



North Carolina Court of Appeals

EUGENE H. SOAR, Clerk

Court of Appeals Building

One West Morgan Street

Raleigh, NC 27601

(919) 831-3600

From Disciplinary Hearing Commission
(22DHC25)

Fax: (919) 831-3615

Web: <https://www.nccourts.gov>

Mailing Address:
P. O. Box 2779
Raleigh, NC 27602

No. P24-328

THE NORTH CAROLINA STATE BAR

v.

MARK CUMMINGS

ORDER

The following order was entered:

By unanimous vote, the motion for temporary stay filed in this cause by defendant on 26 August 2024 is allowed. The Order of Discipline entered on 1 April 2024 by Disciplinary Hearing Panel Chair Margaret M. Hunt is hereby stayed pending this Court's ruling on the petition for writ of supersedeas.

By order of the Court this the 27th of August 2024.

WITNESS my hand and official seal this the 27th day of August 2024.

Eugene H. Soar
Clerk, North Carolina Court of Appeals

Copy to:

Mr. Troy D. Shelton, Attorney at Law, For Mark Cummings - (By Email)

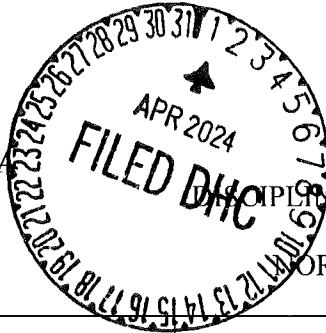
Ms. Jennifer A. Porter, Deputy Counsel - (By Email)

Ms. Jessica Arnold, Attorney at Law - (By Email)

Ms. Kathryn H. Shields, Deputy Counsel, For North Carolina State Bar - (By Email)

N.C. Court of Appeals

The Honorable Clerk of Disciplinary Hearing Commission, Disciplinary Hearing Commission County



STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA State Bar
22 DHC 25

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

MARK T. CUMMINGS, Attorney,

Defendant

ORDER OF DISCIPLINE

THIS MATTER was heard on 14-17 November 2023 and 22-23 January 2024 before a Hearing Panel of the Disciplinary Hearing Commission composed of Margaret M. Hunt, Chair, and members Margit Monaco Hicks and Heath R. Jenkins. Jennifer A. Porter and Jessica M. Arnold represented Plaintiff, the North Carolina State Bar. Defendant, Mark T. Cummings, appeared *pro se*.

Based upon the pleadings, the stipulated facts, and the testimony and evidence admitted 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 T. Cummings (“Cummings” or “Defendant”), was admitted to the North Carolina State Bar in 2007, 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 the relevant periods referred to herein, Cummings was either engaged in the practice of law in the State of North Carolina and maintained a law office in Greensboro, Guilford County, North Carolina or was serving as a District Court Judge in Guilford County, North Carolina.

4. Cummings was properly served with process, a hearing in this matter was set, and the matter came before the hearing panel with due notice to all parties.

Board of Elections / Judicial Candidacy Residency

5. In 2018, Defendant sought election to the office of Superior Court Judge.
6. In order to be qualified for the office of Superior Court Judge in a particular judicial district, Defendant had to reside in that district.
7. The residency requirement for elected positions is designed to deter abuses of the election process, such as precinct shopping, and to ensure that elected officials sincerely represent the residents of a particular district.
8. Defendant sought election to the office of Superior Court Judge in Judicial District 18A.
9. On June 26, 2018, Defendant visited the Guilford County Board of Elections to obtain a certificate of eligibility to file as a candidate for election to the office of Superior Court Judge for Judicial District 18A.
10. During Defendant's attempt to obtain certification, he was asked to provide his address.
11. In response, Defendant provided the Guilford County BoE staff with the address of 3675 McGinty Drive, Greensboro, North Carolina 27406 (the "McGinty Drive address").
12. Guilford County BoE staff told Defendant the McGinty Drive address was not located in Judicial District 18A.
13. Guilford County BoE staff told Defendant he did not reside in the proper judicial district to file for the Superior Court Judge seat in Judicial District 18A.
14. The next day, on June 27, 2018, Defendant returned to Guilford County BoE and executed a new North Carolina Voter Registration Application listing 444 Gorrell Street, Unit C, Greensboro, NC 27406 (the "Gorrell Street address") as his residential address and provided it to BoE staff.
15. The Gorrell Street address is in Judicial District 18A.
16. The Gorrell Street address was owned by the family of a very good friend of Defendant's, and Defendant's friend acted as a leasing agent for the property.
17. On June 27, 2018, after submitting the North Carolina Voter Registration Application changing his address to the Gorrell Street address, Defendant submitted to the Guilford County BoE a Notice of Candidacy form for the Judicial District 18A Superior Court Judge seat.
18. Defendant listed the Gorrell Street address as his residential address on the Notice of Candidacy form.

19. Defendant submitted the Notice of Candidacy form listing the Gorrell Street address as his residential address for the Director of the Guilford County BoE to sign certifying that Defendant resided in Superior Court Judicial District 18A.

20. The Director of the Guilford County BoE certified on the Notice of Candidacy form that Defendant resided in Superior Court Judicial District 18A.

21. On June 28, 2018, Defendant executed and submitted to the North Carolina State Board of Elections the Notice of Candidacy Form on which his residential address was listed as the Gorrell Street address.

22. On July 2, 2018, Defendant changed his address with the North Carolina Department of Motor Vehicles (DMV) from the McGinty Drive address to the Gorrell Street address.

23. On July 2, 2018, Defendant submitted to DMV an application for a driver's license that listed as his address the Gorrell Street address.

24. Defendant and his ex-wife stated Defendant moved from the McGinty Drive address in 2018 due to marital problems.

25. Defendant's ex-wife stated Defendant moved from the McGinty Drive address after he returned from his trip to the Dominican Republic in 2018.

26. Defendant was in the Dominican Republic from about July 4, 2018 to July 10, 2018.

27. On June 27, 2018, June 28, 2018, and July 2, 2018, when he claimed he resided at the Gorrell Street address on the Voter Registration Application, the Notice of Candidacy form, and the driver's license application, Defendant resided at the McGinty Drive address.

28. There was no credible evidence introduced at trial that Defendant lived at the Gorrell Street address at any time.

29. The evidence at trial indicated Defendant did not live at the Gorrell Street address, including the following:

- a. Defendant did not change his address with the United States Postal Service from the McGinty Drive address to the Gorrell Street address.
- b. Defendant did not change his address from the McGinty Drive address to the Gorrell Street address anywhere other than on his voter registration and with the DMV.
- c. Certified mail that the Guilford County Board of Elections attempted to send to Defendant at the Gorrell Street address in July 2018 was not successfully delivered.

30. If Defendant moved out of the McGinty Drive address in 2018, the move was temporary. It was not an actual abandonment of that domicile coupled with an intent to not return to that domicile and was not accompanied by acquisition of a new domicile by actual residence at another place with the intent of making the newer domicile a permanent domicile, which is required to establish residency for election purposes. The temporary nature of any move by Defendant out of the McGinty Drive residence is evidenced by the above-referenced evidence as well as the following:

- a. At the time they discussed having some time apart, Defendant's ex-wife stated she wanted them to go to marital counseling.
- b. At the time their time apart began, Defendant's friend believed Defendant still loved his wife and wanted to be with her.
- c. Defendant left most of his belongings at the McGinty Drive address when he left, including a prized piece of furniture.

31. Even if it were to be believed that Defendant lived at the Gorrell Street address after he returned from the Dominican Republic in July 2018, the evidence established the following: Defendant identified a July 25, 2018 news article as prompting him to move back to the McGinty Drive address, and, according to several witnesses, by September 2018 Defendant was living at the McGinty Drive address.

32. Defendant ran for election for Superior Court Judge in Judicial District 18A from June 2018 through November 2018.

33. From June 2018 through November 2018, Defendant falsely held himself out as qualified and eligible for election as a Superior Court Judge in Judicial District 18A.

34. Because Defendant did not reside in Judicial District 18A, Defendant was not qualified and eligible for election as a Superior Court Judge in Judicial District 18A.

35. The 2018 North Carolina general election, which included election for the Superior Court Judge seat in Judicial District 18A, occurred on Tuesday, November 6, 2018.

36. On the date of the general election in 2018, Defendant's voter registration continued to indicate he resided at the Gorrell Street address.

37. On the date of the general election, Defendant did not reside at the Gorrell Street address.

38. Defendant did not vote in the November 2018 general election in which his name was on the ballot.

39. On June 27, 2018, when Defendant falsely claimed to reside at the Gorrell Street address on the North Carolina Voter Registration Application, Defendant attested to and signed

the North Carolina Voter Registration Application listing the Gorrell Street address under the penalty of perjury.

40. At the time Defendant signed the North Carolina Voter Registration Application listing the Gorrell Street address as his residential address, he was not actually residing at the Gorrell Street address with the intention of making the Gorrell Street address his permanent home.

41. At the time Defendant signed the North Carolina Voter Registration Application listing the Gorrell Street address as his residential address, Defendant knew he did not reside at the Gorrell Street address.

42. Defendant made a false statement regarding his residential address on the North Carolina Voter Registration Application.

43. Defendant's false statement regarding his address on the North Carolina Voter Registration Application was made knowingly and intentionally.

44. On June 27, 2018, Defendant submitted a Notice of Candidacy form that falsely stated his residential address as the Gorrell Street Address for certification by the Director of the Guilford County BoE. The Director's certification was based upon the Gorrell Street address being listed as Defendant's address in the voter registration system, which Defendant had changed that same day when he submitted the North Carolina Voter Registration Application.

45. Defendant used his newly-established voter registration address of 444 Gorrell Street, Unit C, Greensboro, NC 27406 as proof of residency to induce the Director of the Guilford County Board of Elections to certify that Defendant was a resident of District 18A, when Defendant was not in fact a resident of District 18A.

46. On June 28, 2018, Defendant swore or affirmed that the statements on the Notice of Candidacy Form were true, correct, and complete to the best of his knowledge or belief.

47. Defendant did not reside at the address listed as his residential address on the Notice of Candidacy form, the Gorrell Street address.

48. Defendant knew on June 28, 2018 that he did not reside at the Gorrell Street address on that date.

49. Defendant was not eligible to run for Superior Court Judge in Judicial District 18A because he did not reside in Judicial District 18A.

50. Defendant knowingly and intentionally made false statements on the Notice of Candidacy form and knowingly misrepresented himself as eligible to run for Superior Court Judge in Judicial District 18A.

51. Defendant's false statements regarding his address on the North Carolina Voter Registration Application and on the Notice of Candidacy form constituted perjury in violation of

N.C. Gen. Stat. § 14-209 and a knowing false swearing with respect to any matter pertaining to any primary or election in violation of N.C. Gen. Stat. § 163-275.

52. Defendant executed and submitted the above-described North Carolina Voter Registration Application and Notice of Candidacy form containing false statements regarding his residency knowingly and with deceit and intent to defraud, for the purpose of running as a candidate for Superior Court Judge in Judicial District 18A when he did not reside in Judicial District 18A. By engaging in this conduct, Defendant engaged in common law obstruction of justice.

53. On July 2, 2018, when Defendant stated his address was the Gorrell Street address on an application for driver's license to the DMV, Defendant did not reside at the Gorrell Street address.

54. Defendant knew he did not reside at the Gorrell Street address when he provided that address to the DMV.

55. Defendant provided a false address to DMV on July 2, 2018.

56. Defendant's false statement regarding his address in his application for driver's license to DMV was in violation of N.C. Gen. Stat. § 20-30.

57. It is a Class 1 misdemeanor to give a false address to DMV in any application for or renewal of a driver's license pursuant to N.C. Gen. Stat. § 20-30.

58. It is a Class I felony for a person to falsely make or present any certificate or other paper to qualify any person fraudulently as a voter or to attempt thereby to secure to any person the privilege of voting pursuant to N.C. Gen. Stat. § 163-275(13).

59. It is a Class I felony for a person to knowingly swear falsely with respect to any matter pertaining to any primary or election pursuant to N.C. Gen. Stat. § 163-275(4).

60. It is a Class F felony for a person to knowingly and intentionally make a false statement in any oath or affirmation duly administered of or concerning any matter or thing where such person is lawfully required to be sworn or affirmed pursuant to N.C. Gen. Stat. § 14-209.

61. It is a Class H felony to unlawfully and willfully obstruct justice with deceit and intent to defraud.

62. Canon 7 of the North Carolina Code of Judicial Conduct states in subsection C that "[a] judge or a candidate should not: ... (3) intentionally and knowingly misrepresent his/her identity or qualifications."

63. The acts of dishonesty and misrepresentation identified above, including in paragraphs 39 to 56, reflect adversely on Defendant's fitness as a lawyer in that he made these false statements and engaged in this dishonest conduct to make it falsely appear he was qualified

for election to a judicial office for which he was not eligible, and two of the statements were made under penalty of perjury.

64. The criminal acts identified above, including in paragraphs 39 to 56, reflect adversely on Defendant's honesty, trustworthiness, or fitness as a lawyer in other respects. Each of the criminal acts were crimes of dishonesty which inherently reflect adversely on Defendant's honesty and trustworthiness. Moreover, each of these criminal acts reflect adversely on Defendant's fitness as a lawyer in that they were part of an intentional multi-step scheme to subvert election laws, evade residency requirements for elected office, and attempt to gain himself a judgeship for which he was not eligible.

65. By holding himself out as eligible to be elected as Superior Court Judge in District 18A when he was not eligible to be elected in District 18A, Defendant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on his fitness as a lawyer. This conduct reflects adversely on Defendant's fitness as a lawyer in that he was evading a residency requirement designed to deter abuses in the election process in order to falsely appear eligible for a judicial office.

Court Note for J.S. in Child Support Enforcement Action

66. Defendant was, from 2017 to 2019, a District Court Judge in Judicial District 18.

67. On Tuesday, May 1, 2018, Defendant presided as the District Court Judge in child support enforcement court in Guilford County, North Carolina.

68. One of the matters before Defendant on May 1, 2018 was a motion filed by plaintiff-mother to increase defendant-father's child support obligation in *Williams v. Spratley*, Guilford County File No. 17CVD03776.

69. During the hearing in *Williams v. Spratley*, the defendant-father J.S. informed Defendant he resided in the Commonwealth of Virginia.

70. In the hearing for the child support action, J.S. informed Defendant he was not allowed to leave "his area code" in Virginia due to post-prison supervised release requirements.

71. J.S. stated "I plead the fifth" when asked about needing to have gotten permission to leave Virginia.

72. Defendant stated, "But you're in court. I'm telling you we can help you on that."

73. Following discussion between the parties regarding their desire that J.S. be able to spend more time with the child, and that he had spent the whole prior day with the child while the mother worked, Defendant asked J.S. whether he had to work the next day in Virginia.

74. J.S. indicated he did not have to work the following day.

75. Defendant directed the courtroom clerk to prepare a court note for J.S. for Monday, April 30, 2018; Tuesday, May 1, 2018; and Wednesday, May 2, 2018.

76. The court note Defendant directed the clerk to prepare stated that J.S. was present in court on April 30, 2018, May 1, 2018, and May 2, 2018.

77. The clerk prepared the note in accordance with Defendant's direction.

78. Defendant asked the clerk to prepare this note so J.S. would have a court note documenting why he was in North Carolina and not in the Commonwealth of Virginia, if needed with respect to J.S.'s post-prison supervised release.

79. No hearing was scheduled in the *Williams v. Spratley* case for Monday, April 30, 2018.

80. The parties, including J.S., were not in child support enforcement court on Monday, April 30, 2018.

81. As was stated by one of the parties during the *Williams v. Spratley* hearing before Defendant, on April 30, 2018, J.S. had spent 8 hours with his son in North Carolina. J.S. was not in North Carolina to appear in court on that date.

82. The hearing in *Williams v. Spratley* ended before noon on May 1, 2018.

83. J.S. lived about three and a half hours from the hearing location and could have driven back to his home in Virginia on May 1, 2018.

84. At the hearing on May 1, 2018, Defendant stated to J.S. "There's a possibility I'm going to need you to come back to court in the morning" immediately prior to instructing the courtroom clerk to give J.S. a note for the three days.

85. There was no need for J.S. to return to court on May 2, 2018.

86. There was no need for J.S. to be in North Carolina for further court proceedings in *Williams v. Spratley* on May 2, 2018.

87. No hearing was scheduled in the *Williams v. Spratley* case for Wednesday, May 2, 2018.

88. The parties, including J.S., were not in court for the *Williams v. Spratley* case on Wednesday, May 2, 2018.

89. J.S. was only in child support enforcement court on Tuesday, May 1, 2018.

90. Defendant knew J.S. was not in child support enforcement court on Monday, April 30, 2018.

91. Defendant knew J.S. was only in child support enforcement court on Tuesday, May 1, 2018.

92. Defendant knew no hearing was scheduled in the *Williams v. Spratley* case for Wednesday, May 2, 2018.

93. Court notes prepared by the courtroom clerks in Guilford County are prepared from a standard template and confirm the presence of the designated person in court on the designated date.

94. It is not credible that Defendant, who had spent years litigating in Guilford County courts and serving as District Court Judge in Guilford County, did not know what the courtroom note template said.

95. Defendant knew the information he asked the courtroom clerk to include in J.S.'s court note was false.

96. Even if Defendant's testimony – that he thought the note from the courtroom clerk would contain the exact language he stated in Court when instructing that the note be given – were believed, the information in the resulting court note would still be false.

97. The language Defendant stated in Court regarding a note was that the note would say J.S. was “here for Court the last three days, yesterday, today, and tomorrow.”

98. The “here” in “here for Court” would commonly be understood as here in this courtroom, where they were when Defendant made the statement, for the court proceeding.

99. J.S. was not in court for the hearing in *Williams v. Spratley* for “the last three days, yesterday, today, and tomorrow.” J.S. was only in court for the hearing in *Williams v. Spratley* on May 1, 2018.

100. Even if “here” were understood to mean in North Carolina, the statements in the resulting court note would not be true: J.S. was not in North Carolina for the hearing in *Williams v. Spratley* for any day other than the date of the hearing, May 1, 2018.

101. By knowingly and intentionally directing the courtroom clerk to prepare a court note for J.S. containing false information, Defendant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation. This dishonest conduct reflected adversely on Defendant's fitness as a lawyer in that he engaged in dishonesty in the courtroom, indicating to parties in a judicial proceeding that he would have false information placed in a note issuing from the Court for J.S.'s benefit. It further reflects adversely on Defendant's fitness as a lawyer because he involved another courthouse official – the courtroom clerk – in this dishonest conduct.

102. By attempting to aid J.S. in evading consequences for a violation of his post-prison supervised release requirements with a court note containing false information, Defendant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation. This dishonest conduct reflected adversely on Defendant's fitness as a lawyer in that Defendant was willing to misuse court processes and deceive Virginia authorities supervising J.S.'s post-prison release.

Taxes

103. While operating the law firm of Cummings Legal Group (“CLG”), including during the times referred to in this claim for relief, Defendant issued checks from CLG in compensation to one or more individuals for services provided for the benefit of CLG.

104. For certain of these individuals, including the individuals listed herein, Defendant did not treat these individuals as employees for tax purposes and did not withhold and deposit employment taxes, including income taxes, social security taxes, Medicare taxes, and unemployment taxes, from the wages paid to these individuals as would be required with respect to employees under applicable statutes, including 26 U.S.C. §§ 3301, 3402, and 7501.

105. For these same certain individuals, including the individuals listed herein, Defendant did not issue or file Forms 1099 for these individuals for compensation paid by CLG to these individuals of \$600.00 or more in a year as would be required by applicable statute, including 26 U.S.C. § 6041.

106. B.J. provided paralegal services to CLG in 2014 and 2015.

107. The services B.J. provided to CLG included answering telephone calls for CLG, speaking to potential clients regarding services CLG could provide, discussing the fees CLG would charge in traffic cases, conducting intake interviews of new clients for CLG, scheduling client appointments for CLG, and preparing case files for court.

108. B.J. was paid an hourly wage per hours worked, and was typically paid at the end of each week.

109. Defendant issued checks from CLG as compensation to B.J. while she worked at CLG in 2014 and 2015, including the following:

Date Issued	Check No.	Memo Line	Amount
05/16/2014	1612	Administrative Contractor May 9-16	\$457.50
05/23/2014	1616	Internship Stipend	\$260.50
05/30/2014	1628	---	\$191.25
06/06/2014	1631	Administrative Independent Contractor 6/2 – 6/6	\$298.35
06/13/2014	1640	Administrative Independent Contractor 6/9 – 6/13	\$303.83
06/19/2014	1643	6/18 20 Contractor	\$306.86
06/27/2014	1646	Independent Contractor 6/23 – 6/27	\$282.75
07/03/2014	1650	Independent Contractor Admin 6/30 – 7/4	\$254.48
07/11/2014	1655	7/7-11/14	\$330.80
07/18/2014	1665	7/14 – 7/18	\$182.13
07/25/2014	1672	July 21 – 25	\$368.18
08/01/2014	1674	7/28 – 8/1	\$353.14
08/08/2014	1679	8/4 – 8/8	\$324.43
08/18/2014	1683	8/11 to 8/15	\$388.37
08/22/2014	1688	8/18 – 8/22	\$355.55

08/29/2014	1692	8/25 – 8/29	\$320.48
09/05/2014	1697	9/1 – 9/5	\$325.23
09/12/2014	1703	9/8 – 9/12	\$394.77
09/19/2014	1707	9/15 – 9/19	\$498.27
09/26/2014	1710	9/22 – 9/26	\$408.73
10/03/2014	1715	9/29 – 10/3	\$357.75
10/10/2014	1723	Oct 6 – Oct 10	\$306.30
10/17/2014	1727	10/13-17/14	\$303.00
10/24/2014	1734	10/20 – 10/24	\$355.67
11/07/2014	1746	---	\$296.03
11/14/2014	1750	---	\$444.79
11/21/2014	1760	11/17 – 11/21	\$377.68
11/26/2014	1764	Contractor work	\$191.84
12/05/2014	1772	12/1 – 12/5	\$289.57
12/12/2014	1776	12/8 – 12/12	\$279.64
12/19/2014	1781	Christmas	\$100.00
12/19/2014	1783	12/15 – 12/19	\$347.28
12/24/2014	1789	12/22 – 12/26	\$173.55
TOTAL PAID IN 2014			\$10,428.68
01/02/2015	1795	12/29 - 1/2	\$188.16
01/09/2015	1797	1/5 - 1/9	\$337.61
01/16/2015	1800	1/12 - 1/16	\$359.92
01/23/2015	1805	1/19 - 1/23	\$262.80
01/30/2015	1807	1/26 - 1/30	\$377.14
TOTAL PAID IN 2015			\$1,525.63

110. Defendant admitted he signed all of the above-listed checks to B.J.

111. T.D. provided services to CLG in 2015.

112. The services T.D. provided to CLG included conducting legal research for CLG cases, preparing a memorandum for Defendant based upon legal research he did, drafting civil complaints, and filling out paperwork for estates for which Defendant was serving as administrator.

113. Defendant issued checks from CLG to T.D. as compensation while he worked at CLG in 2015, including the following:

Date Issued	Check No.	Memo Line	Amount
08/21/2015	1975	8/17 - 8/21	\$400.00
08/28/2015	1980	8/24 - 8/28	\$400.00
09/04/2015	1986	8/31 - 9/4	\$400.00
09/11/2015	1992	9/14 (9/7 - 9/11)	\$400.00
TOTAL PAID IN 2015			\$1,600.00

114. The checks to T.D. were written in accordance with the compensation agreement Defendant had made with T.D.

115. The checks to T.D. were signed on behalf of Defendant by a person who was assisting Defendant in his law office and who Defendant had allowed to write checks from his operating account.

116. K.N. provided services to CLG in 2016.

117. The services K.N. provided to CLG included answering telephone calls for CLG and scheduling appointments for CLG.

118. K.N. was paid an hourly wage for the hours she worked, and was typically paid at the end of each week.

119. Defendant issued checks from CLG to K.N. as compensation while she worked at CLG in 2016, including the following:

Date Issued	Check No.	Memo Line	Amount
08/26/2016	2288	Admin 8/22 - 8/26	\$390.00
09/02/2016	2292	8/29 - 9/2/16	\$377.26
09/09/2016	2300	Admin Support	\$314.58
09/20/2016	2308	9/12 - 9/17	\$425.40
09/30/2016	2318	Contractor Work	\$235.88
10/07/2016	2323	Consultants Work	\$108.45
10/14/2016	2331	Contract work	\$90.57
10/21/2016	2335	Consultants	\$79.95
11/11/2016	2343	11/7 - 11/13/2016	\$255.94
11/18/2016	2347	Business Consultant	\$235.75
11/22/2016	2350	Consultant Work 11/21 - 25	\$175.50
12/02/2016	2356	Business Consultant	\$327.28
12/05/2016	2357	Consultant ---	\$150.00
12/16/2016	2360	Business Consultant	\$418.51
12/30/2016	2362	Consultant	\$206.05
12/31/2016	2364	Consultant	\$48.75
TOTAL IN 2016:			\$3,839.87

120. Defendant admitted he signed all but three of the above-listed checks for K.N.

121. K.N. testified Defendant instructed her to sign the remaining three checks.

122. Pursuant to 26 U.S.C. § 7203, it is a federal misdemeanor to fail to file a return required by Title 26 of the United States Code or by related regulations.

123. 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.

124. On October 6, 2021, counsel for the State Bar interviewed Defendant in connection with a grievance investigation.

125. While discussing people who worked in his law firm, Defendant described taking people into a social justice program in his law office and providing training to them.

126. Defendant told the State Bar he did not compensate people in the program because they did not provide services to his law firm worthy of compensation.

127. Defendant told the State Bar that B.J. was in the program.

128. Defendant told the State Bar that B.J. was not an employee or independent contractor.

129. Defendant told the State Bar he did not compensate B.J. for her work at CLG.

130. Defendant made false statements to the State Bar regarding B.J.'s compensation.

131. Defendant made false statements to the State Bar regarding B.J.'s employment status at CLG.

132. At the time Defendant falsely stated to the State Bar that B.J. was not an employee or independent contractor of CLG, he knew B.J. had provided the services for CLG identified above. At the time Defendant made this false statement to the State Bar, he knew it was false.

133. At the time Defendant falsely stated to the State Bar that he did not compensate B.J. for her work at CLG, Defendant knew he had issued the above-identified checks to B.J. from the CLG operating account for B.J.'s services to CLG. At the time Defendant made this false statement to the State Bar, he knew it was false.

134. Defendant's statements before the DHC indicating that he had issued these checks to B.J. as charitable gifts rather than as compensation for the services she provided to CLG were not credible.

135. By making false statements regarding B.J.'s status with CLG and her compensation for her services to CLG to the State Bar during its grievance investigation of his conduct, Defendant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on his fitness as a lawyer. This conduct reflects adversely on Defendant's fitness as a lawyer in that Defendant made statements to the agency charged by statute with the responsibility of regulating the legal profession that were designed to mislead the agency in its investigation.

136. By failing to comply with either the tax obligations applicable to employees or the tax obligations applicable to independent contractors with respect to individuals performing services for his law firm, including B.J., T.D., and K.N., Defendant engaged in criminal acts. Those criminal acts reflect adversely on Defendant's honesty, trustworthiness or fitness as a lawyer

in that Defendant failed to comply with generally applicable laws with respect to the compensation paid to B.J., T.D., and K.N. for services to his law firm, in a role that only he could satisfy.

Misrepresentation to Court

137. In 2021, Defendant represented D.B. in *State of North Carolina v. Brown*, Rockingham County File No. 20CRS051143, in which D. B. was charged with felony possession of a firearm by convicted felon (the “firearm charge”).

138. During his representation of D.B., Defendant spoke with A.H., a witness in D.B.’s case, on several occasions in person, by telephone, and by text message.

139. One of Defendant’s conversations with A.H. occurred on May 18, 2021.

140. D.B.’s trial in the firearm charge occurred on September 13-16, 2021.

141. A.H. was a witness for the State of North Carolina in the firearm charge trial.

142. During a break in A.H.’s testimony at trial, Defendant put a recording device on his table.

143. Defendant’s intent when he put the recording device on his table was to create the impression that he had a recording of A.H.’s statements to him.

144. Upon noticing the recording device, the presiding Superior Court Judge Edwin G. Wilson, Jr. (“Judge Wilson”) asked Defendant, “now what are you doing?”

145. Defendant responded, “Taking out what I may use, Your Honor.”

146. Judge Wilson later initiated a discussion with Defendant regarding whether confronting the witness with what was on the recorder might constitute introducing evidence.

147. In response, Defendant stated they intended to offer evidence anyway.

148. Defendant further stated, “Well, for the record, I do think we have to put on the May 18th interview of [A.H.] because I did think it was more prudent, since I didn’t know her and she didn’t know me, to do it in a public place.”

149. By these actions and statements, Defendant misrepresented to the Court that he had a recording of his May 18, 2021 interview of A.H.

150. In response to Defendant’s statements regarding putting on the May 18th interview, Judge Wilson stated, “So you would like to introduce the interview? You interviewed Ms. Hudson, and taped it, and you would like to introduce that into evidence?”

151. Judge Wilson then had Defendant and the Assistant District Attorney approach the bench for a bench conference.

152. During this bench conference, Defendant did not tell Judge Wilson that Defendant did not have a recording of his May 18, 2021 interview of A.H.

153. At all times during the September 2021 trial in *State v. Brown*, Judge Wilson believed Defendant had a recording of Defendant's May 18, 2021 interview of A.H.

154. On October 6, 2021, the State Bar asked Defendant for a copy of his recordings of his conversations with A.H.

155. Defendant stated to the State Bar that he had not recorded his conversations with A.H. and did not have any recordings of his conversations with A.H.

156. Defendant further stated that no recordings were played in court because there were none.

157. Defendant misrepresented to Judge Wilson the existence of a recording of A.H.'s statements to him in a May 18, 2021 interview.

158. Defendant knew at the time he misrepresented to Judge Wilson that he had a recording of his May 18, 2021 interview of A.H. that he did not have any recording of that interview. Defendant knew he was misrepresenting the existence of the recording when he engaged in this conduct.

159. By knowingly misrepresenting to Judge Wilson that he had a recording of his May 18, 2021 interview of A.H., Defendant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on his fitness as a lawyer. This conduct reflects adversely on his fitness as a lawyer in that, as an officer of the Court, he engaged in misrepresentation to the Court.

Based on 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, Mark T. Cummings, 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 holding himself out as eligible to be elected as Superior Court Judge in District 18A when he was not eligible to be elected in District 18A, Defendant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c) and failed to comply with the applicable provisions of the Code of Judicial Conduct in violation of Rule 8.2(b);

- b. By knowingly and intentionally falsely stating his residential address was 444 Gorrell Street, Unit C, Greensboro, NC 27406 on the North Carolina Voter Registration Application that he attested to and signed under penalty of perjury and submitted, Defendant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c), engaged in a criminal act (including violation of N.C. Gen. Stat. § 163-275 and § 14-209) 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 engaged in conduct that is prejudicial to the administration of justice in violation of Rule 8.4(d);
- c. By knowingly and intentionally falsely stating his residential address was 444 Gorrell Street, Unit C, Greensboro, NC 27406 on the Notice of Candidacy form for the office of North Carolina Superior Court Judge in District 18A, which he signed swearing or affirming that the statements on the form were true, correct, and complete to the best of his knowledge or belief and submitted, Defendant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c), engaged in a criminal act (including violation of N.C. Gen. Stat. § 163-275 and § 14-209) that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b), engaged in conduct that is prejudicial to the administration of justice in violation of 8.4(d), and failed to comply with the applicable provisions of the Code of Judicial Conduct in violation of Rule 8.2(b);
- d. By using his newly-established voter registration address of 444 Gorrell Street, Unit C, Greensboro, NC 27406 as proof of residency to the Guilford County Board of Elections personnel and to induce the Director of the Guilford County Board of Elections to certify that Defendant was a resident of District 18A when Defendant was not in fact a resident of District 18A, Defendant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c) and failed to comply with the applicable provisions of the Code of Judicial Conduct in violation of Rule 8.2(b);
- e. By falsely stating his address was 444 Gorrell Street, Unit C, Greensboro, NC 27406 to DMV, Defendant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c) and engaged in a criminal act (including violation of N.C. Gen. Stat. § 20-30) that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b);
- f. By executing and submitting the above-described North Carolina Voter Registration Application and Notice of Candidacy form containing false statements regarding his residency knowingly and with deceit and intent to defraud, for the purpose of running as a candidate for Superior Court Judge in Judicial District 18A when he did not reside in Judicial District 18A, Defendant obstructed justice and

thereby engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c), engaged in 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 engaged in conduct that is prejudicial to the administration of justice in violation of Rule 8.4(d);

- g. By knowingly and intentionally ordering the courtroom clerk to prepare a court note for J.S. containing false information, Defendant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c) and conduct that is prejudicial to the administration of justice in violation of Rule 8.4(d);
- h. By attempting to aid J.S. in evading consequences for a violation of his conditions of post-prison supervised release requirements with a court note containing false information, Defendant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c) and conduct that is prejudicial to the administration of justice in violation of Rule 8.4(d);
- i. By failing to comply with either the tax obligations applicable to employees or the tax obligations applicable to independent contractors with respect to individuals performing services for his law firm, including B.J., T.D., and K.N., Defendant engaged in criminal acts that reflect adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b);
- j. By falsely stating to the State Bar that Defendant did not compensate B.J. for her work at his law firm and that B.J. was not an employee or independent contractor for his law firm, Defendant knowingly made false statements of material fact in violation of Rule 8.1(a) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c); and
- k. By misrepresenting to the judge that he had a recording of his May 18, 2021 interview of A.H., Defendant knowingly made a false statement to a tribunal in violation of Rule 3.3(a)(1), engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c), and engaged in conduct that is prejudicial to the administration of justice in violation of Rule 8.4(d).

Based on the foregoing Findings of Fact and Conclusions of Law, the stipulated facts, and the testimony and evidence 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 – 159 above are reincorporated as if set forth herein.

2. A cornerstone of client trust in an attorney is that the attorney will act with integrity. Failure to do so erodes the confidence clients place in attorneys who handle their affairs and harms the profession. By failing to act with integrity, as described throughout this Order, Defendant caused significant harm to the legal profession and eroded the confidence clients place in their lawyers.

3. The residency requirement for candidates in elections was designed to deter abuses of the election process such as precinct shopping, and to ensure that elected officials sincerely represent the residents of a particular district. Attempting to get elected in a district in which the candidate does not reside undermines this fundamental goal of the electoral process and frustrates the purposes for which residency was included as a requirement for Superior Court Judges in North Carolina's Constitution (N.C. Const. Art. IV, § 9).

4. By running for election to Superior Court Judge in District 18A when he was not eligible to be elected in District 18A or to serve as Superior Court Judge in District 18A, Defendant caused significant harm to members of the public consisting of the voters in District 18A and to the administration of justice by obstructing justice and interfering with the voters' ability to vote for someone who was truly a resident of District 18A and who would represent their interests as a fellow resident.

5. By running for election to Superior Court Judge in District 18A when he was not eligible to be elected in or serve as Superior Court Judge in District 18A, Defendant elevated his own interests above those of the voters in District 18A.

6. Attorneys as officers of the court have a duty to avoid conduct that undermines the integrity of the adjudicative process. By engaging in misrepresentation to the court in the *State v. Brown* proceeding, Defendant caused significant harm to the profession and the administration of justice by causing the judge in *State v. Brown* to believe something that was not true and to spend time addressing a recording that did not exist, and by generally eroding the ability of judges and attorneys to rely on another attorney's word.

7. By directing the courtroom clerk to prepare a note for J.S. containing false information, Defendant caused significant harm to the administration of justice by using court processes and personnel for an improper purpose and by placing the courtroom clerk in the position of having to sign her name to a note she knew contained false information. The courtroom clerk was a vulnerable victim of Defendant's misconduct.

8. By making a false statement to the State Bar concerning B.J., Defendant caused potential significant harm to the administration of justice by impeding the investigation of the State Bar and obstructing the profession's self-regulatory process.

9. By failing to comply with the tax obligations triggered by the compensation he paid to B.J., T.D., and K.N., Defendant elevated his own interests above the interests of B.J., T.D., and K.N., who were vulnerable victims of this misconduct.

10. Defendant has no prior discipline from the State Bar.

11. Allegations of judicial disciplinary offenses were previously filed against Defendant with the Judicial Standards Commission concerning certain of the conduct set out in this order but were resolved by consent without adjudication.

12. Defendant has not acknowledged the wrongful nature of his conduct. Defendant did not admit that he had violated any of the Rules of Professional Conduct. Although Defendant stated he accepted the Hearing Panel's conclusions that he had violated the Rules of Professional Conduct, he also indicated that he took exception to those conclusions.

13. 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 or had related circumstances present in this case:

- a. Factor (B), Intent of Defendant to commit acts where the harm or potential harm is foreseeable;
- b. Factor (D), Elevation of Defendant's own interests above that of the public and his employees and/or staff;
- c. Factor (E), Negative impact of Defendant's actions on client's or public's perception of the profession;
- d. Factor (F), Negative impact of Defendant's actions on the administration of justice;

- e. Factor (H), Effect of Defendant's conduct on third parties, including his law firm staff, the courtroom clerk, the people of Guilford County (the voters in District 18A), and the staff of the Guilford County Board of Elections; and
- f. Factor (I), Acts of dishonesty, misrepresentation, deceit or fabrication.

4. The Hearing Panel concludes that the following factors from 27 N.C. Admin. Code 1B.0116(f)(2), which are factors warranting consideration of disbarment, are present in this case or had related circumstances present in this case:

- a. Factor (A), Acts of dishonesty, misrepresentation, deceit or fabrication;
- b. Factor (C), Misappropriation or conversion of assets of any kind to which the defendant or recipient is not entitled, whether from a client or any other source – for this factor, the Hearing Panel considered that, to the extent B.J., T.D., and K.N. should have been considered employees, Defendant converted funds he should have withheld and paid over as an employer;
- c. Factor (D), Commission of a felony.

5. The Hearing Panel considered disbarment based upon the above factors but determined, based upon the facts of this case, that disbarment was not the appropriate discipline to impose in this case.

6. 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 or had related circumstances present in this case:

- a. Factor (A), No prior discipline;
- b. Factor (C), Dishonest or selfish motive;
- c. Factor (F), A pattern of misconduct;
- d. Factor (G), Multiple offenses;
- e. Factor (O), Refusal to acknowledge wrongful nature of conduct;
- f. Factor (R), Vulnerability of victims, Defendant's staff and the courtroom clerk;
- g. Factor (S), Significant degree of experience in the practice of law; and
- h. Factor (V), Other factors, to wit: Defendant has experienced other impacts from certain of the conduct found in this order as described in paragraph 11 of the additional Findings of Fact Regarding Discipline section.

7. The Hearing Panel considered all of the disciplinary options available to it and determined that suspension is appropriate and necessary in this case, in light of the significant harm caused by Defendant's conduct to the public, the profession, and the administration of justice.

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

- a. Defendant has failed to acknowledge the wrongful nature of his conduct and has given the Hearing Panel no assurance that he would not engage in future violations of the Rules of Professional Conduct; and
- b. 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, and additional Findings of Fact and Conclusions of Law Regarding Discipline, the Hearing Panel hereby enters the following

ORDER OF DISCIPLINE

1. Defendant, Mark T. Cummings, is hereby suspended from the practice of law for five 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 shall surrender his law license and bar card to the Clerk of the DHC no later than 30 days from service of this order upon him.

3. 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 costs within 30 days of service upon him of the statement of costs by the Secretary.

4. Within 15 days of the effective date of this Order, Defendant shall provide the State Bar with an address and telephone number at which clients seeking return of files can communicate with Defendant and obtain such files. Defendant must keep this information current with the State Bar, providing updated information to the State Bar within 15 days of any change.

5. 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.

6. Defendant shall comply with all provisions of 27 N.C. Admin. Code 1B.0128 as set out therein.

7. If Defendant fails to fully comply with 27 N.C. Admin. Code 1B.0128, Defendant shall reimburse the State Bar for all 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 any appointed trustee and/or the trustee's assistant for time and travel associated with the trusteeship. The State Bar shall send an invoice of wind-down expenses to Defendant at Defendant's last known address of record with the State Bar. Defendant shall not be eligible for any stay of suspension or reinstatement from suspension until he has reimbursed the State Bar for all wind-down expenses incurred.

8. After no less than three years 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 three years of 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 he timely complied with paragraphs 2-6 of this section of the Order of Discipline, including having properly wound down his law practice and timely complied with all provisions of 27 N.C. Admin. Code 1B.0128;
- b. For each year of active suspension, Defendant shall have completed four hours of continuing legal education (CLE) courses devoted to ethics as defined in 27 N.C. Admin. Code 1D.1501(c)(8) and eligible to meet the ethics hours requirement in 27 N.C. Admin. Code 1D.1518(b)(1) applicable to attorneys in active membership status with the State Bar, plus the minimum number of CLE hours required of attorneys in active membership status for each such year;
- c. That any funds in any attorney trust account maintained by Defendant as of the filing of this order were returned to the applicable client(s), disbursed to the appropriate recipient, or appropriately escheated;
- d. That Defendant responded to all letters of notice and requests for information from the North Carolina State Bar within 30 days of receipt or by the deadline stated in the communication, whichever is earlier, with full and complete responsive narrative responses and production of any requested documents;
- e. Defendant returned to the client, within 10 days of any request, the client file of such client;
- f. Defendant participated in good faith in the State Bar's fee dispute resolution process for any petition of which he receives notice after the effective date of this order;
- g. That Defendant kept the State Bar Membership Department advised of his current physical home address;

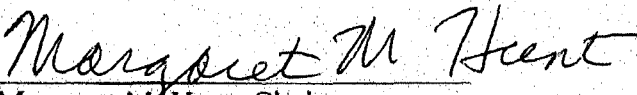
- h. That Defendant owes no outstanding membership fees, Client Security Fund assessments and fees, or fees or costs assessed by the DHC or the State Bar, and has complied with and satisfied any outstanding CLE requirements;
 - i. Defendant timely paid all administrative fees and costs assessed against him in this proceeding as reflected on the statement of costs and fees;
 - j. That Defendant has not violated the Rules of Professional Conduct or the laws of the United States or any state; and
 - k. That he retained the services of a Certified Public Accountant (CPA) who is an authorized IRS tax return preparer with experience in providing tax advice and tax preparation in North Carolina, who is willing to act as a Tax Monitor during any period of stayed suspension, and have provided with his motion a written agreement from the CPA acknowledging the obligations set out in paragraph 9.b. below and agreeing to perform those duties.
9. If Defendant obtains a stay of suspension of his law license, such stay will continue in effect only as long as Defendant complies with the following conditions:
- a. Each year, Defendant complete four hours of CLE courses devoted to ethics as defined in 27 N.C. Admin. Code 1D.1501(c)(8) and eligible to meet the ethics hours requirement in 27 N.C. Admin. Code 1D.1518(b)(1) applicable to attorneys in active membership status with the State Bar, plus the minimum number of CLE hours required of attorneys in active membership status for each such year;
 - b. Tax Monitor:
 - (1) Each quarter, Defendant shall ensure that the Tax Monitor submits a report to the Office of Counsel of the State Bar in which the Tax Monitor provides the following information and certifications:
 - (a) The Tax Monitor certifies that the Tax Monitor has examined all records pertinent to whether Defendant had any state or federal tax obligations with respect to any person properly considered an employee or independent contractor under applicable tax laws and authorities, with identification of the records examined;
 - (b) The Tax Monitor certifies whether Defendant had incurred any state or federal tax obligations with respect to any person properly considered an employee or independent contractor under applicable tax laws and authorities, and, if so, with identification of the tax obligation(s), the person(s) with respect to whom he incurred the tax obligation, the method of complying with the tax obligation(s), and the deadline for complying with the tax obligation(s);

- (c) The Tax Monitor certifies whether any deadlines for complying with state or federal tax obligations as described in the immediately preceding paragraph had come due that quarter (including any monthly, quarterly, and/or annual obligations and deadlines) and, if so, identification of the tax obligation(s), the person(s) with respect to whom he incurred the tax obligation, the deadline for complying with the tax obligation(s), whether the tax obligation was satisfied, how the tax obligation was satisfied, and when the action was taken to satisfy the tax obligation; and
 - (d) The Tax Monitor identifies and provides a copy of any and all documentation of action taken that quarter to satisfy any state or federal tax obligation identified in the immediately preceding paragraphs, and certifies such documentation is attached to the Tax Monitor's report.
- (2) Defendant will provide the Tax Monitor with any and all records requested by the Tax Monitor by the date requested so that the quarterly report can be timely submitted, such records including but not limited to:
- (a) All checks written from Defendant's operating account or any other account used to pay any person properly considered an employee or independent contractor under applicable tax laws and authorities that quarter;
 - (b) Any other instrument by which funds were disbursed from his operating account or any other account used to pay any person properly considered an employee or independent contractor under applicable tax laws and authorities that quarter;
 - (c) Any other documentation of funds being disbursed from his operating account or any other account used to pay any person properly considered an employee or independent contractor under applicable tax laws and authorities that quarter;
 - (d) Any other documentation of funds paid to any person present in Defendant's law office or related in any way to his law practice that quarter;
 - (e) Any documentation of having complied with any state or federal tax obligation with respect to any person properly considered an employee or independent contractor under applicable tax laws and authorities; and
 - (f) Any document requested by the Tax Monitor.
- (3) Defendant shall comply with any state or federal tax obligations with respect to any person properly considered an employee or independent contractor under applicable tax laws and authorities identified by the Tax Monitor by the applicable deadlines.

- (4) The quarterly Tax Monitor reports are due on the 30th day following the end of the calendar year quarter (for example, the report for the first quarter is due April 30 of that year).
- (5) Defendant shall ensure that any documentation to be provided with the Tax Monitor's quarterly report as identified in paragraph 9.b.(1)(d) is provided with the report to the Office of Counsel of the State Bar.
- (6) Defendant shall be solely responsible for any payment due to the Tax Monitor.
- l. Defendant provides any documentation or records requested by the Office of Counsel within 10 days of the request;
- m. Defendant keeps the State Bar's Membership Department advised of his current business address, which address must be a street address, not post-office box or drawer;
- n. Defendant notifies the State Bar of any change of address within 10 days of such change;
- o. Defendant responds 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 is sooner;
- p. Defendant participates in good faith in the State Bar's fee dispute resolution process for any petition of which he receives notice after the effective date of this order; and
- q. Defendant does not violate the Rules of Professional Conduct or the laws of the United States or any state or local government.

10. If Defendant is not granted a stay of any portion of the five-year suspension, or if some part of the suspension is stayed but the stay is thereafter revoked, then before Defendant may subsequently be reinstated to active status he must prove compliance by clear, cogent, and convincing evidence with the requirements of paragraph 8, subparagraphs (a)-(j).

Signed by the Chair with the consent of the other Hearing Panel members, this the 28th day of March, 2024.


Margaret M. Hunt, Chair
Disciplinary Hearing Panel