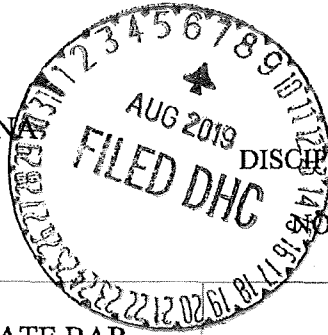


STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
18 DHIC 47

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

SUSAN M. LYNCH, Attorney,

Defendant

CONSENT ORDER
OF
DISCIPLINE

This matter was considered by a hearing panel of the Disciplinary Hearing Commission composed of Donald C. Prentiss, Chair, Shannon R. Joseph, and Ronald C. Brinson. Alex G. Nicely and Mary D. Winstead represented Plaintiff, the North Carolina State Bar. Defendant, Susan M. Lynch, was represented by Alan M. Schneider. Defendant waives a formal hearing in the above-referenced 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 this order, Defendant knowingly, freely, and voluntarily waives her 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 makes 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, Susan M. Lynch ("Defendant"), was admitted to the North Carolina State Bar on March 23, 2002, 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 actively engaged in the practice of law in Moore, Hoke, and Scotland Counties, North Carolina.
4. At all times relevant to the facts and allegations set forth herein, Defendant owned, operated, and practiced law through Lynch Law Firm, P.C., or its predecessor, the Law Office of Susan M. Lynch.
5. From 2003 through 2007, Defendant's practice was comprised primarily of real estate law.

6. Between 2008 and 2011, Defendant's practice became more diversified, but she continued to practice real estate law.

7. From 2003 until 2013, Defendant closed approximately 3,000 real estate transactions.

8. In 2002 or 2003, James Turner, ("Turner"), a mortgage broker, began referring his clients to Defendant for their real estate closings.

9. In the ensuing years, Defendant and Turner had a continuing professional relationship.

10. Referrals from Turner comprised approximately 5 to 8 percent of Defendant's gross annual income from real estate closings.

The 2005 Property Transaction

11. On or about April 22, 2005, Christopher Keitofski ("Keitofski") purchased approximately ten acres of land (the "Property") in Moore County, North Carolina (the "2005 Property transaction").

12. Keitofski financed the 2005 purchase, at least in part, through a \$245,250 loan obtained from RBC Centura Bank ("RBC").

13. Defendant and her law firm handled the closing of the 2005 Property transaction.

14. Defendant prepared the warranty deed for the 2005 Property transaction.

15. Keitofski's loan was secured by a deed of trust on the Property in favor of RBC.

16. Defendant prepared the deed of trust and security agreement ("deed of trust") for the 2005 Property transaction.

17. The deed of trust was executed by both Keitofski and Turner as Grantors.

18. Defendant recorded both the warranty deed and deed of trust with the Moore County Register of Deeds.

19. The deed of trust contained a "due on sale" clause, which provided that if the Property was sold without RBC's prior written consent, RBC had the option of declaring the entire loan with interest immediately due and payable.

20. Due to her role in the 2005 Property transaction, Defendant had actual knowledge of the RBC loan and the deed of trust on the Property.

The 2011 Property Transaction

21. In April and May of 2011, Mitchell Williamson and Stephanie Mickey ("Buyers") negotiated with Keitofski (hereinafter "Seller") and Turner to buy the Property from Seller.

22. Seller and Turner provided Defendant with the sales contract for the closing.

23. Buyers agreed to pay Seller \$270,000 for title to the Property.
24. According to the agreed upon terms, Buyers would pay \$135,000 in cash at closing to Seller, with Buyers financing the balance of the purchase price by executing a promissory note and deed of trust in favor of Seller.
25. Turner advised Buyers to use Defendant's services to close the purchase of the Property, because Defendant was already familiar with the Property, having closed the 2005 Property transaction.
26. The Property transaction closed and the Property was transferred on May 6, 2011 (the "2011 Property transaction").
27. Defendant served as closing attorney throughout the 2011 Property transaction.
28. Defendant represented Buyers throughout the 2011 Property transaction.
29. Defendant also represented Seller throughout the 2011 Property transaction.
30. Between April 2005 and May 2011, Seller made certain payments on the loan to RBC.
31. At the time Seller sold the Property to Buyers, the Property was still encumbered by the RBC deed of trust in favor of RBC, with an outstanding balance of approximately \$235,000.
32. Before and at the May 6, 2011 closing, Seller and Turner concealed from or failed to disclose to Buyers the existence of the RBC deed of trust encumbering the Property.
33. Defendant prepared several legal documents in connection with the May 2011 closing, including the warranty deed, the settlement statement, and the deed of trust (collectively hereinafter the "2011 closing legal documents").
34. The warranty deed, prepared by Defendant on or about April 29, 2011 and recorded on May 6, 2011, stated that Buyers were taking title to the Property "free and clear of all encumbrances."
35. The deed of trust, prepared by Defendant on or about May 2, 2011 and recorded on May 6, 2011, also provided that title to the Property was "free and clear of all encumbrances."
36. The settlement statement documenting the financial aspects of the closing, prepared and signed by Defendant on May 2, 2011, did not show a payoff for the RBC deed of trust and falsely indicated that Buyers' purchase of the Property was not subject to any pre-existing loan or encumbrance.
37. At the time Defendant prepared the 2011 closing legal documents, Defendant knew that the above-mentioned statements regarding pre-existing encumbrances were false.
38. Defendant knew that the RBC deed of trust would not be paid off at closing but would continue in force after Buyers purchased the Property.

39. At the time of the closing, Defendant knew that the deed of trust in favor of RBC constituted an encumbrance on the Property and created an increased and significant risk to the interests of Buyers.

40. At no time before, during, or after the closing did Defendant inform her clients, Buyers, of her continuing professional relationship with Turner.

41. At no time before, during, or after the closing did Defendant inform her clients, Buyers, that the deed of trust would continue to encumber the Property after the transfer of the Property to Buyers.

42. At no time before, during, or after the closing did Defendant inform her clients, Buyers, that the due on sale clause contained in the RBC deed of trust would put them at risk of foreclosure on the Property in the event Seller and Turner failed to continue to make payments as required by the RBC deed of trust.

43. In fact, at no time before, during, or after the closing did Defendant inform her clients, Buyers, that the RBC deed of trust existed.

44. Instead, Defendant prepared the 2011 closing legal documents in a manner that benefited Seller and Turner but simultaneously misled and harmed Buyers.

45. Defendant allowed Buyers and Seller to sign the 2011 closing legal documents, even though Defendant knew said documents contained false statements and representations regarding pre-existing encumbrances.

46. Due to the existence of the deed of trust in favor of RBC, and due to the failure of Defendant, Seller and Turner to disclose to Buyers said encumbrance, an actual conflict of interest existed regarding Defendant's common representation of Buyers and Seller.

47. Defendant failed to disclose to Buyers the conflict of interest present in Defendant's common representation of Buyers and Seller, both prior to and at the May 6, 2011 closing.

48. Defendant did not decline to represent Buyers and Seller in the 2011 Property transaction and Defendant failed to advise Buyers of their right to seek alternate counsel.

49. Buyers paid \$135,000 at the 2011 closing, paid \$300 to Defendant for her legal services, and made \$15,789 in payments on the promissory note between June 2011 and December 2012, for a total outlay of \$151,089 on the part of Buyers.

50. Some time after the May 6, 2011 closing, Seller and Turner failed to make payments as required on the RBC deed of trust.

The 2013 Property Transaction

51. In or about May of 2013, Buyers received notice that RBC or its successor in interest, PNC Bank, intended to foreclose upon the Property.

52. This foreclosure notice was when Buyers first learned of the existence of the RBC deed of trust.

53. After learning of the RBC deed of trust, Buyers spoke with Seller, Turner and Defendant and were led to believe that, unless Buyers deeded a one-half interest in the Property to Seller and Turner, the property would be foreclosed upon.

54. Defendant agreed to serve as the attorney for Buyers, Seller and Turner in 2013, providing common representation throughout the 2013 Property transaction.

55. On or about May 24, 2013, Defendant prepared a warranty deed transferring a one-half interest in the Property to Seller and Turner (the "2013 Property transaction") and recorded the warranty deed with the Moore County Register of Deeds on May 30, 2013.

56. Defendant failed to advise Buyers that it was against their financial interest to execute the warranty deed conveying a one-half interest in the Property to Seller and Turner without receiving any compensation for said transfer.

57. Defendant failed to disclose to Buyers the conflict of interest present in Defendant's common representation of Buyers, Seller and Turner in the 2013 transaction.

58. Defendant failed to provide Buyers, Seller and Turner with full disclosure of the risks of Defendant's common representation of Buyers, Seller and Turner in the 2013 Property transaction.

59. Defendant did not decline to represent Buyers and Seller in the 2013 Property transaction and Defendant failed to advise Buyers of their right to seek alternate counsel.

60. After paying approximately \$195,000 to Seller and Turner, Buyers lost their interest in the Property, because Seller and Turner failed to make required payments on the RBC loan, leading to foreclosure on the Property.

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

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the panel has jurisdiction over Defendant, Susan M. Lynch, and over the subject matter.

2. Lynch'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:

I. Regarding the 2011 Property Transaction:

- a) By undertaking the common representation of Buyers and Seller after both Seller and Defendant concealed from or failed to disclose to Buyers the existence of the encumbrance on the Property, and by continuing said representation after Defendant

prepared the closing legal documents for Buyers' signatures with false representations contained in said closing legal documents, Defendant engaged in a concurrent conflict of interest by undertaking the representation of one client which was directly adverse to another client in violation of Rule 1.7(a)(1) and failed to decline the representation of clients when the representation would result in a violation of the Rules of Professional Conduct in violation of Rule 1.16(a)(1);

- b) By undertaking the common representation of Buyers and Seller without fully disclosing to Buyers the risks involved in the common representation, and by providing said common representation while knowing that a significant likelihood existed that a conflict could arise out of said common representation, Defendant engaged in the representation of one or more clients which was materially limited by the lawyer's responsibilities to another client and by a personal interest of the lawyer in violation of Rule 1.7(a)(2) and failed to decline the representation of clients when the representation would result in a violation of the Rules of Professional Conduct in violation of Rule 1.16(a)(1);
- c) By concealing from or failing to disclose to her clients, Buyers, the existence of the encumbrance on the Property, by providing common representation to Buyers and Seller while also having a continuing professional relationship with Turner, and by failing to disclose to Buyers that the closing legal documents contained false statements, Defendant failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in violation of Rule 1.4(b), failed to exercise independent, professional judgment and render candid advice in violation of Rule 2.1, engaged in conduct that intentionally prejudiced or harmed Buyers in violation of Rule 8.4(g) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- d) By preparing the warranty deed, deed of trust and settlement statement, each of which Defendant knew contained false statements about the existence of a pre-existing encumbrance on the Property, Defendant assisted a client, Seller, in conduct that Defendant knew was fraudulent in violation of Rule 1.2(d), engaged in conduct involving misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c), engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d) and intentionally prejudiced or damaged a client, Buyers, during the course of the professional relationship in violation of Rule 8.4(g);
- e) By failing to ensure that Buyers received title to the Property free and clear of all encumbrances as was contemplated in the agreement between Buyers and Seller, Defendant failed to act with reasonable diligence in representing a client in violation of Rule 1.3; and
- f) By recording the warranty deed which falsely stated that title to the Property was free and clear of all encumbrances, Defendant engaged in conduct involving misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

II. Regarding the 2013 Property Transaction:

- g) By undertaking the common representation of Buyers, Seller and Turner after Buyers received notice that RBC intended to foreclose upon the Property, Defendant engaged in a concurrent conflict of interest by undertaking the representation of one client which was directly adverse to another client in violation of Rule 1.7(a)(1) and failed to decline the representation of clients when the representation would result in a violation of the Rules of Professional Conduct in violation of Rule 1.16(a)(1);
- h) By undertaking the common representation of Buyers, Seller and Turner without fully disclosing to Buyers the risks involved in the common representation, and by providing said common representation while also having a continuing professional relationship with Turner, Defendant failed to promptly inform her clients of a decision or circumstance with respect to which the clients' informed consent is required by the Rules of Professional Conduct in violation of Rule 1.4(a)(1), failed to keep her clients reasonably informed about the status of the matter in violation of Rule 1.4(a)(3), failed to explain a matter to the extent reasonably necessary to permit the clients to make informed decisions regarding the representation in violation of Rule 1.4(b), engaged in the representation of one or more clients which was materially limited by the lawyer's responsibilities to another client and by a personal interest of the lawyer in violation of Rule 1.7(a)(2), and failed to decline the representation of clients when the representation would result in a violation of the Rules of Professional Conduct in violation of Rule 1.16(a)(1);
- i) By failing to advise her clients, Buyers, that it was against their financial interest to execute the warranty deed conveying a one-half interest in the Property to Seller and Turner without Buyers receiving any compensation for said transfer, and by providing said common representation while also having a continuing professional relationship with Turner, Defendant failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in violation of Rule 1.4(b), failed to exercise independent, professional judgment and render candid advice in violation of Rule 2.1 and intentionally prejudiced or damaged her clients, Buyers, during the course of the professional relationship in violation of Rule 8.4(g); and
- j) By failing to disclose to her clients, Buyers, the conflicts of interest inherent in Defendant's common representation of Buyers, Seller and Turner, and by failing to provide her clients with full disclosure of the risks involved in said common representation, Defendant failed to promptly inform her clients of a decision or circumstance with respect to which the clients' informed consent is required by the Rules of Professional Conduct in violation of Rule 1.4(a)(1), failed to keep her clients reasonably informed about the status of the matter in violation of Rule 1.4(a)(3), failed to consult with her clients, Seller and Turner, about relevant limitations on the lawyer's conduct when the lawyer knows that the clients expect assistance not permitted by the Rules of Professional Conduct in violation of Rule 1.4(a)(5), failed to explain a matter to the extent reasonably necessary to permit the clients to make informed decisions regarding the representation in violation of Rule 1.4(b) and failed to exercise independent, professional judgment and render candid advice in violation of Rule 2.1.

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

FINDINGS OF FACT REGARDING DISCIPLINE

1. Lynch has substantial experience in the practice of law and specifically in real estate transactions.
2. Lynch has no prior disciplinary offenses.
3. Buyers, Stephanie Mickey and Mitchell Williamson, were not experienced in real estate transactions and relied on and placed their trust in Defendant, as their attorney, to represent their best interest.
4. Stephanie Mickey and Mitchell Williamson sued Defendant, her former law firm, Turner, and Keitowski ("civil defendants"), and in December 2016, obtained a judgment against the civil defendants in the amount of \$151,089.
5. Defendant has not paid anything on the \$151,089 judgment.
6. Defendant is no longer engaged in the private practice of law. Defendant is now gainfully employed by the Hoke County Public Defender's Office.

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

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has considered all of the factors contained in 27 N.C. Admin. Code 1B.0116(f)(1) and concludes that the following factors that warrant suspension or disbarment are present:
 - (a) intent of the defendant to commit acts where the harm or potential harm is foreseeable;
 - (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) negative impact of the defendant's actions on the administration of justice; and
 - (e) acts of dishonesty, misrepresentation, deceit, or fabrication.

2. The Hearing Panel has considered all of the factors contained in 27 N.C. Admin. Code 1B.0116(f)(2) and concludes that the following factor is present:

(a) Acts of dishonesty, misrepresentation, deceit, or fabrication

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

(a) no prior disciplinary offenses;

(b) Defendant has yet to pay restitution in this matter;

(c) multiple offenses;

(d) good character and reputation in her local legal community;

(e) vulnerability of victims; and

(f) degree of experience in the practice of law.

4. The Hearing Panel has considered all lesser sanctions including: censure, reprimand, and admonition, and finds that discipline less than suspension would not adequately protect the public from Defendant's future misconduct because (i) defendant's actions resulted in significant harm to her clients and the administration of justice, and (ii) lesser discipline is insufficient to adequately protect the public.

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

ORDER OF DISCIPLINE

1. Defendant, Susan M. Lynch, is hereby suspended from the practice of law for five years effective sixty days from service of this order upon Defendant.

2. Defendant shall surrender her law license and membership card to the Secretary of the North Carolina State Bar no later than sixty days following service of this Order upon Defendant.

3. Defendant shall comply with all provisions contained in 27 N.C. Admin. Code 1B.0128 of the North Carolina State Bar Discipline & Disability Rules.

4. Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within thirty days of the effective date of this Order, certifying she has complied with the provisions of 27 N.C. Admin. Code 1B.0128.

5. Defendant shall withdraw from all pending administrative or litigation matters no later than thirty days following service of this Order upon Defendant.

6. Defendant shall not accept any new retainer or engage as attorney for another in any new case or legal matter after the effective date of this Order.

7. Defendant is taxed with the administrative fees and costs of this action as assessed by the Secretary, which Defendant shall pay within six months of service of the notice of costs upon Defendant at her address of record.

8. Defendant shall pay Stephanie Mickey and Mitchell Williamson \$151,089.

9. Within ten days of the effective date of this Order, Defendant shall provide the State Bar with an address and telephone number at which clients seeking return of their files can communicate with Defendant and obtain such files, and Defendant shall promptly return all files to clients upon request. Defendant shall promptly refund any unearned or excessive fees due clients in accordance with Rule 1.5 of the Rules of Professional Conduct.

10. After the completion of 18 months of active suspension of her law license, Defendant may apply for a stay of the remainder of the suspension upon filing of a petition with the DHC at least thirty days before any proposed effective date of the stay and demonstrating by clear, cogent and convincing evidence the following:

- (a) Defendant properly surrendered her law license and membership card as provided in paragraph 2 of this Order;
- (b) Defendant has complied with the general provisions for reinstatement listed in 27 N.C. Admin. Code 1B.0129 of the North Carolina State Bar Discipline & Disability Rules;
- (c) Defendant has complied with the reimbursement requirement contained in paragraph 8 of this Order;
- (d) Defendant has paid the costs of this proceeding as assessed by the Secretary of the North Carolina State Bar within six months of notice of the costs being served on Defendant at her address of record;
- (e) Defendant has kept the North Carolina State Bar Membership Department advised of her current business and home addresses (not P.O. box) and notified the Bar of any change in address within ten days of such change;
- (f) Defendant has responded to all communications from the State Bar within thirty days of receipt or by the deadline stated in the communication, whichever is sooner;
- (g) Defendant is current in payment of all Membership dues, fees, and costs, including all Client Security Fund assessments and other charges or surcharges the State Bar is authorized to collect from her, and including all judicial district dues, fees and assessments;
- (h) There is no deficit in Defendant's completion of CLE hours, in reporting such hours or in payment of any fees associated with attendance at CLE programs;

- (i) Defendant has not violated the Rules of Professional Conduct or the laws of the United States or any state or local government during her suspension; and
- (j) Defendant properly wound down her law practice and complied with the requirements of 27 N.C. Admin. Code 1B.0128.

11. If Defendant successfully petitions for a stay of the suspension of her law license, such stay will continue in force only as long as Defendant complies with the following conditions:

- (a) Defendant shall remain current in payment of all 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 her, to include all judicial district dues, fees and assessments;
- (b) Defendant shall respond to all communications from the North Carolina State Bar, including communications from the Attorney Client Assistance Program, within thirty days of receipt 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 process for any petition of which she receives notice;
- (c) Defendant shall promptly accept service of all certified mail from the State Bar that is sent to her;
- (d) Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or of any state or local government during the stayed suspension; and
- (e) Defendant shall keep the State Bar Membership Department advised of her current business and home addresses. Defendant shall notify the State Bar of any change in address within ten days of such change. Her current business address must be a street address, not a P.O. Box or drawer.

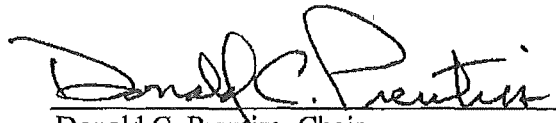
12. If Defendant fails to comply with any of the conditions of the stayed suspension provided in paragraph 11 (a) through (e) above, the stay of the suspension may be lifted as provided in 27 N.C. Admin. Code 1B.0118(a).

13. If Defendant successfully petitions for a stay of her suspension, Defendant's obligations governing the stay under this Order end after the applicable period of the stay provided there are no motions or show cause proceedings pending alleging lack of compliance with the conditions of the stay of the suspension. Pursuant to 27 N.C. Admin. Code 1B.0118(a) of the North Carolina Discipline and Disability Rules, the DHC retains jurisdiction until all conditions of the stay of the suspension have been met. If a motion or show cause 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 remaining portion of the suspension in whole or in part if it finds that any of the conditions of the stay have not been

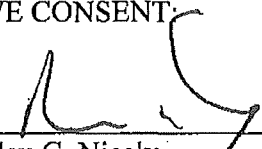
met. The stay of the suspension and Defendant's obligation to comply with the conditions for the stay will continue until resolution of any such pending motion or show cause proceeding.

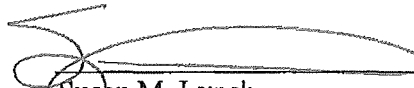
14. If Defendant does not seek or fails to obtain a stay of her suspension, or if some part of the suspension is stayed and thereafter the stay is lifted or revoked, Defendant must comply with the requirements of paragraphs 2 through 9 and paragraphs 10(a) through 10(j) above before being reinstated to the practice of law, and must provide in any petition for reinstatement clear, cogent and convincing evidence demonstrating Defendant's compliance therewith.

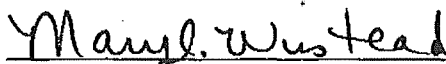
Signed by the Chair with the consent of the other Hearing Panel members this
the 7 day of August, 2019.

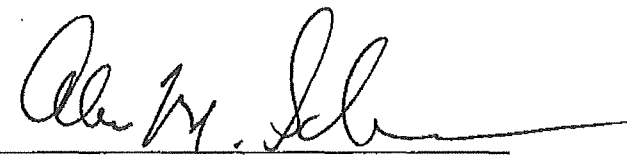

Donald C. Prentiss, Chair
Disciplinary Hearing Panel

WE CONSENT:


Alex G. Nicely
Attorney for Plaintiff


Susan M. Lynch
Defendant


Mary D. Winstead
Attorney for Plaintiff


Alan M. Schneider
Attorney for Defendant