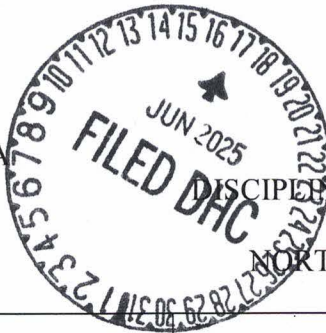


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE  
 DISCIPLINARY HEARING COMMISSION  
 OF THE  
 NORTH CAROLINA STATE BAR  
 25 DHC 2

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

ROBERT P. TUCKER, II, Attorney,

Defendant

ORDER OF DISCIPLINE

THIS MATTER was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of DeWitt F. McCarley, Chair, and members Allison Mullins and Hampton M. Billips upon Plaintiff's Motion for Order of Discipline. Jennifer A. Porter represented Plaintiff, the North Carolina State Bar. Defendant, Robert P. Defendant, II (hereinafter Defendant or Defendant) was not represented and did not file any written submissions in response to Plaintiff's Motion for Order of Discipline. After review of the pleadings herein and pursuant to 27 N.C. Admin. Code 1B.0115(g), the Hearing Panel determines it is appropriate to grant Plaintiff's Motion for Order of Discipline.

THEREFORE, based on the pleadings and the admissions established by Defendant's default pursuant to 27 N.C. Admin. Code 1B.0115(f), the Hearing Panel hereby finds by clear, cogent and convincing evidence 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, Robert P. Tucker, II ("Defendant"), was admitted to the North Carolina State Bar in 1988, 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. The State Bar filed a complaint against Defendant in this action on January 13, 2025.

4. Defendant was served with the Summons and Complaint on January 21, 2025.
5. Defendant failed to file an answer or any responsive pleading by the deadline established by 27 N.C. Admin. Code 1B.0115(c).
6. Upon Plaintiff's motion, default was entered against Defendant by the Secretary of the State Bar on March 13, 2025.
7. Plaintiff filed a Motion for Order of Discipline on May 2, 2025 and served the motion on Defendant by placing it in the U.S. Mail in a postage prepaid envelope addressed to Defendant on that date.
8. Defendant was properly served with process in this matter and this matter came before the Hearing Panel with due notice to all parties.
9. During all or part of the relevant periods referred to herein, Defendant was engaged in the practice of law in the State of North Carolina and maintained a law office in Asheville, Buncombe County, North Carolina.
10. In 2004, Defendant incorporated Robert P. Tucker, II, PA for his practice of law (hereinafter referenced as "his firm" or "Defendant's firm").
11. During the period of 2009 through 2011, Defendant paid wages to employees working at his firm.
12. Defendant was required to timely withhold and pay over employment taxes for his firm's employees under applicable statutes, including 26 U.S.C. §§ 3102, 3301, and 3402, and N.C. Gen. Stat. §§ 96-9.2, 96-9.15, 105-163.2, and 105-163.6.
13. Defendant willfully failed to timely file returns (Form NC-5) for and/or pay over North Carolina income tax withholdings for his firm's employees, including for the following time periods:
  - a. August 2009 through April 2010;
  - b. June 2010;
  - c. August 2010 through November 2010; and
  - d. 1<sup>st</sup> quarter of 2011.
14. Defendant willfully failed to timely file returns (Form 941) for and/or pay over federal income tax withholdings for his firm's employees, including for the following time periods:
  - a. 3<sup>rd</sup> and 4<sup>th</sup> quarters of 2009;
  - b. All quarters of 2010; and
  - c. 1<sup>st</sup> quarter of 2011.

15. Defendant was required to timely pay unemployment insurance taxes on his firm's employees' wages, including the wages he paid to employees working at his firm in 2009 through 2011.

16. Defendant willfully failed to pay the required unemployment insurance taxes for his firm's employees, including for the 1<sup>st</sup> quarter of 2011.

17. During the pertinent time periods, Defendant was a solo practitioner with his firm.

18. Defendant's firm's practice primarily concentrated in real estate transactions.

19. Beginning in 2008, Defendant's firm's income from real estate closings decreased.

20. As a result of Defendant's firm's reduced income, Defendant paid his firm's overhead expenses, including wages to his firm's employees, but did not pay various taxes owed to taxing authorities for his firm.

21. Defendant made knowing and intentional choices to not timely file returns for and pay the taxes referenced in paragraphs 13-16.

22. Defendant knowingly and intentionally chose to not timely file returns for and pay the taxes referenced in paragraphs 13-16.

23. Pursuant to 26 U.S.C. § 7202, it is a federal felony to willfully fail to collect, account for, and pay over any tax imposed by the Internal Revenue Code.

24. Pursuant to 26 U.S.C. § 7203, it is a federal misdemeanor to willfully fail to file a federal tax return.

25. Pursuant to N.C. Gen. Stat. § 105-236, it is a Class 1 misdemeanor to willfully fail to file any required return and to willfully fail to collect, account for, or pay over any tax.

26. Pursuant to 27 N.C. Admin. Code 1B.0103(17), commission of any felony is a criminal offense showing professional unfitness.

27. Pursuant to 27 N.C. Admin. Code 1B.0103(17), willful failure to file a tax return is a criminal offense showing professional unfitness.

Based upon the pleadings, Defendant's default, and the foregoing Findings of Fact, the Hearing Panel enters the following:

#### CONCLUSIONS OF LAW

1. All the parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, Robert P. Tucker, II, and the subject matter.

2. Defendant's conduct, as set forth in the Findings of Fact above, constitutes grounds for discipline 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 returns for and pay over North Carolina income tax withholdings for his firm's employees, Defendant committed a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b);
- (b) By willfully failing to timely file returns for and pay over federal income tax withholdings for his firm's employees, Defendant committed a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b); and
- (c) By willfully failing to pay unemployment insurance taxes for his firm's employees, Defendant committed a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b)

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Panel hereby finds by clear, cogent and convincing evidence additional facts as follows:

#### FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1 – 27 above are reincorporated as if set forth herein.

2. A willful failure to file a tax return inherently involves an implicit representation to taxing authorities that one did not engage in the taxable event that would require one to file a tax return, which was not accurate in Defendant's case. By misrepresenting through his failure to file that the taxable event had not occurred, Defendant caused potential significant harm to the administration of justice by potentially hindering the taxing authorities' access to accurate information on taxes due and credits to which employees may be entitled.

3. The obligation to file and pay employment taxes is a legal and civic duty shared by all employers. When lawyers fail to comply with their tax obligations, it undermines public confidence in the legal profession. Defendant's failure to comply with his tax obligations caused potential significant harm to the profession by undermining public confidence in the profession.

4. Defendant's failure to timely file returns for and pay over the employment taxes for his employees caused potential significant harm to his employees by creating the risk that the ability of an employee to qualify for benefits under the respective affiliated programs if the need arose might be compromised.

5. Pursuant to 26 U.S.C. § 7501, the funds an employer is required to withhold and pay over from employee income taxes are a "special fund in trust for the United States" and as such are fiduciary in nature.

6. By failing to pay over withheld employee income taxes, Defendant mishandled fiduciary funds. Defendant's failure to properly handle fiduciary funds caused potential significant harm to the profession by undermining public confidence in the profession and to his employees by not having paid part of the income tax they may owe.

7. Defendant's failure to comply with his employment tax obligations occurred for a limited period of time.

8. Defendant has not participated in this disciplinary proceeding before the Disciplinary Hearing Commission.

9. Defendant has prior discipline consisting of a stayed suspension in 2015 for failure to properly maintain and disburse entrusted funds, failure to conduct required quarterly reconciliations, and improperly engaging in representation involving potential conflict of interest.

10. The Hearing Panel finds by clear, cogent, and convincing evidence the facts contained in the conclusions set out below of the applicable factors regarding discipline from those listed in 27 N.C. Admin. Code 1B.0116(f).

Based on the foregoing Findings of Fact, Conclusions of Law, and Additional Findings Regarding Discipline, the Hearing Panel enters the following:

#### CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel carefully considered all of the different forms of discipline available to it.

2. The Hearing Panel considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f).

3. The Hearing Panel concludes that the following factors from 27 N.C. Admin. Code 1B.0116(f)(1), which are to be considered in imposing suspension or disbarment, are present in this case:

- a. Factor (B), Intent of Defendant to commit acts where the harm or potential harm is foreseeable;
- b. Factor (H), Effect of Defendant's conduct on third parties; and
- c. Factor (I), Acts of dishonesty or misrepresentation in the failures to timely file tax returns.

4. The Hearing Panel considered the factors listed in 27 N.C. Admin. Code 1B.0116(f)(2), which are factors warranting consideration of disbarment and, although there is a factor present in this section, the Hearing Panel determines that disbarment is not necessary for the protection of the public in light of the unique circumstances of this case.

5. The Hearing Panel concludes that the following factors from 27 N.C. Admin. Code 1B.0116(f)(3), which are to be considered in all cases, are present in this case:

- a. Factor (A), Prior disciplinary offense;
- b. Factor (B), Remoteness of prior offenses;
- c. Factor (C), Absence of dishonest or selfish motive;
- d. Factor (F), A pattern of misconduct;
- e. Factor (G), Multiple offenses;
- f. Factor (M), Bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency; and
- g. Factor (S), Degree of experience in the practice of law.

6. The Hearing Panel considered all of the disciplinary options available to it and determined that a suspension is appropriate in this case, in light of the fiduciary nature of the obligation to pay over withheld income taxes for employees and the potential significant harm caused by Defendant's conduct to his employees.

7. The Hearing Panel has considered all lesser sanctions and finds that discipline short of a suspension would not adequately protect the public for the following reasons:

- a. The factors under Rule .0116(f)(1) are of a nature that support imposition of a suspension as the appropriate discipline;
- b. Defendant, by engaging in dishonest conduct and the mishandling of fiduciary funds, has shown himself to be untrustworthy and that suspension is the only sanction that can adequately serve to protect the public from future transgressions of Defendant; and
- c. Entry of an order imposing 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 of this State.

Based on the foregoing Findings of Fact, Conclusions of Law, additional Findings of Fact and Conclusions of Law Regarding Discipline, the Hearing Panel hereby enters the following

## ORDER OF DISCIPLINE

1. The law license of Defendant, Robert P. Tucker, II, is hereby suspended for three years. The effective date of this Order is 30 days from service of this Order upon Defendant pursuant to 27 N.C. Admin. Code 1B.0128(c).

2. Defendant is taxed with the administrative fees and costs of this proceeding. Defendant shall pay the administrative fees and costs of this proceeding as assessed by the Secretary of the North Carolina State Bar. Defendant must pay the administrative fees and costs within 30 days of service upon him of the statement of fees and costs by the Secretary.

3. 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. Defendant must keep this information current with the State Bar, providing updated information to the State Bar within 15 days of any change.

4. Defendant shall promptly return client files in his possession, custody, or control to clients upon request, within 5 days of receipt of such request. Defendant will be deemed to have received any such request 3 days after the date such request is sent to Defendant if the request is sent to the address Defendant provided the State Bar pursuant to the preceding paragraph.

5. Defendant shall comply with all provisions of the rule set out in 27 N.C. Admin. Code 1B.0128 within the time periods specified in the rule for each requirement or, if no set time period is specified for a requirement, within 30 days of service of this Order upon him.

6. After no less than one year following the effective date of this order, Defendant may file a motion with the Disciplinary Hearing Commission pursuant to 27 N.C. Admin. Code 1B.0118(c) to have the remaining period of suspension imposed by this Order stayed. To be eligible to have the remaining period of suspension stayed after completing one year of the suspension, Defendant must comply with the requirements of 27 N.C. Admin. Code 1B.0118 and 27 N.C. Admin. Code 1B.0129, and must also show by clear, cogent, and convincing evidence the following:

- a. That Defendant timely complied with paragraphs 2-5 of this section of the Order of Discipline, including having timely paid the administrative fees and costs and timely complied with all provisions of 27 N.C. Admin. Code 1B.0128;
- b. That Defendant is current on and has satisfied all applicable federal and state tax obligations on behalf of himself as an individual and on behalf of any corporate or partnership entity of which he is an owner or member. Defendant shall demonstrate satisfaction of this requirement by identifying all applicable tax obligations for the five years immediately preceding the filing of his motion and providing documentation with his motion demonstrating compliance with all such obligations;

- c. That Defendant responded to all communications from the State Bar, including communications from the Attorney Client Assistance Program, within 30 days of receipt of such communication or by the deadline stated in the communication, whichever was sooner;
- d. That Defendant participated in good faith in the State Bar's fee dispute resolution process for any petition of which he received notice after the effective date of this Order; and
- e. That Defendant did not violate the Rules of Professional Conduct or the laws of the United States or any state or local government, other than minor traffic infractions.

7. If the Disciplinary Hearing Commission stays Defendant's suspension, the remaining period of suspension shall be stayed for three years. The stay of Defendant's suspension of his law license will continue in effect only as long as Defendant complies with the following conditions:

- a. Within 30 days of the effective date of this order, Defendant shall provide to the Office of Counsel a copy of any payment agreements in effect at the time of the entry of this Order between Defendant and the Internal Revenue Service (IRS) or the North Carolina Department of Revenue (DOR);
- b. Within 30 days of the entry of any payment agreements entered into by Defendant with the IRS or the DOR during the period of stayed suspension, Defendant shall provide a copy of such agreement to the Office of Counsel;
- c. Defendant shall provide proof of all payments made pursuant to all payment agreements with the IRS or the DOR within 10 days of each payment by Defendant;
- d. Defendant shall cure any deficiency with any tax obligation that may arise during the period of stayed suspension within 30 days of receipt of notification of the deficiency. Defendant shall provide proof of his satisfaction of the requirements of this paragraph within 10 days of taking the curative action;
- e. Defendant shall timely file all state and federal tax returns and timely pay all state and federal taxes during the period of stayed suspension, including, but not limited to, individual income taxes and employment taxes. Timeliness shall be determined based on the filing deadlines established by the DOR and the IRS. If Defendant obtains an extension of time to file any tax return, Defendant must provide the request and any response from the applicable tax authority to the Office of Counsel within 10 days after each document was sent by Defendant or received by Defendant;
- f. Defendant shall provide to the Office of Counsel copies of all state and federal tax returns filed during the period of stayed suspension within 10 days of the date such returns were filed by Defendant;

- g. Defendant shall provide to the Office of Counsel proof of payment of all state and federal taxes due during the period of stayed suspension within 10 days of payment of such taxes by Defendant;
- h. Defendant shall provide to the Office of Counsel copies of all correspondence sent to the DOR or the IRS by or on behalf of Defendant or received by Defendant or his agent from the DOR and IRS during the period of stayed suspension within 10 days after the correspondence was sent by Defendant or received by Defendant;
- i. Defendant shall provide to the Office of Counsel complete and accurate descriptions of all oral communications between the DOR and/or the IRS and Defendant or his agent during the period of stayed suspension within 10 days of such communication;
- j. Defendant shall execute a DOR Form Gen-93 (Tax Information Authorization for Taxpayer Records) annually authorizing the Office of Counsel to obtain all records related to Defendant's state income and employment taxes for the preceding year. The executed authorizations shall be delivered to the State Bar on July 1 of each calendar year;
- k. Defendant shall remain current in payment of all State Bar Membership dues, fees, and costs, including all Client Security Fund assessments and other charges that the State Bar is authorized to collect from him, including all judicial district dues, fees, and assessments;
- l. Defendant shall timely comply with his North Carolina State Bar CLE requirements as set forth in N.C. Admin. Code 1D.1518 and pay all fees and costs assessed by the applicable deadlines;
- m. Defendant shall respond to all communications from the North Carolina State Bar, including communications from the Attorney Client Assistance Program, within 30 days of receipt of the communication or by the deadline stated in the communication, whichever is sooner, and shall participate in good faith in the State Bar's fee dispute resolution program for any petition he has already received and for any petition received during the period of stayed suspension;
- n. Defendant shall promptly accept service of all certified mail that is sent to him from the State Bar;
- o. Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or of any state or local government, other than minor traffic infractions, during the period of stayed suspension; and
- p. Defendant shall keep the State Bar Membership Department advised of his current business and home addresses, telephone numbers, and e-mail addresses. Defendant shall notify the State Bar of any change in this contact information within 10 days

of such change. His current business address must be a street address, not a post office box or drawer.

8. If Defendant fails to comply with any of the conditions of the stayed suspension provided in paragraph 7(a) through (p), the stay of the suspension may be lifted as provided in 27 N.C. Admin. Code 1B.0118(a) of the North Carolina State Bar Discipline and Disability Rules.

9. If the stay of the suspension is lifted and the suspension is activated for any reason, the DHC may enter an order imposing such conditions as it deems proper for the reinstatement of Defendant's license at the end of the suspension. In addition to any such conditions, Defendant must establish the following by clear, cogent, and convincing evidence prior to being reinstated to the practice of law after any period of active suspension:

- a. That Defendant is current on all tax law obligations to all taxing authorities, including but not limited to, satisfying all tax liens that have been or may be filed, and is current on filing and payment requirements for all tax obligations. For all payment agreements Defendant has entered into or will enter into with the IRS or DOR to pay all outstanding taxes, penalties, and interest owed by Defendant and/or any applicable business entity, Defendant must demonstrate that he timely complied with the terms of those agreements throughout the entire period of active suspension;
- b. That Defendant timely satisfied all applicable tax obligations, including that he timely filed all state and federal tax returns and timely paid all state and federal taxes during the period of active suspension. Timeliness shall be determined based on the filing deadlines established by the DOR and the IRS;
- c. That Defendant submitted his law license and membership card to the Secretary of the North Carolina State Bar within 30 days of the date of the order lifting the stay and/or activating the suspension of his law license;
- d. That Defendant provided to the Office of Counsel copies of all correspondence sent to the DOR and IRS by Defendant and all correspondence received by Defendant from the DOR and IRS during the period of active suspension;
- e. That Defendant provided to the Office of Counsel complete and accurate descriptions of all oral communications between Defendant and the DOR or the IRS during the period of active suspension;
- f. That Defendant properly wound down his law practice and complied with the provisions of 27 N.C. Admin. Code 1B.0128 following entry of the order lifting the stay and activating the suspension of his law license;
- g. That Defendant timely paid all administrative fees and costs assessed against him in this proceeding as reflected on the statement of administrative fees and costs served upon him by the Secretary of the North Carolina State Bar;

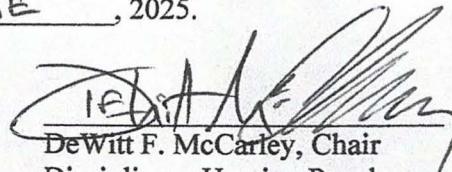
- h. That within 15 days of the effective date of the order lifting the stay and activating the suspension of his law license, Defendant provided the Office of Counsel with an address and telephone number at which clients seeking return of files could communicate with Defendant and obtain such files;
- i. That Defendant provided within 10 days client files to all clients who made a request for return of their files;
- j. That Defendant kept the North Carolina State Bar Membership Department advised of his current physical business and home addresses (not post-office box or drawer addresses), telephone number(s), and e-mail address(es) and notified the State Bar Membership Department of any change in this contact information within 10 days of such change;
- k. That Defendant provided full and complete responses to all communications from the North Carolina State Bar and provided all requested documentation in response to all communications from the North Carolina State Bar, including any letters of notice from the Grievance Committee, any requests for information from the Office of Counsel, and any communications from the Attorney Client Assistance Program (ACAP), within 15 days of receipt of such communication or by the deadline stated in the communication, whichever is sooner, and participated in good faith in the State Bar's fee dispute resolution program for any petition that was pending at the time of the entry of this Consent Order or of which he received notice after entry of the Consent Order;
- l. That, at the time of his petition for reinstatement, Defendant is current in payment of all North Carolina State Bar membership dues, fees and costs, including all Client Security Fund assessments and other charges the State Bar is authorized to collect from him, and including all judicial district dues, fees, and assessments;
- m. That, at the time of his petition for reinstatement, there is no deficit in Defendant's completion of mandatory CLE hours, in reporting of such hours, or in payment of any fees and costs associated with attendance at CLE programs;
- n. That Defendant did not engage in the unauthorized practice of law during the period of active suspension; and
- o. That Defendant did not violate the Rules of Professional Conduct of North Carolina or of any other jurisdiction in which he is licensed to practice law or the laws of the United States or of any state or local government, other than minor traffic infractions.

10. If Defendant fails to fully comply with 27 N.C. Admin. Code 1B.0128, Defendant shall reimburse the North Carolina State Bar for any expenses incurred by the State Bar in winding

down Defendant's practice. Such expenses may include, but are not limited to, storage facility fees, rent payments, moving expenses, charges for secure disposal of client files, postage or other mailing expenses, and compensation paid to the appointed trustee and/or the trustee's assistant(s) for time and travel associated with the trusteeship. The State Bar shall send an invoice of the expenses incurred by the State Bar in winding down Defendant's practice to Defendant at the address on file with the State Bar Membership Department. Defendant shall pay the expenses within 30 days of the State Bar mailing the invoice to him.

11. The DHC will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code 1B.0118.

Signed by the undersigned Chair with the knowledge and consent of the other members of the Hearing Panel, this is the 17<sup>th</sup> day of JUNE, 2025.

  
DeWitt F. McCarley, Chair  
Disciplinary Hearing Panel