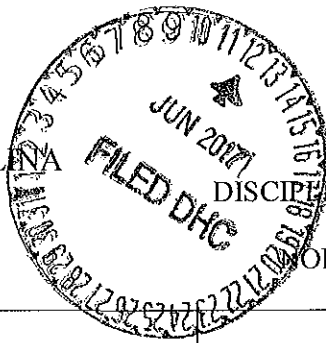


STATE OF NORTH CAROLINA
WAKE COUNTY



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

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

WILLIAM TRIPPE McKENY, 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, Irvin W. ("Hank") Hankins, III, and Christopher R. Bruffey pursuant to 27 N.C. Admin. Code 1B § .0114. Plaintiff, the North Carolina State Bar, was represented by Carmen Hoyme Bannon. Defendant, William Trippe McKeny, represented himself. Defendant waives a formal hearing in this matter and both parties stipulate and consent to the entry of this order and to the discipline imposed. Defendant waives any right to appeal this consent order or to challenge in any way the sufficiency of the findings.

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

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar, is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. Defendant, William Trippe McKeny, was admitted to the North Carolina State Bar in March 2003, 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. Prior to 25 December 2013, McKeny was engaged in the practice of law in the State of North Carolina and maintained a law office in Salisbury, Rowan County, North Carolina. From 25 December 2013 through the present, McKeny has been suspended from the practice of law.

4. McKeny was properly served with the summons and complaint in this matter.
5. In an Order of Discipline filed 21 November 2013, the Disciplinary Hearing Commission suspended McKeny from the practice of law for three years, effective 25 December 2013.
6. McKeny moved away from North Carolina before his license was suspended. As of September 2013, he was residing in Colorado and returning to North Carolina occasionally.
7. Pursuant to the Order of Discipline, McKeny was required to wind-down his law practice during the 30 days prior to the effective date of his suspension, as set forth in Rule .0124 of the North Carolina State Bar Discipline and Disability Rules.
8. McKeny left North Carolina on or about 5 November 2013, and remained out of state throughout his 30-day wind-down period, which ran from 25 November 2013 through 25 December 2013.
9. At the time McKeny was suspended, he had a large caseload and was counsel of record on many pending cases, both civil and criminal, in district and superior courts.
10. McKeny failed to notify all of his clients that he was suspended and therefore could no longer represent them. As a result, many of his clients did not learn they were unrepresented until they appeared in court at the next scheduled setting of their cases.
11. McKeny did not properly withdraw from pending cases: He did not file motions to withdraw, nor did he seek to have cases calendared so that he could orally move to withdraw. As a result, judicial personnel attempted to assist McKeny's clients on an ad hoc basis when the clients appeared in court, unaware that their lawyer was suspended. Many of McKeny's clients' cases were delayed while the clients sought substitute counsel or awaited the appointment of counsel.
12. Many of McKeny's clients were entitled to at least a partial refund of fees because McKeny was unable to complete the representation.
13. McKeny did not refund unearned fees to which his clients were entitled during the wind-down period, at the time of his suspension, or within a reasonable time after he was suspended.
14. Germaine Hardin hired McKeny in early 2013, paying a \$1,500.00 flat fee for representation on a charge of breaking and entering. Hardin's case was still pending when McKeny was suspended. When Hardin learned McKeny had been suspended, he attempted to contact him by phone several times to request a refund. McKeny did not return Hardin's calls and did not refund any of the fees he received from Hardin. In response to subsequent inquiry from the State Bar about why he did not refund any money to Hardin, McKeny contended that he had earned the entire fee.

15. Alex Cowan hired McKeny in early 2013, paying at least \$2,430.00 of a \$3,500.00 flat fee for representation on drug charges. Cowan's case was still pending when McKeny was suspended. When Cowan appeared in court in late 2013, court personnel informed him that McKeny was suspended. Cowan called McKeny to request a refund, but McKeny did not respond or refund any of the fees he received from Cowan. Cowan had to pay another lawyer \$1,900.00 to handle the case. In response to subsequent inquiry from the State Bar about why he did not refund any money to Cowan, McKeny contended that he had earned the entire fee.

16. Tyson Wiggins hired McKeny in July 2013, paying a \$2,000.00 flat fee for representation on a charge of possession of marijuana. Wiggins's case was still pending when McKeny was suspended. When Wiggins appeared in court in late 2013, court personnel informed him that McKeny was suspended. Wiggins called McKeny to request a refund, but McKeny did not respond or refund any of the fees he received from Wiggins. Wiggins had to pay another lawyer \$3,500.00 to handle the case. In response to subsequent inquiry from the State Bar about why he did not refund any money to Wiggins, McKeny contended that he had earned all but \$362.50 of the fee. McKeny did not issue a refund to Wiggins until May 2016, after the State Bar inquired about the case.

17. Keith Rattz hired McKeny in August or September 2013, paying \$2,800.00 of a \$3,500.00 flat fee for representation on charges of breaking and entering and habitual felon. Rattz's case was still pending when McKeny was suspended. When Rattz appeared in court in early 2014, court personnel informed him that McKeny was suspended. Rattz's grandmother (who had paid the \$2,800.00) called McKeny to request a refund, but McKeny did not return her calls or refund any of the money. In response to subsequent inquiry from the State Bar about why he did not refund any of Rattz's fee, McKeny contended that he had earned all but \$1,075.00 of the fee. McKeny did not issue a refund to Rattz's grandmother until May 2016, after the State Bar inquired about the case.

18. In representing criminal clients, McKeny used several standard templates for commonly-filed motions, including a Motion for Discovery, Motion for Leave to File Further Motions, and Waiver of Initial Administrative Hearing. (These motions are referred to hereafter as "boilerplate motions"). When he filed one of these boilerplate motions on behalf of a client, McKeny merely inserted the client's name and case number into the template. In the Hardin, Cowan, Wiggins, and Rattz cases described in paragraphs 14 through 17 above, McKeny filed two or more boilerplate motions. In calculating the amount of fees he contended he had earned on each of those cases, McKeny claimed to have spent 30 minutes on each boilerplate motion. For example, McKeny claimed entitlement to \$375.00 for inserting Hardin's name and case number into three boilerplate motions.

19. McKeny represented Danny Caldwell on a charge of DWLR. On 24 September 2013, McKeny filed a notice of appeal to Superior Court in Caldwell's case. Caldwell paid McKeny an additional \$350.00 for representation in Superior Court. At the time he accepted this additional fee, McKeny did not inform Caldwell that he no longer lived in North Carolina or that he was facing imminent disciplinary action. McKeny did not provide Caldwell with any additional legal services. When Caldwell read in the newspaper

that McKeny had been suspended, he called McKeny to request a refund. McKeny did not return the call or refund Caldwell's fee. Caldwell had to pay another lawyer \$700.00 to complete the case. In response to subsequent inquiry from the State Bar about why he did not refund any money to Caldwell, McKeny contended that he had earned all but \$100.00 of the fee. McKeny did not issue a refund to Caldwell until May 2016, after the State Bar inquired about the case.

20. Sandra Parham hired McKeny in October 2013, paying \$250.00 for representation on a charge of DWLR. McKeny did not inform Parham when he accepted the representation that he no longer lived in North Carolina or that he was facing imminent disciplinary action. McKeny did not provide any legal services to Parham. McKeny did not refund Parham's fee. Parham had to borrow money to pay another lawyer to handle the case.

21. Neither Caldwell nor Parham received any beneficial services in return for the fees they paid McKeny.

22. John Reeves and his grandson, Christian Reeves, met with McKeny on 25 September 2013. McKeny agreed to represent Christian on a pending charge of assault for a flat fee of \$2,000.00. McKeny did not inform the Reeveses when he accepted the representation that he no longer lived in North Carolina or that he was facing imminent disciplinary action. John Reeves paid McKeny a total of \$1,200.00 toward the flat fee. Reeves's case was still pending when McKeny was suspended, but McKeny did not refund any of the fees. In response to subsequent inquiry from the State Bar about why he did not refund any money to Reeves, McKeny contended that he had earned all but \$537.50 of the fee. McKeny did not issue a refund to Reeves until May 2016, after the State Bar inquired about the case.

23. Terry Stiller hired McKeny in October or November 2013, paying at least \$1,150.00 of a \$2,000.00 flat fee for representation on charges of maintaining a dwelling for the manufacture of a controlled substance and for altering a serial number on a firearm. McKeny did not inform Stiller when he accepted the representation that he no longer lived in North Carolina or that he was facing imminent disciplinary action. Stiller's case was still pending when McKeny was suspended. McKeny did not refund any of the fees he received from Stiller. Stiller had to pay another lawyer \$2,500.00 to handle the case. In response to subsequent inquiry from the State Bar about why he did not refund any money to Stiller, McKeny contended that he had earned the entire amount received from Stiller.

24. The clients referenced in paragraphs 15, 16, 17, 19, 20, 22, and 23 did not file fee dispute petitions with the State Bar. A dozen other clients to whom McKeny failed to promptly issue refunds filed fee dispute petitions with the State Bar. McKeny refunded in excess of \$17,700.00 to those clients, but only after they availed themselves of the State Bar's fee dispute resolution process.

25. McKeny represented Michael Miller, whose appeal of his criminal conviction was pending at the time McKeny was suspended. McKeny did not inform Miller that the State had petitioned for review by the Supreme Court and failed to notify Miller that he would

not be able to complete the appeal due to the suspension. McKeny did not provide Miller with his file or advise Miller that he would have to obtain substitute counsel. McKeny did not seek leave from the court to withdraw from Miller's case. McKeny provided no notice to opposing counsel, who learned that McKeny had been suspended only after he was unable to serve his brief at McKeny's address of record. At the subsequent request of the Clerk of the Supreme Court, the Appellate Defender contacted Miller, advised him of the situation, and ultimately filed a motion "as friend of the court to discharge current appellate counsel" on Miller's behalf.

Based upon the foregoing Findings of Fact, and 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 Disciplinary Hearing Commission has jurisdiction over Defendant, William Trippe McKeny, and over 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 Defendant violated the Rules of Professional Conduct in effect at the time of his actions as follows:
 - (a) By failing to inform new clients in the fall of 2013 that he no longer lived in North Carolina, Defendant failed to explain a matter to the extent reasonably necessary to permit clients to make informed decisions about the representation in violation of Rule 1.4(b);
 - (b) By abandoning multiple clients without sufficient notice to either the clients or the court that he would be unable to complete the representation, Defendant failed to exercise reasonable diligence in violation of Rule 1.3;
 - (c) By failing to timely notify clients of his suspension or the status of their cases at the time of his suspension and failing to respond to inquiries from clients requesting refunds of unearned fees, Defendant failed to explain a matter to the extent reasonably necessary to permit clients to make informed decisions in violation of Rule 1.4(b) and failed to promptly comply with clients' reasonable requests for information in violation of Rule 1.4(a);
 - (d) By failing to file motions to withdraw from his pending cases during the wind-down period, thereby delaying and complicating the court's ability to dispose of those cases, Defendant failed to comply with applicable law requiring permission of the tribunal to withdraw in violation of Rule 1.16(c) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);

- (e) By failing to promptly refund fees that were unearned at the time he was suspended, Defendant failed to take reasonably practicable steps to protect clients' interests upon termination of the representation in violation of Rule 1.16(d);
- (f) By asserting that he was entitled to fees in cases where the client received no beneficial services and by claiming that he was entitled to compensation for an hour or more spent on the ministerial task of substituting a client's name on boilerplate motions, Defendant charged clearly excessive fees in violation of Rule 1.5(a); and
- (g) By failing to comply with the wind-down process described in Rule .0124 as required by the Order of Discipline, Defendant knowingly failed to comply with an obligation under the rules of the tribunal in violation of Rule 3.4(c).

Based upon 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

ADDITIONAL FINDINGS REGARDING DISCIPLINE

1. Defendant's conduct caused significant harm to his clients. Specifically, his failure to withdraw from pending cases delayed resolution of his clients' legal matters, and his failure to promptly refund unearned fees caused his clients to incur additional costs associated with hiring substitute counsel. This harm was foreseeable.
2. Defendant did not proactively determine what unearned fees were due to his clients when he was suspended, instead relying upon the clients and/or the State Bar to prompt him to return funds to which he was not entitled. Defendant did not issue refunds to some clients until 2016. Defendant's decision not to refund fees until a refund was demanded reflects an elevation of his own interests above his clients' interests.
3. Defendant's abandonment of his clients was fundamentally at odds with the fiduciary role of an attorney, and had the potential to cause significant harm to the standing of the legal profession in the eyes of the public.
4. Defendant's failure to withdraw from pending matters caused significant harm to the administration of justice by delaying and complicating the court's ability to dispose of his clients' cases.
5. Defendant was diagnosed with Post Traumatic Stress Disorder in 2013, and his PTSD contributed in part to the misconduct described herein. Defendant has been, and continues to be, treated for this condition. Defendant and his treating clinicians report that his condition is substantially improved and that his condition does not impair his ability to practice law.
6. Defendant was evaluated by a clinical psychologist in December 2016, who opined that his PTSD no longer impairs his ability to practice law. The evaluator indicated

that “with guidelines and accountability measures in place, [Defendant] should be able to resume his law practice.” Specifically, the evaluator recommended: (a) periodic review of Defendant’s financial records by a third party; (b) ongoing individual therapy; (c) annual polygraph examinations during which Defendant would be questioned about the reoccurrence of any prior problematic behaviors; and (d) random drug testing.

7. Defendant is remorseful for his conduct.

8. All of the misconduct at issue in this case occurred during the immediate aftermath of his suspension. Since that time, Defendant has been cooperative with the State Bar in responding to grievances and fee disputes, and has participated in this proceeding.

9. Defendant has taken steps to rectify the consequences of his misconduct: In addition to the refunds to clients referenced in Finding of Fact 24, above, Defendant issued refunds to other clients without prompting by the State Bar.

Based upon the Findings of Fact, Conclusions of Law, Additional Findings Regarding Discipline, and the consent of the parties, the Hearing Panel makes the following

ADDITIONAL CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has carefully considered all of the different forms of discipline available to it. In addition, the Hearing Panel has considered all of the factors enumerated in Rule .0114(w) of the Discipline and Disability Rules of the State Bar.

2. The Hearing Panel concludes the following factors from Rule .0114(w)(1) warrant consideration of suspension of Defendant’s license:

- (a) Intent of Defendant to commit acts where the harm or potential harm is foreseeable;
- (b) Elevation of Defendant’s own interest above that of the client; and
- (c) Negative impact of Defendant’s actions on the administration of justice.

3. The Hearing Panel has carefully considered all of the factors enumerated in Rule .0114(w)(2) and concludes that none of the factors requiring consideration of disbarment are present in this case.

4. The Hearing Panel has carefully considered all of the factors enumerated in Rule .0114(w)(3) and determines that the following factors are applicable:

- (a) Prior disciplinary offenses;
- (b) Multiple offenses;
- (c) Effect of personal or emotional problems on the conduct in question;

- (d) Effect of physical or mental impairment on the conduct in question;
- (e) Remorse;
- (f) Cooperative attitude toward the proceedings; and
- (g) Interim rehabilitation, in the form of effective treatment for PTSD.

5. The Hearing Panel has considered admonition, reprimand and censure as potential discipline but finds that any sanction less than suspension would fail to acknowledge the seriousness of the offenses committed by Defendant and the risk of harm to the public.

6. In light of the significant harm resulting from Defendant's conduct, the Hearing Panel concludes that a suspension of Defendant's license is the only discipline that:

- (a) will adequately protect the public;
- (b) acknowledges the seriousness of the offenses Defendant committed; and
- (c) sends a proper message to attorneys and the public regarding the conduct expected of members of the Bar of this State.

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

ORDER OF DISCIPLINE.

1. Defendant, William Trippe McKeny, is hereby suspended from the practice of law for two years, effective immediately upon his reinstatement from the suspension imposed in 13 DHC 4.

2. The two year suspension is stayed for two years as long as Defendant complies, and continues to comply during the period of the stay, with the following conditions:

- (a) Defendant shall continue to participate in individual therapy, and shall comply with all treatment recommendations of his treating clinicians;
- (b) Within 10 days of entry of this order, Defendant shall provide a written release to the North Carolina State Bar Office of Counsel, authorizing all providers from whom he is receiving treatment for any psychological, emotional, or behavioral condition to communicate with the Office of Counsel and to release to the Office of Counsel records relating to his compliance with his treatment recommendations. Defendant shall not revoke these releases during the period of stayed suspension;

- (c) Defendant shall ensure that all providers from whom he is receiving treatment for any psychological, emotional, or behavioral condition send a quarterly written report to the State Bar confirming that he is complying with all treatment recommendations and is not suffering from any physical or mental condition that significantly impairs his professional judgment. The reports shall be due each January 30, April 30, July 30, and October 30 during the stayed suspension of Defendant's law license;
- (d) Defendant shall refrain from the use of any mind-altering substances except as specifically prescribed or approved by a physician. Defendant shall comply with the LAP contract he entered into on 26 May 2017, including the requirement that he submit to random drug testing. Defendant shall begin testing within 30 days of the entry of this order. Within 10 days of entry of this order, Defendant shall execute an authorization permitting the LAP to disclose to the Office of Counsel all information regarding Defendant's compliance with the contract, and directing the LAP to promptly report to the Office of Counsel any non-compliance with the contract, including a missed or positive drug test. Defendant shall follow all recommendations of the LAP program. Defendant shall bear all costs associated with compliance with his LAP contract;
- (e) Defendant shall arrange for an active member in good standing of the North Carolina State Bar who has been approved by the Office of Counsel and practices in the county of Defendant's practice to serve as Defendant's practice monitor. Before Defendant resumes practicing law, he must supply the Office of Counsel with a letter from the approved monitoring attorney confirming his or her agreement to: (a) meet with Defendant monthly to review Defendant's cases; (b) provide supervision to ensure that Defendant timely and completely handles client matters; and (c) provide written quarterly reports of this supervision to the Office of Counsel on the following dates as they occur during the duration of the stay of the suspension: January 30, April 30, July 30, and October 30. Defendant will be responsible for the cost, if any, charged by the monitor for this supervision;
- (f) Defendant shall open a new attorney trust account and have a CPA audit the new trust account on a quarterly basis to ensure Defendant's compliance with the Rules of Professional Conduct;
- (g) The CPA must report quarterly to the Office of Counsel concerning the compliance of Defendant's trust account with the Rules of Professional Conduct, including but not limited to reporting any accounting irregularities and any deviance from the requirements of the Rules of Professional Conduct, with a copy of the report sent simultaneously to Defendant. The CPA's reports are due no later than 30 days after the end of each quarter (first quarter's report due April 30, second quarter's report due July 30, third quarter's report due October 30, and fourth quarter's report due January 30). It is Defendant's sole responsibility to ensure the CPA completes and submits the reports as required herein;

- (h) If any of the CPA reports referenced in paragraph (g) above note any irregularities or deficiencies, Defendant shall take all remedial action necessary to bring the trust account into compliance with the Rules of Professional Conduct and shall provide proof of the remedial action and compliance to the Office of Counsel of the State Bar and to the CPA within 30 days of the date of the CPA's report;
- (i) If any of the CPA reports referenced in paragraph (g) above note any irregularities or deficiencies in Defendant's handling of entrusted funds, the CPA shall prepare and submit to the Office of Counsel a subsequent report regarding whether Defendant's remedial actions were sufficient and whether Defendant's account(s) has been brought into compliance with the Rules of Professional Conduct. The CPA shall provide this report regarding remedial measures to the Office of Counsel within 30 days of Defendant's provision of proof of remedial action. It is Defendant's sole responsibility to ensure the CPA completes and submits the reports as required herein;
- (j) All CPA evaluations, reports, and services referred to herein will be completed and submitted at Defendant's sole expense;
- (k) If Defendant's treatment provider, practice monitor, or CPA fails to submit any report required by this Order, it shall be grounds to lift the stay and activate the suspension;
- (l) If Defendant does not handle entrusted funds, he shall submit the following financial records from his operating account to the State Bar's Office of Counsel on a quarterly basis:
 - i. Monthly bank statements;
 - ii. Cancelled checks
 - iii. Deposit tickets/deposit items
 - iv. Records showing the source and/or recipient of all wire transfers and electronic transfers;
- (m) Defendant shall keep the North Carolina State Bar Membership Department advised of his current business and home addresses and shall notify the Bar of any change in address within ten days of such change;
- (n) 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 pending as of the effective date of this order, or of which he receives notice after the effective date of this Order;
- (o) Defendant shall promptly accept service of all certified mail from the State Bar;

- (p) Defendant shall timely comply with all State Bar Membership and Continuing Legal Education requirements; and
- (q) Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or of any state or local government other than minor traffic violations during the stayed suspension.

3. Defendant is taxed with the administrative fees and costs of this action as assessed by the Secretary, which shall be paid within six months of service of the notice of costs upon Defendant.

4. If Defendant fails to comply with any one or more of the conditions stated in Paragraph 2 above, then the stay of the suspension of his law license may be lifted as provided in Rule § .0114(x) of the North Carolina State Bar Discipline and Disability Rules. If the stay granted herein is lifted or the suspension of Defendant's license is activated for any reason, before Defendant can be reinstated or a subsequent stay of the suspension can be entered Defendant must show by clear, cogent, and convincing evidence that he has complied with each of the following conditions:

- (a) Within two months prior to filing any petition for reinstatement or stay, Defendant shall be evaluated, at his own expense, by a board certified psychiatrist or psychologist approved in advance by the Office of Counsel for the purpose of determining whether Defendant has any mental or psychological impairment, addiction, personality disorder, or other condition or illness;
- (b) Defendant shall obtain a written report from the evaluating clinician described in paragraph 4(a) setting forth: (i) the findings of the examination; (ii) the clinician's opinion as to whether Defendant has any physical or mental impairment, addiction, personality disorder, or other condition or illness that could adversely affect his ability to practice law; and (iii) the clinician's recommendations, if any, regarding ongoing treatment;
- (c) Prior to or at the time of filing his petition, Defendant shall provide a copy of the clinician's report described in paragraph 4(b) to the State Bar, and shall execute a written release authorizing the examining clinician to provide medical records to, and communicate with, the Office of Counsel of the North Carolina State Bar regarding the evaluation and report;
- (d) Defendant shall have the burden of establishing by clear and convincing evidence that, at the time he seeks reinstatement or a stay of the suspension, he does not have any physical or mental impairment, addiction, personality disorder, or other condition or illness that significantly impairs his professional performance, judgment or competence; and

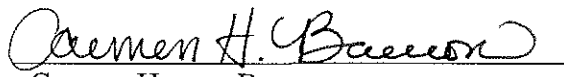
(e) During the period of active suspension, Defendant complied with the conditions set forth in paragraphs 2(m) through 2(q), above.

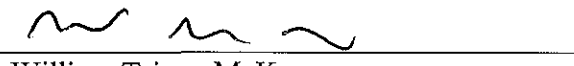
5. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C.A.C. 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout any period of stayed suspension.

8 Signed by the Chair with the consent of the other Hearing Panel members, this the day of June, 2017.


Donald C. Prentiss, Chair
Disciplinary Hearing Panel

CONSENTED TO BY:


Carmen Hoyme Bannon
Attorney for Plaintiff


William Trippe McKeny
Defendant