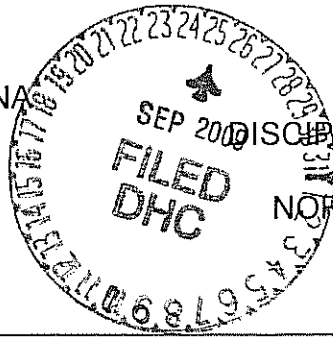


NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
09 DHC 5

THE NORTH CAROLINA STATE BAR,)
Plaintiff)

v.)

MARK L. BIBBS, Attorney,)
Defendant)

CONSENT ORDER OF
DISCIPLINE

This matter was considered by a Hearing Committee of the Disciplinary Hearing Commission composed of Tommy W. Jarrett, Chair, Harriett Smalls, and David L. Williams. Margaret Cloutier represented plaintiff. Defendant was represented by Alan M. Schneider. Defendant waives formal hearing. The parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Defendant also stipulates that Defendant waives his right to appeal this consent order or challenge in any way the sufficiency of the findings by consenting to the entry of this order.

Based on the consent of the parties, the Hearing Committee hereby finds by clear, cogent and convincing evidence the following

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar (hereinafter "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, Mark L. Bibbs (hereinafter "Bibbs" or "Defendant"), was admitted to the North Carolina State Bar on March 23, 1996 and is, and was at all times referred to herein, an Attorney at Law licensed to practice in North Carolina, subject to the rules, regulations, and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During the times relevant herein, Defendant actively engaged in the practice of law in the State of North Carolina and maintained a law office in Wilson, Wilson County, North Carolina.

4. On November 8, 2004 Defendant was charged in Wilson County with operating a motor vehicle on a street or highway while subject to an impairing substance in violation of N.C.G.S. §20-138.1, in a case bearing Wilson County file number 04CRS56218.

5. On August 3, 2006 Defendant entered a plea of guilty in Wilson County Superior Court and was found guilty of the criminal offense of operating a motor vehicle on a street or highway while subject to an impairing substance, a misdemeanor, in Wilson County file number 04CRS56218.

6. In file number 04CRS56218 Defendant was given a suspended sentence and placed on supervised probation for twelve months beginning August 3, 2006.

7. On January 30, 2007 Defendant was charged in Wilson County with operating a motor vehicle on a street or highway while subject to an impairing substance in violation of N.C.G.S. §20-138.1 and driving while license revoked in violation of N.C.G.S. 20-28, in a case bearing Wilson County file number 07CR50601.

8. On September 10, 2007 Defendant entered a plea of guilty in Wilson County District Court and was found guilty of the criminal offenses of operating a motor vehicle on a street or highway while subject to an impairing substance and driving while license revoked, misdemeanors, in Wilson County file number 07CR50601.

9. In file number 07CR50601 Defendant was sentenced to serve ninety days in the Department of Correction for driving while subject to an impairing substance, and placed on supervised probation for driving while license revoked beginning September 10, 2007. Defendant was credited with time spent in in-patient treatment and did not serve active time under this judgment.

10. On November 9, 2007 Defendant was found to be in violation of the suspended sentence ordered in case number 04CRS56218 for the facts underlying the conviction in 07CR50601 and sentenced to serve four weekends in the county jail. In addition, Defendant's sentence in 04CRS56218 was modified to 1) extend probation until August 3, 2009, 2) prohibit Defendant from using, possessing or consuming any alcoholic beverage or controlled substance, 3) provide that Defendant submit upon the request of any law enforcement officer to any test for the detection of alcohol or controlled substance, and 4) be subject to immediate arrest for any such test having a positive result.

11. On December 5, 2008 in telephone conversations with two employees of the Wilson County Clerk of Court, Defendant loudly argued with and used profanity toward the employees. Shortly thereafter, while in the common area of

the courthouse, Defendant argued loudly with and used profanity toward the elected Clerk of Court.

12. Shortly after these conversations with courthouse personnel, at the request of his probation officer, Defendant was administered an alcohol breath test and registered .19 alcohol content.

13. On January 26, 2009 Defendant was found to be in violation of the modified sentence in case number 04CRS56218 for having tested positive for the consumption of alcohol on December 5, 2008. Defendant was ordered to serve sixty-one days in the Department of Correction.

Based on the foregoing Findings of Fact, the Committee enters the following

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Committee, and the Committee has jurisdiction over Defendant and the subject matter of this proceeding.

2. Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. §84-28(b)(2) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of the actions as follows:

a. by unlawfully and willfully operating a motor vehicle on a public street or highway while subject to an impairing substance on November 8, 2004 and January 30, 2007, by driving while his license was revoked on January 30, 2007, and by conviction of such criminal offenses, Defendant committed criminal acts that reflect adversely on his trustworthiness or fitness to practice law in other respects in violation of Rule 8.4(b) and has been convicted of a criminal offense showing professional unfitness in violation of N.C.G.S. §84-28(b)(1);

b. by violating the terms and conditions of his suspended sentence in 04CRS56218 on January 30, 2007 and December 5, 2008, Defendant engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d); and

c. by arguing with and using profanity toward courthouse personnel, Defendant engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Committee also enters the following

FINDINGS REGARDING DISCIPLINE

1. Defendant participated in a 90-day residential recovery program between February and May 2007.
2. Defendant has not been disciplined by the North Carolina State Bar in the past.

CONCLUSIONS REGARDING DISCIPLINE

1. Defendant's misconduct is aggravated by the following factors:
 - a. his conduct constituted multiple violations of the rules;
 - b. he engaged in a pattern of misconduct; and
 - c. he has substantial experience in the practice of law.
2. Defendant's misconduct is mitigated by the following factors:
 - a. he has no prior discipline;
 - b. he had no dishonest or selfish motives;
 - c. he has made full and free disclosure to the hearing committee and has had a cooperative attitude toward these proceedings; and
 - d. other sanctions have been imposed in connection with his criminal convictions, including serving time in jail.
3. The mitigating factors outweigh the aggravating factors.
4. Defendant's conduct, if continued or tolerated by the Bar, poses a significant risk of potential harm to future clients.
5. Defendant's conduct adversely affects the standing of the legal profession in the eyes of the public and substantial discipline is warranted to assure the public that the Bar will not tolerate violations of the criminal laws by attorneys in this State.
6. The DHC Committee has considered all disciplinary alternatives less than suspension and concludes that any lesser form of discipline would fail to acknowledge the seriousness of the offenses committed by Defendant, would fail

adequately to protect the public from significant risk of harm to future clients, and send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar in this State.

7. Given the nature of Defendant's violations, the Hearing Committee concludes that active suspension is unnecessary as long as Defendant refrains from alcohol consumption. The Committee concludes that the public will adequately be protected by suspension of Defendant's license stayed for a period of time with conditions imposed upon Defendant designed to ensure Defendant receives continuing treatment for his addiction and compliance with the Revised Rules of Professional Conduct.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Findings Regarding Discipline, and upon consent of the parties, the Hearing Committee enters the following

ORDER OF DISCIPLINE

1. The license of Defendant, Mark L. Bibbs, is hereby suspended for one year from the date this Order of Discipline is served upon him.

2. The period of suspension is stayed for three years as long as Defendant complies, and continues to comply during the period of stay, with the following conditions:

a. Abstain from the consumption of any alcohol during the period of stay;

b. Abstain from the consumption of any controlled substance other than as expressly authorized by a treating physician during the period of stay;

c. Successfully comply with the monitoring requirements of FirstLab Professional Health Monitoring Program or other service agreed to by the parties, at Defendant's expense. Such monitoring will include twelve alcohol screens per year. The monitoring agreement will require the monitoring service to report to the North Carolina State Bar any failure of Defendant to take or pay for the test and any positive test result. Defendant will enter into a monitoring program within thirty days of the date of this order. Defendant will sign all necessary releases or documents to allow such reporting and shall not revoke the release during the period of stay.

d. Attend at least three AA meetings per week beginning ten days from the date of this order and work with a sponsor willing to make reports of Defendant's attendance to the North Carolina State Bar. Within fifteen

days of the date of this order, Defendant will notify the North Carolina State Bar of the identity and contact information for the sponsor with whom he will be working on the AA program. Defendant will detail his AA meeting attendance to his sponsor in any manner required by the sponsor. Defendant will authorize and instruct his sponsor to provide monthly written reports to the North Carolina State Bar of the dates on which the sponsor is confident that Defendant attended AA meetings. The first such report shall be submitted to the North Carolina State Bar thirty days from the date of this order and subsequent reports submitted on the first day of each month thereafter. Any cost associated with the attendance or report shall be borne by Defendant.

e. Defendant shall not violate any state or federal laws or any provisions of the Revised Rules of Professional Conduct during the period of the stayed suspension;

f. Defendant 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;

g. Defendant shall timely comply with all State Bar membership and Continuing Legal Education requirements; and

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

3. If the stay granted herein is revoked or the suspension of Defendant's license is activated for any reason, before seeking reinstatement of his license to practice law, Defendant must show by clear, cogent and convincing evidence that he has complied with each of the following conditions:

a. Submitted his license and membership card to the Secretary of the North Carolina State Bar within thirty days of service upon him of the order suspending his law license;

b. Complied with all provisions of 27 N.C.A.C. 1B § .0124 of the State Bar Discipline and Disability Rules on a timely basis following the order suspending his law license;

c. Demonstrated that he is not suffering from any addiction, disability or condition that would impair his ability to competently engage in the practice of law;

d. Demonstrated that he has abstained from all alcohol or illicit drug use or consumption and has not taken any prescription drugs or controlled substances other than as authorized by his treating physician for at least one year next preceding the filing of his petition for reinstatement. This requirement will apply regardless of when any stay is lifted and regardless of whether enforcement of this provision would extend the period of suspension of Defendant's law license beyond the period set out herein;

e. Provided the Office of Counsel with releases to obtain and review his medical records, including psychological and mental health evaluations, and substance abuse counseling records, and to interview his medical care providers and substance abuse counselors; and

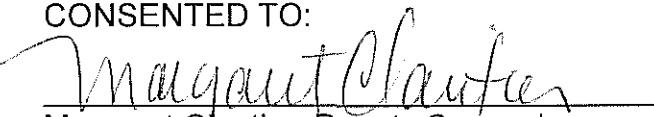
f. Paid all outstanding membership fees, Client Security Fund assessments and costs assessed by the DHC or the State Bar and complied with any outstanding continuing legal education requirements imposed by the State Bar.

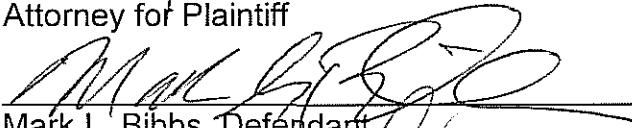
4. Defendant is taxed with the costs of this action as assessed by the Secretary which shall be paid within thirty days of service of the notice of costs upon Defendant.

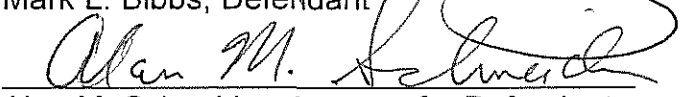
Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Committee, this 23rd day of September, 2009.


TOMMY W. JARRETT, CHAIR
HEARING COMMITTEE

CONSENTED TO:


Margaret Cloutier, Deputy Counsel
Attorney for Plaintiff


Mark L. Bibbs, Defendant


Alan M. Schneider, Attorney for Defendant