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STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO.: 02 CRS 23101

IN RE MARK FLOYD REYNOLDS, II
Attorney at Law

ORDER OF DISCIPLINE
SUSPENDING LAW LICENSE

This matter was scheduled for hearing on July 21, 2003, pursuant to an Order to Show Cause issued to Mark Floyd Reynolds, II dated May 22, 2003. The matter was continued due to a health issue of counsel for Mr. Reynolds. The Court was informed in October 2003 that Mr. Tate, then counsel for Mr. Reynolds, was unlikely to be available during the month of November and it was not clear when he would become available.¹ The Court found that this matter needed to be rescheduled expeditiously, as there had already been substantial delays. The Court relieved Mr. Tate as Mr. Reynolds' counsel. This matter was rescheduled for November 24, 2003, and Mr. Reynolds was given the opportunity to obtain different counsel. This matter came on for hearing on November 24, 2003, before the undersigned judge presiding. Mr. Reynolds was present, without counsel. Present for the State Bar were Jennifer Porter and Carolin Bakewell. The Court heard evidence and arguments from the Bar and from Mr. Reynolds.

Based on the record, the Court finds that the evidence establishes the following facts beyond a reasonable doubt, and makes the following

FINDINGS OF FACT

1. This Court issued an Order of Discipline in this case to Mark Floyd Reynolds, II (Mr. Reynolds) on December 27, 2002. This Order censured Mr. Reynolds for neglecting a client's appeal in First National Pawn, Inc., et al, v. City of Greensboro, et al., 00 CvS 2711, filed in Guilford County Superior Court, and for making a false representation to the Court. Additionally, the Court ordered Mr. Reynolds to submit to a mental health evaluation at his own expense by a licensed mental health professional of

¹ The Court has received no communications directly from Mr. Tate. All correspondence in this matter has been placed in the Court file.

A TRUE COPY
CLERK OF SUPERIOR COURT
GUILFORD COUNTY
BY *Jennifer Porter*

his choosing approved by the State Bar no later than March 10, 2003. This Court further ordered Mr. Reynolds to provide proof of compliance with these terms to the State Bar by March 28, 2003.

2. Sandie Chappell, Deputy Clerk of Superior Court, Guilford County, mailed a copy of the Court's December 27, 2002, order to Mr. Reynolds on December 30, 2002.

3. Mr. Reynolds did not obtain a mental health evaluation by March 10, 2003.

4. Mr. Reynolds did not provide proof of compliance with this Court's order to the State Bar by March 28, 2003.

5. Mr. Reynolds did not obtain the approval of the State Bar for any mental health provider to perform the mental health evaluation.

6. Mr. Reynolds did obtain a mental health evaluation, which lists the dates of assessment as July 17, 2003, and August 15, 2003, from Thomas Hedding, whose evaluation of Mr. Reynolds indicates he is a licensed psychologist.

7. Mr. Reynolds did not provide a copy of this evaluation to the State Bar.

8. Carolin Bakewell, Counsel for the State Bar, contacted Mr. Richard Tate, Mr. Reynolds' attorney, regarding Mr. Reynolds' compliance with this Court's order. Ms. Bakewell received no response.

9. Neither Mr. Reynolds nor Mr. Tate contacted the State Bar before the deadlines set by the Court to discuss any problems complying with the Court's order or to discuss obtaining an extension of time to comply with the Court's order.

10. Mr. Reynolds knew of this Court's December 27, 2002, Order and willfully failed to comply with its terms.

11. Mr. Reynolds' failure to comply with this Court's order is not an isolated incident. Mr. Reynolds has failed to comply with numerous orders of the United States District Court for the Middle District of North Carolina, as described in that Court's September 9, 2003, Memorandum Order Staying Cases, filed in case number 1:03 MC 0089.

12. Mr. Reynolds' violations of orders of the United States District Court for the Middle District of North Carolina, including discovery orders and scheduling orders,

have negatively impacted his clients and led that Court to stay Mr. Reynolds' pending cases in that Court to prevent any further harm while Mr. Reynolds' conduct is investigated. One of the reasons Mr. Reynolds was originally disciplined by this Court was because he did not undertake the work necessary to perfect an appeal, inaction that negatively impacted a client.

13. One of the reasons Mr. Reynolds was originally disciplined by the Court was because he made a false statement to the Court. During his testimony and argument at the hearing on November 24, Mr. Reynolds made at least one statement to the Court that was not true. Specifically, Mr. Reynolds stated that "nobody has every questioned my honesty and integrity," yet in the Order entered in 1:03 MC 0089, a United States District Court Judge specifically expressed "concerns about Mr. Reynolds' ability or willingness . . . to be candid with the Court," and anyone reading that Order would conclude that it raised very substantial questions about Mr. Reynolds' honesty. Two other statements made during the hearing either were not true or if they were true, show disregard for his professional and ethical obligations. Specifically, Mr. Reynolds testified that he had not seen the written report by psychologist Thomas Hedding before the November 24 hearing; during cross-examination, however, he admitted that he had the report in his possession several months ago and personally delivered the report to the Clerk of the United States District Court for the Middle District of North Carolina. Mr. Reynolds testified that he did not read the report at that time. If Mr. Reynolds in fact did not read the report, this shows a further disregard for the Court's orders, which specifically required that Mr. Reynolds comply with any treatment recommendations made in the evaluation. If Mr. Reynolds did read the report, which seems more likely, then he was once again dishonest with the Court. Further, Mr. Reynolds testified that his client in the *First National Pawn* lawsuit directed him to dismiss the appeal in that case. If this is true, then Mr. Reynolds violated numerous rules of professional conduct by arguing to the Court in violation of his client's instructions that the appeal should not be dismissed. If it is not true, which seems more likely, then Mr. Reynolds has again been dishonest with the Court.

14. At the November 24 hearing, Mr. Reynolds made numerous contradictory statements about whether he had or had not received copies of certain documents,

whether he did or did not have notice of hearings, whether his client lived in county or out of state, and his correct mailing address. His ability to be honest with the Court is still under question.

15. Mr. Reynolds' attitude at the November 24 can best be characterized as deliberately dense. He seems unwilling to understand the magnitude of the problem he is facing in this Court or in the United States District Court and disinclined to concern himself with requirements of which he does not approve, even when they are in court orders. This disconnect from reality about his own legal situation is particularly disturbing when one realizes that Mr. Reynolds is presently providing legal advice to laypeople who are highly likely to rely on his judgment and evaluation of their legal problems.

16. The mental health evaluation Mr. Reynolds underwent raises as many questions as it answers. Mr. Reynolds did not disclose to the psychologist the extent of his problems with the courts and he was otherwise not forthcoming with the psychologist. Mr. Reynolds' testimony and argument at the November 24 hearing, while not completely incoherent, was confused and confusing and did not give rise to any confidence that Mr. Reynolds does not have mental health problems or issues.

17. Mr. Reynolds has not accepted responsibility for this violation, has engaged in a pattern of violating court orders, and has given no reliable assurance that he will not violate an order of the Court again.

Based on these findings of fact, the Court CONCLUDES as a matter of law that:

1. In evaluating the evidence and imposing the requirements made herein, the Court is acting pursuant to its inherent authority and duty to discipline attorneys, to protect itself from impropriety, to protect the public, and to safeguard the administration of justice. See, e.g., In re Hunoval, 294 N.C. 740, 744 (1977); State v. Spivey, 213 N.C. 45 (1938); In re Paul, 84 N.C. App. 491, 499-500, cert. denied, 319 N.C. 673 (1987), cert. denied, 484 U.S. 1004 (1988). The Court's inherent power is not limited or bound by the technical precepts contained in the Rules of Professional Conduct. Swenson v. Thibaut, 39 N.C. App. 77, 109 (1978), cert. denied and appeal dismissed, 296 N.C. 740 (1979).

2. The Court also acts pursuant to its authority to address indirect criminal contempt of court, pursuant to N.C. Gen. Stat. §§ 5A-11 and 5A-13, after having held this plenary hearing for criminal contempt pursuant to N.C. Gen. Stat. § 5A-15.

3. Mr. Reynolds's violation of this Court's December 27, 2002, order was done knowingly and willfully.

4. Mr. Reynolds' disregard of this Court's order harms the administration of justice by impairing this Court's ability to address Mr. Reynolds' behavior before it, and by generally impairing this Court's ability to regulate attorneys who appear before it.

5. Mr. Reynolds' violation of this Court's order is part of a broader pattern of violating orders of the courts, some of which have negatively impacted clients. Mr. Reynolds' violation of this Court's order causes concern for the protection of the public.

6. The Court has evaluated other and lesser sanctions and/or disciplinary measures in light of all the evidence and finds in its discretion that lesser disciplinary measures would not be appropriate. Specifically, the Court has considered suspending Mr. Reynolds' license and staying that suspension upon appropriate terms and conditions. Given Mr. Reynolds' behavior over the last year, the Court has no confidence that Mr. Reynolds would comply with the terms and conditions the Court would impose, which failure would require further action before the Court. The Court has determined therefore that it is appropriate to place the burden on Mr. Reynolds to seek a stay, if he is so inclined and willing to comply with appropriate terms and conditions.

It is therefore ORDERED that:

1. Mark Floyd Reynolds, II is hereby suspended from the practice of law for two years, effective 60 days from the date this Order is mailed to him by the Clerk. He shall comply with any written directives of the North Carolina State Bar concerning wrapping up his practice during the course of the next 60 days. He shall take all necessary steps to promptly withdraw from all pending cases. This obligation is personal to Mark Floyd Reynolds II and cannot be delegated to any other person, including any lawyer Mr. Reynolds might hire.

2. The Court will stay the period of suspension upon written motion from Mr. Reynolds, which motion demonstrates that he has:

- (a) obtained a mental health evaluation from a licensed provider approved by the State Bar and provided a copy of same to the Court and to the State Bar;
- (b) contacted the Lawyers Assistance Program (LAP) of the North Carolina State Bar, agreed to fully cooperate with any and all evaluations and treatments directed by LAP, entered into a LAP contract, and provided a copy of the signed contract to the Court;
- (c) consented to, authorized, and directed LAP: to notify the Office of Counsel of the North Carolina State Bar if, at any time during the stay period, he fails to comply with the prescribed course of treatment of the Lawyers Assistance Program; to provide a final report to the Office of Counsel of the North Carolina State Bar if, at any time during the stay period, he completes the prescribed course of treatment and is released from care; and to discuss his progress and treatment with the Office of Counsel of the North Carolina State Bar;
- (d) asked a member of the North Carolina State Bar in good standing who practices law in Guilford County and who has been approved by the North Carolina State Bar to serve as his supervising attorney during the period of the stay and that the selected attorney has agreed to so serve and agreed to submit quarterly reports to the Court and the North Carolina State Bar;
- (e) consented to entry of an Order staying the suspension of his license requiring him to:
 - (i) fully cooperate with any and all evaluations and treatment directed by the Lawyers Assistance Program (LAP) of the North Carolina State Bar and to comply with all requirements of the contract he has signed with LAP;

- (ii) provide written quarterly reports to the Office of Counsel confirming that he is participating in LAP, such reports being due on January 1, April 1, July 1, and October 1 of each year of the stay period;
- (iii) not revoke any consent, authorization, or directives he has given in the Motion requesting the Stay;
- (iv) submit to supervision by the supervising attorney with whom he shall meet at least once a month and to whom he shall report the status of all current client matters, cooperate with the supervising attorney and provide any information the supervising attorney deems reasonably necessary to ensure that Mr. Reynolds is handling all client matters in a timely fashion and that Mr. Reynolds responds to his clients promptly, and to pay the cost, if any, of retaining the supervising attorney;
- (v) provide to the North Carolina State Bar and to the Court a copy of any and all Orders entered by the United States District Court for the Middle District of North Carolina in In Re: Mark Floyd Reynolds, II, 1:03 MC 0089; and
- (vi) be truthful in all statements, representations, and testimony made to and before all Courts in which he appears.

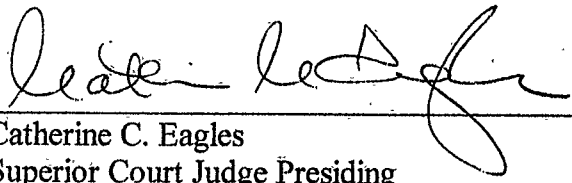
Upon submission of a satisfactory Motion and proposed Consent Order demonstrating compliance with and agreement to the above terms, the Court will enter a stay of the suspension.

3. This Court retains jurisdiction to enter further orders in connection with this Order, if necessary and appropriate, upon motion by either Mr. Reynolds or the State Bar.

4. The Clerk shall mail a filed copy of this Order to Mark Floyd Reynolds II at both addresses provided by him at the November 24, 2003, hearing, and shall fax a filed copy of this Order to him at 336/887-0005. The Court has arranged for an unfiled copy to be faxed to Mr. Reynolds on the date the Order is signed.

5. The Clerk shall further provide a filed and certified copy of this Order to Hon. John Brubaker, Clerk of Court for the United States District Court for the Middle District of North Carolina, and to the North Carolina State Bar.

This the 11 day of December, 2003.


Catherine C. Eagles
Superior Court Judge Presiding