. Defendant must not be incarcerated at the time of any stay of her suspension.
- (f) That Defendant has abstained from the consumption of any alcohol and from the consumption of any controlled substance, other than as expressly authorized by a treating physician, continuously for the two years immediately preceding the filing of her petition for stay.
 - i. This abstinence must continue from the date of the filing of her petition through the effective date of any stay.
 - ii. Evidence of compliance with this condition must include compliance with the monitoring requirements of FirstLab Professional Health Monitoring Program or other service agreed to in advance by the Office of Counsel of the North Carolina State Bar (hereinafter "monitoring laboratory"). Such monitoring will be at Defendant's expense. Such monitoring will include daily call-ins, random observed urine collection, and testing for the substances identified by the North Carolina State Bar. Such monitoring will include at least thirteen random drug and alcohol screens per year. Compliance shall include having no failures to test and having no positive test results that are not consistent with proper authorized use of a prescribed medication. The monitoring agreement with the monitoring laboratory will require the

monitoring laboratory to report to the North Carolina State Bar the following: any failure of Defendant to call in; any failure of Defendant to submit an observed urine sample at a location approved by the monitoring laboratory when directed to do so by the monitoring laboratory; any failure of Defendant to pay for a test; dilution in excess of the parameters set by the monitoring laboratory or any other indication of any attempt by Defendant to alter her urine specimen or impair the ability of the testing to detect alcohol or controlled substances in her urine; and any positive test result. If there is any positive test result, Defendant shall cooperate in any medical review to determine whether any positive test result is consistent or inconsistent with any authorized medications prescribed to Defendant, at Defendant's expense. The monitoring laboratory will report the results of any such medical review to the State Bar. The monitoring agreement will include authorization for the State Bar to set the hours during which Defendant must call in and the hours during which Defendant must have her urine sample collected. Defendant will sign all necessary releases or documents to allow such reporting and shall not revoke the release during the period of monitoring;

- (g) That Defendant was evaluated within 30 days of the effective date of this Order by a psychiatrist or mental health provider who specializes in treatment of substance abuse addiction;
- (h) That for the two years immediately preceding her petition for stay, Defendant followed and complied with any treatment recommendations of the psychiatrist or mental health provider, or, if none, participated regularly and continually on at least a weekly basis in a program designed to assist those with substance abuse addictions;
- (i) That Defendant submitted to comprehensive evaluations by two separate psychiatrists or other mental health professionals who specialize in the treatment of substance abuse addiction, who are selected by or acceptable to the Office of Counsel of the North Carolina State Bar. Such evaluations must occur no sooner than 90 days prior to the date of the filing of the petition. Both psychiatrists/mental health professionals must have certified under oath, based on independent comprehensive evaluations of Defendant, that in their professional opinion Defendant's addiction(s) are controlled and do not pose any risk of harm to potential clients or the public and that she does not suffer from any addiction, disability, or mental, psychological, emotional, or other condition or circumstance that significantly impairs her professional judgment, performance, or competence as an attorney;

- (j) That Defendant attached to her petition the sworn certifications from the two evaluating mental health professionals. Defendant must also attach to her petition releases or authorizations instructing the evaluating mental health professionals to discuss their evaluation of her and to release any corresponding records to the Office of Counsel of the State Bar. Defendant shall provide any additional releases or authorizations that may be necessary upon request by the Office of Counsel;
- (k) That Defendant has kept the North Carolina State Bar Membership Department advised of her current physical home address;
- (l) That Defendant has responded to all communications from the North Carolina State Bar received after the effective date of this Order within 30 days of receipt or by the deadline stated in the communication, whichever is sooner;
- (m) That Defendant paid all outstanding membership fees, Client Security Fund assessments and fees or costs assessed by the DHC or the State Bar and complied with and satisfied any outstanding continuing legal education requirements imposed by the State Bar; and
- (n) That she has not violated the Rules of Professional Conduct or the laws of the United States or any state.

7. The procedures of 27 N.C. Admin. Code Chapter 1, Subchapter B, Section .0125(b) shall govern Defendant's petition for a stay of the remainder of the suspension of her law license.

8. If the State Bar does not file an objection to Defendant's petition for a stay of the remainder of her suspension as described in 27 N.C. Admin. Code Chapter 1, Subchapter B, Section .0125(b)(6), then pursuant to Section .0125(b)(5) the Secretary shall put into effect the stay of the remaining period of suspension provided for in this Order by reinstating Defendant to active status subject to the terms, conditions, and requirements of this Order of Discipline, with Defendant's active status contingent upon continued compliance with the terms of this Order. Such stay will continue in force only as long as Defendant continues to comply with all conditions in this Order, including the conditions set out in paragraph 10 below. The Disciplinary Hearing Commission will retain jurisdiction of the matter until all conditions of the Order are satisfied, under 27 N.C. Admin. Code Chapter 1, Subchapter B, Section .0114(x).

9. If the State Bar files an objection to Defendant's petition for a stay of the remainder of her suspension as described in 27 N.C. Admin. Code Chapter 1, Subchapter B, Section .0125(b)(6), then pursuant to Section .0125(b)(7) the Secretary shall refer the matter to the Chair of the Disciplinary Hearing Commission. The Chair of the Disciplinary Hearing Commission shall appoint a hearing panel and set the matter for hearing as described in Section .0125(b)(7). The Chair of the Disciplinary Hearing

Commission shall appoint as members of the hearing panel the members entering this Order if practicable.

10. If Defendant is granted a stay of her suspension, the stay of her suspension will remain in effect only if Lovins complies, and continues to comply, with the following conditions:

- a. Comply with all terms and conditions of any order of the court pertaining to her guilty pleas and convictions;
- b. Abstain from the consumption of any alcohol during the period of stay;
- c. Abstain from the consumption of any controlled substance other than as expressly authorized by a treating physician during the period of stay;
- d. Comply with the monitoring requirements of FirstLab Professional Health Monitoring Program or other service agreed to by the parties ("monitoring laboratory"), at Lovins' expense. Such monitoring will include daily call-ins, random observed urine collection, and testing for the substances identified by the North Carolina State Bar. Such monitoring will include at least thirteen random drug and alcohol screens per year. Compliance shall include having no failures to test and having no positive test results that are not consistent with proper authorized use of a prescribed medication. The monitoring agreement with the monitoring laboratory will require the monitoring laboratory to report to the North Carolina State Bar the following: any failure of Defendant to call in; any failure of Defendant to submit an observed urine sample at a location approved by the monitoring laboratory when directed to do so by the monitoring laboratory; any failure of Defendant to pay for a test; dilution in excess of the parameters set by the monitoring laboratory or any other indication of any attempt by Defendant to alter her urine specimen or impair the ability of the testing to detect alcohol or controlled substances in her urine; and any positive test result. If there is any positive test result, Defendant shall cooperate in any medical review to determine whether any positive test result is consistent or inconsistent with any authorized medications prescribed to Defendant, at Defendant's expense. The monitoring laboratory will report the results of any such medical review to the State Bar. The monitoring laboratory will also report whether any positive test result is consistent or inconsistent with any authorized medications prescribed to Defendant. The monitoring agreement will include authorization for the State Bar to set the hours during which

Defendant must call in and the hours during which Defendant must have her urine sample collected. Defendant will sign all necessary releases or documents to allow such reporting and shall not revoke the release during the period of monitoring;

- e. Engage in ongoing treatment by a mental health professional who specializes in substance abuse addiction or participate in a program approved by the Office of Counsel of the State Bar to ensure her addiction(s) remain under control and pose no risk to clients or the public. The mental health professional or the program shall notify the State Bar if Defendant fails to participate in the treatment or program or fails to follow the recommendations of the mental health provider or the program, as applicable. Defendant shall ensure this notification is made. Defendant will sign all necessary releases or documents to allow such notification and to allow the mental health provider or program to discuss Defendant's participation and treatment with the Office of Counsel of the State Bar, and shall not revoke the release during the period of stay;
- f. Each month Lovins shall provide the State Bar with the three-way reconciliation of her trust account described in the State Bar Lawyer's Trust Account Handbook on pages 35-40 (reference is to the edition last revised in May 2011). Lovins shall provide the three-way reconciliation report, client ledgers for all clients with funds in her trust account during that month, ledger for any personal funds maintained in the trust account for bank or credit card fees, her trust account ledger, and the bank statement, cancelled checks, and deposit slips for each month. These documents are due on the 15th day of the following month -- for example, the three-way reconciliation for the month of January is due on February 15;
- g. Lovins shall not violate any state or federal laws or any provisions of the Rules of Professional Conduct during the period of the stayed suspension;
- h. Defendant shall not be not arrested or incarcerated for any reason during the stay of her suspension;
- i. Lovins shall respond to all State Bar requests for information as required by Rule 8.1(b) of the Rules of Professional Conduct by the earlier of the deadline stated in the communication or within 30 days of receipt;
- j. Lovins shall timely comply with all State Bar membership and Continuing Legal Education requirements; and

k. Lovins shall keep the North Carolina State Bar membership department advised of her current home and business street (not P.O. Box) addresses and telephone numbers.

11. If an order staying any period of this suspension is entered and the Defendant fails to comply with any one or more of the conditions set out in this Order of Discipline, then the stay of the suspension of her law license may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

12. If Defendant does not seek a stay of the active portion of the suspension of her law license or if some part of the suspension is stayed and thereafter the stay is revoked, Defendant must comply with the conditions set out in paragraph 6(a) through (n) above as well as the requirements of 27 N.C. Admin. Code 1B, § .0125(b) in order to be reinstated from this suspension to active status.

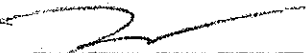
13. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of any stayed suspension.

Signed by the Chair with the consent of the other Hearing Panel members, this the 5th day of December, 2012.




M.H. Hood Ellis
Chair, Disciplinary Hearing Panel

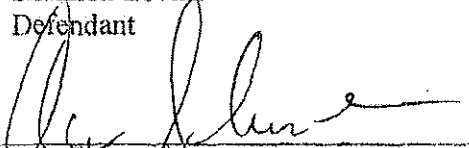
CONSENTED TO BY:


Jennifer A. Porter
Counsel for Plaintiff

11/19/2012
Date


Shannon Lovins
Defendant

11/15/12
Date


Alan M. Schneider
Counsel for Defendant

11/15/2012
Date