

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED

03/29/2019

Clerk of the
Appellate Courts

IN RE: JASON R. GRUBB, BPR #022818
An Attorney Licensed to Practice Law in Tennessee
(Beaver, West Virginia)

No. M2019-00239-SC-BAR-BP
BOPR No. 2019-2959-0-AW-25

ORDER OF RECIPROCAL DISCIPLINE

This matter is before the Court pursuant to Tenn. Sup. Ct. R. 9, § 25, upon a Notice of Submission filed by the Board of Professional Responsibility (“Board”) consisting of a certified copy of the Order entered May 18, 2016, by the Supreme Court of Appeals of West Virginia, annulling the license of Jason R. Grubb to practice law in West Virginia.

On February 8, 2019, this Court entered a Notice of Reciprocal Discipline requiring Mr. Grubb to inform this Court, within thirty (30) days of his receipt of this Notice, of any claim predicated upon the grounds set forth in Tenn. Sup. Ct. R. 9, § 25.4 that the imposition of the identical discipline in Tennessee would be unwarranted and the reason therefor. The Notice further provided that, in the absence of a response demonstrating the grounds set forth in Tenn. Sup. Ct. R. 9, § 25.4, this Court would impose a discipline with identical terms and conditions based upon the order of the Supreme Court of Appeals of West Virginia. Mr. Grubb filed a response on March 8, 2019, and the Board, upon order of this Court, filed a reply on March 22, 2019.

After careful consideration of the record in this matter as well as the filings of the parties, the Court finds, based upon the particular facts of this case, that none of the elements in Tenn. Sup. Ct. R. 9, § 25.4 exist. Accordingly, it is appropriate to enter an Order of Reciprocal Discipline.

IT IS, THEREFORE, CONSIDERED, ORDERED, ADJUDGED AND DECREED BY THE COURT THAT:

- (1) Jason R. Grubb shall be disbarred from the practice of law in Tennessee consistent with the order entered by the Supreme Court of Appeals of West Virginia, in *Office of Disciplinary Counsel vs. Jason R. Grubb*, No. 16-0121

(W. Va. May 18, 2016), attached to this Order as Exhibit A. Further, the disbarment shall be retroactive to May 18, 2016.

- (2) Pursuant to Tenn. Sup. Ct. R. 9, § 31.3, Mr. Grubb shall pay to the Clerk of this Court the costs incurred herein, within ninety (90) days of the entry of this Order, for all of which execution may issue if necessary.
- (3) Prior to seeking reinstatement, Mr. Grubb must have met all CLE requirements; have remitted all outstanding registration fees and outstanding professional privilege taxes, including those due from the date of this disbarment until the date of reinstatement; and have remitted all court costs in this matter.
- (4) Mr. Grubb shall comply in all aspects with Tenn. Sup. Ct. R. 9, §§ 28 and 30.4, regarding the obligations and responsibilities of suspended attorneys and the procedure for reinstatement.
- (5) Pursuant to Tenn. Sup. Ct. R. 9, § 28.1, this Order shall be effective upon entry.
- (6) The Board of Professional Responsibility shall cause notice of this discipline to be published as required by Tenn. Sup. Ct. R. 9, § 28.11.

PER CURIAM

FILED

03/29/2019

Clerk of the
Appellate Courts

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 18th of May, 2016, the following order was made and entered:

Office of Disciplinary Counsel,
Petitioner

vs.) No. 16-0121

Jason R. Grubb, a suspended member of
The West Virginia State Bar,
Respondent

ORDER

On February 9, 2016, the petitioner, Office of Disciplinary Counsel, by Rachael L. Fletcher Cipoletti, Chief Lawyer Disciplinary Counsel, filed a petition seeking annulment of the law license in the State of West Virginia of the respondent, Jason R. Grubb, pursuant to Rule 3.18, Rules of Lawyer Disciplinary Procedure.

Thereafter, on March 9, 2016, the respondent, Jason R. Grubb, by counsel Timothy Lupardus, filed a request for a mitigation hearing. The Office of Disciplinary Counsel filed an objection to the request for a mitigation hearing on March 16, 2016.

On April 13, 2016, the Court received the Hearing Panel Subcommittee of the Lawyer Disciplinary Board's ruling denying the request for a mitigation hearing. Respondent did not object to the ruling.

Upon consideration and review of the petition seeking annulment, the Court is of the opinion to and does hereby grant the petition. It is therefore ordered that the license to practice law in the State of West Virginia of the respondent, Jason R. Gubb, shall be, and it hereby is, annulled.

Exhibit A

A True Copy

Attest: //s// Rory L. Perry II
Clerk of Court



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FEB 9 2016

IN THE SUPREME COURT OF APPEALS
STATE OF WEST VIRGINIA

OFFICE OF DISCIPLINARY COUNSEL,

Petitioner,

v.

No. 16- 0121

Jason Grubb, a member
of the West Virginia State Bar,

Respondent.

PETITION SEEKING ANNULMENT OF LAW LICENSE
PURSUANT TO RULE 3.18 OF THE RULES OF
LAWYER DISCIPLINARY PROCEDURE

Rachael L. Fletcher Cipoletti
[Bar No. 8806]
Chief Lawyer Disciplinary Counsel
Office of Disciplinary Counsel
City Center East, Suite 1200C
4700 MacCorkle Avenue, S.E.
Charleston, West Virginia 25304
rfcipoletti@wvdc.org
(304) 558-7999
(304) 558-4015 -- facsimile

Grant - Annul license to practice law. (5-0) Memo & Hithum Jy 5/18/16.

NOW COMES the Office of Disciplinary Counsel by Rachael L. Fletcher Cipoletti, its counsel, and reports to this Court pursuant to Rule 3.18 of the Rules of Lawyer Disciplinary Procedure and Rule 35(a)(4) of the Rules of Appellate Procedure that Jason Grubb (hereinafter “Respondent”) has been convicted of a felony crime that reflect adversely on his honesty, trustworthiness, and fitness as a lawyer and is in direct violation of the Rules of Professional Conduct. In support of this petition, the Office of Disciplinary Counsel states as follows:

FACTS

1. Respondent was admitted to the West Virginia State Bar on May 13, 2004, and is therefore subject to the lawyer disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and the Lawyer Disciplinary Board. Respondent practices law in Welch, McDowell County, West Virginia.
2. The United States Attorney for the Southern District of West Virginia issued a 30 Count Indictment against Respondent on or about September 29, 2015. Count 1-6 charged Respondent with violations of 18 U.S.C. § 1341 (Mail Fraud) and Counts 7-30 charged Respondent with violations of 26 U.S.C. § 7202 (Failure to Collect, Account for and pay over Employment Taxes).¹ [Attachment A].
3. On or about February 3, 2016, Respondent pleaded guilty to Count 30 of the Indictment in violation of 26 U.S.C. § 7202. [Attachment B].

¹Complaint I.D. No. 15-03-431 was docketed by the Office of Disciplinary Counsel against Respondent on or about October 2, 2015.

4. The maximum penalty to which Respondent will be exposed by virtue of his guilty plea is:
- a. imprisonment for a period of 5 years;
 - b. a fine of \$10,000.00², or twice the gross pecuniary gain or twice the gross pecuniary loss resulting from defendant's conduct, whichever is greater;
 - c. a term of supervised release of three years;
 - d. a mandatory special assessment of \$100 pursuant to 18 U.S.C. § 3013
 - e. an order of restitution pursuant to 18 U.S.C. §§ 3663 and 3664, or as otherwise set forth in this plea agreement; and
 - f. costs of prosecution.
5. Respondent agreed that he owed restitution in the following amounts:
- a. \$29,193.32 payable to Daniels Capital Corporation;
 - b. \$126,225 payable to West Virginia Public Defender Services; and
 - c. \$247,035.97 payable to the Internal Revenue Service.
6. Respondent stipulated to the following relevant facts:
- a. Respondent practiced law in Shady Spring, Raleigh County, West Virginia. Among other types of cases, Respondent represented indigent clients, by court appointment, in state criminal matters pending in Mercer, McDowell, Summers, Wyoming and Raleigh counties.

²The plea agreement indicates the fine exposure is \$250,000.00, however, during the plea hearing that number was corrected by the parties to \$10,000.00.

- b. In 2009 and continuing through 2015, Respondent operated his law office and hired an individual as his secretary.
 - c. During the operation of his law office, Respondent withheld trust fund taxes from his secretary's paychecks.
 - d. Respondent was responsible for paying over the trust fund portion of his law office practice, but did not comply with his responsibility and instead willfully failed to report of pay over any of the trust fund taxes.
 - e. From the first quarter of 2009 through the second quarter of 2015, Respondent failed to report and pay over approximately \$21,741.79 in trust fund taxes on behalf of his employee.
 - f. From the first quarter of 2009 through the second quarter of 2015, Respondent failed to report and pay over the employer share of FICA taxes for a total of \$13,125.87.
 - g. Respondent also failed to file his personal income taxes in 2008 through 2012 and owes \$212,167.31.
 - h. Respondent agrees that the tax loss resulting from his offense is \$247,035.97.
7. Respondent also stipulated to the following facts to support the restitution order:
- a. As a normal practice after an appointed case was completed, Respondent submitted a payment voucher form to the respective Circuit Court Judge for approval. The Circuit Court Judge reviewed the payment voucher and signed

a court order authorizing payment. The Clerk of the Court for the respective Circuit Court then submitted the court order and voucher to the WV PDS for payment. As a general matter, the WV PDS took several months or more to reimburse Respondent.

- b. To expedite payment, Respondent entered into a cash-advance agreement with Daniels Capital Corporation. In exchange for prompt payments less a small percentage, Respondent assigned his right to full payment from WV PDS to DCC.
- c. Beginning on at least April 14, 2008, and at least until June 9, 2011, Respondent at times falsified the amount of payment he was owed by WV PDS.
- d. Respondent inflated the amount of hours he worked on particular cases, then submitted the vouchers to the Circuit Court, which would in turn submit them to WV PDS by the Clerk of the Court.
- e. Respondent would also at times submit false payment vouchers to DCC, representing that he had performed or would perform work on cases and that the court would order payment in a certain amount, when Respondent had not and did not perform such work.

- f. Between April 14, 2008, and June 9, 2011, Respondent reported to WV PDS that he worked more than 24 hours in a single day on 51 days and frequently over-billed WV PDS for work he performed.
- g. Respondent agrees that he owes WV PDS \$126,225.00.
- 8. Upon information and belief, Respondent will be sentenced for this felony offense by the United States District Court on May 12, 2016.
- 9. Upon information and belief, as of the filing of this petition, Respondent is an Assistant Prosecutor at the McDowell County Prosecuting Attorney's Office.
- 10. On or about February 4, 2016, ODC filed a petition pursuant to Rule 3.27 of the Rules of Lawyer Disciplinary Procedure seeking Respondent's immediate suspension.
- 11. On or about February 5, 2016, Chief Judge Murensky entered an Administrative Order that prohibited Respondent from appearing in all Courts in McDowell County, including Circuit, Family and Magistrate Courts. [Attachment C].
- 12. On or about February 4, 2016, the United States District Court executed an Order that was entered by the Court on or about February 5, 2016, wherein the Court accepted Respondent's guilty plea and adjudicated Respondent convicted of violating 26 U.S.C. § 7202. [Attachment D].
- 13. Rule 3.18(c) of the Rules of Lawyer Disciplinary Procedure provides that "[a] plea or verdict of guilty or a conviction after a plea of nolo contendere shall be deemed to be a conviction within the meaning of this rule."

14. Rule 3.18(d) of the Rules of Lawyer Disciplinary Procedure provides that “[a] lawyer shall be deemed to have been convicted within the meaning of this rule upon the entry of the order or judgment of conviction and such lawyer’s license may be suspended or annulled thereupon notwithstanding the pendency of an appeal from such conviction.”
15. Respondent has been convicted of a crime within the meaning of Rule 3.18 of the Rules of Lawyer Disciplinary Procedure. “Where there has been a final criminal conviction, proof on the record of such conviction satisfies the Committee on Legal Ethics’ burden of proving an ethical violation arising from such conviction.” Syllabus Point 2, Committee on Legal Ethics v. Six, 181 W.Va. 52, 380 S.E.2d 219 (1989).
16. Because Respondent has pleaded guilty to and has now been convicted of a criminal act he has violated Rule 8.4(b), Rule 8.4(c) and Rule 8.4(d) of the Rules of Professional Conduct which state in pertinent part:

Rule 8.4. Misconduct.

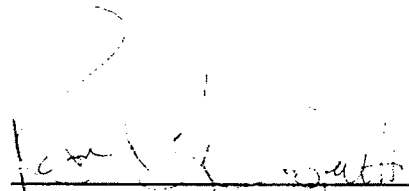
It is professional misconduct for a lawyer to:

- (b) commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, after affording the right of Respondent to file a written request with the Chairperson of the Hearing Panel of the Lawyer Disciplinary Board for a mitigation

hearing within thirty (30) days of the date of the filing of this Petition pursuant to Rule 3.18(e) of the Rules of Lawyer Disciplinary Procedure, the Office of Disciplinary Counsel requests that this Honorable Court issue an Order which annuls Respondent's law license based on Rule 3.18 of the Rules of Lawyer Disciplinary Procedure and legal precedent of this Court.

Respectfully submitted,
Office of Disciplinary Counsel



Rachael L. Fletcher Cipoletti [Bar No. 8806]
rfcipoletti@wvdc.org
Chief Lawyer Disciplinary Counsel
Office of Disciplinary Counsel
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(304) 558-4015 *facsimile*

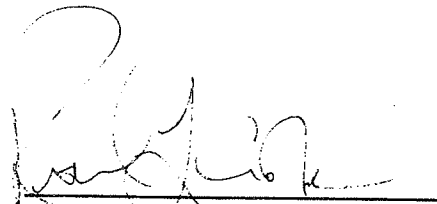
CERTIFICATE OF SERVICE

This is to certify that I, **Rachael L. Fletcher Cipoletti**, Chief Lawyer Disciplinary Counsel for the Office of Disciplinary Counsel, have this day, the 9th day of February, 2016, served a true copy of the foregoing **"PETITION SEEKING ANNULMENT OF LAW LICENSE PURSUANT TO RULE 3.18 OF THE RULES OF LAWYER DISCIPLINARY PROCEDURE"** upon Timothy P. Lupardus, Esquire, counsel for Respondent, Jason R. Grubb, by mailing the same, United States Mail with sufficient postage, and by electronic mail to the following address:

Timothy P. Lupardus, Esquire
Post Office Box 1680
Pineville, West Virginia 24874
tim@luparduslaw.com

And to the Chair of the Hearing Panel of the Lawyer Disciplinary Board:

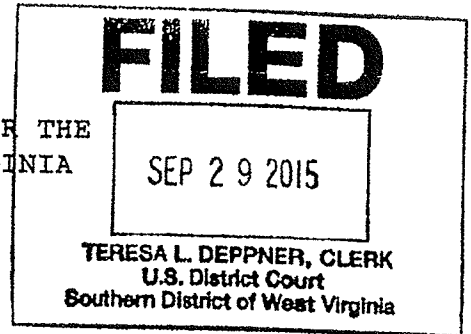
Steven K. Nord, Esquire
Post Office Box 2868
Huntington, West Virginia 25728



Rachael L. Fletcher Cipoletti

Attachment A

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY GRAND JURY 2015
SEPTEMBER 29, 2015 SESSION



UNITED STATES OF AMERICA

v.

CRIMINAL NO.

5:15-00195

18 U.S.C. § 1341

26 U.S.C. § 7202

JASON GRUBB

I N D I C T M E N T

The Grand Jury Charges:

COUNTS ONE - SIX

Mail Fraud

At all relevant times:

1. The defendant JASON GRUBB was a resident of Beaver, Raleigh County, West Virginia who practiced law in Shady Spring, Raleigh County, West Virginia, beginning in at least 2008 and continuing through 2015.

2. The State of West Virginia Public Defender Services (hereinafter "PDS") was an agency of the Executive Branch of the State of West Virginia responsible for administering the provision of legal representation to indigent persons. PDS funded all indigent defense for the State of West Virginia

through either private attorneys appointed on a case-by-case basis or full-time public defenders. In addition to criminal cases, PDS paid for representation in abuse and neglect, mental commitment, juvenile proceedings and other related matters to indigent defendants in which a state right to counsel existed. The State of West Virginia, authorized by PDS, paid each private attorney on an hourly basis, plus expenses, for each case pursuant to a court order and a schedule of hours worked, fees and expenses submitted by the attorney called a "voucher."

3. Defendant JASON GRUBB performed appointed counsel work in West Virginia counties including Mercer, McDowell, Summers, Wyoming and Raleigh.

4. At times, payments to court-appointed attorneys were delayed by PDS for processing and budgeting reasons, and in turn attorneys would seek advance payment arrangements with finance companies. For a fee, Daniels Capital Corporation (hereinafter "DCC"), a finance company in Birmingham, Alabama, provided attorneys with advance funding for court-appointed indigent cases based on that attorney's proposed or certified court order and voucher.

5. When attorneys had an advance fee arrangement with DCC, once a voucher was approved, the State of West Virginia issued payment for the court-appointed attorney's fees and

expenses in the form of a check, also known as a warrant. The warrant was mailed from Charleston, Kanawha County, by the Treasurer's Office of the State of West Virginia to DCC.

6. Defendant JASON GRUBB entered into an advance payment agreement with DCC in approximately December 2004, and notified PDS that the payment of his claims for attorney fees should be sent to DCC.

The Scheme

7. From on or about January 24, 2008; until on or about December 14, 2010, at or near Shady Spring and Beckley, Raleigh County, Princeton, Mercer County, Welch, McDowell County, Hinton, Summers County, Pineville, Wyoming County, and Charleston, Kanawha County, within the Southern District of West Virginia and elsewhere, defendant JASON GRUBB knowingly devised and intended to devise a scheme and artifice to defraud and to obtain money from the State of West Virginia by means of materially false and fraudulent pretenses, representations and promises, by falsely inflating the hours submitted on his vouchers to include work not actually performed.

Manner and Means to Carry Out the Scheme

8. It was a part of the scheme and artifice to defraud that defendant JASON GRUBB created, caused to be created, submitted, and caused to be submitted vouchers to the State of

West Virginia reflecting court-appointed attorney work not actually performed by defendant JASON GRUBB. In the aggregate, the vouchers reflect hours billed for court-appointed work in excess of twenty-four hours in a given day on approximately 51 different dates, commencing on or about January 24, 2008, through on or about March 4, 2010. Generally, the vouchers were submitted at the conclusion of each case, with defendant JASON GRUBB submitting and causing to be submitted the last billing from a twenty-four hour day to PDS on approximately November 10, 2010.

9. Defendant JASON GRUBB knew that the vouchers were relied on by PDS to determine the amount of payment owed to him by the State of West Virginia.

10. In furtherance of the scheme and artifice, and in order to effect the purpose thereof, defendant JASON GRUBB committed the following acts and caused others to do the following acts:

- a. Created paperwork, including the Defense Counsel Voucher Information Page, the Itemized Statement of Legal Services (including billable hours), and draft orders for the signature of a Circuit Court judge, that included hourly billings and requested payment for work that defendant JASON GRUBB allegedly

performed, but that included hours that were falsified and that contained materially false and fraudulent information;

- b. Sent the Defense Counsel Voucher Information Page, Itemized Statement of Legal Services, and draft orders that included false billings to DCC. DCC, as defendant JASON GRUBB well knew, then mailed those documents to the Circuit Court on JASON GRUBB's behalf for approval of payment to defendant JASON GRUBB by the Court and PDS.
- c. Caused to be sent through the United States Mail the Defense Counsel Voucher Information Page, Itemized Statement of Legal Services, and certified copies of signed orders from the Circuit Court to PDS in Charleston, Kanawha County, West Virginia;
- d. Caused PDS to authorize the State of West Virginia to pay defendant JASON GRUBB for the work not actually performed based upon the materially false and fraudulent vouchers submitted to the Circuit Court and PDS on behalf of defendant JASON GRUBB; and
- e. Caused to be sent through the United States Mail checks from the State of West Virginia to DCC for

payment of these materially false and fraudulent vouchers.

The Mailings in Furtherance of the Scheme

11. On or about the following dates in the Southern District of West Virginia, and elsewhere, the defendant JASON GRUBB, having devised and intended to devise the above scheme and artifice to defraud and to obtain money by means of materially false and fraudulent pretenses, representations and promises, for the purpose of executing such scheme and artifice and attempting so to do, did knowingly place and knowingly cause to be placed in an authorized depository for mail the matter or thing to be sent or delivered by the Postal Service, and did knowingly cause to be delivered by mail the matter and thing, according to the direction thereon, the following matters and things, each mailing being a separate count of this Indictment:

COUNT	ON OR ABOUT DATE OF MAILING	MAIL MATTER	MAILED FROM	MAILED TO
1	10/6/2010	An order and attached voucher from the Circuit Court of McDowell County	Welch, McDowell County Courthouse	PDS, Charleston, Kanawha County, West Virginia
2	11/10/2010	An order and attached voucher from the Circuit Court of Wyoming County	Pineville, Wyoming County Courthouse	PDS, Charleston, Kanawha County, West Virginia
3	10/08/2010	A check from the State of West Virginia totaling \$1,508.74	Charleston, Kanawha County, West Virginia	DCC, Birmingham, Alabama
4	10/13/2010	A check from the State of West Virginia totaling \$1,400.06	Charleston, Kanawha County, West Virginia	DCC, Birmingham, Alabama
5	11/18/2010	A check from the State of West Virginia totaling \$2,309.40	Charleston, Kanawha County, West Virginia	DCC, Birmingham, Alabama
6	12/14/2010	A check from the State of West Virginia totaling \$5,288.67	Charleston, Kanawha County, West Virginia	DCC, Birmingham, Alabama

All in violation of Title 18, United States Code, Section
1341.

COUNTS SEVEN - TWENTY-NINE
(Failure to Collect, Account for
and Pay Over Employment Taxes)

12. The Grand Jury realleges Paragraphs 1 through 10 of Count One-Six as set forth fully herein.

13. Beginning in or about approximately June 2008 and continuing through approximately July 2015, defendant JASON GRUBB employed a person known to the Grand Jury as his secretary.

14. From at least the third quarter of 2009 and continuing through the second quarter of 2015, defendant JASON GRUBB withheld taxes from his secretary's paychecks, including federal income taxes, Medicare and social security taxes, referred to collectively as "trust fund taxes." In addition to the trust fund taxes, JASON GRUBB was also responsible for reporting and paying over the employer portions of FICA tax and Medicare Tax based on the wages paid to his secretary.

15. During the period of in or about the third quarter of 2009 and continuing through the second quarter of 2015, defendant JASON GRUBB failed to pay over to the Internal Revenue Service the trust fund taxes withheld from his secretary's paychecks.

16. Defendant JASON GRUBB was required to make deposits of the trust fund taxes to the Internal Revenue Service on a

periodic basis. In addition, defendant JASON GRUBB was required to file, following the end of each calendar quarter, an Employer's Quarterly Federal Income Tax Return (Form 941), setting forth the total amount of wages and other compensation subject to withholding, the total amount of income tax withheld, the total amount of social security and Medicare taxes due, and the total tax deposits. Payments of trust fund taxes withheld by JASON GRUBB and the employer portion of FICA and Medicare taxes were due, at the very latest, with the timely submission of each Employer's Quarterly Federal Tax Return, Form 941.

17. From at least 2009 through June 2015, defendant JASON GRUBB withheld tax payments from his secretary's paychecks. However, he made no payments to the Internal Revenue Service of the trust fund taxes that were withheld or the employer portions of FICA and Medicare Taxes.

18. Defendant JASON GRUBB further failed to file quarterly employment tax returns (Forms 941) with the Internal Revenue Service. Each Form 941 was due to be filed at the end of the month following the end of each calendar quarter. Each Form 941 was due to be filed at the end of the month following the end of each calendar quarter. For example, the Form 941 for the first quarter of 2009 was due on or before April 30, 2009, since the calendar quarter ended on March 31, 2009.

19. Beginning on or about April 30, 2009, and continuing up to and including July 31, 2015, in or near Shady Springs, ~~WV~~ Raleigh County, West Virginia, in the Southern District of West Virginia and elsewhere, defendant JASON GRUBB willfully failed to truthfully account for and pay over to the Internal Revenue Service employment taxes, including trust fund taxes, due and owing to the United States, for each of the following calendar quarters:

Count 7:	Third Quarter of 2009
Count 8:	Fourth Quarter of 2009
Count 9:	First Quarter of 2010
Count 10:	Second Quarter of 2010
Count 11:	Third Quarter of 2010
Count 12:	Fourth Quarter of 2010
Count 13:	First Quarter of 2011
Count 14:	Second Quarter of 2011
Count 15:	Third Quarter of 2011
Count 16:	Fourth Quarter of 2011
Count 17:	First Quarter of 2012
Count 18:	Second Quarter of 2012
Count 19:	Third Quarter of 2012
Count 20:	Fourth Quarter of 2012
Count 21:	Second Quarter of 2013

Count 22: Third Quarter of 2013
Count 23: Fourth Quarter of 2013
Count 24: First Quarter of 2014
Count 25: Second Quarter of 2014
Count 26: Third Quarter of 2014
Count 27: Fourth Quarter of 2014
Count 28: First Quarter of 2015
Count 29: Second Quarter of 2015

All in violation of Title 26, United States Code, Section 7202.

COUNT THIRTY

20. At all relevant times, defendant JASON GRUBB operated his own law firm, and the primary office was in Shady Spring, Raleigh County, West Virginia.

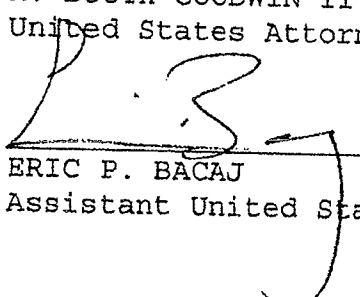
21. At all relevant times, defendant JASON GRUBB employed a person known to the Grand Jury as his secretary.

22. On or about January 2013, through March 31, 2013, within the Southern District of West Virginia, defendant JASON GRUBB willfully failed to truthfully account for and pay over to the Internal Revenue Service employment taxes totaling \$1,031.17, including trust fund taxes deducted and collected from the total taxable wages of the employee of defendant JASON GRUBB for the first quarter of 2013, ending March 31, 2013.

In violation of Title 26, United States Code, Section 7202.

R. BOOTH GOODWIN II
United States Attorney

By:


ERIC P. BACAJ
Assistant United States Attorney

MEREDITH GEORGE THOMAS
Assistant United States Attorney

Attachment B



United States Department of Justice

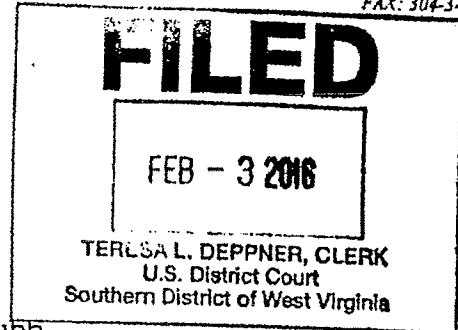
*United States Attorney
Southern District of West Virginia*

*Robert C. Byrd United States Courthouse
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1-800-659-8726*

*Mailing Address
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Charleston, WV 25326
304-345-2200
FAX: 304-347-5104*

January 28, 2016

Timothy P. Lupardus
Lupardus Law Office
P. O. Box 1680
Pineville, WV 24874



Re: United States v. Jason Grubb
Criminal No. 5:15-cr-00195

Dear Mr. Lupardus:

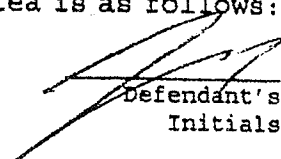
This will confirm our conversations with regard to your client, Jason Grubb (hereinafter "Mr. Grubb"). As a result of these conversations, it is agreed by and between the United States and Mr. Grubb as follows:

1. **PENDING CHARGES.** Mr. Grubb is charged in a thirty-count indictment as follows:

- (a) Counts One through Six charge Mr. Grubb with a violation of 18 U.S.C. § 1341 (Mail Fraud); and
- (b) Counts Seven through Thirty charge Mr. Grubb with a violation of 26 U.S.C. § 7202 (Failure to Collect, Account for, and Pay Over Employment Taxes).

2. **RESOLUTION OF CHARGES.** Mr. Grubb will plead guilty to Count Thirty of said indictment, which charges him with a violation of 26 U.S.C. § 7202. Following final disposition, the United States will move the Court to dismiss Counts One through Twenty-Nine in Criminal No. 5:15-cr-00195 as to Mr. Grubb.

3. **MAXIMUM POTENTIAL PENALTY.** The maximum penalty to which Mr. Grubb will be exposed by virtue of this guilty plea is as follows:


Defendant's
Initials

Timothy P. Lupardus, Esquire
January 28, 2016
Page 2

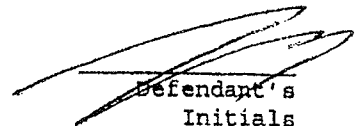
Re: Jason Grubb

- (a) Imprisonment for a period of 5 years;
- (b) A fine of \$250,000, or twice the gross pecuniary gain or twice the gross pecuniary loss resulting from defendant's conduct, whichever is greater;
- (c) A term of supervised release of three years;
- (d) A mandatory special assessment of \$100 pursuant to 18 U.S.C. § 3013;
- (e) An order of restitution pursuant to 18 U.S.C. §§ 3663 and 3664, or as otherwise set forth in this plea agreement; and
- (f) Costs of prosecution.

4. **SPECIAL ASSESSMENT.** Prior to the entry of a plea pursuant to this plea agreement, Mr. Grubb will tender a check or money order to the Clerk of the United States District Court for \$100, which check or money order shall indicate on its face the name of defendant and the case number. The sum received by the Clerk will be applied toward the special assessment imposed by the Court at sentencing. Mr. Grubb will obtain a receipt of payment from the Clerk and will tender a copy of such receipt to the United States, to be filed with the Court as an attachment to this plea agreement. If Mr. Grubb fails to provide proof of payment of the special assessment prior to or at the plea proceeding, the United States will have the right to void this plea agreement. In the event this plea agreement becomes void after payment of the special assessment, such sum shall be promptly returned to Mr. Grubb.

5. **RESTITUTION.** Notwithstanding the offense of conviction, Mr. Grubb agrees that he owes restitution in following amounts:

- (a) \$29,193.32 payable to Daniels Capital Corporation;
- (b) \$126,225 payable to West Virginia Public Defender Services; and
- (c) \$247,035.97 payable to the Internal Revenue Service.


Defendant's
Initials

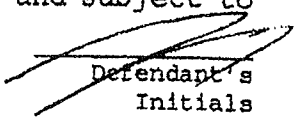
Timothy P. Lupardus, Esquire
January 28, 2016
Page 3

Re: Jason Grubb

Mr. Grubb agrees to pay such restitution, with interest as allowed by law, to the fullest extent financially feasible. In aid of restitution, Mr. Grubb further agrees as follows:

- (a) Mr. Grubb agrees to fully assist the United States in identifying and locating any assets to be applied toward restitution and to give signed, sworn statements and testimony concerning assets upon request of the United States.
- (b) Mr. Grubb will fully complete and execute, under oath, a Financial Statement and a Release of Financial Information on forms supplied by the United States and will return these completed forms to counsel for the United States within seven calendar days from the date of the signing of this plea agreement.
- (c) Mr. Grubb agrees not to dispose of, transfer or otherwise encumber any real or personal property which he currently owns or in which he holds an interest.
- (d) Mr. Grubb agrees to fully cooperate with the United States in the liquidation of assets to be applied towards restitution, to execute any and all documents necessary to transfer title of any assets available to satisfy restitution, to release any and all right, title and interest he may have in and to such property, and waives his right to exemptions under the Federal Debt Collection Procedures Act upon levy against and the sale of any such property.
- (e) Mr. Grubb agrees not to appeal any order of the District Court imposing restitution unless the amounts of restitution imposed exceeds the amounts set forth in this plea agreement. However, nothing in this provision is intended to preclude the Court from ordering Mr. Grubb to pay a greater or lesser sum of restitution in accordance with law.

6. **PAYMENT OF MONETARY PENALTIES.** Mr. Grubb agrees not to object to the District Court ordering all monetary penalties (including the special assessment, fine, court costs, and any restitution that does not exceed the amount set forth in this plea agreement) to be due and payable in full immediately and subject to


Defendant's
Initials

Timothy P. Lupardus, Esquire

January 28, 2016

Re: Jason Grubb

Page 4

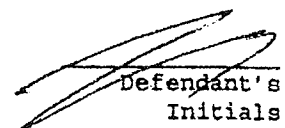
immediate enforcement by the United States. So long as the monetary penalties are ordered to be due and payable in full immediately, Mr. Grubb further agrees not to object to the District Court imposing any schedule of payments as merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment.

7. **IRS COLLECTION OF RESTITUTION.** If the Court orders Mr. Grubb to pay restitution to the IRS for the failure to pay tax, either directly as part of the sentence or as a condition of supervised release, the IRS will use the restitution order as the basis for a civil assessment. See 26 U.S.C. § 6201(a)(4). Mr. Grubb does not have the right to challenge the amount of this assessment. See 26 U.S.C. § 6201(a)(4)(C). Neither the existence of a restitution payment schedule nor Mr. Grubb's timely payment of restitution according to that schedule will preclude the IRS from administrative collection of the restitution based assessment, including levy and distraint under 26 U.S.C. § 6331.

8. **COOPERATION.** Mr. Grubb will be forthright and truthful with this office and other law enforcement agencies with regard to all inquiries made pursuant to this agreement, and will give signed, sworn statements and grand jury and trial testimony upon request of the United States. In complying with this provision, Mr. Grubb may have counsel present except when appearing before a grand jury.

9. **ASSISTANCE TO INTERNAL REVENUE SERVICE.** Mr. Grubb agrees to cooperate with the Internal Revenue Service in the determination of his civil income tax liability for the taxable years 2008-2012 and to make available to the examining agents all books, records and other documentary evidence in his or the company's possession, custody or control, including all materials provided to the defense, through discovery or otherwise, during this proceeding by the attorneys for the government and any criminal investigators assisting them.

10. **USE IMMUNITY.** Unless this agreement becomes void due to a violation of any of its terms by Mr. Grubb, and except as expressly provided for in paragraph 12 below, nothing contained in any statement or testimony provided by Mr. Grubb pursuant to this agreement, or any evidence developed therefrom, will be used against Mr. Grubb, directly or indirectly, in any further criminal prosecutions or in determining the applicable guideline range under the Federal Sentencing Guidelines.


Defendant's
Initials

Timothy P. Lupardus, Esquire
January 28, 2016
Page 5

Re: Jason Grubb

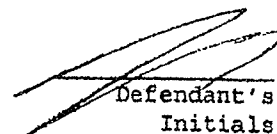
11. **LIMITATIONS ON IMMUNITY.** Nothing contained in this agreement restricts the use of information obtained by the United States from an independent, legitimate source, separate and apart from any information and testimony provided pursuant to this agreement, in determining the applicable guideline range or in prosecuting Mr. Grubb for any violations of federal or state laws. The United States reserves the right to prosecute Mr. Grubb for perjury or false statement if such a situation should occur pursuant to this agreement.

12. **STIPULATION OF FACTS AND WAIVER OF FED. R. EVID. 410.** The United States and Mr. Grubb stipulate and agree that the facts comprising the offense of conviction include the facts outlined in the "Stipulation of Facts," a copy of which is attached hereto as "Plea Agreement Exhibit A."

Mr. Grubb agrees that if he withdraws from this agreement, or this agreement is voided as a result of a breach of its terms by Mr. Grubb, and Mr. Grubb is subsequently tried on any of the charges in the information, the United States may use and introduce the Stipulation of Facts in the United States case-in-chief, in cross-examination of Mr. Grubb or of any of his witnesses, or in rebuttal of any testimony introduced by Mr. Grubb or on his behalf. Mr. Grubb knowingly and voluntarily waives, see United States v. Mezzanatto, 513 U.S. 196 (1995), any right he has pursuant to Fed. R. Evid. 410 that would prohibit such use of the Stipulation of Facts. If the Court does not accept the plea agreement through no fault of the defendant, or the Court declares the agreement void due to a breach of its terms by the United States, the Stipulation of Facts cannot be used by the United States.

The United States and Mr. Grubb understand and acknowledge that the Court is not bound by the Stipulation of Facts and that if some or all of the Stipulation of Facts is not accepted by the Court, the parties will not have the right to withdraw from the plea agreement.

13. **AGREEMENT ON SENTENCING GUIDELINES.** Based on the foregoing Stipulation of Facts, the United States and Mr. Grubb agree that the following provisions of the United States Sentencing Guidelines apply to this case.


Defendant's
Initials

Timothy P. Lupardus, Esquire

January 28, 2016

Re: Jason Grubb

Page 6

USSG § 2T1.6

Tax loss of between
\$100,000 and \$250,000

16

Mr. Grubb and the United States also agree that the United States will not move the Court for the application of a one-point decrease pursuant to USSG § 3E1.1(b) and Mr. Grubb will not seek the application of the same.

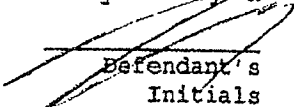
The United States and Mr. Grubb acknowledge and understand that the Court and the Probation Office are not bound by the parties' calculation of the United States Sentencing Guidelines set forth above and that the parties shall not have the right to withdraw from the plea agreement due to a disagreement with the Court's calculation of the appropriate guideline range.

14. **WAIVER OF APPEAL AND COLLATERAL ATTACK.** Mr. Grubb knowingly and voluntarily waives his right to seek appellate review of his conviction and of any sentence of imprisonment, fine, or term of supervised release imposed by the District Court, or the manner in which the sentence was determined, on any ground whatsoever including any ground set forth in 18 U.S.C. § 3742(a), except that the defendant may appeal any sentence that exceeds the maximum penalty prescribed by statute. The United States also agrees to waive its right to appeal any sentence of imprisonment, fine, or term of supervised release imposed by the District Court, or the manner in which the sentence was determined, on any ground whatsoever, including any ground set forth in 18 U.S.C. § 3742(b), except that the United States may appeal any sentence that is below the minimum penalty, if any, prescribed by statute.

Mr. Grubb also knowingly and voluntarily waives the right to challenge his guilty plea and conviction resulting from this plea agreement, and any sentence imposed for the conviction, in any collateral attack, including but not limited to a motion brought under 28 U.S.C. § 2255.

The waivers noted above shall not apply to a post-conviction collateral attack or direct appeal based on a claim of ineffective assistance of counsel.

15. **WAIVER OF FOIA AND PRIVACY RIGHT.** Mr. Grubb knowingly and voluntarily waives all rights, whether asserted directly or by a


Defendant's
Initials

Timothy P. Lupardus, Esquire
January 28, 2016
Page 7

Re: Jason Grubb

representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without any limitation any records that may be sought under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a, following final disposition.

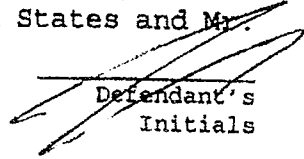
16. **FINAL DISPOSITION.** The matter of sentencing is within the sole discretion of the Court. The United States has made no representations or promises as to a specific sentence. The United States reserves the right to:

- (a) Inform the Probation Office and the Court of all relevant facts and conduct;
- (b) Present evidence and argument relevant to the factors enumerated in 18 U.S.C. § 3553(a);
- (c) Respond to questions raised by the Court;
- (d) Correct inaccuracies or inadequacies in the presentence report;
- (e) Respond to statements made to the Court by or on behalf of Mr. Grubb;
- (f) Advise the Court concerning the nature and extent of Mr. Grubb's cooperation; and
- (g) Address the Court regarding the issue of Mr. Grubb's acceptance of responsibility.

17. **VOIDING OF AGREEMENT.** If either the United States or Mr. Grubb violates the terms of this agreement, the other party will have the right to void this agreement. If the Court refuses to accept this agreement, it shall be void.

18. **TAX DIVISION APPROVAL.** It is understood that this agreement is conditioned upon approval by the Department of Justice, Criminal Tax Division. In the event such approval is not granted, this agreement shall be void.

19. **ENTIRETY OF AGREEMENT.** This written agreement constitutes the entire agreement between the United States and Mr.


Defendant's
Initials

Timothy P. Lupardus, Esquire
January 28, 2016
Page 8

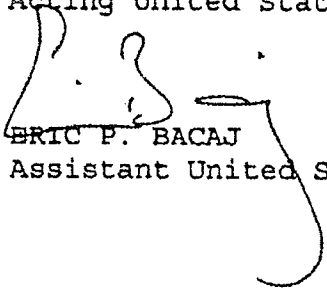
Re: Jason Grubb

Grubb in this matter. There are no agreements, understandings or recommendations as to any other pending or future charges against Mr. Grubb in any Court other than the United States District Court for the Southern District of West Virginia.

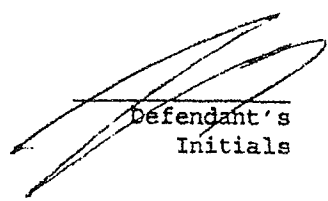
Acknowledged and agreed to on behalf of the United States:

CAROL A. CASTO
Acting United States Attorney

By:


ERIC P. BACAJ
Assistant United States Attorney

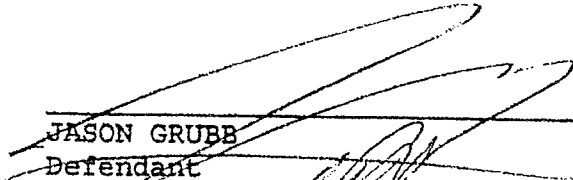
EPB/smw


Defendant's
Initials

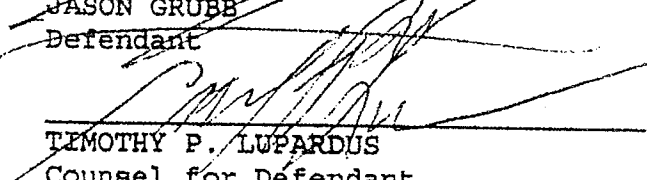
Timothy P. Lupardus, Esquire
January 28, 2016
Page 9

Re: Jason Grubb

I hereby acknowledge by my initials at the bottom of each of the foregoing pages and by my signature on the last page of this nine-page agreement that I have read and carefully discussed every part of it with my attorney, that I understand the terms of this agreement, and that I voluntarily agree to those terms and conditions set forth in the agreement. I further acknowledge that my attorney has advised me of my rights, possible defenses, the Sentencing Guideline provisions, and the consequences of entering into this agreement, that no promises or inducements have been made to me other than those in this agreement, and that no one has threatened me or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.


JASON GRUBB
Defendant

2/1/16
Date Signed


TIMOTHY P. LUPARDUS
Counsel for Defendant

2/1/16
Date Signed

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 5:15-cr-00195

JASON GRUBB

STIPULATION OF FACTS

28.
TDL
SRG

The United States and Jason Grubb (hereinafter "Mr. Grubb") stipulate and agree ^{by agreement} that the facts comprising the offense of conviction in the ~~information~~ in the Southern District of West Virginia, and the relevant conduct for that offense, as well as the conduct constituting the agreement related to restitution, include the following:

At all relative times, Mr. Grubb was a resident of Beaver, Raleigh County, located in the Southern District of West Virginia.

Mr. Grubb practiced law in Shady Spring, Raleigh County, West Virginia. Among other types of cases, Mr. Grubb represented indigent clients, by court appointment, in state criminal matters pending in Mercer, McDowell, Summers, Wyoming and Raleigh counties.

In 2009 and continuing through 2015, Mr. Grubb operated his law office and hired an individual as his secretary.

During the course of the operation of his law office, Mr. Grubb withheld trust fund taxes from his secretary's paychecks. Trust fund taxes are federal income and Federal Insurance Contribution Act ("FICA") taxes, which are taxes comprising Social Security and Medicare taxes. Trust fund taxes are reported to the Internal Revenue Service ("IRS") on quarterly Form 941. Mr. Grubb was responsible for paying over the trust fund portion of his law office's practice, but did not comply with his responsibility. Mr. Grubb knew he had to pay trust fund taxes to the IRS, but willfully failed to report or pay over any of the trust fund taxes.

PLEA AGREEMENT EXHIBIT A

The primary responsibility for preparing, filing and paying Forms 941 was located in Shady Spring, West Virginia, where Mr. Grubb had his law office.

Specifically, during the first quarter of 2013, that is, from January through March, 2013, Mr. Grubb employed one individual as his secretary. During that time, he withheld trust fund taxes from his employee's paychecks, which he was obligated to pay over to the Internal Revenue Service on the employee's behalf. However, for the first quarter of 2013, Mr. Grubb failed to pay over the trust fund taxes in the amount of \$1,031.17, which he owed to the IRS.

From the first quarter of 2009 through the second quarter of 2015, Mr. Grubb failed to report and pay over approximately \$21,741.79 in trust fund taxes to the IRS on behalf of his employee.

For 2009 through and including the second quarter of 2015, Mr. Grubb also failed to pay the employer share of the FICA taxes for a total of \$13,125.87.

Mr. Grubb also failed to file his personal income taxes in 2008 through 2012, and owes \$212,167.31 to the IRS for his personal income taxes. This number includes a reduction for federal income tax withheld and a payment included with an extension.

Mr. Grubb agrees that the tax loss resulting from his offense is \$247,035.97 as follows:

- Employment Taxes for 2009-2015: \$34,867.66.
- Personal Income Tax:

<u>Calendar Year</u>	<u>Additional Tax Due and Owing</u>
2008	\$21,190.60
2009	\$74,877.06
2010	\$69,478.09
2011	\$25,025.39
2012	\$21,596.17

Restitution

Mr. Grubb agrees with the following for the purposes of restitution:

As a normal practice, after an appointed case was completed, Mr. Grubb submitted a payment voucher form to the respective Circuit Court Judge for approval. The Circuit Court Judge reviewed the payment voucher and signed a court order authorizing payment. The Clerk of Court for the respective Circuit Court then submitted the court order and voucher to the West Virginia Public Defender Services ("WV PDS") for payment. As a general matter, the WV PDS took several months or more to reimburse Mr. Grubb.

To expedite payment, Mr. Grubb entered into a cash-advance agreement with Daniels Capital Corporation ("DCC"), a corporation headquartered in Birmingham, Alabama. In exchange for prompt payments less a small percentage, Mr. Grubb assigned his right to full payment from WV PDS to DCC. In essence, Mr. Grubb would send DCC a form listing the amount ordered by the circuit court, or the amount he expected that the circuit court would order. DCC would provide Mr. Grubb the reimbursement less a percentage that same day or the next day. When WV PDS eventually processed the same payment voucher, WV PDS would pay DCC directly the full amount.

Beginning on at least April 14, 2008, and at least until June 9, 2011, Mr. Grubb at times falsified the amount of payment he was owed by WV PDS. Mr. Grubb inflated the amount of hours he worked on particular cases, then submitted the vouchers to the Circuit Court, which would in turn submit them to WV PDS by the Clerk of Court.

Mr. Grubb would also at times submit false payment vouchers to DCC, representing that he had performed or would perform work on cases and that the court would order payment in a certain amount, when Mr. Grubb had not and did not perform such work.

Between April 14, 2008, and June 9, 2011, Mr. Grubb reported to WV PDS that he worked more than 24 hours in a single day on 51 days and frequently overbilled WV PDS for work he performed. Mr. Grubb agrees that he owes WV PDS \$126,225.00.

DCC has provided Mr. Grubb with \$29,193.32 that has not been reimbursed by WV PDS.

TR
JR
SRG
This Stipulation of Facts does not contain each and every fact known to Jason Grubb and to the United States concerning his involvement and the involvement of others in the charges set forth in the ^{information} information, and is set forth for the limited purpose of establishing a factual basis for the defendant's guilty plea, relevant conduct, and for the purposes of restitution.

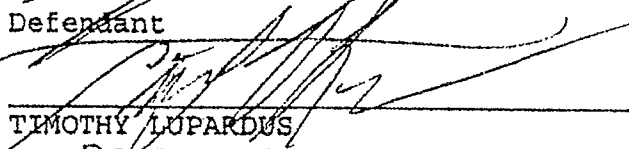
Stipulated and agreed to:



JASON GRUBB
Defendant

2/1/16

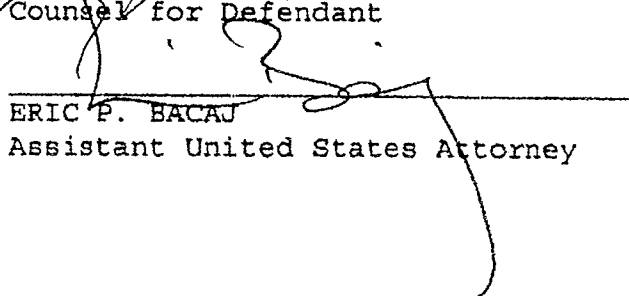
Date



TIMOTHY LUPARDUS
Counsel for Defendant

2/1/16

Date



ERIC P. BACA
Assistant United States Attorney

2/3/16

Date

PLEA AGREEMENT EXHIBIT A

Attachment C

RECEIVED

FEB - 8 2016

IN THE CIRCUIT COURT OF McDOWELL COUNTY, WEST VIRGINIA OFFICE OF
DISCIPLINARY COUNSEL

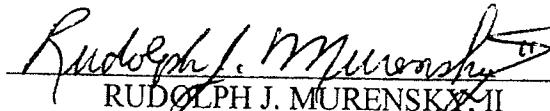
ADMINISTRATIVE ORDER

The undersigned has had an opportunity to review the "District Judge Daybook Entry", relating to *USA v. Jason Grubb*, Case Number 5:15-cr-00195, a copy of which is attached hereto. The entry clearly states that the US District Court adjudges the defendant guilty.

Therefore, Jason Grubb will be prohibited from appearing in all courts in McDowell County, including Circuit, Family and Magistrate, until further Order of this Court.

The Clerk of this Court is hereby directed to send a copy of this Administrative Order to the Honorable Booker T. Stephens, Circuit Court Judge; the Honorable Anthony Bisaha, Family Court Judge; the Honorable Lisa K. Clark, Family Court Judge; the Honorable Mary E. Griffith, Family Court Judge; the Honorable Daniel W. Mitchell, Magistrate; the Honorable Steve L. Cox, Magistrate; the Honorable Richard VanDyke, Magistrate; to Rachael L. Fletcher Cipoletti, Office of Disciplinary Counsel, 4700 MacCorkle Avenue SE, Suite 1200 C, Charleston, WV 25304; to Edward J. Kornish, McDowell County Prosecuting Attorney; and to Jason Grubb, Assistant Prosecuting Attorney for McDowell County.

ENTER this 5th day of February, 2016.


RUDOLPH J. MURENSKY, II
CHIEF JUDGE

TRUE COPY TESTE
RANCINE SPENCER CLERK



District Judge Daybook Entry

United States District Court - Southern District of West Virginia at Beckley

Date: 2/3/2016

Case Number 5:15-cr-00195

Case Style: USA vs. Jason Grubb

Type of hearing Plea Hearing

Before the honorable: 2516-Berger

Court Reporter Lisa Cook

Courtroom Deputy Kierstin Tudor

Attorney(s) for the Plaintiff or Government Eric Bacaj

Attorney(s) for the Defendant(s) Timothy Lupardus

Law Clerk Cynthia Wildfire

Probation Officer Jeff Gwinn

Trial Time

Non-Trial Time

Plea Hearing

Court Time

8:32 am to 9:08 am

Total Court Time: 0 Hours 36 Minutes Non-Trial Time/Uncontested Time

Courtroom Notes

Scheduled Start 8:30 a.m.

Actual Start 8:32 a.m.

Defendant present in person and by counsel.
Counsel note appearances on the record.
Defendant placed under oath.
Court FINDS Defendant competent to go forward.
Mr. Bacaj summarizes plea agreement.
Court DEFERS acceptance of plea agreement but ORDERS original plea agreement filed.
Defendant waives reading of Indictment.
Defendant pleads guilty to Count Thirty.
Court reads statute with which Defendant is charged.
Defendant advised of elements of offense which Government would have to prove at trial.
Defendant gives his account of the offense.
Government provides a proffer re: factual basis for the plea.
Defendant advised of the penalties which may apply based upon the plea.
Defendant advised of right to plead not guilty, to remain silent, and to stand trial.
Defendant executes written guilty plea form; same ORDERED filed.
Court FINDS Defendant is competent and capable of entering an informed plea.
Court FINDS sufficient factual basis for Defendant's plea.
Court FINDS that Defendant understands the consequences of the plea.
Court FINDS that Defendant understands the rights being given up.
Court FINDS Defendant's plea to be voluntary.
Court ACCEPTS plea.
Court ADJUDGES Defendant guilty.
Sentencing SCHEDULED for May 12, 2016, at 1:30 p.m.
Defendant RELEASED on prior bond pending sentencing.
Court recessed at 9:08 a.m.

2016 FEB - 5 AM 11:16

RECEIVED & FILED
CLERK OF COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY

Attachment D

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION NO. 5:15-cr-00195

JASON GRUBB,

Defendant.

ORDER

On the 3rd day of February 2016, came the Defendant, Jason Grubb, in person and by counsel, Timothy P. Lupardus, and also came the United States by Eric P. Bacaj, AUSA, for the purpose of the Defendant's entry of a plea of guilty to Count Thirty of the Indictment filed against him.

The Court inquired of the Defendant, both personally and through counsel, to determine the Defendant's competency. The Court found the Defendant competent and capable of entering an informed plea.

Mr. Bacaj summarized and offered for the Court's consideration the entirety of the written plea agreement in this case signed by both the Defendant and his counsel. The Court reserved acceptance of the plea agreement until sentencing but ordered the original plea agreement filed with the Clerk.

The Defendant waived the reading of the Indictment. The Court inquired as to the Defendant's plea. The Defendant then pled guilty to Count Thirty of the Indictment.

The Court then read the pertinent portion of 26 U.S.C. § 7202. The Court explained the elements that the United States would have had to prove had this matter gone to trial. After hearing and considering the Defendant's explanation of why he considered himself guilty and hearing a proffer from the United States about what it would have been able to prove at trial, the Court found that there was a sufficient factual basis for the Defendant's plea of guilty.

The Court further informed the Defendant, pursuant to the requirements of *Fed. R. Crim. P. 11(c)(1)*, of the nature of the charge and of the consequences of pleading guilty to the charge. After explaining thoroughly these items and after hearing and considering the Defendant's responses to the Court's questions, the Court found that the Defendant understood the nature of the charge and the consequences of pleading guilty.

The Court further informed the Defendant, pursuant to the requirements of *Fed. R. Crim. P. 11(c)(3), (c)(4)*, of the constitutional and other legal rights that the Defendant was giving up by pleading guilty. After explaining thoroughly these items and after hearing and considering the Defendant's responses to the Court's questions, the Court found that the Defendant understood his constitutional and other legal rights.

The Court further inquired of the Defendant, pursuant to the requirements of *Fed. R. Crim. P. 11(d)*, to insure that the Defendant's plea was voluntary. After hearing and considering the Defendant's responses to the Court's questions, the Court found that the Defendant's plea was voluntary.

The Defendant further executed a written plea of guilty which was witnessed by his counsel and ordered filed by the Court. The Court accepted the Defendant's plea. Accordingly, the Court **ADJUDGES** the Defendant, Jason Grubb, guilty, and the Defendant now stands convicted of violating 26 U.S.C. § 7202.

The Court **ORDERS** that the Probation Office prepare and forward a draft presentence report to the United States and counsel for the Defendant no later than **March 30, 2016**; that the United States Attorney and counsel for the Defendant file objections to the draft presentence report no later than **April 13, 2016**; that the Probation Office submit a final presentence report to the Court no later than **April 27, 2016**; and that the United States and counsel for the Defendant file a sentencing memorandum no later than **May 4, 2016**. **THE AFORESAID PRESENTENCE REPORT DEADLINES HAVE BEEN ESTABLISHED BY THE COURT AND MAY BE ALTERED ONLY BY THE COURT. REQUESTS TO EXTEND ANY DEADLINE SHALL BE SUBMITTED TO THE COURT IN WRITING IN ADVANCE OF THE ESTABLISHED DEADLINE. SUCH DEADLINES WILL BE EXTENDED ONLY UPON GOOD CAUSE SHOWN.**

Pursuant to United States v. Booker, 543 U.S. 220 (2005) and United States v. Hughes, 401 F.3d 540 (4th Cir. 2005), the Government and the Defendant are hereby **ORDERED** to file a Sentencing Memorandum addressing the sentencing factors set forth in 18 U.S.C. § 3553(a) as may pertain to this case. The Sentencing Memorandum may also address such other matters not previously addressed in the form of motions or objections to the Presentence Report and may include argument as to the appropriate sentence to be imposed. Sentencing Memoranda shall be no more than five (5) pages in length.