

STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
23 DHC 5

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

NEIL W. SCARBOROUGH, Attorney,

Defendant

CONSENT ORDER
OF
DISCIPLINE

This matter came before a hearing panel of the Disciplinary Hearing Commission composed of Jaye P. Meyer, Chair, William A. Oden, III, and Jane B. Weathers. Joshua T. Walthall represented the Plaintiff, the North Carolina State Bar. Defendant, Neil W. Scarborough, was represented by Alan M. Schneider. Defendant waives a formal hearing in this matter. The parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order. The parties consent to the discipline imposed by this order. By consenting to the entry of 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 on the foregoing and on the consent of the parties, the Hearing Panel hereby enters 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, Neil W. Scarborough (hereafter "Defendant" or "Scarborough"), was admitted to the North Carolina State Bar on September 21, 2007 and is an attorney at law subject to the rules, regulations, and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During all or part of the relevant periods referred to herein, Defendant was actively engaged in the practice of law in Nags Head and Wanchese, Dare County, North Carolina.

FIRST CLAIM FOR RELIEF (CLIENTS B.Y. AND R.Y)

4. In 2012, B.Y. and R.Y. retained Defendant to prepare a deed of gift giving B.Y. an interest in real property owned by R.Y.
5. B.Y. paid Defendant \$226.00 for fees and a recording fee.
6. In or around April 2018, B.Y. discovered her name had not been added to the deed.
7. B.Y. attempted to communicate with Defendant, to no avail.
8. On January 24, 2019, Defendant was served with a Letter of Notice in State Bar grievance no. 18G0498 related to Defendant's representation of B.Y.
9. Defendant failed to timely respond to the Letter of Notice in grievance file no. 18G0498 within the time provided by 27 N.C.A.C. 1B § .0112(c).
10. Defendant finally responded on or about March 26, 2019.

SECOND CLAIM FOR RELIEF (CLIENTS M.B. AND J.B.)

11. M.B. and her husband J.B. retained Defendant in August 2013 in a case involving a property dispute and, later, a power of attorney.
12. The property dispute involved a neighbor's use of the clients' property to dump raw sewage through a network of illegally laid pipes.
13. At no time between the beginning of the representation in August 2013 and when J.B. passed away in May 2017 did Defendant depose J.B.
14. Upon being informed of J.B.'s death by M.B. on June 12, 2017, Defendant promised to contact M.B. within thirty (30) days regarding the case.
15. Defendant did not contact M.B. for sixty days.
16. M.B. made several attempts to communicate with Defendant through email, by phone, and by going to Defendant's law office, all to no avail.
17. On January 24, 2019, Defendant was served with a Letter of Notice inquiring about his conduct in M.B.'s case in State Bar grievance file 18G0537.
18. Defendant failed to timely respond to the grievance within the time provided by 27 N.C.A.C. 1B § .0112(c).

19. Defendant communicated with the State Bar on March 25, 2019, citing mounting health problems as well as technical problems as reasons for his delay in responding. The response did not address the allegations set forth in the grievance.

20. On May 29, 2019, more than three months after the deadline, Defendant submitted his response.

THIRD CLAIM FOR RELIEF (SOCIAL MEDIA POSTS)

21. In 2014, Defendant began representing Kevin W. (“Kevin”) in a divorce action against Kevin’s then-wife Kristina W. (“Kristina”).

22. Defendant also represented Kevin’s parents, R.W. and S.W., in a civil action against Kristina.

23. Over the course of Defendant’s representation in the divorce action and the civil action, Defendant and Kristina’s interactions became increasingly vitriolic.

24. Defendant operated a Facebook profile bearing the name “Neil W. Scarbrough, Attorney at Law.”

25. On the evening of Sunday, December 10, 2016, Defendant made a post on his Facebook profile which included personal attacks against Kristina based upon what Defendant perceived as slanderous attacks against his clients.

26. Defendant’s Facebook post included references to Kristina’s mental health.

27. Defendant made several statements in his Facebook post, including the following:

- a. “Kristy lost her primary job at Manteo Middle School after it was determined that she engaged in ‘unauthorized behavior’ that led to a ‘scene’ on school grounds in front of numerous children.”
- b. “Manteo Middle School...has since prohibited her from teaching classes, including PE classes and coaching...”
- c. “The trial judge [in the divorce case] ... ordered that [Kristina] submit to a psychiatric exam (ultimately, in an effort to speed the process along and to protect the children, I agreed to have my client to [sic] submit to one as well); [Kristina] has since refused to submit to the examination....”

28. Defendant’s post included information gathered by Defendant during the course of the representation.

29. Defendant did not obtain his clients’ permission before posting this information online.

30. On the morning of Monday, December 12, 2016, Defendant deleted his Facebook post.

31. On or about December 21, 2016, Defendant sent a letter of apology to Kristina.

32. In the letter, Defendant acknowledged his conduct was “extremely unprofessional.”

33. On January 24, 2019, Defendant was served with a Letter of Notice inquiring about his conduct in Kevin W.’s case in State Bar grievance file 18G0188.

34. Defendant failed to timely respond to the grievance within the time provided by 27 N.C.A.C. 1B § .0112(c).

FOURTH CLAIM FOR RELIEF (ADMINISTRATIVE SUSPENSION)

35. On April 4, 2019, the State Bar served Defendant with an Order of Administrative Suspension for non-compliance with continuing legal education requirements for the years 2017 and 2018 and for failure to pay his local District Bar dues for the 2016-2017 fiscal year.

36. The Order of Administrative Suspension provided that if Defendant satisfied all of the delinquent obligations noted in the Order within 30 days of service, his law license would not be suspended.

37. Defendant did not timely satisfy the obligations noted in the Order of Administrative Suspension.

38. Defendant’s license to practice law was administratively suspended effective May 6, 2019, at which time he was prohibited from accepting new clients.

39. Pursuant to 27 N.C.A.C. 1B § .0128 of the North Carolina Discipline and Disability Rules, Defendant had thirty days from May 6, 2019 to wind down all existing legal matters.

40. Defendant failed to timely notify his clients of his suspension and failed to timely resolve or withdraw from all pending cases.

41. Defendant was prohibited from representing clients or otherwise engaging in the practice of law after June 5, 2019.

42. Defendant continued to practice law after his law license was suspended based upon his incorrect interpretation of the suspension order.

43. In 2019, Defendant represented client T.M. in the sale of a commercial fishing vessel.

44. Between June 7 and June 13, 2019, Defendant prepared legal documents in furtherance of the sale, including an installment sale agreement, a promissory note, and a security agreement.

45. Despite his administrative suspension, Defendant held himself out as being able to practice law in T.M.'s matter.

46. Defendant also represented W.T. in *D.H. v. W.T.*, 14 CVD 273, in Dare County and appeared in court on W.T.'s behalf after June 5, 2019.

47. Despite his administrative suspension, Defendant held himself out as being able to practice law in W.T.'s matter.

48. Defendant failed to notify opposing counsel and the presiding judge in *D.H. v. W.T.*, 14 CVD 273 of his administrative suspension.

49. Opposing counsel was notified of the suspension by a Legal Aid attorney in the middle of September 2019.

50. Opposing counsel sent Defendant a text message on September 19, 2019, asking whether he was "fully reinstated" with the State Bar.

51. Defendant replied by making the following statement: "I'm suspended (for deficiencies), but the suspension order doesn't apply to any cases that were pending prior to the issuance of the order, and this case obviously was."

52. Defendant's statement in the immediately preceding paragraph was incorrect, as the Suspension Order did apply to cases pending prior to issuance of the Order.

53. After making the statement described above and while still administratively suspended, Defendant engaged in a settlement discussion with opposing counsel on W.T.'s behalf.

54. Defendant also represented D.B. in *D.B. v. G.B.*, 15 CVD 487, a domestic case in Dare County.

55. Defendant failed to timely notify D.B. of his administrative suspension and failed to withdraw from the representation until on or about October 30, 2019.

FIFTH CLAIM FOR RELIEF (TRUST ACCOUNT ISSUES)

56. In 2019, the State Bar opened an investigation into Defendant's trust account.

57. On or about November 8, 2020, Defendant was served with a Letter of Notice in State Bar grievance file 19G1009 regarding Defendant's trust account. In the Letter of Notice, Defendant was asked to provide the State Bar with various trust account records.

58. Defendant did not timely provide all the trust account records requested by the State Bar in the Letter of Notice in file 19G1009.

59. On or about February 14, 2020, Defendant was served with an investigative subpoena in relation to the State Bar's trust account investigation.

60. Pursuant to the subpoena, Defendant was required to provide the State Bar with various trust account records. He did not produce the records by the deadline set forth in the subpoena.

61. After several months, Defendant belatedly provided the subpoenaed trust account records to the State Bar.

62. The State Bar's analysis of Defendant's trust account revealed the following violations of the trust accounting rules:

- a. Defendant failed to perform quarterly trust account reconciliations;
- b. Defendant failed to review, sign, date and retain all reconciliation reports;
- c. Defendant failed to always maintain accurate client ledgers;
- d. Defendant failed to promptly disburse entrusted funds to two of his clients; and
- e. Defendant disbursed more funds from his trust account for two clients than were contained in the trust account for those clients, resulting in negative client balances.

Based on the foregoing Findings of Fact and with the consent of the parties, the Hearing Panel makes the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, Neil W. Scarborough, and the subject matter of this proceeding.
2. Defendant was properly served with the summons and complaint in this matter.
3. 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 as follows:
 - a) By obtaining a \$226.00 fee to prepare a deed for B.Y. and failing to properly provide that legal service, Defendant failed to act with reasonable diligence in violation of Rule 1.3;

- b) By failing to depose J.B. in the nearly four years he represented him prior to his death, Defendant failed to act with reasonable diligence in violation of Rule 1.3;
- c) By failing to communicate with M.B. as promised, failing to respond to M.B.'s attempts to contact him, and failing to notify M.B. that he had closed his law office, Defendant failed to adequately communicate with his client in violation of Rule 1.4;
- d) By failing to consult with Kevin, R.W. and S.W. prior to making a Facebook post containing personal attacks against Kristina, Defendant failed to consult with the client as to the means by which the objectives of the representation are to be pursued in violation of Rule 1.2(a);
- e) By making a Facebook post containing personal attacks against Kristina, Defendant used means that have no substantial purpose other than to embarrass, delay, or burden a third person in violation of Rule 4.4(a);
- f) By failing to timely respond to the Letters of Notice in grievance files 18G0188, 18G0498, and 18G0537, Defendant failed to respond to a lawful demand for information from a disciplinary authority in connection with a disciplinary matter in violation of Rule 8.1(b);
- g) By failing to timely withdraw from the representation in a couple of client matters, Defendant failed to withdraw from a representation in violation of Rule 1.16(a);
- h) By continuing to represent some clients while his license to practice law was administratively suspended, Defendant engaged in the unauthorized practice of law in violation of Rule 5.5(a);
- i) By failing to reconcile his trust accounts on a quarterly basis, Defendant failed to conduct the requisite reconciliations of his trust accounts in violation of Rule 1.15-3(d)(1);
- j) By failing to review, sign, date, and retain reconciliation reports, Defendant violated Rule 1.15-3(d)(3);
- k) By failing to consistently maintain accurate client ledgers that identified and tracked, per client, the entrusted funds received and disbursed for each client, Defendant failed to maintain ledgers containing a record of receipts and disbursements for each person for whom funds were received and showing the current balance of funds held in the trust account for each person in violation of Rule 1.15-2(b)(5);
- l) By failing to promptly disburse entrusted funds to two of his clients, Defendant failed to promptly pay or deliver to the client, or to third persons as directed by the client, any entrusted property belonging to the client and to which the client was entitled in violation of Rule 1.15-2(n); and
- m) By disbursing funds from the trust account on behalf of clients for whom Defendant did not maintain in the trust account sufficient funds for such disbursements, resulting in negative client balances, Defendant failed to properly maintain entrusted funds in violation of Rule 1.15-

2(a) and used entrusted property for the personal benefit of personal other than the legal or beneficial owners of that property in violation of Rule 1.15-2(k).

Based on the foregoing Findings of Fact and Conclusions of Law and the consent of the parties, the Hearing Panel finds by clear, cogent and convincing evidence the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Defendant's failure to depose J.B. and his failure to properly communicate with M.B. caused significant harm to clients that were already vulnerable due to their personal circumstances in addition to their unfamiliarity with the legal process and their reliance upon Defendant to protect their legal rights.

2. Prompt and accurate communication with clients is integral for an attorney to establish and maintain the trust of clients, and for clients to participate meaningfully in the representation and in their legal matters.

3. Defendant's neglect of his clients demonstrates his intent to act in a way that resulted in foreseeable significant harm to his clients and reflects on Defendant's lack of dependability.

4. The legal profession is entrusted with the privilege of self-regulation. The State Bar's system of self-regulation relies upon attorneys to participate in the process and to provide full and fair disclosure of the pertinent facts. Failure by an attorney to timely participate in the State Bar's self-regulation process poses potential harm to the profession.

5. Defendant's failure to maintain proper trust account records in accordance with the Rules of Professional Conduct has the potential to harm future clients and the public.

6. Defendant has no prior discipline.

7. Defendant acknowledges his conduct and is remorseful for the same.

8. Defendant was undergoing significant physical and mental health problems during the period of time in question.

9. The Hearing Panel has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension, and disbarment, in considering the appropriate discipline to impose in this case.

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

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension and disbarment.

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

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f)(1) and determined the following factors are applicable in this matter:

- a. Factor (E), Negative impact of Defendant's actions on client's or public's perception of the profession;
- b. Factor (F), Negative impact of the Defendant's actions on the administration of justice;
- c. Factor (G), Impairment of the client's ability to achieve the goals of the representation; and
- d. Factor (J), Multiple instances of failure to participate in the legal profession's self-regulation process.

4. The Hearing Panel has considered the factors enumerated in 27 N.C. Admin. Code 1B.0116(f)(2) of the Rules and Regulations of the North Carolina State Bar, which are factors warranting consideration of disbarment, and concluded no factors in this section of the rule are present in this case.

5. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f)(3) of the Rules and Regulations of the North Carolina State Bar and determines that the following factors are applicable in this matter:

- a. Factor (A), Absence of prior discipline;
- b. Factor (H), Effect of any personal or emotional problems on the conduct in question;
- c. Factor (R), Vulnerability of victim; and
- d. 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 and the profession. A stayed suspension with conditions designed to ensure all necessary corrections are made to achieve and maintain full compliance with the Rules is necessary to protect clients and the public.

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

suspension as the appropriate discipline;

- b. Supervision under a stayed suspension is necessary to ensure all required corrections are made and sustained; and
- c. 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 to the public regarding the conduct expected of members of the Bar of this state.

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

ORDER OF DISCIPLINE

1. The law license of Defendant, Neil W. Scarborough, is hereby suspended for two years, effective thirty days after service of this Order upon Defendant. 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 costs within 30 days of service upon him of the statement of costs by the Secretary.

3. Defendant's two-year suspension is stayed for three years. The stay of Defendant's suspension of his law license will continue in effect only as long as Defendant complies with all of the following conditions:

- a. Defendant timely pays the administrative fees and costs as set out herein.
- b. Defendant satisfies all outstanding membership and continuing legal education obligations.
- c. Defendant establishes written procedures for complying with the obligations in Rule 1.15-2 and Rule 1.15-3, setting forth the personnel to be involved, the documents to be utilized, and the process to be implemented within 30 days of entry of this Order.
- d. Within 30 days of entry of this Order, Defendant makes arrangements in writing for a Trust Account Monitor approved by the Office of Counsel of the North Carolina State Bar. Defendant will be responsible for any associated costs. The Trust Account Monitor shall agree in writing – such documentation to be provided to the Office of Counsel with the request for approval – to do the following:

- i. Review all transactions in any and all trust accounts utilized by Defendant each month, no later than the 15th day of the next subsequent month (e.g. review the transactions for January no later than February 15), with such review to include per trust account review of the bank statements, canceled checks, deposit slips, deposited items, any bank instrument by which funds were deposited into or disbursed from the trust account, the general ledger for the trust account, and the subsidiary trust account ledgers including those required by Rule 1.15-3(b)(5) for all clients for whom funds were received, disbursed, or maintained in the trust account in that month;
 - ii. Verify and certify for the month that all bank transactions (including all deposits, disbursements, bank charges, etc.) are recorded on a general ledger for the trust account and on an appropriate subsidiary trust account ledger and all entries on all general ledgers and subsidiary trust account ledgers accurately reflect the corresponding bank transaction;
 - iii. Verify and certify that a client identifier was used, and the same client identifier was consistently used per client, across all applicable records that month, including on the client's subsidiary trust account ledger, on the general ledger, on any trust account check or other instrument disbursing funds from the trust account, and on any deposit slip depositing funds for the client into the trust account; and
 - iv. Verify and certify that the client from whose funds in the trust account a disbursement was made is identified for all disbursements from the trust account, and that no disbursements were made from the trust account in excess of the funds in the trust account for that client.
- e. Defendant ensures that all bank transactions (including all deposits, disbursements, bank charges, etc.) are recorded on the general ledger for his trust account and on any appropriate subsidiary trust account ledger and that all entries on all general ledgers and subsidiary trust account ledgers accurately reflect the corresponding bank transaction.
- f. Defendant personally performs the monthly and quarterly reconciliations and quarterly transaction reviews of all bank accounts into which Defendant deposits funds held in trust for the benefit of any client or third party. Defendant performs the reconciliations using the reconciliation methods described in the State Bar Lawyer's Trust Account Handbook and using the reconciliation form provided therein. Defendant provides reconciliation reports and all supporting documentation to the Trust Account Monitor within fifteen days of the end of each quarter (each January 15, April 15, July 15, and October 15 during the period of the stay).

- g. Defendant provides each month, no later than the 15th day of the next subsequent month (e.g. certification for January due no later than February 15), a certification from the Trust Account Monitor verifying and certifying the following:
- i. That the Trust Account Monitor reviewed all transactions in any and all trust accounts utilized by the Defendant each month, with such review including per trust account review of the bank statements, canceled checks, deposit slips, deposited items, any bank instrument by which funds were deposited into or disbursed from the trust account, then general ledger for the trust account, and the subsidiary trust account ledgers including those required by Rule 1.15-3(b)(5) for all clients for whom funds were received, disbursed, or maintained in the trust account in that month;
 - ii. That all bank transactions for all trust accounts (including all deposits, disbursements, bank charges, etc.) are recorded on a general ledger for the respective trust account and on an appropriate subsidiary trust account ledger and all entries on all general ledgers and subsidiary trust account ledgers accurately reflect the corresponding bank transaction;
 - iii. That a client identifier was used, and the same client identifier was consistently used per client, across all applicable records that month, including on the client's subsidiary trust account ledger, on the general ledger, on any trust account check or other instrument disbursing funds from the trust account, and on any deposit slip depositing funds for the client into the trust account; and
 - iv. That the client from whose funds in the trust account a disbursement was made is identified for all disbursements from the trust account, and that no disbursements were made from the trust account in excess of the funds in the trust account for that client.
- h. Within ten days of any report by the Trust Account Monitor that he or she cannot make any of the above-required certifications due to inaccuracies, deficiencies, or other reasons, Defendant corrects any inaccuracies, deficiencies, or other issues identified by the Trust Account Monitor resulting in the Trust Account Monitor's inability to make a required certification and shall provide documentation to the North Carolina State Bar Office of Counsel of the correction(s) and a certification from the Trust Account Monitor verifying that all necessary corrections have been made and making the certification he or she was previously unable to make.
- i. Each quarter, Defendant has the Trust Account Monitor, or an accountant, audit all trust accounts. Defendant will be responsible for any associated costs. This audit shall assess whether Defendant has in the trust account(s) the client funds

he is required to maintain for clients at that time, as well as Defendant's compliance with Rule 1.15-2 and Rule 1.15-3. The audit shall address the items on the Report Template form which will be provided by the State Bar to Defendant. The quarterly audit reports are due no later than 30 days after the end of the quarter – for example, the audit for the first quarter of the calendar year (January, February, and March) is due on April 30.

- j. If during the stay of the suspension any Trust Account Monitor or accountant previously approved by the State Bar to provide the services set out in this Order is no longer available to serve, Defendant shall make arrangements for a replacement and shall submit the name and information about the proposed replacement to the Office of Counsel for approval within 15 days of such unavailability and need for the replacement.
- k. If a monthly three-way reconciliation report, a Trust Account Monitor review, a quarterly audit, or other review reveals any deviation from Defendant's obligations under Rule 1.15-2 or Rule 1.15-3, Defendant shall take remedial action and shall, within ten days of the date of such report, review, or audit, provide documentation to the Office of Counsel showing the remedial action. If the State Bar review revealed the deviation, Defendant shall take remedial action within ten days of the date of the correspondence notifying him of the issue.
- l. If, at any point during the pendency of the stay of the suspension, Defendant is not handling entrusted or fiduciary funds and maintaining an attorney trust account, Defendant shall submit to the Office of Counsel, on a quarterly basis, an affidavit certifying that he did not handle any entrusted or fiduciary funds in that month. This affidavit shall be in lieu of the three-way reconciliation report and audit required in the above paragraphs for any period in which Defendant did not handle entrusted funds or fiduciary funds. For as long as Defendant is not handling any entrusted funds or fiduciary funds any is not maintaining an attorney trust account, the requirements of paragraph 3(c) – 3(k) above shall be tolled.
- m. For each calendar year of the stayed suspension, Defendant shall complete two additional hours of continuing legal education (CLE) on the topic of trust account management. These CLE requirements are in addition to Defendant's other CLE requirements.
- n. Defendant shall provide any trust account related documentation or records requested by the Office of Counsel within ten days of the request.
- o. Defendant shall keep 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 email address(es) and notify the State Bar of any changes within ten days of such change.

- p. Defendant shall accept all certified mail from the State Bar sent to the address on record with the State Bar Membership Department.
- q. Defendant shall timely and fully respond to all communications from the State Bar, including communications from the Attorney Client Assistance Program, within 30 days of receipt of each communication or by the deadline stated in the communication, whichever is sooner.
- r. Defendant shall participate in good faith in the State Bar's fee dispute resolution process for any petition of which he receives notice after the effective date of this Order.
- s. Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or any state or local government.

4. If during the stay of the suspension Defendant fails to comply with any one or more of the conditions stated herein, the stay of the suspension of Defendant's law license may be lifted as provided in Rule .0118(a) of the North Carolina State Bar Discipline and Disability Rules (27 N.C. Admin. Code 1B § .0118).

5. If the stay of the suspension is lifted and the suspension is activated for any reason, Defendant may petition for reinstatement after serving the activated suspension by filing a petition pursuant to Rule .0129(b) of the North Carolina State Bar Discipline and Disability Rules (27 N.C. Admin. Code 1B § .0129) demonstrating compliance with the requirements therein as well as the following requirements by clear, cogent, and convincing evidence:

- a. That Defendant properly wound down his law practice and complied with the terms of Rule .0128 of the North Carolina State Bar Discipline & Disability Rules (27 N.C. Admin. Code 1B § .0128);
- b. That Defendant submitted his license and membership card to the Secretary of the North Carolina State Bar within thirty days after the date of the order lifting the stay and/or activating the suspension of his law license;
- c. That Defendant kept the Membership Department of the State Bar advised of his current physical business and home addresses (not post-office box or drawer addresses), telephone number(s), and e-mail address(es) following the entry of this Order;
- d. That Defendant accepted all certified mail from the State Bar sent to the address on record with the State Bar Membership Department;
- e. That Defendant provided full and complete responses to all communications from the State Bar, including communications from ACAP, within thirty days of Defendant's receipt of the 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 process for any petition filed with ACAP;

- f. That Defendant remained current in payment of all 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, including all judicial district dues, fees, and assessments;
- g. That Defendant did not violate any of the Rules of Professional Conduct or the laws of the United States or of any state or local government, other than minor traffic violations, following the entry of this Order;
- h. 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 associated with attendance at CLE programs;
- i. That Defendant paid the costs and administrative fees of this proceeding as assessed by the Secretary by the date of the filing of his petition for reinstatement; and
- j. That Defendant complied with any other conditions deemed necessary for reinstatement imposed by the Hearing Panel pursuant to the order lifting the stay of the suspension of Defendant's law license.

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 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. After the Court has discharged the trustee, the State Bar shall send an invoice of wind-down expenses to Defendant at Defendant's last known address of record with the North Carolina State Bar. Defendant shall not be eligible for reinstatement until he has reimbursed the State Bar for all wind-down expenses incurred.

7. Unless Defendant's obligations under this Order are modified by further order of the DHC, Defendant's obligations under this Order end two years from the effective date of the Order, provided there are at that time no pending motions to activate the suspension of his law license alleging lack of compliance with the conditions of the stay of the suspension. Pursuant to 27 N.C. Admin. Code 1B § .0118, the DHC retains jurisdiction until all conditions of the stay of the suspension have been met. If a motion or proceeding alleging lack of compliance with the conditions for the stay of the suspension is pending when the period of the stay of the suspension would otherwise have terminated, the DHC retains the jurisdiction and ability to lift the stay of the suspension and activate the two-year suspension in whole or in part if it finds that any of the conditions of the stay have not been met. The stay of the suspension and Defendant's obligation to comply with the conditions for the stay will continue until resolution of any such pending motion or proceeding.

8. Defendant is taxed with the administrative fees and costs of this action as assessed by the Secretary of the North Carolina State Bar which shall be paid within thirty days of service of the statement of costs upon Defendant.


9. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code 1B.0118 throughout the suspension, and any stay thereof, and until all conditions of this Order have been satisfied.


Signed by the undersigned Hearing Panel Chair with the consent of the other Hearing Panel members.


This the 21st day of May 2024.


Jaye Meyer, Chair
Disciplinary Hearing Panel

Agreed and consented to by:


Neil W. Scarborough
Defendant
Date 5/17/24


Alan M. Schneider
Attorney for Defendant
Date 5/20/24


Joshua T. Walthall
Attorney for Plaintiff
Date May 14, 2024