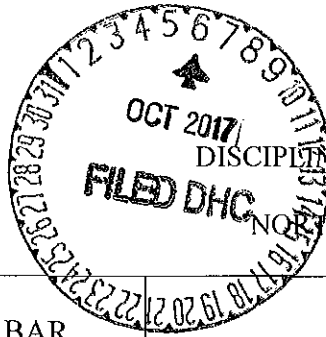


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
15 DHC 22 **SC**

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

ROBERT M. GALLANT, Attorney,

Defendant

ORDER ACTIVATING SUSPENSION

Defendant, Robert M. Gallant (“Gallant” or “Defendant”), was ordered to appear and show cause why the stay of the suspension imposed by the Order of Discipline entered in this case on 8 July 2015 should not be lifted and the suspension activated. This matter was heard on 6 October 2017 by a Hearing Panel of the Disciplinary Hearing Commission composed of R. Lee Farmer, Chair, N. Hunter Wyche, Jr., and Randy Moreau pursuant to 27 N.C. Admin. Code 1B § .0118 (previously codified as 27 N.C. Admin. Code 1B § .0114(x)). Plaintiff, the North Carolina State Bar (“State Bar” or “Plaintiff”) was represented by Brian P.D. Oten. Defendant did not file a response and did not appear at the scheduled hearing.

Based upon the pleadings and the evidence presented at the hearing, the Hearing Panel hereby finds by the greater weight of the evidence the following

FINDINGS OF FACT

1. On 8 July 2015, a Consent Order of Discipline (hereinafter “the Order”) was entered in this matter, effective from the date of service. Defendant’s counsel accepted service of the order on 8 July 2015.

2. The Order imposed a two-year suspension, stayed for two years, on Defendant’s license to practice law in this State. The stay of the suspension was conditioned upon Defendant’s compliance with the conditions stated in the Order.

3. The Order, at paragraph 1(a) on page 4, required Defendant to execute written waivers and releases necessary to authorize the State Bar’s Office of Counsel to confer with the Internal Revenue Service or the North Carolina Department of Revenue for the purpose of determining whether Defendant has cooperated and complied with all requirements of the Order. Defendant failed to comply with this condition by not executing a waiver authorizing the Office of Counsel to confer with the IRS and the NCDOR about Defendant’s tax filings for the 2016 tax year.

4. The Order, at paragraph 1(b) on page 4, required Defendant to timely file during the period of stay his federal and state income tax returns along with any associated schedules and attachments thereto, and required Defendant to provide proof of these filings to the Office of Counsel within 30 days of filing. Defendant failed to comply with this condition by failing to provide the Office of Counsel with any documentation evidencing his 2016 federal and state income tax returns or requests for extension of the filing deadlines.

5. The Order, at paragraph 1(c) on page 5, required Defendant to timely pay all state and federal tax liabilities, fines, and penalties accrued during the stay period. Defendant owed \$119 from his 2015 federal income tax filing. Defendant failed to comply with this condition by failing to provide the Office of Counsel or this Hearing Panel with any evidence demonstrating his payment of his 2015 tax liability.

6. The Order, at paragraph 1(d) on page 5, required that within 60 days of the effective date of the Order, Defendant be evaluated by a licensed and qualified psychiatrist or psychologist. Defendant was evaluated by Dr. Eugenia L. Gullick on 31 October, 2 November, and 26 November 2016. Dr. Gullick submitted a report of evaluation to the Office of Counsel dated 10 December 2016. Defendant failed to comply with this condition by not sitting for the required evaluation within the designated timeframe.

7. The Order, at paragraph 1(e) on page 5, required Defendant to comply with all treatment recommendations of the evaluating psychiatrist/psychologist (Dr. Gullick) as well as any treatment provider(s), and to direct his treatment provider(s) to provide the Office of Counsel with semi-annual written reports concerning Defendant's condition, Defendant's compliance with the treatment plan, and Defendant's progress resulting from treatment for the duration of the stay of his suspension. Such reports were to be received by the Office of Counsel every June 1 and December 1. Defendant failed to comply with this condition as follows:

- a. In her report of evaluation, Dr. Gullick recommended Defendant be evaluated for ADHD and Executive Function Disorder. Dr. Gullick also recommended Defendant work with a personal coach and a personal assistant to help him manage his personal and professional obligations, including financial responsibilities. Defendant failed to undergo further testing as recommended by Dr. Gullick, and Defendant failed to engage a personal coach and personal assistant as recommended by Dr. Gullick;
- b. The Office of Counsel has received no reports from any of Defendant's treatment provider(s) during the course of this stayed suspension, despite Dr. Gullick's treatment recommendations. Accordingly, Defendant failed to have his treatment provider(s) submit semi-annual written reports to the Office of Counsel.

8. The Order, at paragraph 1(j) on page 6, required Defendant to timely comply with all State Bar membership and Continuing Legal Education requirements. Defendant failed to comply with this condition as follows:

- a. Defendant failed to timely file his 2016 Annual Report Form;

- b. Defendant failed to pay the \$75.00 late-filing fee and the \$125.00 non-compliance fee charged by the Board of Continuing Legal Education for his failure to return his 2016 Annual Report Form;
- c. Defendant was served with a Notice to Show Cause for these deficiencies on 15 May 2017, and Defendant failed to correct these deficiencies or otherwise respond to the Notice to Show Cause;
- d. Defendant failed to pay his 2017 membership dues.

Based upon the foregoing Findings of Fact, the Hearing Panel enters the following

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, Robert M. Gallant, and over the subject matter of this proceeding.
2. Defendant failed to comply with the following conditions of the stay of his suspension contained in the Order of Discipline:
 - a. That he execute any written waivers and releases necessary to authorize the Office of Counsel to confer with the Internal Revenue Service or the North Carolina Department of Revenue for the purpose of determining whether Defendant has cooperated and complied with all requirements of the Order as required by paragraph 1(a) of the Order of Discipline;
 - b. That he timely file during the period of stay his federal and state income tax returns along with any associated schedules and attachments thereto and shall provide proof of these filings to the Office of Counsel within 30 days of filing as required by paragraph 1(b) of the Order of Discipline;
 - c. That he timely pay all state and federal tax liabilities, fines, and penalties accrued during the stay period as required by paragraph 1(c) of the Order of Discipline;
 - d. That, within 60 days of the effective date of the Order of Discipline, he be evaluated by a licensed and qualified psychiatrist or psychologist as required by paragraph 1(d) of the Order of Discipline;
 - e. That he comply with all treatment recommendations of his evaluating psychiatrist/psychologist as well as any treatment provider(s), and that he direct his treatment provider(s) to provide the Office of Counsel with semi-annual written reports concerning Defendant's condition, Defendant's compliance with the treatment plan, and Defendant's progress resulting from treatment for the duration of the stay of his suspension as required by paragraph 1(e) of the Order of Discipline; and

f. That he timely comply with all State Bar membership and Continuing Legal Education requirements as required by paragraph 1(j) of the Order of Discipline.

3. Such violations warrant activation of the suspension imposed by the Order of Discipline and warrant imposition of conditions upon Defendant's possible reinstatement at the end of the period of active suspension.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Panel enters the following

ORDER

1. The stay of Defendant's two-year suspension is lifted and the suspension is activated. Pursuant to 27 N.C. Admin. Code 1B § .0128, this order and the two-year suspension imposed herein are effective 30 days after service of this order upon Defendant.

2. All costs and administrative fees of this action are taxed to Defendant. Defendant must pay the costs of this action within 30 days of service upon him of the statement of costs by the Secretary. Service of the statement of costs shall be completed in the same way orders are served pursuant to 27 N.C. Admin. Code 1B § .0116(g).

3. Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following the effective date of this Order.

4. Defendant shall comply with the wind down provisions contained in 27 N.C. Admin. Code 1B § .0128. Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within 10 days of the effective date of this order, certifying he has complied with the wind down rule.

5. Within 10 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, and Defendant shall promptly return all files to his clients upon request.

6. 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 a trustee and/or a 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 North Carolina State Bar. Defendant shall not be eligible for reinstatement until he has reimbursed the State Bar for all wind-down expenses incurred.

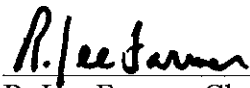
7. At the end of the two-year active period of suspension, Defendant may apply for reinstatement by filing a petition with the DHC in accordance with the North Carolina State Bar Discipline and Disability Rules. In addition to complying with the general provisions for reinstatement listed in Rule .0129 of the North Carolina State Bar Discipline & Disability Rules,

Defendant must demonstrate compliance with the following conditions by clear, cogent, and convincing evidence:

- a. That he has timely complied with paragraphs 2-6 of this section of the Order Activating Suspension, including payment of any costs and administrative fees assessed as a result of this disciplinary proceeding;
- b. That, not more than 90 days before he petitions for reinstatement, Defendant has been evaluated by a licensed and qualified psychiatrist or psychologist. Such psychiatrist/psychologist shall be approved in advance by the North Carolina State Bar Office of Counsel. Such psychiatrist/psychologist shall certify under oath whether, based on his or her independent and comprehensive evaluation of Defendant and in his or her professional opinion, Defendant currently has any physical, mental, psychological, behavioral, cognitive, or emotional illness, disorder, or other condition that impairs Defendant's ability to practice law, that impacts Defendant's ability or willingness to comply with the Rules of Professional Conduct, and/or that poses a risk of harm to the public if he engages in the practice of law. Defendant bears the burden of proving that he does not suffer from any such impairing condition at the time of reinstatement. Defendant shall sign an authorization form consenting to the release of all medical records and information related to Defendant's evaluation to the Office of Counsel, and Defendant shall not revoke that release. Defendant shall simultaneously provide a copy of such signed authorization to the Office of Counsel and the psychiatrist/psychologist. Defendant shall direct the evaluating psychiatrist/psychologist described herein to provide a written report of such evaluation and recommended treatment, if any, to the Office of Counsel within 30 days of the evaluation taking place. All expenses of such evaluation, report(s), and production of records shall be borne by Defendant;
- c. That he has complied with all treatment recommendations of the evaluating psychiatrist/psychologist described in paragraph (b) above. Defendant shall sign an authorization form consenting to the release of any medical records and information related to Defendant's treatment to the Office of Counsel, and Defendant will not revoke that release, and Defendant shall simultaneously provide a copy of such signed authorization to the Office of Counsel and his treatment provider. Defendant shall direct his treatment provider to provide the Office of Counsel with a written report detailing Defendant's treatment plan and Defendant's compliance or lack of compliance with such plan. All expenses of such treatment and reports shall be borne by Defendant;
- d. That he has timely filed all federal and state income tax returns along with any associated schedules and attachments thereto, and timely paid all federal and state tax obligations;
- e. That he has paid all outstanding membership dues and Client Security Fund assessments, and that there is no deficit in his fulfillment of any obligation of membership (including continuing legal education requirements);

- f. That he has kept the North Carolina State Bar membership department advised of his current physical home and business addresses and telephone numbers, and that he has accepted all certified mail from the North Carolina State Bar and responded to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication or within fifteen (15) days of receipt of such communication, whichever is earlier; and
- g. That he has not violated any state or federal laws or any provisions of the Rules of Professional Conduct.

Signed by the Chair with the consent of the other Hearing Panel members, this the 6th day of October, 2017.



R. Lee Farmer, Chair
Disciplinary Hearing Panel