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NORTH CAROLINA

WAKE COUNTY



BEFORE THE
 DISCIPLINARY HEARING COMMISSION
 OF
 THE NORTH CAROLINA STATE BAR
 04 DHC 52

The North Carolina State Bar,
 Plaintiff

v.

Michael L. King, Attorney and
 Dumont Stockton, Attorney
 Defendants

Order of Discipline

This matter was heard on August 24 and 25, 2005, before a Hearing Committee of the Disciplinary Hearing Commission composed of the Chair, W. Steven Allen, Sr., and members Charles M. Davis, and Marguerite P. Watts, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). The Plaintiff was represented by David R. Johnson and Jennifer Porter. Defendant Michael King was present and was represented by Fred Williams. Defendant Dumont Stockton was present and represented himself. Based upon the record, the evidence introduced at the hearing, the Hearing Committee, by clear, cogent, and convincing evidence, hereby makes the following:

Findings of Fact

1. The Plaintiff, the North Carolina 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. The Defendant, Michael L. King (King), was admitted to the North Carolina State Bar on 23 August 1986, 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.

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3. The Defendant, Dumont Stockton (Stockton), was admitted to the North Carolina State Bar on 21 March 1987, 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.

4. During all periods relevant hereto, King and Stockton (hereafter, King and Stockton or the Defendants) were engaged in the practice of law as partners and maintained an office for that purpose in the Town of East Spencer in Rowan County, North Carolina. Stockton primarily engaged in a state District Court criminal practice. Before 2002, King primarily engaged in a civil litigation and office practice.

5. During all periods relevant hereto, the Defendants maintained a combined, firm attorney trust account at the Bank of America for the receipt and disbursement of client funds by either Defendant, account number 411013527 (hereafter "trust account"). Both Defendants were authorized signatories on the trust account. The Defendants also maintained a combined firm operating account, also at Bank of America, on which both Defendants were authorized signatories.

The Committee makes the following additional Findings of Fact specifically with respect to Plaintiff's First Claim for Relief:

6. On or about Jan. 14, 1998, Andre Howell (Howell) was convicted of robbery with a dangerous weapon, following a trial in Iredell County Superior Court in *State v. Howell*, 97 CRS 7004. He was sentenced to 103 to 133 months in jail.

7. Shortly after Howell's conviction, Howell's mother, Ruby Howell, discussed her son's conviction with King seeking advice on legal options for her son to pursue. King agreed with Ms. Howell to investigate the legal options available to try to set aside Howell's conviction for a flat fee of \$1,000. Ms. Howell paid King the \$1,000 fee at some time shortly after their first meeting.

8. After completing his research into Howell's conviction, King informed Ms. Howell that he could pursue both an appeal and a Motion for Appropriate Relief (MAR) on behalf of Howell. Defendant King further informed Ms. Howell that he would pursue an MAR for a flat fee of \$5,000 and would apply the \$1,000 he had already been paid toward the \$5,000 fee. He

also informed Ms. Howell that he would handle an appeal for a fee of \$9,000. Ms. Howell told King that she did not have enough money to pay King's fee on the appeal at that time. King advised that he could file for an extension of time to pursue the appeal, but she needed to pay the court reporter for a transcript of Howell's trial. King arranged for Ms. Howell to pay the court reporter for the transcript.

9. On June 22, 1998, King filed a motion for an extension of time in which to settle the record on appeal. The motion was granted and King was given until Aug. 9, 1998 in which to serve the State with the proposed record on appeal. Accordingly, King made a general appearance on behalf of Howell on an appeal.

10. King did not meet with Howell to determine whether Howell wanted to pursue an appeal or an MAR. Additionally, King did not advise Howell that he would not perfect an appeal if his entire fee was not paid before the deadline for settling the record on appeal or that Howell could seek appointed counsel if he could not afford to retain King's services.

11. King did nothing more to perfect the appeal on Howell's behalf. King also failed to withdraw from representation of Howell. King did not tell Howell or his mother that he had failed to perfect the appeal.

12. Ms. Howell paid the Defendants the additional \$4,000 for fees for an MAR in installments over a period of one to two years.

13. After receiving the balance of his fee, King did not respond promptly to inquiries about the status of the case from Howell and his mother.

14. On Feb. 27, 2002, King filed an MAR on Howell's behalf. King did not attach a necessary affidavit to the MAR he filed.

15. On March 4, 2002, the State filed a motion to dismiss Howell's appeal and a response to the MAR asking that it be denied.

16. On March 19, 2002 the court entered orders dismissing Howell's appeal and denying the MAR.

17. On April 1, 2002, the court entered an amended order denying Howell's MAR.

18. On April 18, 2002, King filed a notice of appeal from the order denying the MAR.

19. King did not perfect the appeal from the order denying Howell's MAR nor did he take other effective action to assist Howell after April 2002. King did not move to withdraw from representation of Howell on an appeal.

20. By filing notice of appeal of the order denying the MAR filed on Howell's behalf, King entered a general appearance with respect to the appeal.

21. Having entered an appearance on behalf of Howell in the appeal of his conviction and the appeal of the denial of the Motion for Appropriate Relief, King had a legal responsibility to continue to represent Howell, whether or not he had received his fee, unless and until allowed to withdraw from further representation by the court.

22. King has not refunded any portion of the \$5,000 fee he received despite demands for a refund from Howell and his mother.

23. King did not earn the entire \$5,000 fee paid to him by Ms. Howell in advance for the Motion for Appropriate Relief and the unearned portion of the fee is \$1,800.

The Committee makes the following additional Findings of Fact with respect to Plaintiff's Second, Fourth, and Sixth Claims for Relief:

24. In early 2002, King began engaging in a real estate law practice. King handled a number of real estate loan closings between March 2002 through December 30, 2003, including but not limited to, transactions involving the following parties (settlement dates indicated in parentheses): Bracey Benson (May 7, 2002); Orlando H. C. Ager, Sr. (May 22, 2002); Kerry Norton (June 5, 2002); Jacqueline Jeremiah (June 12, 2002 and July 24, 2002); Gary Curry (June 13, 2002); Kenneth Pleasant (June 28, 2002); Tracey Roberson (July 9, 2002); Victor Saul (August 2, 2002); and Lester Sturdivant (October 21, 2002).

25. These closings were typically purchase transactions involving a buyer and a lender from whom the buyer borrowed funds to finance the purchase and pay the seller. In each of the specifically identified closings, the buyers borrowed money from a lender to finance the transaction. As closing attorney, King had duties and responsibilities with respect to each of the parties to the transaction.

26. As part of each of these real estate closings, King prepared HUD-1 Settlement Statements showing the receipt and disbursement of the funds received from the buyer/borrower and the lender for each closing. By law, HUD-1 Settlement Statements must show a complete and accurate accounting of the receipt and disbursement of funds at each real estate closing. King was identified as the settlement agent for each of these closings on the HUD-1 form he prepared. As settlement agent, King was responsible for collection of all funds required to be paid by or on behalf of the buyer/borrower and payment of all disbursements to or on behalf of the parties as shown on the HUD-1 form for the transaction.

27. King was required to deposit all funds received for these real estate closings into the trust account and disburse those funds, in accordance with the HUD-1 for each transaction.

28. In the course of preparing HUD-1 Settlement Statements for which he was the settlement agent, King signed a statement on the second page of each HUD-1 Settlement Statement certifying "The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement."

29. The HUD-1 Settlement Statements prepared by King were not true and accurate accounts of the transaction and King did not receive funds from the buyer/borrower or cause the funds to be disbursed in accordance with the HUD-1 Settlement Statements in the identified closing transactions, specifically including discrepancies in the following transactions (identified by borrower and date):

(a) Bracey Benson (May 7, 2002)

The HUD-1 shows \$7,512.95 was to be collected from the buyer/borrower Bracey Benson at the closing. King did not collect these funds from Benson as required and made no deposit into Defendants' trust account of that amount for this transaction. King knew that he had not deposited any funds from Benson with respect to this closing.

\$974.00 was distributed to Mildred Na-Allah from this that was not listed on the HUD-1 Settlement Statement.

The HUD-1 shows that a distribution of \$15,172.00 to "Jackson M. Enterprises - Renovations" was to have been made from this closing transaction. King did not distribute this amount to Jackson M. Enterprises.

King disbursed \$7,057.91 to Benson from this transaction that is not listed on the HUD-1.

King disbursed \$2,524.00 to an Eric Jackson that was not listed on the HUD-1.

The HUD-1 shows that a distribution of \$1,740.00 was to have been made to Central Carolina Equity as a broker fee at the close of the transaction. King did not disburse this amount to Central Carolina Equity.

(b) Orlando Ager (May 22, 2002)

The HUD-1 did not disclose a \$24,114.03 disbursement to Orlando Ager, who was the buyer/borrower in the transaction.

The HUD-1 shows \$24,741.12 was to be distributed to A-1 Construction. King did not disburse this or any amount to A-1 Construction.

The HUD-1 shows \$570.70 was to be distributed to Dr. Joseph R. Hendrick. King did not disburse this or any amount to Dr. Hendrick.

A disbursement of \$9,751.74 was made from this transaction to Larry Gene Causby; no such distribution is listed on the HUD-1.

(c) Kerry Norton (June 5, 2002)

The HUD-1 shows that the buyer/borrower, Kerry Norton, was to have paid \$10,805.53 to King as settlement agent on or before the settlement date. King did not receive \$10,805.53 from Norton on or before the settlement date of June 5, 2002. King knew that he had not received any funds from Norton with respect to this closing. Instead, King received a personal check from Michelle A. Dixon for \$10,805.53 at some indeterminate date, but did not deposit that check into his trust account

until November 26, 2002. The bank returned Dixon's check for insufficient funds on December 2, 2002. King did not collect any funds from Dixon to replace the insufficient funds check until February 21, 2003.

The HUD-1 shows a disbursement of \$35,083.75 was to have been made to Epiphany Restoration at closing. No disbursement of \$35,083.75 was made to Epiphany Restoration.

King made a disbursement of \$24,083.75 to Michelle A. Dixon and a disbursement of \$11,000 to Norton at closing. Neither of these disbursements is shown on the HUD-1.

(d) Jacqueline Jeremiah I (June 12, 2002)

The HUD-1 lists \$8,277.05 as received from the borrower, Jacqueline Jeremiah, on or before the settlement date. King did not receive \$8,277.05 from Jeremiah on or before the settlement date of June 12, 2002. King knew that he had not received any funds from Jeremiah with respect to this closing. Instead, King received a personal check from Michelle A. Dixon for \$8,277.05 at or shortly after the closing and deposited it on June 14, 2002.

The HUD-1 lists a disbursement of \$26,468.50 to Epiphany Restoration. No disbursement of \$26,468.50 was made to Epiphany Restoration.

King made a disbursement of \$25,468.50 to Michelle A. Dixon and a disbursement of \$1,000 to Inga Johnson from this transaction. These disbursements to Dixon and Johnson were not listed on the HUD-1.

(e) Jacqueline Jeremiah II (July 24, 2002)

The HUD-1 lists \$12,583.88 as received from the borrower, Jacqueline Jeremiah, on or before the settlement date. King did not receive \$12,583.88 from Jeremiah on or before the settlement date of July 24, 2002. King knew that he had not received any funds from Jeremiah with

respect to this closing. Instead, King received a personal check from Michelle A. Dixon for \$12,583.88 at some indeterminate date, but did not deposit that check into his trust account until November 7, 2002.

The HUD-1 lists a disbursement of \$34,362.75 to Solutions Restoration. No disbursement of \$34,362.75 was made to Solutions Restoration.

King made a disbursement of \$33,627.80 to Michelle A. Dixon and a disbursement of \$1,000 to Inga Johnson from this transaction. These disbursements to Dixon and Johnson were not listed on the HUD-1.

(f) Kenneth Pleasant (June 28, 2002)

The HUD-1 shows \$17,325.20 received from the borrower, Kenneth Pleasant, on or before the disbursement date of June 28, 2002. King did not receive \$17,325.20 from Pleasant on or before the disbursement date of June 28, 2002. King knew that he had not received or deposited any funds from Pleasant contemporaneously with the closing transaction.

King distributed \$2,886.00 to Pleasant from this transaction. This disbursement was not listed on the HUD-1.

The HUD-1 lists \$20,915.23 to be distributed to the seller, Na-Allah Properties, Inc. King did not distribute \$20,915.23 to the seller.

King disbursed \$1,130.16 to Salifour Na-Allah from the proceeds of this transaction. This disbursement was not listed on the HUD-1.

Defendants distributed \$900.00 to Arthur Simell from this transaction. The HUD-1 does not list any disbursement to Arthur Simell in this transaction.

(g) Victor Saul (August 2, 2002)

The HUD-1 lists a disbursement to Solutions Restorations in the amount of \$55,308.00. \$55,308.00 was not distributed to Solutions Restoration.

King disbursed \$54,605.27 to Michelle A. Dixon and \$1,000 to Inga Johnson from this transaction. These disbursements to Dixon and Johnson were not listed on the HUD-1.

The HUD-1 lists distributions to "NCO Financial Systems-Payoff," "Mercy Hospital-Payoff," "ACS-Payoff" that were not made by King from this transaction.

The HUD-1 lists receipt of "gift funds" in the amount of \$16,500 as part of the funds collected on behalf of the borrower on or before the settlement date of August 2, 2002. No deposit was made into Defendants' trust account in the amount of \$16,500 on or before the settlement date.

The HUD-1 lists a distribution of \$6,423.50 to the borrower, Victor Saul. Defendants did not disburse \$6,423.50 from this transaction to Saul.

30. Flick Mortgage Investors Incorporated (hereafter "Flick") was the lender for five of the closing transactions conducted by King specifically identified above - the transactions for Norton, Roberson, Saul, and both Jeremiah transactions. In each of these transactions, Michelle A. Dixon acted as a mortgage loan broker. In each of the Flick transactions in which the borrower was required to provide funds at the closing as shown on the HUD-1 Settlement Statement, Dixon provided her personal check for those funds to King. King did not disclose the source of those funds to Flick or that the borrower had not provided funds for the closing. Flick considered the source of the borrower's funds as shown on the HUD-1 Settlement Statement to be a material fact for eligibility for the mortgage loan it was making to the borrower. Had Flick known that the source of the borrower's funds in these transactions was Michelle A. Dixon rather than the borrower, it would not have approved the loan or authorized the disbursement of the loan proceeds. Flick was relying on King to actually receive and disburse the funds in accordance with the entries on the HUD-1 Settlement Statement. King knew that he was receiving a check from Dixon rather than the borrower but did not disclose that fact on the HUD-1 Settlement Statement or to Flick.

31. Additionally, in each of the five closing transactions specifically identified in this proceeding in which Flick was the lender, King issued a trust account check payable to Michelle

A. Dixon personally for substantial amounts even though no such disbursement was shown on the HUD-1 Settlement Statement. King did not disclose to Flick that he was disbursing funds from the closing directly to Dixon. Flick would have had concerns that Dixon, as a mortgage broker, was circumventing legal limitations on the amount of compensation to mortgage brokers had King made the disclosure. Had Flick known that Michelle A. Dixon was personally receiving or her companies were receiving as funds these additional amounts from the transactions in which Dixon was the mortgage broker, it would not have approved the loan or authorized the disbursement of the loan proceeds. King knew that he was making the disbursements to Dixon without disclosure on the HUD-1 Settlement Statement or to Flick. The Flick loans subsequently fell into default, were foreclosed, and Flick was required to repurchase the loans.

32. In the closing transactions for Norton, Roberson, and Jeremiah, King disbursed funds to the borrowers at closing that were not disclosed on the HUD-1 Settlement Statement. Such disbursements to the borrowers without disclosure to and approval by the lender is improper and violate the lenders' closing instructions. King did not otherwise disclose to Flick that he was disbursing funds from the closing directly to the borrowers. If Flick had known that the borrowers were receiving funds from the closing that were not disclosed and approved by them in advance, Flick would not have approved the loan or authorized the disbursement of the loan proceeds. King knew that he was making the disbursements to the borrowers without disclosure on the HUD-1 Settlement Statement or to Flick.

33. King knew that the HUD-1 Settlement Statements that he prepared were not true and accurate accountings of the receipt and disbursement of funds from these closing transactions. King also knew that he was receiving and disbursing funds in a manner other than what was shown on the HUD-1 Settlement Statements.

34. King knew that he represented the borrowers and the lenders as clients in the closing transactions. King did not represent Dixon with respect to any of these closing transactions. King followed Dixon's directions with respect to the disbursement of the funds from these transactions contrary to his obligation to Flick and the other lenders that King receive and disburse funds from these closings only in accordance with the HUD-1 Settlement Statements.

35. King knowingly disbursed funds from the Defendants' trust account on behalf of borrowers in the identified closing transactions without first depositing funds from or on behalf of the borrowers into the account. King also knowingly disbursed more funds from the Defendants' trust account than he had received for the above identified real estate closings. As a result, the funds disbursed by King belonged to one or more other clients of the Defendants and/or were funds in the trust account held by one or both of the Defendants in a fiduciary capacity for third parties.

36. In addition, Stockton conducted at least one real estate closing in or around January 2002 for a client named New Cornerstone Ministries. Stockton cannot produce a HUD-1 or any other Settlement Statement for this closing. Stockton was required to deposit the funds received for this real estate closing into, and disburse only those funds from, the trust account.

37. Stockton disbursed more funds from the Defendants' trust account than he had received for the New Cornerstone Ministries closing transaction. As a result, the funds disbursed by Stockton belonged to one or more other clients of the Defendants and/or were funds in the trust account held by one or both of the Defendants in a fiduciary capacity for third parties.

The Committee makes the following additional Findings of Fact specifically with respect to Plaintiff's Third Claim for Relief:

38. On or before March 15, 2002, Defendant King agreed to act as settlement agent in a real estate closing transaction in which Salifou Na-Allah (hereafter "Na-Allah") was borrowing \$68,400 from a lender known as Option One Mortgage Corporation (hereafter "Option One") to be secured by real property located at 1404 Leonard Avenue in High Point, North Carolina (hereafter "Leonard property"). At the time, Na-Allah was the President of a business corporation named Na-Allah Properties, Inc. (hereafter "NA Properties"). The closing transaction for which King was acting as settlement agent involved Na-Allah in his individual capacity and not his capacity as President of NA Properties.

39. On or before February 28, 2002, Na-Allah had engaged attorney Armina Swittenberg (hereafter "Swittenberg") to conduct a real estate closing in which the Leonard property was to have been sold to NA Properties by the then owner, Provident Consumer Financial Services (hereafter "Provident"), at a purchase price of \$61,000, with NA Properties borrowing \$60,900

to finance the purchase from the Bank of Stanly. Provident was to have received \$50,472.14 as its net sales proceeds from this transaction. On February 28, 2002, Swittenberg received the funds from the Bank of Stanly and Na-Allah executed the note and deed of trust on the Leonard property. However, Swittenberg did not complete the closing of this transaction and did not record either a deed from Provident to NA Properties or the deed of trust in favor of the Bank of Stanly at that time. Swittenberg did not disburse the \$50,472.14 to Provident.

40. Defendant King prepared a HUD-1 form for the Na-Allah transaction showing the transaction was a sale by Provident to Na-Allah at a sales price of \$72,000. Defendant King also prepared a deed transferring the property from Provident to Na-Allah and a deed of trust from Na-Allah in favor of Option One on the Leonard property. King closed the transaction and recorded the deed and deed of trust on March 21, 2002.

41. King knew that Swittenberg had not recorded any deed from Provident to NA Properties or the deed of trust from NA Properties to the Bank of Stanly at the time he closed the Na-Allah transaction. King also knew that Provident was not selling the property directly to Na-Allah and that the sales price was not \$72,000.

42. King agreed to accept the funds held by Swittenberg for Provident and transmit them to Provident as part of the closing transaction he conducted.

43. On March 25, 2002, Swittenberg's check for \$50,472.14 was deposited into Defendants' trust account. King then sent a check drawn on Defendants' trust account for \$50,472.14 to Provident on or about March 26, 2002.

44. On March 27, 2002, Swittenberg's bank returned Swittenberg's check for \$50,472.14 that had been deposited into Defendants' trust account for insufficient funds. King received a notice from his bank that Swittenberg's check had been dishonored on or about March 27, 2002. At the time, there were insufficient funds in the Defendants' trust account to pay the Provident check without the funds from Swittenberg.

45. Provident presented the check it had received from King on or about March 27, 2002. Because Swittenberg's check had been returned for insufficient funds, King's check to Provident was dishonored by King's bank on March 27, 2002 for insufficient funds in the Defendants' trust account.

46. King had not received any replacement funds from Swittenberg before April 1, 2002. Provident presented King's check a second time on or about April 3, 2002. King's check to Provident was again dishonored by King's bank on April 3, 2002 for insufficient funds in the Defendants' trust account.

47. On April 2, 2002, Swittenberg provided certified funds to King for the \$50,472.14 due Provident, which were deposited into Defendants' trust account on or about April 2, 2002. King was aware of the deposit of Swittenberg's certified funds at that time.

48. Upon receipt and deposit of the certified funds in the amount of \$50,472.14 from Swittenberg, King did not contemporaneously reissue a check to Provident to cover his previous check to Provident that had been returned for insufficient funds. Accordingly, King should have maintained at least \$50,472.14 in the trust account on Provident's behalf at all times until those funds were paid to Provident.

49. On or about September 6, 2002, Provident presented King with documentation that his check to Provident had been returned for insufficient funds and demanded payment of the \$50,472.14.

50. In January 2003, King confirmed with his bank that the funds due Provident had not been paid to Provident and that his trust account should have all of Provident's \$50,472.14 on deposit.

51. King did not pay the funds due Provident at any time between April 2, 2002 and August 8, 2003.

52. The balance in the trust account fell below \$50,472.14 on a number of occasions after April 2, 2002, including Aug. 12 - Aug. 16, 2002; Oct. 17 - 22, 2002; Oct. 31 - Nov. 5, 2002; Nov. 12 - 22, 2002; Dec. 12 - 20, 2002; Dec. 27 - 31, 2002; Jan. 3, 2003; Jan. 7 - 9, 2003; Jan. 24 - Feb. 4, 2003; Feb. 25 - 28, 2003; March 10 - 19, 2003; March 25 - May 2, 2003; May 7 - 14, 2003; May 19 - Aug. 8, 2003. Accordingly, King had insufficient funds in the trust account from which to pay the full amount due Provident. One of the reasons that there were insufficient funds in the account was King's failure to deposit funds from the borrowers in the real estate closing transactions contemporaneously with those closings. As a result, Provident's funds were used to pay for the excess disbursements from the real estate closing transactions.

53. On or about August 8, 2003, King wired \$31,472.14 to Provident in partial payment of the full amount due Provident. King also agreed at that time to pay Provident a total of \$55,000, including lost interest and other damages arising from the failure to pay Provident, by the end of October 2003. On behalf of his partner and himself, King executed a promissory note due October 31, 2003 in the principal amount of \$25,000 plus interest at the rate of 8%. King paid Provident an additional \$7,500 before October 31, 2003. In mid-November 2003, King paid another \$1,500 to Provident. King has made no further payments to Provident. King still owes Provident \$10,000 on his original fiduciary obligation to Provident plus the additional sums he agreed to pay Provident plus interest on his note, which is now in default. The total amount King owes Provident is \$14,527.86 plus interest.

54. The HUD-1 prepared by King in the Na- Allah closing does not list \$50,472.14 to be disbursed to Provident. Instead an amount of \$8,212.08 is listed as payable to Provident as the seller. Defendant did not distribute \$8,212.08 to Provident on the disbursement date listed on the HUD-1. Defendant knew that these entries on the HUD-1 Settlement Statement for this transaction were false as that was not actually the amount due Provident.

55. In addition, the HUD-1 prepared by King has other discrepancies from the actual transaction, including:

- (h) King made two distributions to Jackson.M. Enterprises, one in the amount of \$58.00 and another in the amount of \$5,913.08, from the proceeds of the transaction. No distribution in any amount to Jackson M. Enterprises is listed on the HUD-1.
- (i) The HUD-1 shows that King was to have collected \$4,331.77 from Na-Allah at closing. King did not deposit any funds from Na-Allah for this transaction into Defendants' trust account at any time.

The Committee makes the following additional Findings of Fact with respect to Plaintiff's Fourth and Fifth Claims for Relief:

56. Stockton engaged in a criminal law litigation practice during the period from approximately January 1, 2000 through December 31, 2003.

57. As part of his criminal law litigation practice between January 1, 2000 and December 31, 2003, Stockton's clients paid funds only to Stockton for his fee and expenses, particularly court costs. Stockton's clients regularly and routinely paid Stockton in cash for the court costs due.

58. These cash funds for court costs should have been deposited into the Defendants' trust account.

59. Stockton did not deposit all cash funds given to him by clients for court costs into the Defendants' trust account.

60. Stockton retained some or all of these cash funds and used them for his personal use and benefit without client consent.

61. During this time, Stockton disbursed funds from Defendants' trust account for court costs on behalf of his clients by checks written to various courts. Stockton disbursed funds from the trust account for court costs for clients on whose behalf he had not deposited any funds into the trust account. Stockton knowingly disbursed more funds than he had deposited on behalf of clients for such court costs during this period. The funds disbursed by Stockton belonged to one or more other clients of the Defendants. Over the period of January 1, 2000 through December 31, 2003, the shortfall of funds in trust attributable to Stockton's misappropriation was approximately \$15,000.

The Committee makes the following additional Findings of Fact with respect to Plaintiff's Fourth Claims for Relief:

62. Defendants failed to reconcile their trust account at least quarterly during the period from January 1, 2000 through August 8, 2003.

63. Defendants failed to retain appropriate client ledgers, and failed to maintain all monthly bank statements, check stubs, deposit slips, canceled checks, debit memos and deposited items relating to their trust account for the period from January 1, 2000 through August 8, 2003.

Based upon the foregoing **Findings of Fact**, the Hearing Committee enters the following:

Conclusions of Law

1. All parties are properly before the Hearing Committee and the committee has jurisdiction over Michael L. King and Dumont Stockton and the subject matter. By appearing and participating in the proceedings without objection, Defendants waived any and all defects in the service of the summons and complaint and in the notice of the hearing.

2. The Defendant King'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) in that the conduct violated the Revised Rules of Professional Conduct in effect at the time of the conduct as follows:

- (a) By failing to perfect an appeal from Howell's conviction and by failing to perfect an appeal from the denial of the motion for appropriate relief, Defendant King neglected a client matter in violation of former Rule 6(b)(3) and/or Rule 1.3 of the Revised Rules of Professional Conduct;
- (b) By failing to keep Howell informed of the status of his case and by failing to respond to his requests for information about the case, Defendant King failed to adequately communicate with a client in violation of former Rule 6(b)(1) and/or Rule 1.4 of the Revised Rules of Professional Conduct; and
- (c) By failing to return \$1,800 as the unearned portion of the \$5,000 fee paid to them on Howell's behalf, Defendant King retained an excessive fee in violation of former Rule 2.6 and/or Revised Rule 1.5 and failed to take reasonable steps to protect their client's interests on termination of the relationship by returning the unearned portion of the fee in violation of Revised Rule 1.16(d);
- (d) By preparing and signing HUD-1 Settlement Statements that falsely represented receipt of funds and/or falsely represented the disbursement of funds for the real estate closing transactions, King engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).
- (e) By disbursing funds from Defendants' trust account purportedly related to specific real estate closings to recipients not listed on the HUD-1 Settlement

Statement for such closings, King engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Revised Rule 8.4(c); failed to properly maintain and disburse client or fiduciary funds in violation of Rule 1.15-2(a) and failed to pay or deliver funds as directed or required in violation of Rule 1.15-2(m).

(f) By failing to receive sufficient funds from the buyer/borrower for each real estate transaction before closing and disbursing the loan proceeds, King engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Revised Rule 8.4(c).

(g) By disbursing more funds from the trust account on behalf of clients than he had deposited on behalf of those clients, particularly with respect to the real estate closing transactions for Benson, Norton, Roberson, and Jeremiah, King failed to properly maintain and disburse client or fiduciary funds in violation of Rule 1.15-2(a) and disbursed funds belonging to other clients or parties for whom he held funds as a fiduciary, including Provident, from the trust account without the clients' or parties' knowledge or consent in violation of Rule 1.15-2(a) and (m);

(h) By preparing and signing a HUD-1 Settlement Statement that falsely represented receipt of funds and/or falsely represented the disbursement of funds for the Na-Allah transactions, King engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);

(i) By failing to promptly pay Provident the funds collected on its behalf from Swittenberg, King failed to promptly pay funds as directed by a client in violation of Rule 1.15-2(m);

(j) By disbursing funds from Defendants' trust account purportedly related to specific real estate closings to recipients not listed on the HUD-1 Settlement Statement for such closings, King engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Revised Rule 8.4(c); failed to

preserve the identity of client funds in violation of Rule 1.15-2(a); and failed to pay or deliver funds as directed by the client in violation of Rule 1.15-2(m);

(k) By disbursing funds that should have been held in trust for Provident to third parties without Provident's knowledge and consent, King failed to preserve the identity of fiduciary or client funds in violation of Rule 1.15-2(a) and failed to pay or deliver funds as directed by the client or beneficiary in violation of Rule 1.15-2(m).

(l) By failing to reconcile the trust account at least quarterly, King violated Revised Rule 1.15-3(c);

(m) By failing to maintain appropriate client ledgers, all monthly bank statements, check stubs, deposit slips, canceled checks, debit memos and deposited items relating to the trust account, King violated Revised Rule 1.15-3(b); and

(n) By fraudulently or knowingly and willfully misapplying funds from the Defendants' trust account belonging to another person or entity to the payment of disbursements made to various other parties who were not disclosed as intended recipients of such disbursements in the course of real estate closing transactions, King committed criminal acts that reflect adversely on his honesty, trustworthiness, or fitness in other respects in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

3. The Defendant Stockton'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) in that the conduct violated the Revised Rules of Professional Conduct in effect at the time of the conduct as follows:

(o) By failing to reconcile the trust account at least quarterly, Stockton violated Revised Rule 1.15-3(c);

(p) By failing to maintain appropriate client ledgers, all monthly bank statements, check stubs, deposit slips, canceled checks, debit memos and

deposited items relating to the trust account, Stockton violated Revised Rule 1.15-3(b); and

(q) By disbursing more funds from the trust account on behalf of clients than he had deposited on behalf of those clients, particularly with respect to the real estate closing transactions for New Cornerstone Ministries and court costs for his criminal clients, Stockton failed to properly maintain and disburse client or fiduciary funds in violation of Rule 1.15-2(a) and disbursed funds belonging to other clients or parties for whom he held funds as a fiduciary from the trust account without the clients' or parties' knowledge or consent in violation of Rule 1.15-2(a) and (m); and

(r) By misappropriating client funds paid to him for court costs and converting those funds for his own use and/or by fraudulently or knowingly and willfully misapplying trust account funds belonging to another person or entity to the payment of court costs for litigation clients for whom he had not deposited funds into the trust account, Stockton committed criminal acts that reflect adversely on his honesty, trustworthiness, or fitness in other respects in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

Based upon the foregoing **Findings of Fact** and **Conclusions of Law**, and upon clear, cogent, and convincing evidence, the Hearing Committee hereby makes these additional

Findings of Fact Regarding Discipline

1. Stockton has no prior disciplinary record.
2. King was sanctioned by the United States District Court for the Western District of North Carolina in July 1999, but the Hearing Committee did not consider this sanction as a prior disciplinary offense for purposes of discipline in this proceeding.
3. From April 2002 through November 2002, King conducted 15 real estate closings for clients who were directed to him by Michelle A. Dixon, providing significant income to King through fees he would not have otherwise received. King's complicity in following Dixon's

directions with respect to the disbursement of funds was motivated by a desire to retain this business.

Based on the **Findings of Fact** and **Conclusions of Law** above and the additional **Findings of Fact Regarding Discipline**, the Hearing Committee makes the following:

Conclusions with Respect to Discipline

1. Defendant King's misconduct is aggravated by the following factors:
 - (a) A pattern of misconduct;
 - (b) Multiple offenses involving multiple clients; and
 - (c) Substantial experience in the practice of law.

2. Defendant King's misconduct is mitigated by the following factors:
 - (a) Good character and reputation;
 - (b) Full and free disclosure to the Hearing Committee;
 - (c) A cooperative attitude toward the proceedings; and
 - (d) Interim rehabilitation.

3. The weight of the aggravating factors outweigh the weight of the mitigating factors.

4. Defendant King's failure to collect funds from the borrowers as reflected on the HUD-1 Settlement Statements discussed herein evaded the safeguards designed by the lenders and allowed certain clients to obtain loans they could not afford. As a foreseeable consequence, some of these loans are now in default and the lender has had to institute foreclosure proceedings against these clients. Further, his use of funds belonging to one client to benefit another client not only constituted misappropriation and embezzlement of funds held in a fiduciary capacity, but resulted in financial losses to parties whose funds should have been held in trust, particularly to Provident Consumer Financial Services.

5. Defendant King engaged in conduct involving dishonesty, fraud, misrepresentation, or deceit over a substantial time period and has thus shown himself to be untrustworthy. Clients are entitled to attorneys they can trust. When an attorney violates that trust, it harms the public and the profession.

6. The Hearing Committee has carefully considered all of the different forms of sanctions available to it with respect to Defendant King and finds that disbarment is the only sanction that can adequately protect the public in this particular case for these reasons:

(a) King committed misdeeds involving moral turpitude and violations of the public trust; dishonesty; fraudulent conduct; material misrepresentations; and misappropriation of money belonging to others that he had a fiduciary obligation to protect. Misconduct involving fraud, misrepresentation, dishonesty and theft are the most serious offenses that an attorney can commit. Such offenses demonstrate that the offending attorney is not trustworthy. Clients are entitled to have trustworthy attorneys. When an attorney violates that trust, it harms the public. No discipline short of disbarment can protect the public from an untrustworthy member of the legal profession.

(b) Entry of an order imposing discipline short of disbarment would fail to acknowledge the seriousness of the offenses that King committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the North Carolina State Bar.

(c) The protection of the public and the legal profession requires that King not be permitted to resume the practice of law until he demonstrates that he has reformed, that he understands his obligations to his clients, the public, the courts, and the legal profession, and that permitting him to practice law will not be detrimental to the public or the integrity and standing of the legal profession or the administration of justice.

7. Defendant Stockton's misconduct is aggravated by the following factors:

(d) A pattern of misconduct;

- (e) Multiple offenses involving multiple clients;
- (f) A dishonest or selfish motive; and
- (g) Substantial experience in the practice of law.

8. Defendant Stockton's misconduct is mitigated by the following factor:

- (h) No prior disciplinary record.

9. The aggravating factors outweigh the mitigating factors.

10. Defendant Stockton's conduct has caused, and had the potential to cause, substantial harm to other King & Stockton clients and others to whom he owed a fiduciary obligation in that he was disbursing trust funds in an unauthorized and illegal manner. Further, his use of trust funds for his own personal benefit and use of trust funds belonging to one firm client to benefit another client not only constituted misappropriation and embezzlement of funds held in a fiduciary capacity, but resulted in financial losses to parties whose funds should have been held in trust, particularly to Provident Consumer Financial Services.

11. Defendant Stockton engaged in conduct involving dishonesty, fraud, misrepresentation, or deceit and has thus shown himself to be untrustworthy. Clients are entitled to attorneys they can trust. When an attorney violates that trust, it harms the public and the profession.

12. The Hearing Committee has carefully considered all of the different forms of sanctions available to it with respect to Defendant Stockton and finds that disbarment is the only sanction that can adequately protect the public in this particular case for these reasons:

- (i) Stockton committed misdeeds involving moral turpitude and violations of the public trust; dishonesty; and misappropriation of money belonging to others that he had a fiduciary obligation to protect. Misconduct involving dishonesty and theft are among the most serious offenses that an attorney can commit. Such offenses demonstrate that the offending attorney is not trustworthy. Clients are entitled to have trustworthy attorneys. When an attorney violates that trust, it

harms the public. No discipline short of disbarment can protect the public from an untrustworthy member of the legal profession.

(j) Entry of an order imposing discipline short of disbarment would fail to acknowledge the seriousness of the offenses that Stockton committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the North Carolina State Bar.

(k) The protection of the public and the legal profession requires that Stockton not be permitted to resume the practice of law until he demonstrates that he has reformed, that he understands his obligations to his clients, the public, the courts, and the legal profession, and that permitting him to practice law will not be detrimental to the public or the integrity and standing of the legal profession or the administration of justice.

Based upon the foregoing **Findings of Fact, Conclusions of Law** and the **Findings of Fact Regarding Discipline**, and the **Conclusions with Respect to Discipline**, the Hearing Committee enters the following:

Orders of Discipline

1. The Defendant, Michael L. King, is hereby DISBARRED.
2. The Defendant, Dumont Stockton, is hereby DISBARRED.
3. Both Michael L. King and Dumont Stockton will surrender their respective licenses and membership cards to the Secretary within 30 days of the effective date of this order.
4. Both Michael L. King and Dumont Stockton will comply with the requirements of 27 NCAC 1B, § .0124 in winding down their practice. In addition, within 60 days of the effective date of this order, both King and Stockton will provide the Office of Counsel with complete and accurate accountings of the disbursement of the balance of funds held in any and all trust accounts maintained by either of them; will provide all bank records, including statements, deposit tickets and items, and copies of the fronts and backs of all cancelled checks; will provide authorizations and releases permitting the Office of Counsel to receive any records directly from the financial institutions at which the accounts are maintained that are irrevocable,

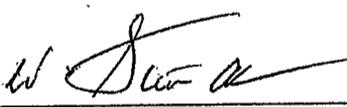
and will otherwise cooperate with the reasonable requests of the Office of Counsel to audit and account for the final disbursement of funds from the Defendants' trust account(s).

5. Before petitioning for reinstatement, Michael L. King will, in accordance with 27 N.C.A.C. 1B, § .0125, make restitution to Andre Howell in the amount of \$1,800 and to National City Bank as the successor in interest to Provident Consumer Financial Services, or any future successor to National City Bank as applicable, in the amount of \$15,000 plus interest of 8% per annum from November 13, 2003. Michael L. King will provide the Office of Counsel with satisfactory evidence of payment of such restitution before filing any petition for reinstatement.

6. Before petitioning for reinstatement, Dumont Stockton will, in accordance with 27 N.C.A.C. 1B, § .0125, make restitution of \$15,000 to or on behalf of those clients of the firm of King & Stockton whose funds were misappropriated by Stockton as reasonably determined after a final audit of all trust accounts maintained by Stockton upon completion of the wind-down period. Dumont Stockton will provide satisfactory evidence of payment of such restitution before filing any petition for reinstatement.

7. The Committee finds that the costs of deposing the Defendants by the Plaintiff were reasonable and necessary costs of this proceeding. Michael L. King is hereby taxed with the costs of his deposition and Dumont Stockton is hereby taxed with the costs of his deposition. The other costs of this proceeding are taxed to both Michael L. King and Dumont Stockton jointly and severally and shall be paid as assessed by the Secretary with 30 days of the effective date of this order.

Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Committee, this the 30 day of September, 2005



W. Steven Allen, Sr., Chair
Disciplinary Hearing Committee