

STATE OF NORTH CAROLINA

WAKE COUNTY

BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR 21 DHC 23

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

MARK A. KEY, Attorney,

Defendant

ORDER OF DISCIPLINE

THIS MATTER was heard on remand from the North Carolina Court of Appeals on November 21 - 22, 2024, by a Hearing Panel of the Disciplinary Hearing Commission composed of Brian O. Beverly, Chair, Tywana D. Frazier, and William A. Oden, III ("the Hearing Panel"). Carmen Bannon and Savannah McLamb represented Plaintiff, the North Carolina State Bar. Defendant, Mark A. Key, appeared pro se.

Based upon the pleadings, the record, the Opinion of the Court of Appeals, and evidence presented at the hearing, 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, Mark A. Key, was admitted to the North Carolina State Bar in 1997, 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. During all or part of the relevant periods referred to herein, Key was engaged in the practice of law in Lillington, Harnett County, North Carolina.

4. Key was properly served with the summons and complaint in this matter.

5. The Hearing Panel's standard of review is by clear, cogent and convincing evidence. Allegations of criminal conduct were reviewed by the Hearing Panel under this standard and not by the higher burden of beyond a reasonable doubt required for a criminal conviction.

TAX CRIMES

6. Key's law firm is a professional corporation registered as "The Key Law Office, PC." Key is the sole owner of The Key Law Office, PC (hereafter "the law firm," "Key's law firm," or "his law firm").

7. As the managing attorney of the law firm, Key had authority over the funds in bank accounts maintained by the law firm and made decisions concerning how and when those funds would be spent.

8. From 2016 through 2020, Key's law firm had employees who provided services directly related to and for the benefit of Key's law practice. Key was an employee of his law firm and received an annual W-2 reflecting his income.

9. Key was a "responsible person" as defined by federal tax law, in that he had the power to see that the federal tax obligations of the law firm were paid.

Employee Income Tax Withholding

10. When Key paid employees of his law firm, including himself, he was required pursuant to 26 U.S.C. § 3402(a)(1) to withhold funds from their wages to pay federal income taxes.

11. Key was obligated, pursuant to N.C. Gen. Stat. § 105.163.2, to deduct and withhold from employees' wages, including his own wages, the state income taxes payable by the employee on the wages.

12. Key was required to pay over to the U.S. Department of the Treasury and the North Carolina Department of Revenue (hereafter "Treasury" and "NCDOR"; collectively, "the tax authorities") income taxes withheld from employees' paychecks, including his own paychecks.

13. During the period from 2016 through 2020, Key did not withhold or pay over to the tax authorities amounts due for federal or state income taxes on the wages of any law firm employees, including his own.

FICA Taxes

14. When Key paid employees of his law firm, including himself, he was required pursuant to 26 U.S.C. § 3102(a) to withhold funds from their wages to pay Social Security and Medicare taxes (hereafter collectively “FICA taxes”).

15. Key was required to report the FICA taxes collected from employees of his law firm by filing Employer’s Quarterly Federal Tax Returns (IRS Form 941).

16. During the period from 2017 through 2020, Key frequently failed to timely file Forms 941.

17. Key was required to pay over to the IRS the FICA taxes collected from the wages of firm employees and reflected on the Forms 941.

18. Key failed to pay over to the IRS the FICA taxes collected from the wages of firm employees during the fourth quarter of 2019.

Personal Income Taxes (Federal)

19. Key failed to timely file federal personal income tax returns for tax years 2015 through 2018.

20. Key filed his 2018 federal personal income tax return in June 2020 and filed the returns for tax years 2015 through 2017 in September 2020.

21. At the time he belatedly filed the 2015-2018 returns, Key did not pay the federal income taxes due for tax years 2015 through 2017.

22. Key also did not pay the federal income taxes that were due in connection with his 2019 and 2020 returns.

Personal Income Taxes (State)

23. Key failed to timely file state personal income tax returns for tax years 2015 through 2018.

24. Key filed his 2018 state personal income tax return in June 2020 and filed the returns for tax years 2015 through 2017 in August 2021.

25. At the time he belatedly filed the returns for tax years 2015 through 2017, Key did not pay in full the state income taxes, plus penalties and interest, due in connection with his 2015 and 2016 returns.

26. Key also did not pay the state income taxes that were due in connection with his 2019 and 2020 returns.

27. The Hearing Panel takes notice that 26 U.S.C. § 7203 provides: “Any person required under [the IRS Code] to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor.”

28. Under the Hearing Panel’s clear, cogent and convincing standard of review, the Hearing Panel finds that Key violated 26 U.S.C. § 7203 by:

- (a) willfully failing to timely file federal income tax returns for tax years 2015 through 2018; and
- (b) willfully failing to timely pay federal income taxes owed for tax years 2015 through 2017, 2019, and 2020.

29. The Hearing Panel takes notice that 26 U.S.C. § 7202 provides: “Any person required under [the IRS Code] to collect, account for, and pay over any tax imposed by this title who willfully fails to collect or truthfully account for and pay over [income taxes withheld from employee wages and FICA taxes] shall, in addition to other penalties provided by law, be guilty of a felony.”

30. Under the Hearing Panel’s clear, cogent and convincing standard of review, the Hearing Panel finds that Key violated 26 U.S.C. § 7202 by:

- (a) willfully failing to withhold federal income taxes from the wages of his law firm employees, including his own; and
- (b) willfully failing to pay over to Treasury all FICA taxes withheld from the wages of firm employees in 2019.

31. The Hearing Panel takes notice that N.C. Gen. Stat. § 105-236(a)(8) provides: “Any person required to collect, withhold, account for, and pay over any [North Carolina state] tax who willfully fails to collect or truthfully account for and pay over the tax shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor.”

32. The Hearing Panel takes notice that N.C. Gen. Stat. § 105-236(a)(9) provides: “Any person required to pay any tax, to file a return, to keep any records, or to supply any information, who willfully fails to pay the tax, file the return, keep the records, or supply the information, at the time or times required by law, or rules issued pursuant thereto, is, in addition to other penalties provided by law, guilty of a Class 1 misdemeanor.”

33. Under the Hearing Panel's clear, cogent and convincing standard of review, the Hearing Panel finds that Key violated N.C. Gen. Stat. §§ 105-236(a)(8) and (9) by:

- (a) willfully failing to withhold or pay over to NCDOR amounts due for state income taxes on the wages of any law firm employees, including his own, during the period from 2016 through 2020;
- (b) willfully failing to timely file state personal income tax returns for tax years 2015 through 2018; and
- (c) willfully failing to timely pay state income taxes for tax years 2015 through 2017, 2019, and 2020.

EMPLOYEE TAXES

34. Key employed attorney Diamond Zephir as an associate in his law firm from approximately April through August 2018.

35. Key paid Zephir's salary from the firm's operating account.

36. Key did not provide Zephir with a paystub or other documentation of the amounts withheld from her paychecks to pay income taxes.

37. Key told Zephir that he would be responsible for paying to the IRS and NCDOR federal and state income taxes due in connection with her employment at the law firm.

38. Key did not withhold or pay over to the tax authorities any federal or state income taxes on behalf of Zephir during her employment.

39. As a result, Zephir owed federal and state income taxes on the income earned while she was employed by Key's law firm.

40. The W-2 Key issued to Zephir by Key's law firm in early 2019 falsely underreported her wages by approximately \$3,000.00.

41. When Zephir received the inaccurate W-2 and discovered the income tax debt caused by Key's failure to withhold from her paychecks, she contacted Key.

42. Key assured Zephir that he would change her W-2 to accurately reflect the income she received as well as all tax withholdings. He failed to do so.

43. Zephir asked Key to pay the amounts she owed to the tax authorities due to Key's failure to withhold from her paychecks. Key refused.

44. Zephir then filed suit against Key, obtaining a judgment for: (a) the income taxes owed on her actual income from the firm, (b) the amount of tax refund she would have been entitled to if the taxes had been properly paid, and (c) expenses associated with the litigation.

45. On 9 May 2019, approximately three months after Zephir notified Key that her W-2 was inaccurate and one day after he participated in the hearing at which judgment was entered against him on Zephir's claim, Key filed with the Social Security Administration a Transmittal of Wage and Tax Statement (IRS form W-3) along with W-2 forms for the employees of his law firm during 2018.

46. The W-2 form for Zephir that Key filed on 9 May 2019 underreported Zephir's 2018 wages.

47. By signing the W-3, Key swore under penalty of perjury to the accuracy of the W-2 that he knew underreported Zephir's wages.

TRUST ACCOUNTING

48. In or around June 2016, Debra Jordan and her children, Joshua Jordan, a minor, and Johnathan Jordan (collectively "the Jordans") retained Key to represent them in a personal injury matter.

49. In November 2020, the insurance adjuster assigned to the Jordans' matters reported to the State Bar that Key accepted settlement offers on behalf of the Jordans in June 2019 and that Key received settlement checks but had not returned executed settlement releases for Debra or Joshua Jordan.

50. The State Bar opened grievance file no. 20G0861 to investigate the report from the insurance adjuster assigned to the Jordans' matters.

51. In the investigation of grievance file no. 20G0861, the State Bar conducted an audit of Key's general trust account at Truist (formerly BB&T Bank), account number ending with digits 3257 (hereafter "trust account").

52. The State Bar's investigation and audit revealed the following deficiencies in Key's trust account management and handling of entrusted funds:

- (a) Key failed to ensure that the entrusted funds he received on behalf of Debra and Joshua Jordan were deposited into his trust account;
- (b) When Key received payments that were partially for his fees and partially entrusted funds, Key did not deposit those payments into his trust account intact. This failure to deposit mixed funds intact

occurred, for example, when Key received payments from clients for criminal and civil cases that included court costs and/or filing fees;

- (c) Key did not prepare required monthly and quarterly reconciliation reports for his trust account;
- (d) Key failed to maintain complete and accurate client ledgers;
- (e) Key commingled earned fees and entrusted funds in his trust account; and
- (f) Key did not promptly pay or deliver to clients, or to third persons as directed by clients, entrusted property belonging to clients and to which the clients were currently entitled.

REPRESENTATION OF T.M.

53. In August 2018, T.M. retained Key's law firm to obtain a divorce and pursue alimony.

54. Key's then-associate, Diamond Zephir, filed a complaint for divorce and alimony for T.M. Before she hired Key's firm, T.M. had hired another lawyer to handle child custody and equitable distribution (ED).

55. When Zephir filed the divorce and alimony action, T.M.'s prior attorney sought to withdraw so Key's firm could handle all components of her case.

56. In late August 2018, Zephir left the firm and Key took over T.M.'s representation. He agreed to also handle the ED and custody components of T.M.'s case.

57. Just before a May 2019 custody hearing in T.M.'s case, Key's assistant informed T.M. that Key would not be able to attend the hearing.

58. Key sent another lawyer in his place who was unfamiliar with the facts and unknown to T.M.

59. Key provided information acquired during the course of his professional relationship with T.M. ("confidential information") to the lawyer he sent to fill in at the May 2019 custody hearing.

60. T.M. did not consent in writing to Key disclosing confidential information to the other lawyer, who was not a member of Key's law firm.

61. Key's disclosure of confidential information to a lawyer unknown to T.M. was not impliedly authorized in order to carry out the representation.

62. During the weeks after the May 2019 hearing, Key did not inform T.M. whether the custody order had been entered and Key did not respond to T.M.'s calls or emails.

63. Throughout the representation, Key failed to communicate with T.M. about the status of the matter and did not respond to reasonable requests for information from T.M.

64. On 27 January 2020, T.M. sent Key an email terminating the representation and directing him to withdraw.

65. Three days later, Key filed a Notice of Hearing setting T.M.'s ED matter for mid-February. Key did not file a motion to withdraw from T.M.'s case.

CONDUCT IN LANGLEY TRIAL

66. Key represented Renaldo Langley on a charge of felonious restraint. On 11 June 2019, Langley's trial began in Wake County Superior Court.

67. During the State's direct examination of a witness, Key raised the same objection multiple times notwithstanding the fact it had been overruled.

68. During his cross-examination of a witness, Key repeatedly attempted to elicit testimony that the Court had already ruled inadmissible.

69. Key's manner and tone in an ensuing exchange with the Court was disruptive and disrespectful.

70. When Key raised his voice at the judge in the presence of the jury, the Court deemed it necessary to end the proceedings for the day.

71. After the jury was excused, the Court began addressing Key, saying "Mr. Key, let me tell you something . . ."

72. Key interrupted the Court, pointed his finger in an aggressive manner, and raised his voice at the judge, "Can I tell you something, too?"

73. When Key was informed that his behavior was inappropriate and could result in contempt proceedings, he was unapologetic.

MORTGAGE FRAUD

74. In October 2016, Lokia Mitchell purchased the home at 2864 Jordan Pointe Blvd. in New Hill ("the property") for approximately \$740,000.00.

75. Key was in a romantic relationship with Mitchell and lived with her at the property until May 2020 when their relationship ended.

76. Key wanted to buy the property from Mitchell when their relationship ended.

77. Although Mitchell intended to sell the property, she refused to sell it to Key.

78. In July 2020, Key discussed his desire to buy the property with a man named Javon Howell, who was in a relationship with a woman named Kristian Smith. Howell and Smith agreed to purchase the property from Mitchell and sell it to Key.

79. By mid-July 2020, Key had established a joint bank account with Smith.

80. On 14 July 2020, Smith incorporated an entity called Sweet Fruits Healing, LLC ("Sweet Fruits").

81. For approximately two months after he opened the joint account with Smith, Key moved large sums of money into and out of the account. Neither Smith nor Howell deposited funds into the account.

82. On 1 September 2020, Key sent an email to his CPA that read "I am sorry for bothering you this week. I am trying to purchase a house. I need a copy of my w-2 [sic] from the following years: 2011, 2012, 2015, 2016 and 2017. If you prepared my personal income tax 1040 for any of those years please forward me a copy. The IRS is saying that I have not filed those years."

83. On 24 September 2020, \$20,000.00 of the funds Key had deposited into the joint account with Smith was transferred out to an account belonging to Smith and/or Howell.

84. On 28 September 2020, Mitchell sold the property to Sweet Fruits. The purchase price was \$740,000.00, which Sweet Fruits partially funded with a \$518,000.00 mortgage with a one-year repayment term.

85. Sweet Fruits paid the remainder of the purchase price with money deposited by Key into the joint account with Smith.

86. After Sweet Fruits bought the property, Key began living there again. On five occasions during the ensuing six months, Key provided Smith with approximately \$4,800.00 purportedly to cover mortgage payments, escrows, and homeowner's association dues associated with the property.

87. On 30 April 2021, Sweet Fruits sold the property to Key. The excise stamps reflected that the purchase price was \$522,000.00.

88. Key funded his purchase of the property with a mortgage loan from Navy Federal Credit Union (“Navy Federal”) for \$531,135.00.

89. Navy Federal is a federal credit union chartered under the authority of the National Credit Union Administration.

90. In order to obtain the mortgage, Key submitted a loan application to Navy Federal that he signed on 22 March 2021.

91. The loan application included a Borrower Certification wherein Key certified that all the information he was submitting was true and complete and that he “made no misrepresentations on the loan application or other documents, nor did [he] omit any pertinent information.”

92. In the 22 March 2021 loan application, Key knowingly made the following false representations:

- (a) He did not have any credits towards the purchase of the house.
- (b) The value of the property was \$522,000.00.
- (c) He did not have a business affiliation with the seller of the property.
- (d) He was not currently delinquent or in default on any Federal debt.
- (e) He had not entered into any agreement, written or oral, in connection with the real estate transaction, other than the sales contract submitted to the lender.

93. In support of the loan application, Key created and submitted to Navy Federal earnings statements for January and February 2021.

94. The earnings statements Key submitted to Navy Federal falsely indicated that he had received biweekly salary checks from his law firm and that state and federal income taxes had been withheld from the wages he earned in January and February 2021.

95. Pursuant to N.C. Gen. Stat. § 14-118.12, a “person is guilty of [the felony offense of] residential mortgage fraud when, for financial gain and with the intent to defraud, that person ... [k]nowingly makes or attempts to make any material misstatement, misrepresentation, or omission within the mortgage lending process with the intention that a mortgage lender, mortgage broker, borrower, or any other person or entity that is involved in the mortgage lending process relies on it.”

96. Pursuant to 18 U.S. Code § 1014, “[w]hoever knowingly makes any false statement or report ... for the purpose of influencing in any way the action of ... a

Federal credit union ... any institution the accounts of which are insured by the Federal Deposit Insurance Corporation, ... or any person or entity that makes in whole or in part a federally related mortgage loan ... upon any application ... shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.”

97. The Hearing Panel finds that Key’s actions described in paragraphs 90 through 94 above, all when evaluated pursuant to the Hearing Panel’s clear, cogent and convincing standard, were in violation of 18 U.S. Code § 1014 and constituted the criminal offense of residential mortgage fraud as defined in N.C. Gen. Stat. § 14-118.12.

MISCONDUCT IN GRIEVANCE PROCESS

98. The State Bar opened grievance file no. 21G0082 to investigate the tax-related matters described in paragraphs 6 through 33 above.

99. Key was served with a Letter of Notice in file no. 21G0082 that required him to submit a response to the allegations in the grievance within 15 days. Key did not respond within 15 days.

100. Key’s response to the Letter of Notice in file no. 21G0082 was due on 31 March 2021. He did not request an extension of time and did not respond until 11 May 2021.

101. In his 11 May 2021 response to the Letter of Notice in file no. 21G0082, Key stated that he had “realized” in early 2020 that “certain tax periods” including 2015 through 2017 had not been timely filed.

102. In his 11 May 2021 response, Key falsely stated: “In early 2020 I not only filed all my tax returns[,] I paid \$12,000 towards my outstanding taxes.”

103. Key was also served with a subpoena issued by the Grievance Committee in connection with file no. 21G0082 and file no. 20G0861 (which involved the allegations of trust account mismanagement set forth above).

104. Key was required to produce documents pursuant to the subpoena on 9 April 2021. Key did not produce any documents pursuant to the subpoena on 9 April 2021.

105. Key produced documents on April 21, April 27, May 3, and May 17. After each partial-production, the State Bar sent him a detailed follow-up email stating what was still missing.

106. Key never completely produced all subpoenaed documents.

107. On 7 July 2021, Key was interviewed by the State Bar regarding grievance file nos. 21G0082 and 20G0861. During the interview, Key made false statements including:

- (a) That he had signed and filed his past-due state income tax returns at the same time he filed his past-due federal income tax returns;
- (b) That he did not see or sign the Navy Federal loan application until the date of closing; and
- (c) That he first learned during the week prior to the interview that certain federal tax lien documents had been filed against him.

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

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and this tribunal has jurisdiction over Defendant, Mark A. Key, and the subject matter of this proceeding.

2. Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Key violated the Rules of Professional Conduct in effect at the time of his conduct as follows:

- (a) By chronically failing to timely file and/or pay all manner of taxes for which he and/or his law firm was responsible, Defendant repeatedly engaged in criminal conduct reflecting adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);
- (b) By falsely telling Zephir that he would be responsible for paying income taxes on her behalf Defendant engaged in conduct involving dishonesty, deceit or misrepresentation in violation of Rule 8.4(c);
- (c) By knowingly certifying on the IRS form W-3 for tax year 2018 that Zephir's inaccurate W-2 was accurate, Defendant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);
- (d) By failing to ensure that entrusted funds he received on behalf of Debra and Joshua Jordan were deposited into his trust account and by failing to deposit payments that were partially for his fees and partially entrusted funds into his trust account intact, Defendant failed to

properly maintain and disburse entrusted funds in violation of Rule 1.15-2(a), (b), and (g);

- (e) By failing to prepare required monthly and quarterly reconciliation reports for his trust account, Defendant failed to maintain required records in violation of Rule 1.15-3(d)(1) and (2);
- (f) By failing to maintain complete and accurate client ledgers, Defendant failed to properly identify and maintain entrusted funds in violation of Rule 1.15-2(a);
- (g) By commingling earned fees and entrusted funds in his trust account, Defendant failed to properly maintain and disburse entrusted funds in violation of Rule 1.15-2(a) and (f);
- (h) By disbursing more funds from his trust account for clients than he held in trust for those clients, Defendant failed to properly maintain and disburse entrusted funds and used entrusted funds for the benefit of someone other than the beneficial owner in violation of Rule 1.15-2(a) and (k);
- (i) By not promptly paying or delivering to clients, or to third persons as directed by clients, entrusted property belonging to the clients and to which the clients are currently entitled, Defendant failed to properly maintain and disburse entrusted funds in violation of Rule 1.15-2(a) and (n);
- (j) By providing confidential information to the lawyer he sent to represent T.M. at the May 2019 hearing, who was not a member of Defendant's law firm, Defendant revealed information acquired during the professional relationship in violation of Rule 1.6(a);
- (k) By failing to respond to T.M.'s inquiries and failing to notify T.M. of important developments in the case, Defendant failed to respond to reasonable requests for information in violation of Rule 1.4(a) and failed to provide sufficient information to allow the client to make informed decisions about the representation in violation of Rule 1.4(b);
- (l) By setting T.M.'s ED matter for hearing after T.M. terminated the attorney-client relationship and failing to comply with T.M.'s directive to withdraw from her case, Defendant failed to withdraw when terminated in violation of Rule 1.16(a), and failed to take reasonably practicable steps to protect a client's interests upon termination of the representation in violation of Rule 1.16(d);

- (m) By failing to accept the court's evidentiary rulings, raising his voice at the judge, and displaying disrespect for the court in the Langley trial, Defendant engaged in undignified or discourteous conduct demeaning to the tribunal in violation of Rule 3.5(a)(4)(B);
- (n) By knowingly providing false information to Navy Federal in connection with his mortgage loan application, Defendant engaged in criminal conduct reflecting adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);
- (o) By failing to timely respond to the Letter of Notice and failing to timely and fully comply with the subpoena in grievance file no. 21G0082, Defendant knowingly failed to respond to lawful demands for information from a disciplinary authority in violation of Rule 8.1(b); and
- (p) By providing false information to the State Bar during the grievance process, Defendant knowingly made false statements of material fact in connection with a disciplinary matter in violation of Rule 8.1(a).

Based upon the foregoing Findings of Fact and Conclusions of Law, and the additional evidence regarding discipline presented at the hearing, the Hearing Panel hereby finds by clear, cogent, and convincing evidence the following additional:

FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1 through 107 above are reincorporated as if fully set forth herein.
2. Defendant has significant experience in the practice of law, as he has been a licensed attorney for 25 years.
3. The failure to comply with tax obligations described herein is part of a pattern of misconduct: The tax liens of record against Defendant reflect that he was also delinquent in paying personal income taxes in 1998, 2000, 2001, 2003, 2004, 2005, 2006, 2008, and 2010.
4. Defendant's refusal to pay Zephir's income taxes as promised caused significant harm to Zephir: It was a financial hardship for her to pay the taxes that Defendant had agreed to be responsible for, and she had to travel to North Carolina from out of state to pursue legal action against Defendant.
5. Even after he acknowledged responsibility for paying Zephir's taxes and judgment was entered against him on Zephir's claim, Defendant did not pay the

amount due to Zephir. To collect the judgment, she had to have the sheriff levy Defendant's bank account.

6. Defendant's client, T.M., was emotionally invested in the outcome of her child custody case but was unfamiliar with the legal process, making her vulnerable.

7. Both the prosecutor and the presiding judge in the Langley case testified that they had never seen courtroom conduct by a lawyer that was as aggressive and disrespectful as Defendant's conduct during the Langley trial. When an officer of the court publicly displays disrespect for the judiciary, it tends to damage public perception of the legal system and undermine public confidence in the legitimacy of the judicial process. Defendant's courtroom conduct posed a risk of significant harm to public perception of the legal system, the reputation of the profession, and the administration of justice.

8. Defendant acted with selfish and dishonest motive when he knowingly provided false information and false documentation to Navy Federal in connection with his mortgage loan application.

9. Self-regulation of the legal profession relies upon the cooperation and participation of lawyers in the self-regulatory process. Defendant was only partially cooperative with the State Bar's investigation of his misconduct, made false statements in response to State Bar inquiries, and gave testimony before the DHC that was not credible. When a lawyer provides false information and/or doesn't fully and timely respond to lawful inquiries from a disciplinary authority, it jeopardizes the ability of the profession to remain self-regulating.

10. Defendant, by engaging in acts of misrepresentation and deceit, has demonstrated untrustworthiness.

11. Senior Resident Superior Court Judge Winston Gilchrist testified that Defendant was a valued member of the Harnett County Bar and provided legal services to many indigent defendants in criminal matters. Judge Gilchrist also testified that Defendant served a unique and valuable role in his representation of a particular subset of that County's population. Judge Gilchrist also testified that although he had many interactions with Defendant during Defendant's years of practice (both as opposing counsel and as a judge), he never observed Defendant engage in inappropriate courtroom conduct. The Hearing Panel understands that the original panel gave substantial weight to Judge Gilchrist's testimony in reaching discipline for Defendant.

12. Defendant is an effective criminal defense lawyer and can be an asset to clients in that role.

13. Defendant has assisted those less fortunate in his community, and the best version of Defendant is a positive lawyer role model for young men.

14. Defendant experienced several major stressors during part of the time during which his misconduct occurred: In September 2019, one of Defendant's sisters died. In January 2020, another of Defendant's sisters died. In January 2021, Defendant's brother suffered serious injuries and has been substantially if not entirely dependent upon Defendant since that time.

15. Defendant has a history of professional discipline and criminal convictions:

- (a) In May 2002, Defendant was convicted of assault on a female for making sexual advances toward a client during an after-hours meeting at his office. He was placed on supervised probation for 24 months.
- (b) In May 2003, Defendant was disciplined by the DHC for sexual misconduct with a client that led to his 2002 conviction. Defendant's law license was suspended for two years, but the suspension was stayed for three years upon compliance with conditions.
- (c) In November 2005, Defendant was disciplined by the Wake County Superior Court for abandoning a client and willfully failing to appear in court on her behalf, and making "unprofessional, inexcusable, and outrageous profane statements" in the presence of court personnel. Defendant was suspended from practicing in the 10th Judicial District for one year.
- (d) Also in November 2005, Defendant was convicted of criminal contempt of court for intentionally failing to appear in court "in complete disregard for his duties to his client and to the Court," which resulted in substantial interference with the Court's business. His 30-day sentence was suspended for 18 months, during which time he was placed on unsupervised probation.
- (e) In June 2006, the DHC entered an order finding that Defendant had violated the terms of the 2003 stayed suspension by violating the Rules of Professional Conduct during the period of the stay. As a result, Defendant's law license was suspended for 90 days.
- (f) In July 2010, Defendant was Censured by the DHC for violating a court order and engaging in unauthorized practice by filing documents in the Wake County court during the period in which he was suspended from practice in the 10th Judicial District.
- (g) In August 2021, Defendant was Censured by the Grievance Committee of the North Carolina State Bar for neglect and failure to communicate with two different clients.

16. Defendant has not fully acknowledged that he violated the Rules of Professional Conduct, instead conceding some “technical” violations, and has been slow to express any remorse.

17. Defendant’s law license was suspended pursuant to the original Order of Discipline in this case on 24 March 2023, and remained suspended until the Court of Appeals’ mandate vacating the discipline was issued on 8 July 2024. During that period of suspension, Defendant failed to comply with the conditions set forth in the original order of discipline:

- a. Defendant did not file with the DHC the required affidavit indicating that he properly wound down his law practice in compliance with 27 N.C.A.C. § .0128.
- b. Defendant did not pay the costs and administrative fees of the disciplinary action within 30 days after being served with the statement of costs and fees.
- c. Defendant continued to hold himself out as an attorney by sending emails identifying himself as “Attorney at Law” over a signature block indicating his affiliation with “The Key Law Office.”
- d. Defendant failed to respond to notices of six fee dispute petitions filed by former clients with the North Carolina State Bar.
- e. Defendant failed to timely return a client’s file, despite repeated requests to do so.
- f. Defendant did not comply with multiple conditions in the original order of discipline requiring him to provide to the State Bar’s Office of Counsel his income tax returns, proof of extensions for filing tax returns, proof of payment of taxes, all correspondence with tax authorities.
- g. Defendant did not execute NC DOR Forms 93 authorizing the Office of Counsel to obtain records relating to Defendant’s State income taxes for the preceding year.

18. During his testimony in the November 2024 hearing, Defendant characterized State Bar employees as liars, criticized the original members of the DHC Hearing Panel, and accused the Court of Appeals judges who rendered the opinion in this case of unethical conduct. This testimony indicates that Defendant continues to minimize responsibility for his actions, deflect blame, and attribute his situation to others’ purported malfeasance rather than his own.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Additional Findings of Fact Regarding Discipline, and upon consideration of the factors set forth

in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0116(f), the Hearing Panel hereby enters the following additional:

CONCLUSIONS OF LAW REGARDING DISCIPLINE

1. The Hearing Panel considered all the factors enumerated in 27 N.C.A.C. 1B § .0116(f) of the Discipline and Disciplinary Rules of the North Carolina State Bar.

2. The Hearing Panel concludes that the following factors from § .0116(f)(1), which are to be considered in imposing suspension or disbarment, are present in this case:

- (a) circumstances reflecting the Defendant's lack of honesty, trustworthiness, or integrity;
- (b) negative impact of Defendant's actions on clients or the public's perception of the profession;
- (c) negative impact of the Defendant's actions on the administration of justice;
- (d) effect of the Defendant's conduct on third parties; and
- (e) acts of dishonesty, misrepresentation, deceit, or fabrication.

3. The Hearing Panel concludes that the following factors from § .0116(f)(2), which require consideration of disbarment, are present in this case:

- (a) acts of dishonesty, misrepresentation, deceit, or fabrication;
- (b) impulsive acts of dishonesty, misrepresentation, deceit, or fabrication without timely remedial efforts; and
- (c) commission of multiple felonies.

4. The Hearing Panel concludes that the following factors from § .0116(f)(3), which are to be considered in all cases, are present in this case:

- (a) prior disciplinary offenses;
- (b) dishonest or selfish motive;
- (c) indifference to making restitution;
- (d) a pattern of misconduct;
- (e) multiple offenses;

- (f) effect of any personal or emotional problems on the conduct in question;
- (g) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- (h) refusal to acknowledge wrongful nature of conduct;
- (i) character or reputation;
- (j) vulnerability of victim; and
- (k) degree of experience in the practice of law.

5. The Hearing Panel has considered admonition, reprimand, and censure as potential discipline but finds that admonition, reprimand, or censure would not be sufficient discipline because of the gravity of the harm and potential harm to the public, clients, the administration of justice, and the profession in the present case.

6. Defendant has a successful criminal defense practice where Defendant has represented many indigent clients and has been a valuable member of the defense bar in not only representing indigents but giving them a complete defense.

7. Defendant has received prior discipline, but Defendant's prior discipline has not been a deterrent.

8. The Hearing Panel concludes that by complying with the conditions placed on Defendant by the original panel, Defendant could be a contributing member of the legal community he has served. The original panel concluded that, should Defendant satisfy all of the conditions contained in its order, he should have an opportunity to be a contributing member of the legal community, and this Hearing Panel, which is additionally charged with following the COA mandate, concludes that Defendant should retain an opportunity to return to the practice of law in the future.

9. Defendant experienced significant loss in his personal life during the period wherein the alleged misconduct occurred. While the Hearing Panel does not find that these losses caused all of the aforementioned concerns, the Hearing Panel believes that Defendant's circumstances require additional review by a medical professional before Defendant may continue to operate his law firm and represent clients.

10. The Hearing Panel weighed harsher discipline and acknowledged that they were made aware of a prior DHC case with facts that substantially mirrored those in Defendant's case and the accused in that similar case received a suspension and not disbarment.

11. The Hearing Panel finds and concludes that a five-year suspension of Defendant's license to practice law, with an opportunity after three years to seek a stay of the remainder of the suspension upon compliance with conditions, is the appropriate discipline in this case.

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

ORDER OF DISCIPLINE

1. Defendant's license to practice law in the State of North Carolina is suspended for five years, effective 22 November 2024.

2. Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 15 days following service of this order upon Defendant if he has not already done so.

3. Defendant shall comply with the wind down provisions contained in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0128 ("Obligations of Disbarred or Suspended Attorneys") if he has not already done so. Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within 10 days after service of this order, certifying he complied with the wind down rule.

4. The administrative fees and costs of the original disciplinary hearing (which was conducted on November 28 through December 2, 2022 and January 5-6, 2023) in this action are taxed to Defendant. Defendant was previously served with the statement of costs by the Secretary and must pay the costs of that action within 90 days after service of this Order.

5. Within 30 days after service of this Order, Defendant shall provide the State Bar's Office of Counsel with an address and telephone number at which clients seeking their files can communicate with Defendant. Defendant shall return all files to clients within five days of any request.

6. After serving three years of the active suspension that began on 22 November 2024, Defendant may apply for a stay of the remainder of the suspension by filing a petition with the Secretary of the North Carolina State Bar pursuant to § .0118(c) demonstrating by clear, cogent, and convincing evidence that, in addition to complying with the general provisions for reinstatement listed in 27 N.C.A.C. 1B § .0129 of the North Carolina State Bar Discipline & Disability Rules, Defendant has complied with the following conditions:

- (a) That Defendant completed 8 hours of accredited CLE on the topic of trust account management and provided proof of his completion of the trust accounting CLE to the North Carolina State Bar's Office of Counsel (hereafter "Office of Counsel").
- (b) That Defendant completed one hour of accredited CLE on the topic of law office management approved by the Office of Counsel and provided proof of his completion of the course to the Office of Counsel.

- (c) That Defendant entered into payment agreements with the IRS and NC DOR by August 1, 2025 to pay all outstanding taxes, penalties, and interest owed by Defendant and Defendant's law firm and complied with the terms of those agreements throughout the period of active suspension.
- (d) That Defendant provided copies of the payment agreements referenced in paragraph 6(c) above to the Office of Counsel and submitted proof of all payments made pursuant to those agreements to the Office of Counsel within 10 days after the payment was made;
- (e) That during the period of active suspension Defendant timely filed all State and Federal income tax returns and timely paid all State and Federal income taxes. Timeliness shall be determined based on the filing deadlines set by the DOR and the IRS. If Defendant obtains an extension of time to file any income tax return, Defendant must provide proof that the extension was granted to the Office of Counsel within 10 days after the request for extension was approved;
- (f) That Defendant provided copies of all State and Federal income tax returns filed during the period of active suspension to the Office of Counsel within 10 days of filing;
- (g) That Defendant provided proof of payment of all income taxes due during the period of active suspension to the Office of Counsel within 10 days of payment;
- (h) That Defendant provided to the Office of Counsel copies of all correspondence sent to the DOR by Defendant or received by the Defendant from the DOR and IRS during the period of active suspension within 10 days after the correspondence was sent by or received by Defendant;
- (i) That annually during the period of active suspension, Defendant executed a DOR Form Gen-93 (Tax Information Authorization for Taxpayer Records) authorizing the Office of Counsel to obtain all records related to Defendant's State income taxes for the preceding year. The executed authorizations shall be delivered to the State Bar on July 1 of each calendar year during the period of active suspension.
- (j) That Defendant was evaluated by a psychologist or psychiatrist approved by the Office of Counsel to determine whether he has any identifiable condition for which treatment is recommended. The evaluation shall take place no more than 12 months and no less than six months before Defendant is eligible to petition for a stay. Defendant

shall be solely responsible for the cost of the evaluation. Defendant must also demonstrate:

- i. That the written report of the evaluating clinician referenced in paragraph 6(j) above was submitted to the Office of Counsel within 10 days of completion.
 - ii. That Defendant executed a release directing and authorizing the evaluating clinician to communicate and share all records related to the evaluation with the Office of Counsel.
 - iii. That Defendant complied with all treatment recommendations of the evaluating clinician, and—if applicable—executed releases directing and authorizing the clinician(s) who provided the recommended treatment to communicate and share all records related to the treatment with the Office of Counsel.
- (k) That at least thirty days prior to filing the petition for stay, Defendant arranged for an active member of the North Carolina State Bar to serve as his law practice monitor during the stay. The practice monitor shall be an attorney in good standing who practices law in the judicial district in which Defendant practices law and has been approved by the State Bar's Office of Counsel. Defendant shall pay the costs, if any, charged by the practice monitor for the monitor's supervision. At the time he files a petition for stay, Defendant must provide the Office of Counsel with a letter from the practice monitor confirming the practice monitor's agreement to perform the duties described in paragraph 7(i) below during the period of stayed suspension;
- (l) If Defendant does not intend to open or operate a trust account during the period of the stay, Defendant shall attach to the petition a signed, notarized affidavit attesting that he will not open or operate a trust account or handle entrusted funds during the period of stayed suspension;
- (m) That 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;
- (n) That Defendant has responded to all communications from the North Carolina State Bar within thirty days of receipt 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 received after the effective date of this Order;

- (o) That Defendant has not engaged in the unauthorized practice of law during the period of suspension;
- (p) That Defendant has not violated the Rules of Professional Conduct or the laws of the United States or any state or local government during his suspension other than minor traffic violations. If Defendant is convicted of criminal offenses for the misconduct described herein or otherwise any future panel must consider the conviction in any ruling on the petition for stay as the Hearing Panel did not have the benefit of a determination in state or federal court of any criminal conduct;
- (q) That Defendant paid the costs and administrative fees of this action within 90 days after service of this Order;
- (r) That Defendant properly wound down his law practice and complied with the requirements of §.0128 of the North Carolina State Bar Discipline and Disability Rules; and
- (s) That, in connection with the wind down of his law practice, Defendant complied in all respects with the requirements of Rule 1.16(d) of the Rules of Professional Conduct.

7. If Defendant successfully petitions for a stay, the remainder of the suspension of Defendant's law license shall be stayed as long as Defendant complies and continues to comply with the following conditions:

- (a) Upon request by the Office of Counsel, Defendant shall permit the State Bar to audit all accounts over which he has signatory authority and into which client or fiduciary funds have been deposited and shall fully cooperate with the audit and provide all information and documentation requested in the course of the audit.
- (b) Defendant shall provide all documents, including any documents sought in connection with the audits referenced in paragraph 7(a) above, requested by the State Bar within 5 business days and shall be solely responsible for the costs of complying with any such request for documents.
- (c) If Defendant attested in connection with his petition for stay that he did not intend to handle entrusted funds or open or operate a trust account during the period of stayed suspension, Defendant will, at least annually, provide a signed, notarized affidavit attesting that he did not open or operate a trust account or handle entrusted funds during the

preceding year of the period of stay. This affidavit will be due on 1 July each year during the period of stay.

- (d) If Defendant maintains a trust account during the period of stayed suspension, he shall retain a certified public accountant approved by the Office of Counsel who shall provide semi-annual written reports to the State Bar confirming that, at all times during the period of each written report, Defendant maintained in his trust account all client funds or other entrusted funds he was required to maintain in trust and that Defendant has at all times relevant to each such report been in compliance with all requirements of the Rules of Professional Conduct regarding safekeeping property (which are currently codified in Rules 1.15-2 and 1.15-3). Defendant shall be solely responsible for the cost of compliance with this paragraph;
- (e) Defendant shall timely file all State and Federal income tax returns and timely pay all State and Federal income taxes during the period of stayed suspension. Timeliness shall be determined based on the filing deadlines set by the DOR and the IRS. If Defendant obtains an extension of time to file any income tax return, Defendant must provide proof that the extension was delivered to the Office of Counsel within 10 days of the approval of the request for extension;
- (f) Defendant shall provide copies of all State and Federal income tax returns filed during the period of stayed suspension to the Office of Counsel within 10 days of the date such returns were filed by Defendant;
- (g) Defendant shall provide proof of payment of all State and Federal income taxes due during the period of stayed suspension to the Office of Counsel 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 Defendant or received by Defendant 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 meet with his law practice monitor at least monthly. The practice monitor shall review all of Defendant's pending cases. Defendant shall ensure that his practice monitor submits quarterly written reports to the Office of Counsel confirming that the meetings are occurring, that the monitor has reviewed all of Defendant's pending cases, and that Defendant is meeting deadlines, appearing in court when his clients' cases are on the calendar, adequately communicating with clients, and behaving in accordance with all professional

standards. The reports are due January 15, April 15, July 15, and October 15 during the period of stayed suspension. If at any point during the stayed suspension Defendant's practice monitor cannot serve or is unwilling to serve, Defendant shall, within 30 days, arrange for an alternate practice monitor who meets the requirements set forth in paragraph 6(k) above;

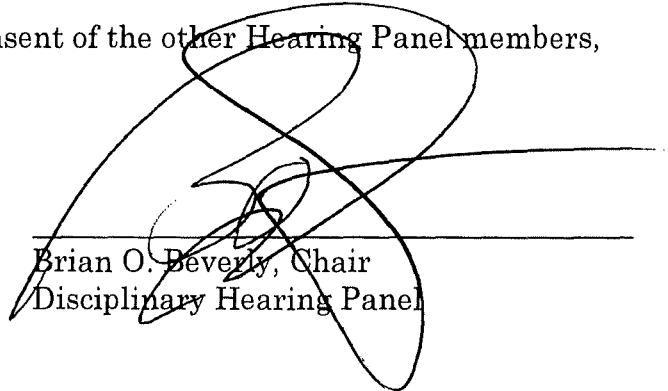
- (j) Defendant shall keep the North Carolina State Bar Membership Department advised of his current business and home addresses and notify the Bar of any change in address within ten days of such change;
- (k) Defendant shall respond to all communications from the North Carolina State Bar by the deadline stated in the communication, whichever is sooner, and participate in good faith in the State Bar's fee dispute resolution process for any petition received during the period of the stay;
- (l) Defendant shall timely comply with all North Carolina State Bar CLE requirements as set forth in 27 N.C.A.C. 1D.1518 and pay all fees and costs assessed therefor by the applicable deadline. Defendant shall provide proof of the same to the Office of Counsel within 10 days of completing each CLE course; and
- (m) Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or any state or local government during the period of the stay, other than minor traffic violations.

8. If Defendant fails to comply with any of the conditions of the stayed suspension provided in paragraph 7 above, the stay of the suspension may be lifted as provided in § .0118 of the North Carolina State Bar Discipline and Disability Rules.

9. If Defendant does not seek a stay of the suspension of his 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 paragraphs 6(a) through (j) and 6(m) through (s) above and the provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0129 before seeking reinstatement of his license to practice law, and must provide in his petition for reinstatement clear, cogent, and convincing evidence showing his compliance therewith.

10. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to §§ .0118 and .0129(b) of the North Carolina State Bar Discipline and Disability Rules throughout the period of the suspension, any stay thereof, and until all conditions set forth above are satisfied.

Signed by the Chair with the consent of the other Hearing Panel members,
this the 27th day of February, 2025.



Brian O. Beverly, Chair
Disciplinary Hearing Panel