

STATE OF NORTH CAROLINA **FILED** IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

COUNTY OF LINCOLN

2018 JAN -8 A 11:34

17-CVS-89

STATE OF NORTH CAROLINA

Vs.

BLAIR MACFARLAND PETTIS

ORDER OF SUSPENSION

and

IN THE MATTER OF THE LICENSE

TO PRACTICE LAW OF BLAIR

MACFARLAND PETTIS

This matter came on for hearing before Robert C. Ervin, Superior Court Judge, presiding over the December 29, 2017 special session of Superior Court in Lincoln County on the Order to Show Cause entered on December 22, 2017. When the matter was called for hearing, Root Edmonson appeared on behalf of the North Carolina State Bar. The respondent Blair M. Pettis did not appear for the hearing. Noell Tin, counsel for the respondent, was also not present. The Court, having heard from the party present and having reviewed the file maintained by the Clerk of Superior Court of Lincoln County, finds as fact and concludes as a matter of law that:

1. An unfortunate incident occurred in open court in Lincoln County Superior Court on January 17, 2017.
2. As a result of that incident, the undersigned judge issued an Order to Show Cause and Notice in these matters on January 26, 2017.
3. A hearing was set for February 26, 2017.
4. Further proceedings lead to the formulation of and execution of a Consent Interim Order and Recovery Program. The Consent Order was entered on or about October 12, 2017. A copy of that order is attached as Exhibit A to this Order.
5. Mr. Tin, as attorney for Mr. Pettis, consented to the entry of this order by an e-mail dated October 5, 2017. A copy of that e-mail is attached as Exhibit B to this Order and is incorporated by reference.

6. There is a presumption that the attorney who signs a consent judgment and represents himself to a court as the attorney for a party does so with the authority and consent of the client. The party challenging the actions of the attorney as being unauthorized has the burden of rebutting the presumption. *Nye, Mitchell, Jarvis & Bugg v. Oates*, 109 N. C. App. 289, 426 S. E. 2d 291 (1993).

7. In North Carolina, when an attorney acts on behalf of his client, a presumption arises that the attorney so acts within his authority and with the consent of his client. *Guilford County v. Eller*, 146 N. C. App. 579, 553 S. E. 2d 235 (2001).

8. A judgment of record, whether in invitum or by consent, is presumed to be regular, and an attorney who consented to it is presumed to have acted in good faith and to have had the necessary authority from his client, and not to have betrayed his confidence or to have sacrificed his right. The law does not presume that a wrong has been done. It would greatly impair the integrity of judgments and destroy the faith of the public in them if the principles were different. *Id.*, 146 N. C. App. at 581-582.

9. Mr. Pettis initiated treatment even prior to the execution of the Consent Order. Pettis executed a Recovery Contract with the Lawyer Assistance Program on or about July 7, 2017 to initiate this treatment program. A copy of that agreement is attached as Exhibit C. to this Order and is incorporated by reference.

10. The similarity between the provisions of the Consent Order and the requirements of the Recovery Contract is indicative of Mr. Pettis' consent to the entry of the Consent Order.

11. On or about November 28, 2017, Cathy Killian of the Lawyers Assistance Program contacted the undersigned judge to advise him that Mr. Pettis was not in compliance with the terms of the Consent Interim Order and Recovery Program.

12. As a result of that communication, the Court issued the order to show cause.

13. The Show Cause Order advised Mr. Pettis that he may have violated the provisions of the Consent Order in that:

1. The respondent had not been in contact with his mentor in violation of the provisions of paragraph B2 of the Consent Order.
2. The respondent had not been in contact with representatives of the Lawyer Assistance Program in violation of the Consent Order.
3. The respondent had failed to participate in additional forms of therapy which were clinically indicated in violation of the provisions of paragraph B6 of the Consent Order.
4. The respondent had failed to attend meetings in violation of the provisions of paragraph B7 and B8 of the Consent Order.

14. Mr. Tin has filed a motion to withdraw because he has been unable to communicate with Mr. Pettis.

15. Mr. Tin was advised of this hearing and he informed the Court's Trial Court Coordinator Justina A. Tate that he had not been in contact with Mr. Pettis.

16. A number of efforts were made to advise Mr. Pettis of this hearing.

17. Justina A. Tate sent an e-mail to Mr. Pettis on December 22, 2017 to advise him of the hearing. This e-mail was sent to blairpettis@gmail.com. A copy of that e-mail and the attachment is attached to this order as Exhibit D and is incorporated by reference.

18. Ms. Tate mailed copies of the show cause order to Mr. Pettis on December 22, 2017. The order was mailed to 320 North Aspen Street, Lincolnton, NC 28092 and P. O. Box 713, Lincolnton, NC 28092.

19. On December 22, 2017, the undersigned physically left a copy of the show cause order inside a wreath on the front door of Mr. Pettis' office located at 320 North Aspen Street, Lincolnton, North Carolina. This copy was placed inside an envelope addressed to Mr. Pettis and it was left at approximately 5:30 p.m. on that date.

20. The hearing was noticed for 11:00 a.m. on December 29, 2017.

21. When Mr. Pettis did not appear at the hearing, Kinsley Mashburn Craig called Mr. Pettis' office. No one answered the telephone.

22. The hearing began at 11:15 a.m. in Mr. Pettis' absence.

23. No effort was made to show cause or offer any explanation for Mr. Pettis' failure to comply with the provisions of the Consent Order.

24. Mr. Pettis' failure to attend the hearing, like flight, is a relevant circumstance in determining the question of whether he has complied with the provisions of the Consent Order. See *State v. Williamson*, 122 N. C. App. 229, 468 S. E. 2d 840 (1996).

25. In *re Peoples*, 296 N. C. 109, 152, 250 S. E. 2d 890 (1978), the Supreme Court observed that:

It is only in criminal cases that the law decrees that the failure of the defendant to testify shall create no presumption against him. In all other proceedings, it has long been the rule in this State that the failure of a party to take the stand to testify to facts peculiarly within his knowledge and directly affecting him is a pregnant circumstance for the fact finder's consideration. If the party is a competent witness, his failure to go upon the stand when the case is such as to call for an explanation...or the evidence is such as to call for a denial, is a circumstance against him and a proper subject for fair comment. (Quotation marks omitted).

26. In the same opinion, the Supreme Court also quoted from a will caveat decision that observed:

we are at a loss to conceive why Respondent did not take the witness stand to refute the personal charges made against him unless he knew them to be true and unanswerable, or felt that he could not overcome the evidence of their truth offered by Special Counsel, or

did not wish to undergo the ordeal of a severe cross-examination.” (Parentheses omitted for clarity).

296 N. C. at 152.

27. Pettis’ failure to appear at the show cause hearing acts as an implied admission that he failed to comply with the provisions of the Consent Order identified above without good cause.

28. The Court concludes that Mr. Pettis has failed to comply with the terms of the Consent Order as set forth in paragraph 13 above.

29. No showing has been made of any reason why Mr. Pettis could not comply with the provisions of the Consent Order.

30. Paragraph B of the Consent Order provides that “respondent’s license to practice law is hereby suspended for three years, such suspension to be stayed upon continued compliance with the following terms and conditions...”

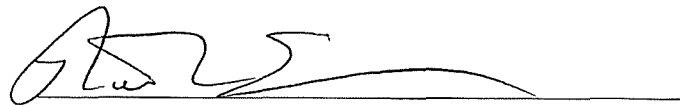
31. Paragraph C of the Consent Order provides that “if Respondent fails to follow the terms of his recovery program as set out in this Order and/or fails to comply with the terms of monitoring by LAP pursuant to this order...or otherwise the failing by Respondent to follow the recovery program set out herein then, Respondent agrees that his license to practice law shall be actively suspended for 1 year to give him the opportunity to enter into a focused period of time to work on his recovery.”

32. Mr. Pettis, the respondent, has failed to follow the terms of his recovery program and has failed to comply with the terms of monitoring by LAP pursuant to the Consent Order.

Based on the foregoing findings of fact and conclusions of law, it is hereby ordered that:

1. Mr. Pettis’ license to practice law in the State of North Carolina is suspended pending further order of this Court.
2. Mr. Pettis is hereby ordered to wind down his practice of law within 30 days of the service of this order upon him.
3. Mr. Pettis is directed to comply with the provisions of Rule B.0128 of the Rules of the North Carolina State Bar.
4. Noell Tin is granted leave to withdraw as counsel for Mr. Pettis, the respondent.

This the 3rd day of January, 2018.



Robert C. Ervin

Superior Court Judge

EXHIBIT A

STATE OF NORTH CAROLINA
COUNTY OF LINCOLN

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
__SPC__

STATE OF NORTH CAROLINA

Vs.

BLAIR MACFARLAND PETTIS

And

CONSENT INTERIM ORDER
AND RECOVERY PROGRAM
IN CAMERA

IN THE MATTER OF THE LICENSE TO
PRACTICE LAW OF BLAIR
MACFARLAND PETTIS

THIS CAUSE coming on to be heard pursuant to North Carolina General Statutes Sections 84-21 and 84-28 and 27 North Carolina Admin. Code 1(D), Section .0600 upon the request of the Lawyer Assistance Program (LAP) of the North Carolina State Bar and its LAP Committee, by and through its Director Robynn E. Moraites, and upon the request of Respondent Blair Pettis; and the parties presenting to the Court the following:

WHEREAS the Respondent Blair Pettis is a resident of Gaston County and practices law in District 27B, North Carolina and is subject to the disciplinary authority of the Court and the rules and regulations of the North Carolina State Bar; and

WHEREAS the Lawyer Assistance Program of the North Carolina State Bar and its LAP Committee is authorized pursuant to Section .0600 et al. of Subchapter D, of Title 27 of the North Carolina Administrative Code to investigate and to assist lawyers concerning allegations of substance abuse and/or mental health issues; and

WHEREAS Respondent failed to appear in court during the trial of a drug trafficking case before the undersigned judge, failed on other occasions to appear for court and likely appeared in court subject to an impairing substance; and

WHEREAS Judge Robert C. Ervin issued a show cause order to Respondent and scheduled a hearing for contempt and to consider the status of the Respondent's license to practice law because of performance issues caused by Respondent's substance use and possible mental health disorders; and

WHEREAS Judge Ervin conferred with Respondent, Respondent's counsel and a representative of the State Bar to discuss the possibility of continuing the hearing upon the condition that Respondent agree to meet with the Lawyer Assistance Program and follow any clinical recommendations of the Lawyer Assistance Program; and

WHEREAS, Respondent agreed to do so and after meeting with the Clinical Director of the Lawyer Assistance Program, and upon the recommendation of same, Respondent admitted himself for treatment at an outpatient facility approved by the Lawyer Assistance Program; and

WHEREAS the Lawyer Assistance Program was in regular communication with the treatment center and where Respondent signed a release allowing the Lawyer Assistance Program to provide on-going clinical updates on Respondent's progress to Judge Ervin; and

WHEREAS Respondent successfully completed an intensive outpatient treatment program, and signed and entered into a Recovery Contract to be monitored and supervised by the Lawyer Assistance Program; and

WHEREAS Respondent has agreed and consented that Judge Ervin, may continue to monitor his progress, receive updates, and enforce this *in camera* Recovery Contract within the Consent Order; and

WHEREAS because Respondent has continued to comply with the terms of his Recovery Contract to date; and

WHEREAS, the parties hereto have agreed on entry of this Order for appropriate relief pursuant to North Carolina General Statutes Sections 84-23 and 84-28 and 27 North Carolina N. C. Admin. Code 1 (D), Section .0600;

NOW THEREFORE, IT IS HEREBY, ORDERED, ADJUDGED AND DECREED,

- A. The original show cause order and scheduled hearing are hereby dismissed and replaced in their entirety with this Order.
- B. Respondent's license to practice law is hereby suspended for three years, such suspension to be stayed upon continued compliance with the following terms and conditions, compliance with such shall be considered evidence that Respondent has successfully undertaken the steps set out herein to minimize the chance of further impairment and relapse. To do so, Blair Pettis, Respondent, shall:
 1. Totally refrain from the use of alcohol or any other mind-altering substances. An exception may be made when specifically prescribed or approved by Respondent's psychiatrist, primary care physician, or such other physician as may be approved by the Lawyer Assistance Program. Prior to the use of any such prescribed drugs, Respondent will inform his physician of his participation in the Lawyer Assistance Program, communicate the identity of his physician to the Lawyer Assistance Program, and have his physician consult with the Lawyer Assistance Program before any such prescription medications are used by Respondent, or otherwise provide the documentation required by paragraph B12 of this Order. *Failure to do so shall be deemed a violation of this Order and shall subject Respondent to the remedies set forth in this Order.* Use of any prescriptions other than those approved by Respondent's identified physician, or taken other than as

prescribed, shall be deemed a breach of this Order and subject Respondent to the remedies set forth in this Order.

2. Accept a LAP Volunteer to be assigned by the Lawyer Assistance Program, or such other person(s) as may be designated by the Lawyer Assistance Program as mentor/monitor(s) for his performance under this Order, and assume the responsibility of making at least one personal contact per week and at least one face-to-face each month with said monitor/mentor, or more frequently if indicated by the mentor/monitor.
3. Provide the mentor/monitor with whatever reasonable substantiating documentation that he may require assuring Respondent's compliance with this Order. Assume responsibility for ensuring the monthly mentor/monitor reports are submitted to the Lawyer Assistance Program in a timely fashion.
4. Provide the Lawyer Assistance Program with current contact information, including home address, telephone number, email address, cell phone number, work address and phone number, and indicating which of these is his preferred method of contact.
5. Having successfully completed outpatient treatment and following that, actively participate in an abstinence based self-help group as follows:
 - a) Respondent agrees to attend at least 4 such meetings per week for the term during the pendency of this Order. The number of meetings Respondent is required to attend may be periodically reviewed by the Lawyer Assistance Program, and be decreased or increased in the sole discretion of Lawyer Assistance Program. This decision will be based on information provided by the Respondent, his sponsor, and any treating clinician. Respondent's meetings with the professionals or support groups listed in section B7 and B8 below may be counted as a meeting fulfilling this paragraph of the Order.
 - b) Should Respondent choose to participate in AA or NA as an abstinence based self-help group, Respondent acknowledges by his initials hereto that his decision to do so is voluntary.(_____) In that event, Respondent also agrees that he will join a home group, and select and maintain a sponsor. Respondent will actively work the 12 Steps with his sponsor, and maintain his relationship with his sponsor at all times. Respondent will become involved in service work as agreed upon by him and his sponsor. The identity of his sponsor shall be communicated to the Lawyer Assistance Program, and Respondent will authorize the Lawyer Assistance Program to communicate with his sponsor regarding the status of his recovery. The Lawyer Assistance Program will seek no other confidential information from his sponsor.
6. Participating in the relapse prevention program at The Dilworth Center for a minimum of 12 weeks. If clinically indicated, obtaining additional forms of therapy by Respondent, such as individual therapy, group therapy, or therapy workshops, for a frequency and duration as recommended by this counselor and the Lawyer Assistance Program. Respondent agrees to sign releases and ensure that this

program will provide treatment updates to the Lawyer Assistance Program on a regular basis and he provides substantial advance notice of his inability to attend a particular meeting.

7. Regularly attending the LAP Monday Night Support Group Meetings which are held each Monday from 5:30 – 6:30 at the LAP office, located at 312 Rensselaer Avenue, Suite 100. Respondent may be excused from attendance if there is a valid conflict with his working hours and he provides substantial advance notice of his inability to attend a particular meeting.
8. Attending the LAP Recovery Support Group Meetings currently held at noon on the 2nd Friday of each month at Hickory Tavern, located at 1100 Metropolitan Ave #170 in Charlotte, NC. Respondent may be excused from attendance if there is a valid conflict with his working hours and he provides substantial advance notice of his inability to attend a particular meeting.
9. Recognizing that proper diet and exercise are essential components in recovery, Respondent agrees to consult with his physician and/or other professionals to develop a healthy diet and exercise program that is appropriate for him.
10. Within one year of this Order, Respondent will attend a Recovery Renewal Program such as the LAP 12 Step Retreat, Renewal Center for the South (www.rcsouth.org), Matt Talbot Group 142 (mtg142@gmail.com), or other such renewal programs approved by the LAP.
11. Submit to and pay for random urine and/or blood screens, and/or breathalyzers and/or hair tests, on a frequency as established by the LAP, or as may be ordered by any Superior Court Judge from time to time in their sole discretion and without notice if requested. Any request made by a judge shall not be delayed for more than 30 minutes. Otherwise, these screenings will be conducted through The Dilworth Center for as long as Respondent is a client there. Upon completion of treatment Respondent shall enroll with Affinity eHealth (www.affinityehealth.com) or such other agency as approved by the LAP for his screening. Respondent agrees to abide by the procedures of Affinity or other such agency, including a daily check-in and testing when notified that he has been selected. Respondent acknowledges that his failure to do so will for purposes of this Order, shall be considered a positive screen. Respondent acknowledges that his failure to submit to a drug or alcohol screen within 30 minutes of a judge's instruction to do so shall also be considered a positive screen. Respondent shall notify the screening agency or person taking the sample prior to the taking of the blood/urine/hair sample as to any prescription or over-the-counter medications he is currently taking. Upon receipt by the LAP or the requesting Judge of a positive alcohol and/or drug test report, Respondent agrees to submit to further evaluation, either by the LAP or another professional as deemed clinically appropriate by the LAP, and agrees to follow the recommendations of that evaluation. Respondent acknowledges that this Order may be amended to include additional provisions considered by the LAP in the best interest of the lawyer and the public. Respondent stipulates that the results of any alcohol and/or drug test may be

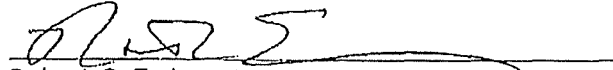
admitted into evidence as reported without the necessity of further authentication in any *in camera* proceeding authorized by the LAP rules.

12. Provide the LAP prior to the use of prescription medications, adequate documentation from the prescribing physician to the effect that such prescribing physician has knowledge of Respondent's substance abuse history, and that the use of such medication(s) is nevertheless required.
 13. Immediately notify his mentor/monitor in the event of the use of alcohol or other mind-altering substances, in violation of paragraph B1 of this Order. If the Respondent uses mind-altering substances without promptly notifying his mentor/monitor, he agrees to undergo a 96-hour inpatient evaluation, or other clinically indicated evaluative procedure. If as a result of this evaluation, further treatment is found to be necessary and appropriate, Respondent agrees for this Order to be amended to provide for such treatment.
 14. Provide appropriate signed release forms for any drug screens, treatment records, therapist's reports, and any other written and verbal information as needed to verify compliance with the terms of this Order. Respondent authorizes the Lawyer Assistance Program to provide any information concerning his condition, treatment, and recovery to any treating clinician or agency, and authorizes any treating clinician or agency to provide information concerning his condition, treatment, and recovery to the Lawyer Assistance Program. In addition, Respondent agrees that the Lawyer Assistance Program may provide information concerning his condition, treatment and recovery progress (or lack thereof) to Judge Ervin or other Superior Court Judge presiding over this matter.
- C. If Respondent fails to follow the terms of his recovery program as set out in this Order and/or fails to comply with the terms of monitoring by the LAP pursuant to this Order, and/or tests positive for alcohol and/or any other mood altering drug (except such drugs as might be prescribed by a physician who has consulted with the LAP and is aware of the Respondent's addictive status), and/or any such use of same, then upon such relapse (consumption of any alcohol or other mind altering substances) occurring, or otherwise the failing by Respondent to follow the recovery program set out herein then, Respondent agrees that his license to practice law shall be actively suspended for 1 year to give him the opportunity to enter into a focused period of time to work on his recovery.
- D. At any time following the completion of the 1 year active suspension, Respondent may petition the Court to have the active suspension lifted by petitioning the undersigned Superior Court Judge for return to stayed suspension status in the North Carolina State Bar. Upon proof satisfactory to the hearing Judge that Respondent is able to show that his active addiction is in satisfactory remission and the chances of relapse minimized, the court may enter an order transferring Respondent to stayed suspended status. At such hearing the Lawyer Assistance Program shall provide to the court its recommendations regarding any necessary further program of rehabilitation that may be needed. And any order entered lifting the active suspension shall include in it as a condition of ongoing stayed suspended status such program of continuing care and monitoring by the LAP as

the Court shall deem appropriate based upon the LAP's recommendation and the continuation of random drug screens in the manner set forth above.

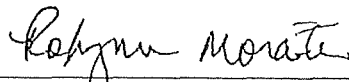
- E. Such petition filed with the undersigned Superior Court Judge for return to stayed suspended status shall be served on the Director of the LAP and the State Bar at least ten days prior to any hearing. Respondent shall have the burden to show by clear and convincing evidence that his active addiction is in remission, the chances of his relapse are minimized and his practice of law does not pose a threat to the public. Evidence of satisfactory control and remission of his addictive disease will need to include, among other things, a) documentation that he has participated in a program of random drug screens for at least one year and has not used any mind altering drugs; b) extended treatment and counseling (extended treatment would include a 90-day inpatient program and at least a year of intensive relapse prevention counseling at a counselor recommended by the LAP) and recommendations by those treating him that he is sober, mentally stable, and at low risk to relapse, and c) an agreement to enter into a continuing in camera consent order with the LAP providing for a monitored aftercare program of rehabilitation as a condition of the reinstatement.
- F. Furthermore, Respondent shall report to the Lawyer Assistance Program any grievances or fee disputes filed against him after reinstatement and agrees to actively participate in resolution of grievances or fee disputes. Respondent's failure to report such grievances or fee disputes to the Lawyer Assistance Program and/or failure to actively participate in resolution of same may waive the in camera nature of this proceeding and this Order and enforcement of this Order may, in that event, proceed through ordinary judicial processes that are not under seal.
- G. This Order and all proceedings in this Cause shall be filed under seal by the Clerk. However, Respondent is advised that by violating this Order, and/or in the event of active suspension for failure to comply with this Order, or Respondent's practice of law while actively suspended, in any case will waive the in camera nature of this proceeding and this Order and enforcement of this Order may, in that event, proceed through ordinary judicial processes that are not under seal. In addition, the undersigned Superior Court Judge may, at his sole discretion, provide copies of this Order to Superior Court Judges and District Court Judges of Judicial District 27B in the interests of protecting the public and ensuring on-going compliance with the Order.
- H. Respondent shall report back to the Court quarterly during the term of this Order as to his compliance with this Order and progress in recovery. A copy of this Order shall be served upon Respondent and upon the Secretary of the North Carolina State Bar.

This the 12th day of October, 2017.



Robert C. Ervin
Superior Court Judge Presiding

This the 25th day of October, 2017.



Robynn E. Moraites
Executive Director - Lawyer Assistance Program