

STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
15 DHC 16

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

THOMAS S. HICKS, Attorney,

Defendant

ORDER OF DISCIPLINE

THIS MATTER was heard on 25 February 2016 by a Hearing Panel of the Disciplinary Hearing Commission composed of Steven D. Michael, Chair, Irvin W. Hankins, III, and Michael S. Edwards pursuant to 27 N.C.A.C. 1B § .0114 of the Rules and Regulations of the North Carolina State Bar. Carmen Hoyme Bannon represented Plaintiff, the North Carolina State Bar. Defendant, Thomas S. Hicks, was represented by Alan M. Schneider.

Based upon the pleadings, stipulations, and evidence presented at the hearing, 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, Thomas S. Hicks, was admitted to the North Carolina State Bar in 1980 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, Defendant was engaged in the practice of law in the State of North Carolina and maintained a law office in Wilmington, New Hanover County, North Carolina.

4. Hicks was properly served with the summons and complaint in this matter.

5. In 2006, Hicks agreed to assist one of his former clients, Sandra Fritz, with a business deal involving the acquisition of property in Chesterfield, South Carolina and the

development of that property for a sand mining operation. (The property is referred to hereafter as "the Chesterfield property," and the proposed acquisition and development of the Chesterfield property as a sand mining operation is referred to as "the sand mining project").

6. Hicks filed as the organizer and registered agent of Silica Group, LLC ("Silica"), which was formed for the purpose of purchasing the Chesterfield property and carrying out the sand mining project.

7. Hicks and Fritz were among the manager-members of Silica Group, LLC.

8. Hicks represented Silica in connection with the sand mining project.

9. When Hicks agreed to be one of the members of Silica and also agreed to represent the entity, he did not obtain signed written informed consent from Fritz and/or the other members of Silica regarding the terms upon which he was representing Silica, and whose interests Hicks would represent in the sand mining transaction(s).

10. When Hicks agreed to be one of the members of Silica and also agreed to represent the entity, he did not advise Fritz and/or the other members of Silica in writing of the desirability of seeking independent legal counsel on the agreement by which Hicks became a member of Silica and/or Hicks's role in the transaction(s) related to the sand mining project.

11. The investors in the sand mining project included Russell Morris, d/b/a CRM Investments, Inc. ("CRM"), who agreed to lend Silica \$225,000.00, and, Maurice Horton, who loaned Silica \$200,000.00. The purpose of the \$425,000.00 in loans was to fund Silica's purchase of the Chesterfield property.

12. Hicks acted as escrow agent for the \$425,000.00 received from CRM and Horton, agreeing to deposit their funds in an interest-bearing account until the money was released to the closing attorney in South Carolina to fund Silica's purchase of the Chesterfield property.

13. When Hicks received the \$425,000.00 from CRM and Horton in November 2006, he deposited it into a money market account that was established solely for the purpose of maintaining the loan proceeds to be used in Silica's acquisition of the Chesterfield property. (This account is referred to hereafter as "the money market account").

14. Except for a small deposit by Hicks in order to open the account, the only deposits into the money market account were from CRM and Horton.

15. Hicks did not designate the money market account as a dedicated trust account, fiduciary account, or escrow account, nor did he reference the beneficial owners of the funds in the identifying information for the account: The money market account was held in the name of "Thomas Hicks and Associates, PLLC."

16. The seller of the Chesterfield property eventually reneged on the agreement to sell to Silica, and when the closing attorney returned the loan proceeds to Hicks in March 2007, Hicks refunded \$200,000.00 to Horton and \$200,000.00 to CRM.

17. Hicks did not pay to Horton or to CRM any of the interest that had accrued on the money market account.

18. With Morris's authorization, in March 2007 Hicks disbursed \$5,000.00 of CRM's remaining \$25,000.00 in the money market account to a South Carolina law firm. The purpose of the disbursement was to hire the firm to file an action on behalf of Silica against the owner of the Chesterfield property seeking specific performance of the contract for sale of the property.

19. Between March 2007 and March 2008, Hicks contributed approximately \$4,000.00 of his own funds to pay Silica's legal fees to the South Carolina firm that was representing Silica in seeking specific performance of the Chesterfield property contract. During the time he made these payments of personal funds, Hicks continued to represent Silica.

20. In November 2007, Hicks notified Morris that CRM's balance in the money market account was \$21,206.73, which included the remaining \$20,000.00 of principal, plus interest, less one-half the wire fees that had been charged to the account.

21. In January 2008, Morris asked Hicks to remit to him "all monies, both principal and interest, that you are holding on my behalf."

22. In response, Hicks sent Morris a check for \$20,000.00 representing CRM's remaining principal in the money market account, but declined to pay over any of the interest, stating that he would have to "consult legal authorities and the North Carolina State Bar" before he disbursed the interest to anyone.

23. Hicks subsequently concluded that Silica Group was entitled to the interest earned on the money market account. This conclusion was unwarranted and unjustified in that it was not supported by any agreement, understanding, or legal authority, nor based on consultation with the State Bar.

24. Hicks did not notify Morris or Horton of his conclusion that Silica Group was entitled to the interest earned on the money market account.

25. Based on Hicks's unwarranted, unjustified, and unsupported conclusion that the interest belonged to Silica Group, Fritz authorized Hicks to apply those funds to the attorney's fees owed to him by Silica.

26. Hicks left the accrued interest in the money market account until August 2011. Beginning in March 2008, the bank regularly debited maintenance fees from the account. As a result, by August 2011, the balance in the money market account (which previously exceeded \$1,200.00) had been reduced to \$797.76.

27. Hicks closed the money market account in August 2011 and transferred the remaining \$797.76 into his operating account.

28. Hicks used the \$797.76 transferred from the money market account for the benefit of himself and/or his law firm.

29. Neither Hicks nor Silica Group was entitled to the interest that accrued on the money Hicks had received in escrow from Horton and CRM.

30. In 2012, Morris followed up with Hicks regarding the issue of the interest on the money market account. In response to Morris's 2012 letter, Hicks stated "I know I have the records concerning that account, and I am researching the issue to determine the disposition of the funds, if any." Hicks stated that he would be in contact with Morris "in the near future."

31. Hicks did not respond to Morris's 2012 letter or have any further communication with Morris about the interest on the money market account.

32. In January 2010, Barry L. Schulties hired Hicks to represent him on charges of DWI and hit and run in New Hanover County. In November 2011, Schulties pled guilty to DWI.

33. In January 2012, Schulties (who lived out of state) sent \$550.00 to Hicks for payment of the court costs and fines associated with the DWI case.

34. Hicks received the \$550.00 from Schulties.

35. During the period from January 2012 through August 2013, Hicks neither paid the costs and fines nor refunded Schulties' entrusted funds.

36. At no time during the nineteen months in which Hicks held Shulties' \$550.00 in trust did Hicks provide Shulties with a written accounting of entrusted funds.

37. In connection with his law practice, Hicks maintained a client trust account at PNC Bank (account ending in -9335, which was previously an RBC Bank account ending in -2062). Hicks also maintained a client trust account at First Citizens Bank (account number ending in -2307).

38. Hicks did not maintain accurate individual client ledgers for all of the clients on whose behalf he received entrusted funds.

39. Hicks did not maintain an accurate general ledger reflecting the source and date of receipt for funds deposited in each of his trust accounts.

40. Hicks disbursed money to himself from the trust account using checks and/or other methods of disbursement that did not indicate the client balance upon which the funds were drawn.

41. Rather than promptly refunding, disbursing, or paying entrusted funds to himself for fees, Hicks held money entrusted to him by several clients for extended periods after he was no longer representing those clients.

42. Hicks did not perform monthly and quarterly reconciliations of his trust accounts.

43. Due to Hicks's failure to monitor the activity in his trust accounts, thousands of dollars of entrusted client funds were disbursed improperly to cover credit card processing fees:

During the period from January 2011 through August 2013, processing fees exceeding \$6,000.00 were debited from Hicks's RBC/PNC trust account. Hicks did not make any corrective deposit to offset these fees until after the State Bar notified him that it would be auditing his trust accounts.

44. From October 2010 through March 2011, the company that handled credit card processing for Hicks's law practice did not credit Hicks's trust account for payments he received by credit card. This resulted in a deficit of more than \$36,000.00 in the RBC/PNC trust account.

45. Due to Hicks's failure to monitor the activity in his trust accounts, he was unaware of the deficit caused by missing credit card payments for approximately six months.

46. During the period of time when credit card payments were not being credited to his trust account, Hicks used entrusted funds for the benefit of third parties without authorization on numerous instances. Specifically, Hicks made disbursements for clients whose deposits had not been received, using other clients' entrusted funds to cover those disbursements.

47. Hicks intentionally commingled personal funds with client funds in his trust accounts.

48. On 28 August 2013, Hicks was served with a subpoena for cause audit issued by the State Bar's Grievance Committee. Hicks did not fully comply with the subpoena, in that he failed to produce many of the documents described therein.

49. Despite the State Bar's repeated subsequent communications with Hicks in an effort to obtain the missing documents and information regarding Hicks's trust accounts, as of March 2014, Hicks still had not fully complied with the subpoena for cause audit.

50. Hicks did not produce all documentation that was the subject of the original subpoena for cause audit until after he was served with another subpoena requiring Hicks to appear at the State Bar and bring the previously-subpoenaed documents.

Based on the record and the foregoing Findings of Fact, the hearing panel makes the following:

CONCLUSIONS OF LAW

1. All parties are properly before the hearing panel and this tribunal has jurisdiction over Defendant, Thomas S. Hicks, and the subject matter of this proceeding.

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

- (a) By failing to obtain signed written informed consent from Fritz and/or the other members of Silica regarding the terms upon which he was representing Silica, and whose interests Hicks would represent in the sand mining transaction(s), and by failing to advise them in writing of the desirability of seeking independent legal counsel, Hicks entered into a business transaction with a client without making the

necessary notifications and obtaining the necessary informed consent, in violation of Rule 1.8(a);

- (b) By depositing the loan proceeds into a money market account in the name of his law firm that was not designated as a fiduciary, escrow, or trust account and did not identify the beneficial owners of the funds, Hicks failed to properly identify, hold, and maintain entrusted funds in violation of Rule 1.15-2(a) and failed to promptly deposit fiduciary funds in a fiduciary account or a general trust account in violation of Rule 1.15-2(c);
- (c) By contributing personal funds to pay for Silica's South Carolina litigation, Hicks provided financial assistance to a client in connection with pending or contemplated litigation in violation of Rule 1.8(e);
- (d) By refusing to disburse to CRM and/or Horton the interest earned on funds held in escrow, Hicks failed to promptly disburse entrusted property to which CRM and/or Horton was entitled in violation of Rule 1.15-2(m);
- (e) By using the interest earned on the money market account for the benefit of himself and/or his law firm without reasonable cause to believe that either he or Silica were entitled to the interest, Hicks claimed entitlement to interest earned on fiduciary funds in violation of Rule 1.15-2(p), used entrusted funds for personal benefit in violation of Rule 1.15-2(j) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c); and
- (f) By informing Morris that he was "researching the issue" of the accrued interest on the money market account "to determine the disposition of the funds, if any," when he had already converted those funds to his own use, Hicks engaged in conduct involving dishonesty, deceit or misrepresentation in violation of Rule 8.4(c).
- (g) By failing to pay Shulties' costs and fines upon receipt of the \$550.00 in January 2012, Hicks failed to act with reasonable diligence on behalf of a client in violation of Rule 1.3 and failed to promptly disburse entrusted funds as directed by his client in violation of Rule 1.15(m);
- (h) By failing to adequately communicate with Shulties and failing to rectify the situation regarding non-payment of costs and fines for six months until the State Bar intervened, Hicks failed to take steps to the extent reasonably practicable to protect the interests of his former client, in violation of Rule 1.16(d); and
- (i) By failing to provide Shulties with an accounting of the funds he was holding in trust, Hicks failed to render to a client at least annually a written accounting of the receipts and disbursements of all trust funds in violation of Rule 1.15-3(e).
- (j) By failing to maintain complete client ledgers accurately reflecting the amounts received and disbursed for each client, Hicks violated Rule 1.15-3(b)(5);

- (k) By failing to maintain accurate records reflecting the source and date of receipt of funds deposited into his trust accounts, Hicks violated Rule 1.15-3(b)(1);
- (l) By disbursing money to himself from the trust accounts using methods of disbursement that did not indicate the client balance upon which the funds were drawn, Hicks violated Rule 1.15-2(h);
- (m) By holding clients' entrusted funds for extended periods after the representation concluded, Hicks failed to take reasonably practicable steps to protect his clients' interests upon termination of the representation in violation of Rule 1.16(d) and failed to promptly disburse entrusted funds to which clients were entitled in violation of Rule 1.15-2(m);
- (n) By failing to perform monthly or quarterly reconciliations of his trust accounts, Hicks violated Rule 1.15-3(d);
- (o) By using other clients' entrusted funds to cover disbursements for clients who did not have funds in the account, and by issuing duplicate disbursements to himself for fees, Hicks used entrusted funds without authorization for the benefit of himself and/or third parties in violation of Rule 1.15-2(j);
- (p) By intentionally commingling personal funds with client funds in his trust account, Hicks violated Rule 1.15-2(f); and
- (q) By failing to timely produce all of the documents that were the subject of the subpoena for cause audit, Hicks knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b).

3. The State Bar did not prove by clear, cogent, and convincing evidence that Hicks committed a criminal act reflecting adversely on his honesty, trustworthiness, and fitness in violation of Rule 8.4(b), as alleged in the Complaint.

Based upon the foregoing Findings of Fact and Conclusions of Law, and the additional evidence regarding discipline presented at the hearing, the Hearing Panel hereby finds by clear, cogent, and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

- 1. The findings of fact in paragraphs 1 through 50 above are reincorporated as if fully set forth herein.
- 2. Defendant has substantial experience in the practice of law.
- 3. Defendant received an admonition from the Grievance Committee in 2006.
- 4. Defendant lacked a reasonable basis in concluding that the interest earned on the money market account belonged to Silica Group. Although the Hearing Panel concluded that Defendant's unwarranted, unjustified, and unsupported conclusion on this issue amounted to

dishonest conduct, Defendant did not knowingly and intentionally misappropriate the interest. Accordingly, this case is distinguishable from cases in which a lawyer knowingly and intentionally converts fiduciary funds to his own use.

5. Defendant failed to timely pay the fines and costs which was a prerequisite to Shulties having his driver's license reinstated after his DWI conviction.

6. Morris and Schulties indicated that because of their experiences with Defendant, they are more hesitant about trusting lawyers.

7. Defendant's conduct in over-disbursing entrusted funds from his trust account caused significant potential harm to his clients whose entrusted funds were used for the benefit of third parties without their knowledge or consent.

8. Conducting quarterly reconciliations of the trust account is the lynchpin of proper maintenance and protection of entrusted funds. Had Defendant been conducting quarterly reconciliations, he would have maintained awareness of whose funds were in his trust account. Defendant's failure to reconcile his trust account and failure to maintain proper trust account records was a pattern of misconduct that demonstrates Defendant's intent to commit acts where the potential harm is foreseeable.

9. Improperly maintaining and disbursing client funds—even inadvertently—places entrusted funds at risk and has the potential to cause significant harm to the standing of the profession in the eyes of the public because it shows a lawyer's disregard for his fiduciary duties as an attorney.

10. Self-regulation of the legal profession depends upon the cooperation and participation of lawyers in the self-regulatory process. When a lawyer does not timely comply with a Grievance Committee subpoena, it interferes with the State Bar's ability to regulate attorneys and thus undermines the privilege of lawyers in this state to remain self-regulating.

11. Several lawyers attested to Defendant's good character and reputation within the legal community in which he practices, indicating that the misconduct described herein is inconsistent with their knowledge of Defendant's behavior as a lawyer.

12. Defendant expressed remorse for his actions and has been fully cooperative in this disciplinary proceeding.

13. Morris urged the DHC to be lenient in determining the appropriate sanction for Defendant. As the victim of Defendant's most serious misconduct, Morris's request carried considerable weight.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Additional Findings of Fact Regarding Discipline, and upon consideration of the factors set forth in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(w), the Hearing Panel hereby enters the following additional

CONCLUSIONS OF LAW REGARDING DISCIPLINE

1. The Hearing Panel considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w) of the Discipline and Disciplinary Rules of the North Carolina State Bar.

2. The Hearing Panel concludes that the following factors from § .0114(w)(1), which are to be considered in imposing suspension or disbarment, are present in this case:

- (a) intent of the defendant to cause the resulting harm or potential harm;
- (b) circumstances reflecting the defendant's lack of honesty, trustworthiness, or integrity;
- (c) negative impact of defendant's actions on client's or public's perception of the profession;
- (d) impairment of the client's ability to achieve the goals of the representation; and
- (e) effect of defendant's conduct on third parties;

3. The Hearing Panel concludes that the following factors from § .0114(w)(2), which require consideration of disbarment, are present in this case:

- (a) acts of dishonesty, misrepresentation, deceit, or fabrication; and
- (b) misappropriation or conversion of assets of any kind to which the defendant or recipient is not entitled, whether from a client or any other source.

4. The Hearing Panel concludes that the following factors from § .0114(w)(3), which are to be considered in all cases, are present in this case:

- (a) prior disciplinary offense in this state;
- (b) dishonest or selfish motive;
- (c) a pattern of misconduct;
- (d) multiple offenses;
- (e) full and free disclosure to the hearing panel and cooperative attitude toward the proceedings;
- (f) remorse;
- (g) good character and reputation in the legal community in which he practices;
- (h) vulnerability of victim; and
- (i) significant experience in the practice of law;

5. The Hearing Panel has considered admonition, reprimand, and censure as potential discipline but finds that admonition, reprimand, or censure would not be sufficient discipline because of the gravity of the harm to the administration of justice and the potential harm to the public in the present case. Furthermore, the Panel finds that any sanction less than suspension would fail to acknowledge the seriousness of the offenses committed by Defendant, would not adequately protect the public, and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar in this State.

6. The Panel considered disbarment but determined, in light of all relevant facts and circumstances, that disbarment is not necessary to protect the public. The Hearing Panel finds and concludes that the public will be adequately protected by a five-year suspension of Defendant's license to practice law, with an opportunity to have a portion of the suspension stayed upon compliance with conditions.

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

ORDER OF DISCIPLINE

1. Defendant's license to practice law in the State of North Carolina is hereby suspended for five years, beginning 30 days from the date of service of this order upon Defendant.

2. Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon Defendant.

3. Defendant shall comply with the wind down provisions contained in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124. As provided in § .0124(d), Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within 10 days of the effective date of this order, certifying he has complied with the wind down rule.

4. The administrative fees and costs of this action, including deposition costs and digital forensic expert costs, are taxed to Defendant. Defendant must pay the costs of this action within 30 days of service upon him of the statement of costs by the Secretary.

5. Within 30 days after service of this Order, Defendant shall provide the State Bar's Office of Counsel with an address and telephone number at which clients seeking their files can communicate with Defendant. Defendant shall promptly return all files to his clients upon request.

6. After serving no less than eighteen months of the suspension, Defendant may apply for a stay of the remaining period of suspension imposed by this Order by filing a verified petition with the Secretary of the North Carolina State Bar. In addition to complying with the general provisions for reinstatement listed in Rule .0125 of the North Carolina State Bar Discipline & Disability Rules, to be eligible for a stay of the remaining period of suspension, Defendant must demonstrate compliance with the following conditions by clear, cogent, and convincing evidence:

- (a) Defendant shall timely comply with paragraphs 2-5 of this section of the Order of Discipline;
- (b) Defendant shall complete six hours of trust account continuing legal education, approved in advance by the Office of Counsel, including at least one that includes discussion of quarterly reconciliations of trust accounts taught by Trust Account Compliance Counsel for the North Carolina State Bar;
- (c) Within 30 days of this Order's effective date, Defendant shall retain a CPA to assist in the reconciliation of Defendant's trust accounts and identification of all clients whose funds are deposited in the accounts or are missing from the accounts. Any costs associated with retaining the CPA shall be at Defendant's sole expense. When Defendant's trust accounts are reconciled, Defendant shall provide the Office of Counsel with a reconciliation report from the CPA that includes the identification of: (i) every client whose funds are in Defendant's trust accounts; (ii) the appropriate recipients of those clients' funds; (iii) any shortage in the accounts; and (iv) any funds which cannot in the exercise of due diligence be identified and are therefore subject to escheat;
- (d) As of the date of this Order, Defendant is enjoined from handling entrusted funds by the Wake County Superior Court (case no. 14 CVS 3778). Within 90 days after the reconciliation of Defendant's trust accounts described in the preceding paragraph, and after obtaining the approval of the Office of Counsel, Defendant shall petition the Wake County Superior Court to dissolve the injunction. Within 30 days after the injunction is dissolved, Defendant shall reimburse to his trust accounts any shortage identified in the reconciliation and properly disburse all funds in his trust accounts, including escheating all unidentified funds in accordance with Rule 1.15-2(q). When all of the entrusted funds are disbursed, Defendant shall close all of the trust accounts he maintained prior to the date of this Order;
- (e) Defendant shall keep the North Carolina State Bar membership department advised of his current physical home and business addresses and telephone numbers, and shall notify the membership department within 10 days of any change to his contact information;
- (f) Defendant shall accept all certified mail from the North Carolina State Bar and respond to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication;
- (g) Defendant shall timely comply with State Bar membership and continuing legal education requirements, and pay all fees and costs assessed by the State Bar and the Client Security Fund by the applicable deadline;
- (h) Defendant shall participate fully and timely in the State Bar's fee dispute resolution program when notified of any petitions for resolution of disputed fees; and

- (i) Defendant shall not violate the Rules of Professional Conduct or any state or federal laws other than minor traffic violations during the period of active suspension.

7. Defendant may file a petition seeking a stay of the remainder of the suspension up to 30 days prior to the end of the 18 month suspension but shall not be reinstated prior to the end of the 18 month suspension period.

8. If Defendant successfully seeks a stay of the suspension of his law license pursuant to this Order, the stay will continue in force only as long as Defendant complies with the following conditions:

- (a) Each month that Defendant operates a trust account in connection with his law practice, Defendant shall provide the Office of Counsel with an accurate three-way reconciliation (as described in the State Bar Lawyer's Trust Account Handbook) for all trust accounts he maintains. With each monthly three-way reconciliation report, Defendant shall also submit accurate client ledgers for all clients with funds in the trust account(s) during that month, a ledger for any personal funds maintained in the trust account(s) to cover bank or credit card fees, his general trust account ledger(s), and the bank statements, cancelled checks, deposit slips, and any other document or instruction (such as wire or electronic transfer records) regarding the deposit or disbursement of entrusted funds. These documents are due on the 15th day of the following month – for example, the trust account documentation for the month of January is due on February 15;
- (b) Each quarter that Defendant operates a trust or fiduciary account in connection with his law practice, Defendant shall have a CPA audit those accounts. Defendant will be responsible for any associated costs. This audit shall assess whether Defendant has in his trust account the client funds he should be maintaining for his clients at that time, as well as Defendant's compliance with Rule 1.15-2 and Rule 1.15-3. The quarterly audit reports from the CPA are due no later than 30 days after the end of the quarter – for example, the CPA audit for the first quarter of the calendar year (January, February, and March) is due on April 30;
- (c) If either the monthly three-way reconciliation report or the CPA audit reveals any deviation from Defendant's obligations under Rule 1.15-2 or Rule 1.15-3, Defendant shall take remedial action within 10 days of the date of the three-way reconciliation report or the CPA audit and shall provide documentation showing the remedial action to the State Bar within 5 days of the date of the remedial action;
- (d) Defendant shall comply with all requests from the Office of Counsel for information regarding his trust account(s), and with all requests to execute releases or authorizations that will allow the Office of Counsel to obtain information directly from any bank in which Defendant maintains a trust or fiduciary account;

- (e) Defendant shall permit the State Bar to conduct random audits of all accounts over which he has signatory authority and into which client or fiduciary funds have been deposited. Defendant shall provide the State Bar with all documents requested by the State Bar within 5 business days and shall be solely responsible for the expense of complying with any random audit request. The State Bar shall not conduct more than two random audits in any 12 month period.
- (f) Defendant shall keep the North Carolina State Bar membership department advised of his current physical home and business addresses and telephone numbers, and shall notify the membership department within 10 days of any change to his contact information;
- (g) Defendant shall accept all certified mail from the North Carolina State Bar and respond to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication;
- (h) Defendant shall timely comply with his State Bar membership and continuing legal education requirements, and pay all fees and costs assessed by the State Bar and the Client Security Fund by the applicable deadline;
- (i) Defendant shall participate fully and timely in the State Bar's fee dispute resolution program when notified of any petitions for resolution of disputed fees; and
- (j) Defendant shall not violate the Rules of Professional Conduct or any state or federal laws other than minor traffic violations during the period of stayed suspension.

9. If Defendant fails to comply with any one or more of the conditions stated in Paragraph 8 above, then the stay of the suspension of his law license may be lifted as provided in 27 N.C. Admin. Code 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

10. If Defendant does not seek a stay of the suspension, or if some part of the suspension is stayed and thereafter the stay is revoked, Defendant must provide in his application for reinstatement clear, cogent, and convincing evidence of the following:

- (a) Compliance with the general provisions for reinstatement listed in 27 N.C. Admin. Code 1B § .0125; and
- (b) Compliance with the conditions set out in paragraph 6, above.

11. Nothing in this Order shall prohibit the State Bar from investigating and, if necessary, pursuing disciplinary action against Defendant for additional misconduct discovered or reported which occurred during the same time period as the conduct addressed in this Order.

12. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the suspension, and any stay thereof, and until all of the conditions in paragraph 6 above are satisfied.

Signed by the Chair with the consent of the other Hearing Panel members, this the 3rd day of March, 2016.


Steven D. Michael, Chair
Disciplinary Hearing Panel