

STATE OF NORTH CAROLINA

WAKE COUNTY



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

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

ROBERT M. GALLANT, Attorney,

Defendant

FINDINGS OF FACT,  
 CONCLUSIONS OF LAW, AND  
 CONSENT ORDER OF DISCIPLINE

THIS MATTER was considered by a hearing panel of the Disciplinary Hearing Commission composed of Walter E. Brock, Jr., Chair, R. Lee Farmer, and Randy A. Moreau pursuant to 27 N.C. Admin. Code 1B § .0114 of the Rules and Regulations of the North Carolina State Bar. Plaintiff, the North Carolina State Bar, was represented by Brian P.D. Oten. Defendant, Robert M. Gallant, was represented by Ashley R. Smith. Defendant waives a formal hearing in this matter and both parties stipulate and consent to the entry of this order and to the discipline imposed. Defendant waives any right to appeal this consent order or to challenge in any way the sufficiency of the findings.

Based upon the consent of the parties, the hearing panel hereby makes, by clear, cogent and convincing evidence the following

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar (“Plaintiff” or “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, Robert M. Gallant (“Defendant” or “Gallant”), was admitted to the North Carolina State Bar on 23 August 1997 and is, and was at all times referred to herein, an Attorney at Law licensed to practice in North Carolina, subject to the rules, regulations, and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During a portion of the relevant periods referred to herein, Gallant was actively engaged in the private practice of law in the city of Charlotte, Mecklenburg County, North Carolina.

4. During a portion of the relevant periods referred to herein, Gallant was actively suspended from the practice of law pursuant to the State Bar's Order of Administrative Suspension dated 28 January 2009, effective 16 March 2009.

5. Defendant was properly served with process and received due notice of the hearing in this matter.

6. During calendar years 2007 through 2013, Gallant's income exceeded the minimum threshold above which an individual is required to file federal and state income tax returns.

7. For these tax years, Gallant was aware of the deadlines for filing state and federal tax returns.

8. Gallant failed to file, within the times required by law, federal income tax returns showing his tax liability for tax years 2007 through 2013.

9. Gallant failed to file, within the times required by law, state income tax returns showing his tax liability for tax years 2007 through 2013.

10. Gallant did not file federal income tax returns for tax years 2007 through 2013 until October 2014. Gallant did not file state income tax returns for tax years 2007 through 2013 until December 2014.

11. Gallant's failure to file federal and state income tax returns for tax years 2007 through 2013 was willful.

12. Willful failure to file federal income tax within the time required by law is a violation of 26 U.S.C. § 7203.

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

Based upon the foregoing Findings of Fact, the 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's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:

- (a) By failing to timely file his federal and state income taxes for tax years 2007 through 2013, Defendant committed criminal acts that reflect adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b).

Based upon the consent of the parties, the hearing panel also finds by clear, cogent, and convincing evidence the following

#### ADDITIONAL FINDINGS REGARDING DISCIPLINE

1. Defendant has no prior discipline.
2. Before the facts recited herein came to the attention of the State Bar, Defendant had filed his state and federal returns for tax years 2007 through 2013.
3. During the relevant periods herein, Defendant experienced significant tragic events in his personal life that led to his exiting the practice of law and obtaining employment in an unrelated field. Defendant's new employer did not always timely provide Defendant with proper tax records and documentation to enable Defendant to timely file his taxes. Despite Defendant's personal circumstances and despite his employer's conduct, Defendant's delay in filing his state and federal taxes and his delay in paying state taxes was willful in that he was solely responsible for complying with his known personal tax obligations.
4. Defendant cooperated fully with the State Bar's investigation of this matter and expressed remorse for his conduct.
5. Defendant, who was admitted to the North Carolina State Bar on 23 August 1997, has substantial experience in the practice of law.
6. When lawyers violate the law in their business and personal affairs, it brings disrepute upon the legal profession and undermines public confidence in lawyers.

Based upon the Findings of Fact, Conclusions of Law, and Additional Findings Regarding Discipline, and the consent of the parties, the hearing panel also enters the following

#### CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure and suspension.
2. The hearing panel has carefully considered all of the different forms of discipline available to it. In addition, the hearing panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0114(w)(3) of the Rules and Regulations of the North Carolina State Bar and determines the following factors are applicable:
  - a. The effect of Defendant's personal or emotional problems on the conduct in question;
  - b. Defendant's lack of prior disciplinary offenses;
  - c. Full and free disclosure to the hearing panel and cooperative attitude toward the proceedings;

- d. Remorse; and
- e. Defendant's experience in the practice of law.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0114(w)(2) and concludes no factors are present that would warrant disbarment.

4. The hearing panel has carefully considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and determines the following factors warrant suspension of Defendant's license:

- a. Defendant's actions potentially had a negative impact on the public's perception of the legal profession.

5. The Hearing Panel has considered lesser alternatives and finds that a censure, reprimand or admonition would be insufficient discipline because of the significant potential harm to the legal profession caused by Defendant's conduct.

6. Although Defendant's conduct is serious enough to warrant more than a censure it does not warrant an active suspension of his license.

7. A stayed suspension of Defendant's law license is warranted because entry of an order imposing less severe discipline would fail to acknowledge the seriousness of the misconduct and would send the wrong message to attorneys and the public about the conduct expected of members of the Bar of this State.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Findings and Conclusions Regarding Discipline, and based upon the consent of the parties, the hearing panel enters the following

#### ORDER OF DISCIPLINE

1. The law license of Defendant, Robert M. Gallant, is hereby suspended for two years effective from the date this Order of Discipline is served upon him. The period of suspension is stayed for two years as long as Defendant complies and continues to comply with the following conditions:

- a. Defendant shall 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 this Order. Defendant will not revoke these waivers and releases at any time during the period of stay;
- b. Defendant shall 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;

- c. Defendant shall timely pay all state and federal tax liabilities, fines, and penalties accrued during the stay period;
- d. Within 60 days of the effective date of this Order, Defendant shall be 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 mental, psychological, behavioral, cognitive, or emotional condition or disorder that impacts Defendant's ability to practice law and/or Defendant's ability or willingness to comply with the Rules of Professional Conduct. 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 will 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 thirty (30) days of the evaluation taking place. All expenses of such evaluation and report shall be borne by Defendant;
- e. Defendant shall comply with all treatment recommendations of the evaluating psychiatrist/psychologist described in paragraph (d) above as well as any treatment provider(s). 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 such release(s). Defendant shall simultaneously provide a copy of such signed authorization to the Office of Counsel and his treatment provider(s). Within 30 days of beginning treatment, Defendant shall direct his treatment provider(s) to provide the Office of Counsel with a written report detailing Defendant's treatment. Thereafter, Defendant shall 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 shall be received by the Office of Counsel every June 1 and December 1. Defendant shall also comply with any and all requests from the Office of Counsel seeking updates on the status of his ongoing treatment within 15 days of receipt of such requests. Within 30 days of starting treatment with any new provider(s), Defendant shall direct such new treatment provider(s) to provide the Office of Counsel with a written report detailing Defendant's treatment plan, as well

as the semi-annual written reports described above. All expenses of such treatment and reports shall be borne by Defendant;

- f. Defendant shall keep the North Carolina State Bar Membership Department advised of his current contact information, including his current business and home addresses (not a P.O. Box) as well as his current telephone number(s), and shall notify the Bar of any change in address or telephone number within 10 days of such change;
- g. Defendant shall respond to all communications from the North Carolina State Bar, including communications from the Attorney Client Assistance Program, within 15 days of receipt or by the deadline stated in the communication, whichever is sooner, and shall participate 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;
- h. Defendant shall promptly accept service of all certified mail from the State Bar that is sent to him;
- i. Defendant shall respond to all communications from the Internal Revenue Service and the North Carolina Department of Revenue;
- j. Defendant shall timely comply with all State Bar membership and Continuing Legal Education requirements;
- k. Defendant shall timely pay the costs and administrative fees of this action as described below; and
- l. Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or of any state or local government during his suspension.

2. If Defendant fails to comply with any of the conditions of the stayed suspension provided in paragraph 1(a) – (l) above, the stay of the suspension may be lifted as provided in 27 N.C. Admin. Code 1B § .0114(x).

3. If the stay granted herein is lifted or the suspension of Defendant's license is activated for any reason, before seeking reinstatement of his license to practice law, Defendant must show by clear, cogent and convincing evidence that he has complied with each of the following conditions:

- a. Defendant completed the evaluation described in paragraph 1(d) above and complied with any and all treatment recommendations prior to reinstatement, with an evaluation report and a treatment report being sent to the Office of Counsel simultaneous with Defendant's petition for reinstatement;
- b. Defendant submitted his license and membership card to the Secretary of the North Carolina State Bar within thirty days after the date of the order lifting the stay and/or activating the suspension of his law license;

- c. Defendant complied with all provisions of 27 N.C. Admin. Code 1B § .0124 of the State Bar Discipline and Disability Rules following the order lifting the stay and/or activating the suspension of his law license;
- d. Defendant kept the North Carolina State Bar Membership Department advised of his current business and home addresses, as well as his current telephone number, and notified the Bar of any change in address or telephone number within 10 days of such change;
- e. Defendant responded to all communications from the North Carolina State Bar, including communications from the Attorney Client Assistance Program, within 15 days of receipt or by the deadline stated in the communication, whichever is sooner, and has participated in good faith in the State Bar's fee dispute resolution process for any petition of which he receives notice after the effective date of this Order;
- f. Defendant promptly accepted all certified mail sent to him by the State Bar;
- g. That at the time of his petition for stay, Defendant is current in payment of all Membership dues, fees and costs, including all Client Security Fund assessments and other charges or surcharges the State Bar is authorized to collect from him, and including all judicial district dues, fees and assessments;
- h. That at the time of his petition for stay, there is no deficit in Defendant's completion of mandatory Continuing Legal Education (CLE) hours, in reporting of such hours or in payment of any fees associated with attendance at CLE programs;
- i. Defendant has not violated the Rules of Professional Conduct or the laws of the United States or of any state or local government during his suspension, including Defendant's timely filing and payment of federal and state tax obligations;
- j. Defendant has paid the administrative fees and costs of this proceeding as reflected on the statement of costs served upon him by the Secretary of the State Bar; and
- k. Defendant has complied with any other conditions deemed necessary for reinstatement imposed by the Hearing Panel pursuant to the order lifting the stay of the suspension of Defendant's law license.

4. Defendant is taxed with the administrative fees and costs of this action as assessed by the Secretary which Defendant shall pay within thirty days of service of the notice of costs upon Defendant.

5. Nothing in this Order shall prohibit the State Bar from investigating and, if necessary, pursuing disciplinary action against Defendant for additional misconduct

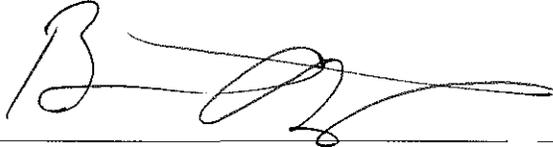
discovered or reported which occurred during the same time period as the conduct addressed in this Order.

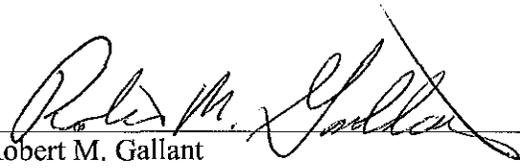
6. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout any period of stayed suspension.

Signed by the Chair with the consent of the other hearing panel members, this the 6<sup>th</sup> day of July, 2015.

  
Walter E. Brock, Jr., Chair  
Disciplinary Hearing Panel

CONSENTED TO BY:

  
Brian P.D. Oten  
Deputy Counsel  
North Carolina State Bar  
Counsel for Plaintiff

  
Robert M. Gallant  
Defendant

  
Ashley R. Smith  
Counsel for Defendant