

STATE OF NORTH CAROLINA  
WAKE COUNTY

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
22 DHC 26

THE NORTH CAROLINA STATE BAR,  
  
Plaintiff  
  
v.  
  
KENNETH ROBERT DAVIS, Attorney,  
  
Defendant

CONSENT  
ORDER OF DISCIPLINE

THIS MATTER was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of James A. Davis, Chair, and members Irving L. Joyner and Brandon Gosey. Jennifer A. Porter and Kelley A. DeAngelus represented Plaintiff, the North Carolina State Bar. Defendant, Kenneth Robert Davis, was represented by Alan M. Schneider.

The parties stipulate and agree to the findings of fact and conclusions of law recited in this Consent Order. The parties consent to the consideration of and conclusions of rule violations made in this order to conform to the evidence developed in this case that may differ from the allegations originally set forth in the Complaint. Defendant waives a formal hearing in this matter. The parties consent to the discipline imposed by this Order. By consenting to this Order, Defendant knowingly, freely, and voluntarily waives his right to appeal this Consent Order or to challenge in any way the sufficiency of the findings.

Based upon the stipulated facts and upon the consent of the parties, the Hearing Panel hereby finds by clear, cogent, and convincing evidence the following:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("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 (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, Kenneth Robert Davis ("Davis" or "Defendant"), was admitted to the North Carolina State Bar in 1996, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Rules of Professional Conduct.

3. During all or part of the relevant periods referred to herein, Davis was engaged in the practice of law in the State of North Carolina and maintained a law office in Elizabethtown, Bladen County, North Carolina.

4. Davis was properly served with process and the matter came before the Hearing Panel with due notice to all parties.

#### Trust Account and Recordkeeping

5. Davis maintained a trust account at BB&T (now Truist), account number ending in numbers 4006 ("TA 4006").

6. On June 26, 2019, Davis presented and caused to be presented two checks totaling \$9,903.45 for payment from TA 4006 attributed to the Landreth Estate at a time when funds previously deposited for the Landreth Estate into TA 4006 were not yet available for disbursement.

7. During his maintenance of TA 4006, Davis failed to conduct the required quarterly reconciliations of his trust account.

8. Davis failed to maintain accurate identification of all funds in his trust account, resulting in there being funds in TA 4006 for which he could not identify the owner(s).

9. Davis failed to maintain accurate client ledgers, including for client P. Vause.

10. Davis' ledger for P. Vause listed the final disbursement of P. Vause's funds as by check 4047 in March 2019 in the amount of \$1,119.83, leaving a zero balance for P. Vause in March 2019.

11. However, check 4047, signed by Davis, was in the amount of \$768.69.

12. The balance left for P. Vause in TA 4006 after the March 2019 disbursements was \$351.14.

13. Davis was unaware of this error and that he should have had \$351.14 in his trust account to be disbursed to P. Vause until it was brought to his attention by the State Bar in its letter to Davis dated August 22, 2019.

14. In the interim, however, Davis had improperly disbursed \$189.52 of P. Vause's \$351.14 by his disbursement from the trust account of \$250.00 in May 2019 for the benefit of client T. McKoy.

15. Davis had no funds in TA 4006 for T. McKoy when he disbursed \$250.00 from TA 4006 for the benefit of T. McKoy

16. The State Bar inquired about the \$250.00 disbursement in its letter to Davis dated July 26, 2019.

17. Davis reimbursed \$250.00 to the trust account on August 1, 2019.
18. Davis disbursed P. Vause's \$351.14 to her on November 15, 2019.
19. Davis improperly disbursed entrusted funds belonging to one client (P. Vause) for the benefit of another client (T. McKoy) for whom there were no funds in the trust account.
20. Davis failed to promptly and timely disburse P. Vause's funds to P. Vause.
21. Davis failed to identify the client on trust account checks, including the \$250.00 check discussed above written for T. McKoy (check 4054) as well as check 4053 payable to Davis for \$378.00.
22. Davis failed to identify the client and source on the deposit slip for the deposit of funds for the Landreth Estate.
23. Davis sometimes did not prepare and have clients sign the required written contingency fee agreements in his cases in which he had contingent fee arrangements with the clients.

#### Taxes

24. During the times set out herein, Davis was required to timely file federal and state individual income tax returns and pay federal and state individual income taxes pursuant to applicable federal and state statutes, including 26 U.S.C. §§ 6012, 6072 and 6151 and N.C. Gen. Stat. §§ 105-153.8<sup>1</sup>, 105-155, and 105-157.
25. Davis willfully failed to timely file his federal and state individual income tax returns, including for the years 2013, 2014, 2015, 2016, 2017, and 2018.
26. Davis willfully failed to timely pay his federal and state individual income taxes, including state individual income taxes for years 1997, 1998, and 1999, and federal and state individual income taxes for years 2010, 2014, 2015, 2016, 2017, 2018, and 2019.
27. Pursuant to 26 U.S.C. § 7203, it is a federal misdemeanor to willfully fail to file a federal tax return or pay federal taxes.
28. Pursuant to N.C. Gen. Stat. § 105-236 it is a Class 1 misdemeanor to willfully fail to pay any required tax, to willfully fail to file any required return, and to willfully fail to collect, account for, or pay over any tax.
29. During the period of 2012 through 2018, Davis paid wages to employees working at his law firm.

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<sup>1</sup> Previously N.C. Gen. Stat. § 105-152, recodified as N.C. Gen. Stat. § 105-153.8 effective January 1, 2014.

30. Davis was required to timely withhold and pay over employment taxes for his employees under applicable statutes, including 26 U.S.C. §§ 3301, 3402, and 7501 and N.C. Gen. Stat. §§ 96-9.2, 96-9.15, and 105-163.6.

31. Davis failed to timely file returns (Form NC-5) for and/or pay over North Carolina income tax withheld for employees, including for the following quarters:

- a. 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> quarters 2012;
- b. All quarters of 2013;
- c. 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> quarters 2014;
- d. All quarters of 2015;
- e. All quarters of 2016;
- f. All quarters of 2017; and
- g. 1<sup>st</sup> and 2<sup>nd</sup> quarters 2018.

32. Davis failed to timely file returns (Form NCUI 101) for and/or pay state unemployment insurance tax for employees, including as follows:

- a. 1<sup>st</sup> quarter 2011;
- b. 2<sup>nd</sup> and 4<sup>th</sup> quarters 2012;
- c. All quarters of 2013;
- d. 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> quarters of 2014;
- e. All quarters of 2015;
- f. All quarters of 2016;
- g. All quarters of 2017; and
- h. 1<sup>st</sup> and 2<sup>nd</sup> quarters 2018.

33. Davis failed to timely file returns (Form 941) for and/or pay over federal income tax withheld for employees, including as follows:

- a. 1<sup>st</sup> quarter 2011;
- b. 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> quarters 2012;
- c. All quarters of 2013;
- d. All quarters of 2014;
- e. All quarters of 2015;
- f. All quarters of 2016;
- g. All quarters of 2017; and
- h. 1<sup>st</sup> and 2<sup>nd</sup> quarters 2018.

34. Davis failed to timely file returns (Form 940) for and/or pay Employer's Annual Federal Unemployment (FUTA) taxes for the following years: 2012 through 2018.

35. Davis periodically tried to catch up with the filing of outstanding tax returns and the payment of his employment taxes throughout the above-listed periods. Many of his employment taxes were filed and the tax paid by about a year after the due date, although some deficiencies lasted longer and penalties and interest sometimes remained outstanding.

36. Davis experienced significant problems as a result of cocaine addiction prior to 2011. In 2011, Davis closed his law office and spent the next year focusing solely on his recovery from this addiction, including attending inpatient treatment programs. In 2012, Davis re-opened his law office on a limited basis, to allow him to continue to focus on his recovery and sobriety. This set of circumstances created a ripple effect that compromised Davis' ability to ensure that he timely filed a return for and paid each tax obligation that arose in the next following several years.

Based on the foregoing Findings of Fact and upon the consent of the parties, the Hearing Panel enters the following:

#### CONCLUSIONS OF LAW

1. All the parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, Kenneth Robert Davis, and the subject matter.

2. Defendant's conduct, as set forth in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- (a) By presenting and causing to be presented two checks totaling \$9,903.45 for payment from TA 4006 attributed to the Landreth Estate when there not sufficient funds available in TA 4006 for the Landreth Estate for the payment of the checks, Davis failed to properly maintain and disburse entrusted funds in violation of Rule 1.15-2(a) and (n)<sup>2</sup>;
- (b) By failing to conduct the required quarterly reconciliations of his trust account, Davis violated Rule 1.15-3(d)(1);
- (c) By failing to accurately track and identify the funds in TA 4006, such that there were funds in TA 4006 for which Davis could not identify the owners, Davis failed to properly identify and maintain entrusted funds in violation of Rule 1.15-2(a);
- (d) By failing to maintain accurate client ledgers, Davis failed to maintain required trust account records in violation of Rule 1.15-3(b)(5);
- (e) By disbursing \$250.00 for T. McKoy from TA 4006 when T. McKoy had no funds in TA 4006, Davis misused other entrusted funds in TA 4006, including funds belonging to P. Vause, in violation of Rule 1.15-2(a), (k), and (n);
- (f) By failing to promptly disburse P. Vause's \$351.14 to P. Vause in March 2019, Davis failed to promptly disburse funds to which the client was entitled in violation of Rule 1.15-2(n);

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<sup>2</sup> All references to Rule 1.15-2 and Rule 1.15-3 are to how they were codified as of the date of the conduct.

- (g) By failing to identify on trust account checks 4053 and 4054 the client whose funds were being disbursed by each check, Davis failed to create and maintain required records in violation of Rule 1.15-3(b)(2);
- (h) By failing to identify the client and source on the deposit slip for the deposit of funds for the Landreth Estate into TA 4006, Davis failed to create and maintain required records in violation of Rule 1.15-3(b)(1);
- (i) By having contingent fee arrangements with clients that were not in writing, Davis failed to ensure all contingent fee agreements were in writing signed by the client and stating the method by which the fee would be determined in violation of Rule 1.5(c);
- (j) By willfully failing to timely file returns for and/or pay his federal and state personal income taxes, Davis engaged in a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b); and
- (k) By failing to ensure the timely filing of returns for and/or payment of employment taxes, including North Carolina income tax withheld, North Carolina unemployment insurance tax, federal income tax withheld, and federal unemployment insurance tax, Davis engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

Based on the foregoing Findings of Fact and Conclusions of Law, the stipulated facts, and upon the consent of the parties, the Hearing Panel hereby finds by clear, cogent and convincing evidence additional facts as follows:

#### FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1 – 36 above are reincorporated as if set forth herein.
2. The trust account record-keeping, review, and reconciliation requirements of the Rules of Professional Conduct are designed to assist with the proper protection, maintenance, and disbursement of entrusted funds, and to facilitate prompt detection and correction of any errors. Defendant's failure to have complied with these requirements as set out above caused significant harm, including the failure to detect and promptly correct the \$189.52 deficiency in P. Vause's funds in the trust account described above. Defendant took corrective action to reimburse P. Vause's funds in the trust account promptly upon notification of the deficiency from the State Bar.
3. Defendant's trust accounting deficiencies were not the result of any dishonest intent.

4. A willful failure to file a tax return inherently involves an implicit representation to taxing authorities that one did not engage in the taxable event that would require one to file a tax return, which was not accurate in Defendant's case.

5. The obligation to file and pay one's taxes is a legal and civic duty shared by all citizens. When lawyers fail to comply with their tax obligations, it undermines public confidence in the legal profession.

6. Defendant's failure to timely file and/or pay the employment taxes, including the unemployment taxes and the Medicare and Social Security withheld taxes for his employees, caused potential significant harm by creating the risk that the ability of an employee to qualify for benefits under the respective affiliated programs if the need arose might be compromised.

7. Defendant has taken significant steps to come into compliance with his individual and employment tax obligations, including having paid, and sometimes double-paid, amounts that he was told were due to both the Internal Revenue Service (IRS) and the North Carolina Department of Revenue (DOR). It appears that he is now in compliance with all tax obligations set out above.

8. Defendant has taken significant steps to remain sober and in recovery and to assist others struggling with addiction, including completing a recovery contract with the Lawyer's Assistance Program (LAP), establishing an Alcoholics Anonymous (AA) group at his church, attending LAP support group meetings, and speaking in various venues to share his experience to help others.

9. Defendant closed his law office in July 2019 and no longer has employees.

10. Defendant has been the county attorney for Robeson County since July 2019 and has established an excellent reputation in the community in this role.

11. Defendant actively participated in this disciplinary proceeding.

12. Defendant has prior discipline consisting of a reprimand for failing to respond to inquiries of the State Bar in May and June 2012.

13. Defendant enjoys an excellent reputation in his community.

14. The Hearing Panel finds by clear, cogent, and convincing evidence the facts contained in the conclusions set out below of the applicable factors regarding discipline from those listed in 27 N.C. Admin. Code 1B.0116(f).

Based on the foregoing Findings of Fact, Conclusions of Law, and Additional Findings Regarding Discipline, the Hearing Panel enters the following:

### CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel carefully considered all of the different forms of discipline available to it.

2. The Hearing Panel considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f).

3. The Hearing Panel concludes that the following factors from 27 N.C. Admin. Code 1B.0116(f)(1), which are to be considered in imposing suspension or disbarment, are present in this case:

- a. Factor (B), Intent of Defendant to commit acts where the harm or potential harm is foreseeable;
- b. Factor (E), Negative impact of Defendant's actions on public's perception of the profession;
- c. Factor (H), Effect of Defendant's conduct on third parties; and
- d. Factor (I), Acts of dishonesty or misrepresentation in the failures to timely file personal tax returns.

4. The Hearing Panel considered the factors listed in 27 N.C. Admin. Code 1B.0116(f)(2), which are factors warranting consideration of disbarment and, although there is a factor present in this section, the Hearing Panel determines that disbarment is not necessary for the protection of the public in light of the unique circumstances of this case.

5. The Hearing Panel concludes that the following factors from 27 N.C. Admin. Code 1B.0116(f)(3), which are to be considered in all cases, are present in this case:

- a. Factor (A), Prior disciplinary offense;
- b. Factor (B), Remoteness of the prior offense;
- c. Factor (C), Absence of dishonest or selfish motive;
- d. Factor (D), Timely good faith effort to make restitution and to rectify consequences of misconduct;
- e. Factor (F), A pattern of misconduct;
- f. Factor (G), Multiple offenses;
- g. Factor (J), Interim rehabilitation;



- h. Factor (K), Full and free disclosure to the Hearing Panel and a cooperative attitude toward the proceedings;
- i. Factor (P), Remorse;
- j. Factor (Q), Character or reputation; and
- k. Factor (S), Degree of experience in the practice of law.

6. The Hearing Panel considered all of the disciplinary options available to it and determined that a stayed suspension with conditions is appropriate in this case, in light of the significant harm and potential harm caused by Defendant's conduct to his clients, third parties, and the profession. A stayed suspension with conditions designed to ensure continued compliance with the Rules of Professional Conduct is necessary to protect the public and the profession.

7. The Hearing Panel has considered all lesser sanctions and finds that discipline short of a stayed suspension would not adequately protect the public for the following reasons:

- a. The factors under Rule .0116(f)(1) are of a nature that support imposition of a stayed suspension as the appropriate discipline; and
- b. Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses Defendant committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar of this State.

Based on the foregoing Findings of Fact, Conclusions of Law, additional Findings of Fact and Conclusions of Law Regarding Discipline, and with the consent of the parties, the Hearing Panel hereby enters the following

#### ORDER OF DISCIPLINE

1. The law license of Defendant, Kenneth Robert Davis, is hereby suspended for three years. The effective date of this Order is 30 days from service of this Order upon Defendant pursuant to 27 N.C. Admin. Code 1B.0128(c). This suspension is stayed from its inception subject to the terms set out below.

2. Defendant is taxed with the administrative fees and costs of this proceeding. Defendant shall pay the administrative fees and costs of this proceeding as assessed by the Secretary of the North Carolina State Bar. Defendant must pay the administrative fees and costs within 30 days of service upon him of the statement of fees and costs by the Secretary.

3. The three-year suspension is stayed for a period of five years as long as Defendant complies and continues to comply with the following conditions:

- a. If Defendant does not intend to handle entrusted funds or open or operate a trust account during the period of stayed suspension, then for as long as Defendant is not handling entrusted or fiduciary funds or maintaining an attorney trust account, on a quarterly basis Defendant shall submit to the North Carolina State Bar Office of Counsel an affidavit certifying that he did not handle any entrusted or fiduciary funds in the preceding quarter and did not maintain and is not maintaining an attorney trust account. This affidavit shall be executed and provided to the Office of Counsel by the 30th day of the following month following the end of each quarter;
- b. If Defendant maintains a trust account during the period of stayed suspension, he shall retain a trust account monitor approved by the Office of Counsel who shall provide semi-annual written reports to the State Bar confirming that, at all times during the period of each written report, Defendant maintained in his trust account all client funds or other entrusted funds he was required to maintain in trust and that Defendant has at all times relevant to each such report been in compliance with all requirements of the Rules of Professional Conduct regarding safekeeping property (which are currently codified in Rules 1.15-2 and 1.15-3). This report shall address all items on the Report Template form which will be provided by the State Bar to Defendant. Defendant shall be solely responsible for the cost of compliance with this paragraph;
- c. Within thirty days of the effective date of this order, Defendant shall provide to the Office of Counsel a copy of any payment agreements in effect at the time of the entry of this Order between Defendant and the IRS or the DOR;
- d. Within thirty days of the entry of any payment agreements entered into by Defendant with the IRS or the DOR during the period of stayed suspension, Defendant shall provide a copy of such agreement to the Office of Counsel;
- e. Defendant shall provide proof of all payments made pursuant to all payment agreements with the IRS or the DOR within 10 days of each payment by Defendant;
- f. Defendant shall cure any deficiency with any tax obligation that arose prior to the entry of this order within 30 days of receipt of notification of the deficiency. Defendant shall provide proof of his satisfaction of the requirements of this paragraph within 10 days of taking the curative action;
- g. Defendant shall timely file all state and federal tax returns and timely pay all state and federal taxes during the period of stayed suspension, including, but not limited to, individual income taxes, employment taxes, and unemployment taxes. Timeliness shall be determined based on the filing deadlines established by the DOR and the IRS. If Defendant obtains an extension of time to file any tax return, Defendant must provide proof that the extension was approved by the applicable tax authority to the Office of Counsel within 10 days of the approval of the request for extension;

- h. Defendant shall provide to the Office of Counsel copies of all state and federal tax returns filed during the period of stayed suspension within 10 days of the date such returns were filed by Defendant;
- i. Defendant shall provide to the Office of Counsel proof of payment of all state and federal taxes due during the period of stayed suspension within 10 days of payment of such taxes by Defendant;
- j. Defendant shall provide to the Office of Counsel copies of all correspondence sent to the DOR or the IRS by Defendant or received by Defendant from the DOR and IRS during the period of stayed suspension within 10 days after the correspondence was sent by Defendant or received by Defendant;
- k. Defendant shall provide to the Office of Counsel complete and accurate descriptions of all oral communications between the DOR and/or the IRS and Defendant during the period of stayed suspension within 10 days of such communication;
- l. Defendant shall execute a DOR Form Gen-93 (Tax Information Authorization for Taxpayer Records) annually authorizing the Office of Counsel to obtain all records related to Defendant's State income and employment taxes for the preceding year. The executed authorizations shall be delivered to the State Bar on July 1 of each calendar year;
- m. Defendant shall remain current in payment of all State Bar Membership dues, fees, and costs, including all Client Security Fund assessments and other charges or surcharges that the State Bar is authorized to collect from him, including all judicial district dues, fees, and assessments;
- n. Defendant shall timely comply with his North Carolina State Bar CLE requirements as set forth in N.C. Admin. Code 1D § .1518 and pay all fees and costs assessed by the applicable deadline. Defendant shall provide proof of the same to the Office of Counsel within 10 days of completing each CLE course;
- o. Defendant shall complete three additional hours of CLE on the topic of trust account management each year during the stay of this suspension. At least one of the three hours of CLE shall be a course taught by the Trust Account Compliance Counsel for the North Carolina State Bar. This CLE requirement is in addition to the requirements set forth in N.C. Admin. Code 1D § .1518(a);
- p. Defendant shall respond to all communications from the North Carolina State Bar, including communications from the Attorney Client Assistance Program, within 30 days of receipt of the communication or by the deadline stated in the communication, whichever is sooner, and shall participate in good faith in the State Bar's fee dispute resolution program for any petition he has already received and for any petition received during the period of stay;

- q. Defendant shall promptly accept service of all certified mail that is sent to him from the State Bar;
- r. Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or of any state or local government, other than minor traffic violations, during the period of stay; and
- s. Defendant shall keep the State Bar Membership Department advised of his current business and home addresses, telephone numbers, and e-mail addresses. Defendant shall notify the State Bar of any change in this contact information within ten days of such change. His current business address must be a street address, not a post office box or drawer.

4. If Defendant fails to comply with any of the conditions of the stayed suspension provided in paragraph 3(a) through (r), the stay of the suspension may be lifted as provided in 27 N.C. Admin. Code 1B § .0118(a) of the North Carolina State Bar Discipline and Disability Rules.

5. If the stay of the suspension is lifted and the suspension is activated for any reason, the DHC may enter an order imposing such conditions as it deems proper for the reinstatement of Defendant's license at the end of the suspension. In addition to any such conditions, Defendant must establish the following by clear, cogent, and convincing evidence prior to being reinstated to the practice of law after any period of active suspension:

- a. That Defendant is current on all his tax law obligations to all taxing authorities, including but not limited to, satisfying all tax liens that have been or may be filed, and is current on filing and payment requirements for all tax obligations. For all payment agreements Defendant has entered into or will enter into with the IRS to pay all outstanding taxes, penalties, and interest owed by Defendant and/or Defendant's law firm, Defendant must demonstrate that he timely complied with the terms of those agreements throughout the entire period of active suspension;
- b. That Defendant cured any failures to comply with the terms of the payment agreements Defendant has with the IRS to pay all outstanding taxes, penalties, and interest owed by Defendant and/or Defendant's law firm that existed as of the effective date of this Consent Order;
- c. That Defendant timely filed all state and federal tax returns and timely paid all state and federal taxes during the period of active suspension. Timeliness shall be determined based on the filing deadlines established by the DOR and the IRS;
- d. That Defendant submitted his law license and membership card to the Secretary of the North Carolina State Bar within 30 days of the date of the order lifting the stay and/or activating the suspension of his law license;

- e. That Defendant provided to the Office of Counsel copies of all correspondence sent to the DOR and IRS by Defendant and all correspondence received by Defendant from the DOR and IRS during the period of active suspension;
- f. That Defendant provided to the Office of Counsel complete and accurate descriptions of all oral communications between Defendant, on the one hand, and the DOR or the IRS, on the other hand during the period of active suspension;
- g. That Defendant properly wound down his law practice and complied with the provisions of 27 N.C. Admin. Code 1B § .0128 following entry of the order lifting the stay and/or activating the suspension of his law license;
- h. That Defendant timely paid all administrative fees and costs assessed against him in this proceeding as reflected on the statement of administrative fees and costs served upon him by the Secretary of the North Carolina State Bar;
- i. That within 15 days of the effective date of the order lifting the stay and/or activating the suspension of his law license, Defendant provided the Office of Counsel with an address and telephone number at which clients seeking return of files could communicate with Defendant and obtain such files;
- j. That Defendant provided within 10 days client files to all clients who made a request for return of their files;
- k. That Defendant kept the North Carolina State Bar Membership Department advised of his current physical business and home addresses (not post-office box or drawer addresses), telephone number(s), and e-mail address(es) and notified the State Bar Membership Department of any change in this contact information within 10 days of such change;
- l. That Defendant provided full and complete responses to all communications from the North Carolina State Bar and provided all requested documentation in response to all communications from the North Carolina State Bar, including letters of notice, requests for information, and communications from the Attorney Client Assistance Program (ACAP), within 15 days of receipt of such communication or by the deadline stated in the communication, whichever is sooner, and participated in good faith in the State Bar's fee dispute resolution program for any petition that was pending at the time of the entry of this Consent Order or of which he received notice after entry of the Consent Order;
- m. That, at the time of his petition for reinstatement, Defendant is current in payment of all North Carolina State Bar membership dues, fees and costs, including all Client Security Fund assessments and other charges or surcharges the State Bar is authorized to collect from him, and including all judicial district dues, fees, and assessments;

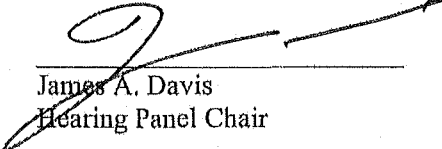
- n. That, at the time of his petition for reinstatement, there is no deficit in Defendant's completion of mandatory CLE hours, in reporting of such hours, or in payment of any fees and costs associated with attendance at CLE programs;
- o. That, Defendant completed, within the 6 months that immediately preceded his petition for reinstatement, 3 hours of CLE in the area of trust account management approved by the Office of Counsel;
- p. That Defendant did not engage in the unauthorized practice of law during the period of active suspension; and
- q. That Defendant did not violate the Rules of Professional Conduct of North Carolina or of any other jurisdiction in which he is licensed to practice law or the laws of the United States or of any state or local government, other than minor traffic violations.

6. If the stay of suspension is lifted and the suspension is activated for any reason, and if Defendant fails to fully comply with 27 N.C. Admin. Code 1B § .0128, Defendant shall reimburse the North Carolina State Bar for any expenses incurred by the State Bar in winding down Defendant's practice. Such expenses may include, but are not limited to, storage facility fees, rent payments, moving expenses, charges for secure disposal of client files, postage or other mailing expenses, and compensation paid to the appointed trustee and/or the trustee's assistant(s) for time and travel associated with the trusteeship. The State Bar shall send an invoice of the expenses incurred by the State Bar in winding down Defendant's practice to Defendant at the address on file with the State Bar Membership Department. Defendant shall pay the expenses within thirty days of the State Bar mailing the invoice to him.

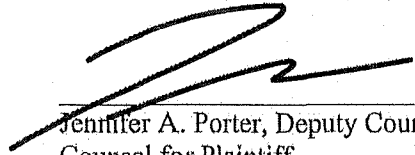
7. Unless Defendant's obligations under this Order are modified by further order of the Disciplinary Hearing Commission (DHC), Defendant's obligations under this Order end five years from the effective date of this Order, provided there are no pending motions to activate the suspension of his law license alleging lack of compliance with the conditions of the stay of the suspension.

8. The DHC will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code 1B § .0118(a).

Signed by the undersigned Chair with the knowledge and consent of the other members of the Hearing Panel, this is the 18<sup>th</sup> day of May, 2023.

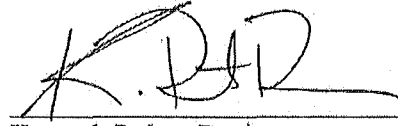
  
James A. Davis  
Hearing Panel Chair

CONSENTED TO:




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Jennifer A. Porter, Deputy Counsel  
Counsel for Plaintiff



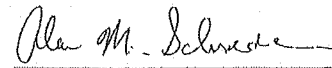
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Kenneth Robert Davis  
Defendant



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Kelley A. DeAngelus, Deputy Counsel  
Counsel for Plaintiff



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Alan M. Schneider  
Counsel for Defendant