STATE OF NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
20 DHC 7

THE NORTH CAROLINA STATE BAR, Plaintiff v. MARTIN M. BRENNAN, JR., Attorney, Defendant	**ORDER OF DISBARMENT**

This matter came before the undersigned Chair of The Disciplinary Hearing Commission pursuant to 27 N.C. Admin. Code 1B.0121(d) upon an affidavit of surrender of license executed by Martin M. Brennan, Jr., on 11 May 2021 and filed in the offices of the North Carolina State Bar on 11 May 2021.

Based upon the pleadings and the record, the undersigned makes the following:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar (hereafter "State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. Defendant, Martin M. Brennan, Jr. ("Brennan" or "Defendant"), was admitted to the North Carolina State Bar in 1987, 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. On 22 September 2020, the North Carolina State Bar filed an Amended Complaint against Defendant, alleging that he committed violations of the Rules of Professional Conduct. The State Bar's amended complaint is incorporated by reference herein.

4. The conduct set out in the State Bar's amended complaint constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2).

5. Defendant has indicated his consent to disbarment by filing an affidavit of surrender with the Disciplinary Hearing Commission. The affidavit meets all requirements set forth in 27 N.C. Admin. Code 1B.0121(a)(1), (2), (3), (4) and (d).

Based upon the foregoing Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. 27 N.C. Admin. Code 1B.0108(a)(6) provides that the Chairperson of the Disciplinary Hearing Commission has the power and duty to enter orders disbarring members by consent.

2. Defendant's affidavit meets all of the requirements set forth in 27 N.C. Admin. Code 1B.0121(a)(1), (2), (3), (4) and (d) and the facts upon which the affidavit is predicated warrant Defendant's disbarment.

3. Defendant has admitted that the material facts and allegations upon which the State Bar's amended complaint, incorporated herein by reference, is predicated are true. The Chair finds that the misconduct alleged in the amended complaint has been established.

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned Chair of the Disciplinary Hearing Commission enters the following:

ORDER OF DISCIPLINE

1. The surrender of the license of Defendant, Martin M. Brennan, Jr., is hereby accepted.

2. Defendant is DISBARRED from the practice of law in North Carolina effective upon entry of this Order.

3. Defendant may complete any legal matters which were pending on the date of this Order which can be completed within sixty days. Defendant has sixty days from the date of this Order in which to comply with all of the duties set out in 27 N.C. Admin. Code 1B.0128.

4. The administrative fees and costs of this action are taxed against Defendant.

5. Within ten days of the 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 shall promptly return all file materials to his clients upon request.

6. If Defendant fails to fully comply with 27 N.C. Admin. Code 1B.0128, he shall reimburse the State Bar for all expenditures made by the State Bar to protect the interests of Defendant's clients. Such expenditures 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 a court-appointed trustee and/or the trustee's assistant for time and travel associated with the trusteeship. The State Bar shall send an invoice for such expenditures to Defendant at his last known address of record with the North

Carolina State Bar upon entry of an Order discharging the trustee which Defendant shall pay within thirty days of the date the State Bar mailed the invoice.

This the 17 day of May, 2021.

Donald C. Prentiss, Chair
Disciplinary Hearing Commission

MAY 2021
FILED DHC

STATE OF NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
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20 DHC 7

THE NORTH CAROLINA STATE BAR, Plaintiff v. MARTIN M. BRENNAN, JR., Attorney, Defendant	**AFFIDAVIT OF SURRENDER OF LAW LICENSE**

Martin M. Brennan, Jr., being first duly sworn, deposes and says as follows:

1. I desire to resign and hereby tender my license to practice law in North Carolina.

2. My resignation is freely and voluntarily rendered. It is not the result of coercion or duress. I am fully aware of the implication of submitting my resignation and have had the opportunity to discuss the evidence against me and possible defenses with counsel.

3. I am aware that there is a pending complaint against me in the Disciplinary Hearing Commission alleging that I violated the Rules of Professional Conduct.

4. I acknowledge that the material facts upon which the pending complaint is predicated are true.

5. I am submitting my resignation because I know that I cannot successfully defend against these pending disciplinary charges.

Respectfully submitted, this the 11th day of May 2021.

Martin M. Brennan, Jr.

I, Heather L. Haebler, Notary Public of the County of Mecklenburg, State of North Carolina, certify that Martin M. Brennan, Jr. personally appeared before me this day, was sworn, attested that the foregoing Affidavit is true and accurate of his own personal knowledge, and executed the foregoing Affidavit.

This the 11th day of May, 2021.

Notary Public
(print name) Heather L. Haebler

My commission expires: 08/07/2021

HEATHER L. HAEBLER
Notary Public
Mecklenburg
County
My Comm. Exp.
08-07-2021
NORTH CAROLINA

STATE OF NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
20 DHC 7

THE NORTH CAROLINA STATE BAR, Plaintiff v. MARTIN M. BRENNAN, JR., Attorney, Defendant	AMENDED COMPLAINT

Plaintiff, complaining of Defendant, alleges and says:

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, Martin M. Brennan, Jr., was admitted to the North Carolina State Bar on August 22, 1987, 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.

Upon information and belief:

3. During all or part of the relevant periods referred to herein, Defendant was engaged in the practice of law in Huntersville, Mecklenburg County, North Carolina.

FIRST CLAIM FOR RELIEF

4. Between September 2017 and October 2018, Defendant employed A.V. as an associate attorney in Defendant's law firm.

5. At the beginning of A.V.'s employment, Defendant and A.V. agreed that each would pay one-half of the premiums for A.V.'s health insurance coverage under a group insurance policy held by Defendant.

6. Between October 2017 and October 2018, Defendant withheld $190.27 from A.V.'s bi-weekly paychecks to cover A.V.'s portion of A.V.'s monthly health insurance premium and his dependent life insurance premium ("A.V.'s portion of the insurance premiums").

7. From the time A.V.'s portion of the insurance premiums was withheld until the time it was paid to the insurer, Defendant had a fiduciary duty to hold the funds withheld from A.V.'s paychecks for the benefit of A.V.

8. Despite withholding $190.27 from A.V.'s bi-weekly paychecks, between October 2017 and May 2018, Defendant did not consistently pay the monthly insurance premiums to the insurer on the firm's group policy that insured A.V.

9. Defendant's failure to consistently pay the monthly insurance premiums to the insurer was willful.

10. Defendant did not inform A.V. that Defendant did not consistently pay the monthly insurance premiums to the insurer.

11. As a result of Defendant's failure to consistently pay the monthly insurance premiums to the insurer, in or around July 2018, the insurer terminated the firm's group insurance policy effective February 1, 2018.

12. Defendant did not inform A.V. that the insurer terminated the firm's group insurance policy effective February 1, 2018.

13. After the firm's group insurance policy was terminated, Defendant continued to withhold A.V.'s portion of the insurance premiums from A.V.'s bi-weekly paychecks until October 2018.

14. Between October 2017 and October 2018, Defendant misapplied or used for his own purposes the funds withheld from A.V.'s paychecks for A.V.'s portion of the insurance premiums that Defendant did not pay to the insurer.

15. Pursuant to N.C. Gen. Stat. § 14-90, it is a Class H felony in North Carolina for a fiduciary to knowingly and willfully misapply or convert to his own use any money that belongs to another person which has come into the fiduciary's possession or is being held under his care.

16. Pursuant to N.C. Gen. Stat. § 58-50-40, it is a Class H felony in North Carolina for an employer who is responsible for the payment of group insurance premiums (1) to cause the cancellation of a policy by willfully failing to pay the premiums for the policy and (2) to willfully fail to provide written notice at least forty-five days prior to the termination of the policy to the persons insured of his or her intent to stop payment of the premiums for the policy.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute 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 not informing A.V. that the insurer terminated the firm's group insurance policy that insured A.V. effective February 1, 2018, Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on his fitness as a lawyer in violation of Rule 8.4(c);

b) By knowingly and willingly misapplying or converting to his own use the funds that he withheld from A.V.'s paycheck to cover A.V.'s portion of the insurance premiums that he did not pay to the insurer, Defendant committed a criminal act that reflects 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 that reflects adversely on his fitness as a lawyer in violation of Rule 8.4(c); and

c) By causing the termination of A.V.'s insurance policy by not consistently paying the monthly insurance premiums to the insurer and by not informing A.V. prior to the termination of the policy that he did not consistently pay the monthly insurance premiums, Defendant committed a criminal act that reflects 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 that reflects adversely on his fitness as a lawyer in violation of Rule 8.4(c).

SECOND CLAIM FOR RELIEF

17. Paragraphs 1-3 are re-alleged and incorporated as if fully set forth herein.

18. During all times referred to herein, Defendant had one or more employees who provided services for the benefit of Defendant's law firm.

19. When Defendant paid the employees of his law firm, Defendant was required by the Internal Revenue Service ("IRS") to withhold funds from his employees' paychecks to pay the employees' social security, Medicare, and federal income taxes ("employment taxes").

20. Defendant was required to collect, truthfully account for, and timely pay to the IRS the employment taxes withheld for employees of his law firm.

21. Defendant was required to remit the employment taxes withheld for employees of his law firm on a periodic basis as specified in the Internal Revenue Code.

22. From the time the employment taxes were withheld until the time they were paid to the IRS, Defendant had a fiduciary duty to hold funds withheld from employees' paychecks for the benefit of the United States Department of the Treasury.

23. Defendant withheld funds from employees for employment taxes and failed to remit those funds to the IRS within the time required by law for the following quarters:

a. Third quarter of 2017;
b. Fourth quarter of 2017; and
c. First quarter of 2018.

24. Defendant knew he had a legal duty to remit the funds withheld to the IRS within the time periods specified in the Internal Revenue Code.

25. On or about July 23, 2019, the IRS filed a tax lien against Defendant's law firm for the unpaid tax balance in the amount of:

a. $466.89 for the third quarter of 2017;
b. $14,369.75 for the fourth quarter of 2017; and
c. $8,948.97 for the first quarter of 2018.

26. Defendant's failure to pay to the IRS the employment taxes withheld from his employees in the third and fourth quarter of 2017 and in the first quarter of 2018 was willful.

27. Between the third quarter of 2017 and the first quarter of 2018, Defendant converted to his own use or the use of another the funds withheld from employees that Defendant did not remit to the IRS.

28. Pursuant to 26 U.S.C. § 7202, willful failure to collect, account for, and pay any tax imposed by the Internal Revenue Code is a felony.

29. Pursuant to 18 U.S.C. § 641, a person who knowingly converts money in an amount of $1,000.00 or more that belongs to the United States or any department thereof to his own use or the use of another is guilty of a felony.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

a) By willfully failing to pay to the IRS the funds withheld from his law firm employees as required by 26 U.S.C. § 7202, Defendant committed a criminal act that reflects adversely on his honesty, trustworthiness, and 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); and

b) By knowingly converting the funds that he was holding for the benefit of the United States Department of the Treasury to his own use or the use of another, Defendant committed a criminal act that reflects adversely on his honesty, trustworthiness, and 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).

THIRD CLAIM FOR RELIEF

30. Paragraphs 1-3 are re-alleged and incorporated as if fully set forth herein.

31. During calendar years 2009, 2010, 2016, 2017, and 2018, Defendant's income exceeded the minimum threshold above which an individual is required to file federal and state income tax returns.

32. For these years, Defendant was aware of the deadlines for filing state and federal tax returns and paying any tax liability.

33. Defendant failed to file, within the times required by law, federal income tax returns showing his tax liability for tax years 2009, 2010, 2016, 2017, and 2018.

34. Defendant failed to file, within the times required by law, state income tax returns showing his tax liability for tax years 2009, 2010, 2016, 2017, and 2018.

35. Defendant failed to pay, within the times required by law, his federal income tax liability for tax years 2009, 2010, 2016, 2017, and 2018.

36. Defendant failed to pay, within the times required by law, his state income tax liability for tax years 2009, 2010, 2016, 2017, and 2018.

37. Defendant's failure to file and pay federal and state income tax returns for tax years 2009, 2010, 2016, 2017, and 2018 was willful.

38. Willful failure to file and pay federal income tax within the time required by law is a violation of 26 U.S.C. § 7203, which is a misdemeanor.

39. Willful failure to file and pay North Carolina income tax within the time required by law is a violation of N.C. Gen. Stat. § 105-236(a)(9), which is a misdemeanor.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute 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 failing to timely file and pay his 2009, 2010, 2016, 2017, and 2018 state and federal income taxes, Defendant committed

criminal acts that reflect adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b).

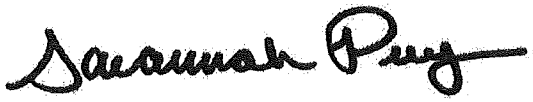
WHEREFORE, Plaintiff prays that:

(1) Disciplinary action be taken against Defendant in accordance with N.C. Gen. Stat. § 84-28, as the evidence on hearing may warrant;

(2) Defendant be taxed with the administrative fees and costs permitted by law in connection with this proceeding; and

(3) For such other and further relief as is appropriate.

This the 22nd day of September 2020.



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