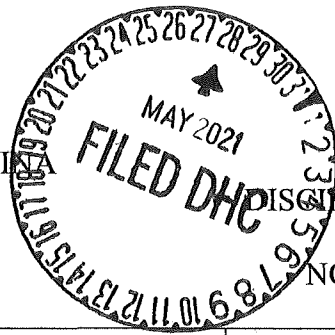


STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
21 DHC 3

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

JAMES E. ROGERS, Attorney,
Defendant

CONSENT
ORDER OF DISCIPLINE

THIS MATTER was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Stephanie N. Davis, Chair, and members James A. Davis and Heath R. Jenkins. Jennifer A. Porter represented Plaintiff, the North Carolina State Bar. Defendant, James E. Rogers, was represented by Douglas J. Brocker.

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 his right to appeal this Consent Order or to challenge in any way the sufficiency of the findings, the conclusions, or the discipline.

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

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar (Chapter 1 of Title 27 of the North Carolina Administrative Code).
2. Defendant, James E. Rogers ("Rogers"), was admitted to the North Carolina State Bar in 1987, 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 North Carolina Rules of Professional Conduct.
3. During all or part of the relevant periods referred to herein, Rogers was engaged in the practice of law in the State of North Carolina and maintained a law office in Morrisville, Durham County, North Carolina.

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

5. During the relevant periods referred to herein, Rogers maintained an attorney trust account with PNC Bank, account number ending in digits *7704 (hereinafter "trust account").

6. During the relevant periods referred to herein, Rogers maintained an operating account for his law practice with PNC Bank, account number ending in digits *7421 (hereinafter "operating account").

7. The State Bar examined records for Rogers' trust account for the period of March 1, 2016 through September 25, 2019.

8. The following conduct occurred during that time period:

a. Failure to deposit entrusted funds belonging to clients G. Barber and E. Vines into the trust account

b. Disbursements to Respondent and to clients from the trust account prior to deposit of funds, or deposit of sufficient funds, for the client with respect to clients V. Avilez-Teyuco, D. Mack, H. Marabel Avilez, F. Marabel Perez, S. Nelson, and D. Turner;

c. Use of entrusted funds for personal benefit, to wit: payment of bank charges;

d. Deposits of personal funds from construction loan into the trust account;

e. Failure to timely and properly conduct quarterly trust account reconciliations;

f. Failure to maintain accurate trust account records, including client ledgers for G. Barber, A. Hammonds, and T./G. Hammonds and including dates on reconciliation reports;

g. Failure to sign reconciliation reports;

h. Failure to promptly disburse funds, including but not limited to for the following clients: C. Brewer and S. Morris;

i. Failure to provide applicable clients with annual accountings of their entrusted funds, including but not limited to the clients listed in the immediately preceding paragraph; and

j. Failure to identify on certain trust account checks to Rogers and to third parties the client for whom funds were being disbursed from the trust account.

9. Rogers was assisted with trust account transactions, reconciliations, and record-keeping by non-lawyer employees.

10. During the pertinent time period of March 1, 2016 through September 25, 2019, Rogers was the principal attorney with his law firm, and was the lawyer with direct supervisory authority over the non-lawyer employees who assisted him with trust account-related tasks.

11. Rogers failed to adequately instruct, supervise, review, and act upon the work done by his non-lawyer employees with respect to trust account transactions, reconciliations, and record-keeping, including concerning the following:

- a. Amounts shown as outstanding deposits on trust account reconciliations that had not actually been deposited into the trust account;
- b. Negative client balances not being shown on client ledgers and trust account reconciliations;
- c. Failure to ensure all trust account transactions were accurately recorded and identified on an appropriate subsidiary trust account ledger; and
- d. Oversight of disbursements from the trust account.

12. Rogers is responsible for the conduct described in paragraph 8 above, either directly or through his failure to adequately instruct, supervise, review, and act upon the associated work done by his non-lawyer employees.

13. On or about June 27, 2016, Rogers was retained by John Taylor ("Taylor") to represent Taylor in a personal injury matter arising from an automobile accident on September 12, 2013.

14. On September 12, 2016, Rogers filed a complaint for Taylor against the driver of the other car in the September 12, 2013 accident.

15. In May 2017, Rogers received and deposited into his trust account for Taylor \$4,055.00 from Taylor's insurance company from his medical payment insurance coverage and \$5,000.00 from the other driver's insurance company in settlement of Taylor's case.

16. In June 2017, Rogers disbursed funds he had received for Taylor to himself and to Taylor.

17. At the conclusion of the June 2017 disbursements, Rogers had a balance of \$1,316.39 in his trust account for Taylor. This balance was to pay liens and/or statutory claims related to Taylor's medical treatment.

18. Medicare had made payments to medical providers for Taylor and there was a Medicare Secondary Payer (MSP) recovery claim of \$2,632.78.

19. In a letter to Rogers dated September 22, 2017, the Centers for Medicare & Medicaid Services (CMS) extended a compromise offer for its MSP recovery claim, offering to accept \$1,666.66 as payment of its claim.

20. The September 22, 2017 letter from CMS (hereinafter “the CMS offer letter”) stated that if the signed acceptance of its compromise offer and payment were not received at the designated Benefits Coordination & Recovery Center (BCRC) within sixty days from the date of the letter, the compromise offer to accept \$1,666.66 would be null and void and the entire MSP recovery claim plus interest would be pursued.

21. Rogers did not communicate directly with Taylor regarding CMS’s compromise offer, the need to accept the offer within sixty days of September 22, 2017 and the consequences for not doing so, or the need for Taylor to provide \$350.27 in addition to the \$1,316.39 held in Rogers’ trust account in order to pay Medicare \$1,666.66.

22. Rogers utilized non-lawyer employees to assist him with his communications with clients.

23. Rogers did not ensure that any non-lawyer employee of his communicated to Taylor all necessary information regarding CMS’s compromise offer, the need to accept the offer within sixty days of September 22, 2017 and the consequences of not doing so, and the need for Taylor to provide \$350.27 in addition to the \$1,316.39 held in Rogers’ trust account in order to pay Medicare \$1,666.66.

24. Rogers did not send Medicare any funds within sixty days after the date of the CMS offer letter.

25. Rogers did not send Medicare a signed acceptance of CMS’s compromise offer to Taylor.

26. Rogers did not take the actions necessary to ensure CMS’s compromise offer to Taylor was timely accepted, to wit: sending a signed acceptance and the payment of \$1,666.66 to the designated BCRC within sixty days of the CMS offer letter.

27. Rogers utilized non-lawyer employees to assist him with post-settlement tasks, including disbursement of funds from a settlement.

28. Rogers did not ensure that his non-lawyer employees took the actions necessary to ensure CMS’s compromise offer to Taylor was timely accepted, including but not limited to coordinating with Rogers regarding the compromise offer when it was received, seeking instruction from Rogers regarding the compromise offer and actions necessary for Taylor to accept it, coordinating with Rogers and/or Taylor regarding executing the required signed acceptance, and/or coordinating with Rogers and/or Taylor regarding the additional \$350.27 needed to pay Medicare the compromise amount of \$1,666.66.

29. Rogers issued to Medicare trust account check number 8511 dated February 1, 2018 for \$1,316.39, which cleared his trust account on February 6, 2018.

30. In May 2018, the U.S. Department of the Treasury (Treasury) began withholding funds from Taylor's monthly Social Security benefit payments to collect the MSP recovery claim.

31. Taylor complained to Rogers regarding Treasury withholding funds from his Social Security benefit payments for the MSP recovery claim.

32. Rogers sent Taylor a letter dated January 31, 2019, in which he made the following statements:

- a. "By letter, they [CMS] indicated to us that they accept \$1,666.63 as compromise payment for your medical bills which had a CMS lien attached to them. However, they either changed their minds or simply made a mistake regarding the amount you owed."
- b. "CMS was paid by this office for the compromise amount and I am at a loss as to why they continue to charge."
- c. "The attached documents show that we paid before the CMS letter came...."

33. Rogers' statements to Taylor in his January 31, 2019 letter included misstatements regarding the nature of the CMS compromise offer, the payment made to CMS, and why CMS pursued collection of its MSP recovery claim plus interest.

34. On or about August 11, 2018, Taylor filed a grievance against Rogers with the North Carolina State Bar.

35. The grievance was initially investigated by the 14th Judicial District Grievance Committee.

36. In response to inquiries in the 14th Judicial District Grievance Committee's investigation, Rogers provided the investigating attorney with a letter dated December 28, 2018 in which he made the following statements:

- a. "By letter dated Sept. 22, 2017, it appears CMS did reduce the lien to \$1,666.66. At the time we received this letter from CMS, we had already paid them \$1,316.39"

37. In response to inquiries in the 14th Judicial District Grievance Committee's investigation, Rogers provided the investigating attorney with documents, including a letter contained in his client file dated July 24, 2017 that appeared to be a letter sent to MSPRC-NGHP regarding the MSP recovery claim with trust account check number 8511 in the amount of \$1,316.39, which letter Respondent later determined was inaccurately dated.

38. Rogers' statements to the investigating attorney with the 14th Judicial District Grievance Committee that he paid Medicare the \$1,316.39 for Taylor prior to the CMS offer letter misrepresented when he paid Medicare. The CMS offer letter was dated September 22, 2017.

Rogers did not issue the trust account check number 8511 to Medicare for the \$1,316.39 until February 1, 2018.

39. After the conclusion of its investigation, the 14th Judicial District Grievance Committee returned the grievance to the North Carolina State Bar for further investigation and action.

40. On August 6, 2019, Rogers met with a deputy counsel and investigators with the North Carolina State Bar concerning the grievance filed by Taylor.

41. During this meeting, Rogers stated the following:

- a. That he had sent payment toward the MSP recovery claim for Taylor prior to receiving the September 22, 2017 compromise offer letter from CMS;
- b. That the letter dated July 24, 2017 was the cover letter his office sent with check 8511 in the amount of \$1,316.39 for payment of the MSP recovery claim.

42. Rogers' statements to the State Bar deputy counsel and investigators misrepresented when he paid Medicare.

43. On August 8, 2019, Rogers sent the deputy counsel and an investigator an e-mail with responses to questions raised during the interview.

44. In his August 8, 2019 e-mail, Rogers made the following statements:

- a. "For some reason CMS took more from Mr. Taylor than they should have."
- b. "In all my years of practice, I have never known CMS to take money from a client's SS check, nor have I had a case where they did not honor a reduction after agreeing to do so and then take more than they were entitled to receive."

45. Rogers' statements that CMS took more from Taylor than it should have, that it did not honor a reduction after agreeing to do so, and that it took more than it was entitled to receive did not accurately reflect what had occurred and why CMS pursued collection of its MSP recovery claim plus interest.

46. Although Rogers' assistant did not send payment to CMS until February 8, 2018 and the cover letter sent to CMS was dated February 8, 2018, there is a version of the cover letter to CMS in Rogers' file for Taylor inaccurately dated July 24, 2017.

47. At the time Rogers made the above-referenced representations to his client, to the 14th Judicial District Grievance Committee, and to the State Bar, he had failed to adequately review his records and had failed to gain an accurate understanding of what had occurred in Taylor's case.

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

CONCLUSIONS OF LAW

1. All the parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, James E. Rogers, and the subject matter.

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

- (a) By failing to deposit entrusted funds belonging to clients G. Barber and E. Vines in the trust account, Defendant failed to properly deposit and maintain entrusted funds in violation of Rule 1.15-2(a) and (b);
- (b) By disbursing, to himself and to others, funds on behalf of clients in excess of funds held in the trust account for the clients, Defendant failed to properly maintain and disburse entrusted funds in violation of Rule 1.15-2(a), (k), and (n);
- (c) By misusing clients' entrusted funds for the payment of bank charges deducted from the funds in his trust account, Defendant failed to properly maintain and disburse entrusted funds in violation of Rule 1.15-2(a), (k), and (n);
- (d) By depositing construction draws from a construction loan to his business into his trust account, Defendant failed to maintain entrusted property separate from the property of the lawyer in violation of Rule 1.15-2(a) and improperly deposited personal funds into his trust account in violation of Rule 1.15-2(f);
- (e) By disbursing fees and/or expenses to himself from the trust account by trust account check that failed to identify the client from whose funds in the trust account the item was drawn, Defendant disbursed funds to himself in an improper manner in violation of Rule 1.15-2(a) and 1.15-2(h);
- (f) Defendant failed to promptly disburse entrusted funds in violation of Rule 1.15-2(n);
- (g) Defendant failed to timely and properly conduct quarterly reconciliations of his trust account in violation of Rule 1.15-3(d)(1);
- (h) Defendant failed to sign reconciliation reports and failed to maintain accurate reconciliation reports in violation of Rule 1.15-3(d)(3);
- (i) Defendant failed to maintain accurate client ledgers in violation of Rule 1.15-3(b)(5);
- (j) Defendant failed to identify on all trust account checks the client from whose funds in the trust account the check was drawn in violation of Rule 1.15-3(b)(2);

- (k) Defendant failed to provide a written accounting of the receipts and disbursements of all trust funds annually to clients for whom he retained funds in his trust account for more than one year in violation of Rule 1.15-3(e);
- (l) As the principal attorney with his law firm, Rogers failed to ensure the firm had in effect measures ensuring that his employees engaged in trust account-related tasks in a manner that was compatible with his professional obligations in violation of Rule 5.3(a);
- (m) As the lawyer with direct supervisory authority over the non-lawyer employees who assisted him with trust account-related tasks, Rogers failed to make reasonable efforts to ensure that his employees engaged in trust account-related tasks in a manner that was compatible with his professional obligations in violation of Rule 5.3(b);
- (n) By delegating post-settlement tasks to his nonlawyer employees, including in Taylor's case, and failing to establish adequate procedures and adequately supervise his nonlawyer employees in the handling of post-settlement tasks, including but not limited to ensuring his employees coordinated with him regarding CMS's compromise offer when it was received, sought instruction from him regarding the compromise offer and actions necessary for Taylor to accept it, and/or coordinated with him regarding the required signed acceptance and the additional money needed to pay the compromise offer, Rogers failed as principal attorney with his law firm to ensure the firm had in effect measures ensuring that his employees engaged in post-settlement tasks in a manner that was compatible with his professional obligations in violation of Rule 5.3(a), failed as the lawyer with direct supervisory authority over his non-lawyer employees to make reasonable efforts to ensure that his employees engaged in post-settlement tasks in a manner that was compatible with his professional obligations in violation of Rule 5.3(b), failed to act with reasonable diligence and promptness in representing Taylor in violation of Rule 1.3; and failed to promptly disburse funds to CMS for Taylor in violation of Rule 1.15-2(n);
- (o) By delegating communication duties to his nonlawyer employees, including with respect to Taylor, and failing to ensure his non-lawyer employees communicated all necessary information to Taylor regarding CMS's compromise offer, the need to accept the offer within sixty days of September 22, 2017 and the consequences for not doing so, and the need for Taylor to provide \$350.27 in addition to the \$1,316.39 held in Rogers' trust account in order to pay Medicare \$1,666.66, Rogers failed as principal attorney with his law firm to ensure the firm had in effect measures ensuring that his employees engaged in client communications in a manner that was compatible with his professional obligations in violation of Rule 5.3(a), failed as the lawyer with direct supervisory authority over his non-lawyer employees to make reasonable efforts to ensure that his employees engaged in client communications in a manner that was compatible with his professional obligations in violation of Rule 5.3(b), and failed to adequately communicate with Taylor regarding the matter in violation of Rules 1.4(a)(2), 1.4(a)(3), and 1.4(b);

- (p) By failing to adequately review his records and making misstatements to Taylor in Roger's January 31, 2019 letter regarding the nature of the CMS compromise offer and why CMS pursued collection of its MSP recovery claim plus interest, Rogers failed to keep the client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3);
- (q) By failing to adequately review his records and misrepresenting to the investigating attorney with the 14th Judicial District Grievance Committee in response to his inquiries in the grievance investigation when he paid Medicare \$1,316.39 and that trust account check 8511 was sent to Medicare with the letter he had provided dated July 24, 2017, Rogers engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d); and
- (r) By failing to adequately review his records and misrepresenting to the State Bar in response to its inquiries in its grievance investigation when he paid Medicare \$1,316.39, that trust account check 8511 was sent to Medicare with the letter he had provided dated July 24, 2017, and the nature of the CMS compromise offer and why CMS pursued collection of its MSP recovery claim plus interest, Rogers engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

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

FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1 – 47 above are reincorporated as if set forth herein.
2. A cornerstone of client trust in an attorney is that the attorney will properly protect, maintain, and disburse entrusted funds. Failure to do so erodes the confidence clients place in attorneys who handle their affairs and harms the profession.
3. The trust account record-keeping, review, and reconciliation requirements of the Rules of Professional Conduct are designed to assist with the proper protection, maintenance, and disbursement of entrusted funds, and to facilitate prompt detection and correction of any errors. Defendant's failure to have complied with these requirements as set out above caused significant harm, including misuse of entrusted funds by payment of bank charges from the trust account and by disbursements for clients for whom he had no funds in the trust account at the time of disbursement or for whom he made disbursements in excess of funds in the trust account for the client.
4. To the extent an attorney utilizes non-attorney assistants to accomplish client or trust account-related tasks, the attorney remains responsible for supervising the assistant to ensure that the delegated tasks are accomplished in compliance with the Rules of Professional Conduct.

By failing to sufficiently supervise his assistant, Defendant caused significant harm to Taylor and potential significant harm to clients with funds in his trust account.

5. Clients depend on their attorneys to provide them with accurate information about their representation. The grievance committees of the local judicial districts and of the State Bar rely upon attorneys to fully and fairly respond to its inquiries in order to fulfill their duties to regulate the profession. Despite being on notice of the questions raised by Taylor with respect to Rogers' representation and the payment to CMS, Rogers failed to exercise the care necessary to ensure the information he provided to Taylor, to the 14th Judicial District Grievance Committee, and to the State Bar was accurate. Rogers' misrepresentations, although unintentional, caused potential significant harm to his client and to the administration of justice in that Taylor, the 14th Judicial District Grievance Committee, and/or the State Bar might have been misled regarding the facts and circumstances of his payment to CMS.

6. Defendant received an admonition in January 2018 for conflict of interest, excessive fees from funds collected from medical payment coverage, and trust account issues occurring in or prior to late 2014, including for the following: failure to reconcile his trust account, disbursing more funds for clients than was in the trust account for the clients, failure to promptly reimburse the trust account for a deficit caused by a returned deposit, and failure to promptly disburse funds.

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

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

CONCLUSIONS REGARDING DISCIPLINE

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

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

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

- a. Factor (E), Negative impact of Defendant's actions on client's and public's perception of the profession;
- b. Factor (F), Negative impact of Defendant's actions on the administration of justice; and
- c. Factor (G) Impairment of the client's ability to achieve the goals of the representation.

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

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

- a. Factor (A), Prior disciplinary offenses;
- b. Factor (F), A pattern of misconduct;
- c. Factor (G), Multiple offenses;
- d. Factor (K), Full and free disclosure to the Hearing Panel and a cooperative attitude toward the proceedings;
- e. Factor (Q), Good character and reputation;
- f. Factor (R), Vulnerability of victim, client Taylor; and
- g. Factor (S), Degree of experience in the practice of law.

6. The Hearing Panel considered all of the disciplinary options available to it and determined that a stayed suspension with conditions is appropriate in this case, in light of the significant harm and potential harm caused by Defendant's conduct to his clients and the profession. A stayed suspension with conditions designed to ensure all necessary corrections are made to achieve and maintain full compliance with Rules, including the trust account record-keeping, review, and reconciliation requirements of the Rules of Professional Conduct, is necessary to protect clients and the public.

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

- a. Supervision under a stayed suspension is necessary to ensure all required corrections are made and sustained; and
- b. Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses Defendant committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar of this State.

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

ORDER OF DISCIPLINE

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

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

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

- a. Defendant timely paid the administrative fees and costs as set out in paragraph 2;
- b. Defendant has made arrangements in writing for a Trust Account Monitor approved by the Office of Counsel of the North Carolina State Bar. Defendant will be responsible for any associated costs. The Trust Account Monitor shall agree in writing – such documentation to be provided to the Office of Counsel within 30 days of entry of this Order – to do the following:
 - (1) Review all transactions in any and all trust accounts utilized by Defendant each month, no later than the 20th day of the next subsequent month (e.g. review the transactions for January no later than February 20), with such review to include per trust account review of the bank statements, canceled checks, deposit slips, deposited items, any bank instrument by which funds were deposited into or disbursed from the trust account, the general ledger for the trust account, and any and all subsidiary trust account ledgers (handwritten and from any software program utilized by Defendant) including those required by Rule 1.15-3(b)(5) for all clients for whom funds were received, disbursed, or maintained in the trust account in that month;
 - (2) Verify and certify that a client identifier was used, and the same client identifier was consistently used per client, across all applicable records that month, including on the client's subsidiary trust account ledger, on the general ledger, on any trust account check or other instrument disbursing funds from the trust account, and on any deposit slip depositing funds for the client into the trust account;
 - (3) Verify that voided checks did not result in the appearance on client ledgers or otherwise that funds are in the trust account for the client prior to any actual receipt of funds in the trust account for the client and that voided

checks were not included in the list of outstanding checks used to adjust the bank statement balance during the reconciliation process; and

- (4) Verify and certify for the month that all bank transactions (including all deposits, disbursements, bank charges, etc.) are recorded on a general ledger for the trust account and on an appropriate subsidiary trust account ledger and all entries on all general ledgers and all subsidiary trust account ledgers (handwritten and from any software program utilized by Defendant) accurately reflect the corresponding bank transaction.
- c. Defendant shall provide each month, no later than the 20th day of the next subsequent month (e.g. certification for January due no later than February 20), a certification from the Trust Account Monitor verifying and certifying the following:
- (1) That the Trust Account Monitor reviewed all transactions in any and all trust accounts utilized by Defendant that month, with such review to include, for each trust account, review of the bank statements, canceled checks, deposit slips, deposited items, any bank instrument by which funds were deposited into or disbursed from the trust account, the general ledger for the trust account, and the subsidiary trust account ledgers including those required by Rule 1.15-3(b)(5) for all clients for whom funds were received, disbursed, or maintained in the trust account in that month;
 - (2) That all bank transactions (including all deposits, disbursements, bank charges, etc.) are recorded on the general ledger for the pertinent trust account and on an appropriate subsidiary trust account ledger and all entries on all general ledgers and subsidiary trust account ledgers accurately reflect the corresponding bank transaction;
 - (3) That a client identifier was used, and the same client identifier was consistently used per client, across all applicable records that month, including on the client's subsidiary trust account ledger, on the general ledger, on any trust account check or other instrument disbursing funds from the trust account, and on any deposit slip depositing funds for the client into the trust account; and
 - (4) Verify that voided checks did not result in the appearance on client ledgers or otherwise that funds are in the trust account for the client prior to any actual receipt of funds in the trust account for the client and that voided checks were not included in the list of outstanding checks used to adjust the bank statement balance during the reconciliation process.
- d. If the Trust Account Monitor finds any inaccuracies or deficiencies in conducting the above-described reviews, such that he or she cannot make any of the above certifications, then the Trust Account Monitor shall make the certifications that are

accurate, identify which certifications he or she cannot make, and identify the inaccuracies, deficiencies, or other reasons resulting in his or her inability to make the identified certification;

- e. Within ten days of any report by the Trust Account Monitor that he or she cannot make any of the above-required certifications due to inaccuracies, deficiencies, or other reasons, Defendant shall correct any inaccuracies, deficiencies, or other issues identified by the Trust Account Monitor resulting in the Trust Account Monitor's inability to make a required certification and shall provide documentation to the North Carolina State Bar Office of Counsel of the correction(s) and a certification from the Trust Account Monitor verifying that all necessary corrections have been made and making the certification he or she was previously unable to make;
- f. Defendant shall have established and shall follow written procedures, to be provided to the Office of Counsel within 30 days of entry of this Order, setting forth the personnel to be involved, the documents to be utilized, and the process to be implemented, to accomplish the following:
 - i. Ensuring a client subsidiary trust account ledger is created for the client at the time of any deposit of entrusted funds into a trust account for the client;
 - ii. Ensuring an accurate and appropriate entry is made on the client subsidiary trust account ledger for the client at the time of any deposit or disbursement of funds for the client in the trust account;
 - iii. Ensuring a folder (paper or electronic) is created and maintained per client, with any and all versions of the client folder containing the same contents, which shall include but is not limited to, true and accurate copies of the following: any and all correspondence to and from the client; any and all correspondence to and from any person or entity in connection with the representation; notes of any substantive conversation by staff with any person in connection with the representation; any and all documents signed by the client; any and all documents signed by Defendant or his staff in the representation; any and all documents sent to any person or entity by Defendant or his staff in the representation; the most current client subsidiary trust account ledger; a copy of each deposit slip and deposited item for any deposits made for the client into a trust account; and a copy of every trust account check, wire confirmation, or other instrument by which funds were disbursed from the trust account for the client. If Defendant utilizes a computer software program for trust account record-keeping and for the reports utilized in the three-way reconciliation, then the client subsidiary trust account ledger shall be printed from that program and maintained in the folder. If Defendant utilizes both handwritten ledgers and computer software program ledgers, then a copy of both shall be maintained in the client's file;

- iv. Ensuring Defendant thoroughly reviews his records, including the above-referenced folder for any pertinent client, and gains an accurate understanding of the pertinent facts, events, and circumstances prior to communicating with the client or any representative of the State Bar or a local district bar;
- v. Ensuring the client subsidiary trust account ledger is checked and the balance of funds in the trust account for the client is verified prior to any disbursement of funds being made from the trust account for the client;
- vi. Ensuring funds are promptly disbursed, including specific procedures for funds received from medical payments coverage, funds received for property damage, and funds received for damages (either by litigation or settlement);
- vii. Ensuring clients are notified in writing upon each and every receipt of entrusted funds for the client;
- viii. Ensuring accountings are sent annually to clients for whom funds are held in trust for more than one year;
- ix. Ensuring that trust account checks that have not been negotiated and cleared the trust account within six months of issuance are promptly investigated and action is promptly taken to complete those disbursements;
- x. Timely monthly reconciliations of every trust account compliant with Rule 1.15-3(d)(2) and preparation and maintenance of the records required by Rule 1.15-3(d)(2) and (3). These procedures shall include provisions ensuring that voided checks are not included in the list of outstanding checks used to adjust the bank statement balance during the reconciliation process;
- xi. Timely quarterly reconciliations of every trust account compliant with Rule 1.15-3(d)(1) and preparation and maintenance of the records required by Rule 1.15-3(d)(1) and (3). These procedures shall include provisions ensuring that voided checks do not result in the appearance on client ledgers or otherwise that funds are in the trust account for the client prior to any actual receipt of funds in the trust account for the client and ensuring that voided checks are not included in the list of outstanding checks used to adjust the bank statement balance during the reconciliation process;
- xii. Timely monthly reviews of every trust account compliant with Rule 1.15-3(i)(1) and preparation and maintenance of the records required by Rule 1.15-3(i)(1) and (5); and

- xiii. Timely quarterly reviews of every trust account compliant with Rule 1.15-3(i)(2) and (3) as applicable, and maintenance of the records required by Rule 1.15-3(i)(2), (3), and (5).
- g. Defendant shall make any adjustments to his written procedures required by the Office of Counsel at any time during the stayed suspension to ensure compliance with the Rules of Professional Conduct, and shall provide revised written procedures within ten days of notice from the Office of Counsel;
- h. Defendant shall provide each month, no later than the 20th day of the next subsequent month (e.g. certification for January due no later than February 20), a certification by him that all written procedures were followed by him, by any other attorneys in his firm, and by all staff in his firm with respect to all trust accounts and all trust account transactions that month. If there was any failure to follow a written procedure, any and all such deficiencies shall be identified, explained, and corrective action implemented to ensure the procedure at issue is followed in the future. If Defendant identifies a need to change any procedure, Defendant must submit to the Office of Counsel the proposed change with explanation for approval, and must receive approval prior to implementing the change;
- i. Defendant provides monthly to the State Bar's Office of Counsel a written report of the three-way reconciliation of all attorney trust accounts to which he has access, using the State Bar's Reconciliation Report form from the State Bar's website and the reconciliation methods described in the State Bar Lawyer's Trust Account Handbook on the State Bar's website, and including with each such report, for the account and period covered by the report, the following documents: (1) list of clients whose funds are held in the trust account that includes the amount of each client's funds, an entry for any office funds in the account to maintain the account and the total of all positive balances; (2) ledger for each client and for any personal funds of Defendant in the account; (3) general ledger; (4) bank statement; (5) canceled checks; (6) deposit slips; (7) deposited items; and (8) bank statement for any account into which funds are directly transferred from the trust account. This documentation is due 20 days after the end of each month (e.g. documentation for January due February 20th, etc.);
- j. For the first six months of the stay of Defendant's suspension, Defendant shall personally complete the Reconciliation Report form required by the preceding paragraph each month. After the first six months, Defendant may utilize an assistant to complete sections 1 – 7 of the Reconciliation Report form required by the preceding paragraph each month, but must still personally review the underlying reconciliation documentation, the bank statement, and the canceled checks, and sign and date at the bottom of the form;
- k. Defendant provides any other trust account related documentation or records requested by the Office of Counsel within 10 days of the request;

- l. Each quarter, Defendant shall have either his Trust Account Monitor or an accountant audit all trust accounts. Defendant will be responsible for any associated costs. This audit shall assess whether Defendant has in the trust account(s) the client funds he is required to maintain for clients at that time, as well as Defendant's compliance with Rule 1.15-2 and Rule 1.15-3. The audit shall address the items on the Report Template form which will be provided by the State Bar to Defendant. The quarterly audit reports are due no later than 30 days after the end of the quarter – for example, the audit for the first quarter of the calendar year (January, February, and March) is due on April 30;
- m. If a monthly three-way reconciliation report, a Trust Account Monitor review, a quarterly audit, or other review reveals any deviation from Defendant's obligations under Rule 1.15-2 or Rule 1.15-3, Defendant shall take remedial action and shall, within ten days of the date of such report, review, or audit, provide documentation to the Office of Counsel showing the remedial action. If State Bar review revealed the deviation, Defendant shall take remedial action within ten days of the date of the correspondence notifying him of the issue;
- n. For each calendar year of the stayed suspension, Defendant completes one additional hour of CLE on the topic of trust account management and one additional hour of CLE on the topic of law office management and/or supervision of non-attorney assistants. These CLE requirements are in addition to Defendant's other CLE requirements;
- o. Defendant keeps the State Bar's Membership Department advised of his current business address, which address must be a street address, not a post office box or drawer;
- p. Defendant notifies the State Bar of any change of address within 10 days of such change;
- q. Defendant responds to all communications from the State Bar, including communications from the Attorney Client Assistance Program, within 30 days of receipt of such communication or by the deadline stated in the communication, whichever is sooner;
- r. Defendant participates in good faith in the State Bar's fee dispute resolution process for any petition of which he receives notice after the effective date of this Order;
- s. Defendant does not violate the Rules of Professional Conduct; and
- t. Defendant does not violate the laws of the United States or any state or local government, the violation of which would reflect adversely on Respondent's honesty, trustworthiness, or fitness as a lawyer in other respects.

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

5. If during the stay of the suspension Defendant fails to comply with any one or more of the conditions stated above, then the stay of the suspension of Defendant's law license may be lifted as provided in 27 N.C. Admin. Code 1B.0118.

6. If the stay of the suspension is lifted and the suspension is activated for any reason, upon application for another stay or for reinstatement, as permitted and applicable under the pertinent order(s) and rules, Defendant shall demonstrate by clear, cogent, and convincing evidence compliance with the requirements of the applicable rule as well as with the following requirements:

- a. Defendant properly wound down his law practice and complied with the terms of 27 N.C. Admin. Code 1B.0128;
- b. Defendant submitted his law license and membership card to the Secretary of the State Bar no later than 30 days following the effective date of the order lifting the stay;
- c. Within 15 days of the effective date of this Order, Defendant shall have provided the Office of Counsel and the Membership Department of the State Bar with an address and telephone number at which clients seeking return of files can communicate with Defendant and obtain such files. Defendant must have kept this information current with the Membership Department of the State Bar, providing updated information to the State Bar within 15 days of any change;
- d. Defendant shall have promptly returned client files in his possession, custody, or control to clients upon request, as soon as possible and no later than 15 days after receipt of such request. Defendant will be deemed to have received any such request 3 days after the date such request is sent to Defendant if the request is sent to the address Defendant provided the Membership Department of the State Bar pursuant to the preceding paragraph;
- e. Defendant disbursed to the proper recipients all identified client funds in any trust account he maintained upon the termination of his representation by the activation of his suspension;

- f. If Defendant maintained any funds in any trust account for which he could not identify the client for whom he was holding the funds, then prior to petitioning for reinstatement, Defendant, at his own expense, shall have retained a certified public accountant or other qualified accounting professional (hereafter collectively "CPA") approved in advance by the Office of Counsel, to audit his trust accounts to identify the beneficial owners of all funds in Defendant's trust account(s), and shall have made any necessary reimbursements to the trust account and disbursed to the proper recipients all identified client funds. Defendant will include with any petition for reinstatement the report of the CPA and all documentation of deposits and disbursements made based upon the report of the CPA;
- g. Defendant complied with Rule 1.15-2(r) and Chapter 116B of the General Statutes regarding any and all abandoned or unidentified funds in any trust account of Defendant's within 30 days of being statutorily permitted to escheat funds to the State;
- h. Defendant completed four hours of continuing legal education in the area of trust account management approved by the Office of Counsel of the State Bar, including at least one CLE by the Trust Account Compliance Counsel for the North Carolina State Bar;
- i. Defendant provided the written procedures described in paragraph 3.f. of this section to the Office of Counsel of the State Bar with his motion for stay or petition for reinstatement;
- j. Defendant kept the Membership Department of the State Bar informed of his current information for his physical address (not a Post Office box), telephone number, and e-mail address throughout the period of his suspension;
- k. Defendant accepted all certified mail from the State Bar sent to the address on record with the Membership Department of the North Carolina State Bar throughout the period of the suspension;
- l. Defendant responded to all letters of notice and requests for information from the North Carolina State Bar by the deadline stated therein with full and complete responses and all requested documentation throughout the period of his suspension;
- m. Defendant came into compliance with any outstanding continuing education or membership obligations at the time of the filing of his petition for reinstatement;
- n. Defendant did not violate any of the Rules of Professional Conduct in effect during the period of the suspension;
- o. Defendant did not violate any laws of the State of North Carolina or of the United States during the period of the suspension, the violation of which would reflect adversely on Respondent's honesty, trustworthiness, or fitness as a lawyer in other respects;

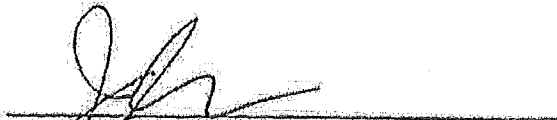
- p. Defendant paid all costs and fees of this proceeding as assessed by the Secretary by the date of the filing of his petition for reinstatement; and
- q. If Defendant failed to fully comply with 27 N.C. Admin. Code 1B.0128, Defendant shall reimburse the State Bar for any and all expenses incurred by the State Bar in winding down Defendant's practice. Such expenses may include, but are not limited to, storage facility fees, rent payments, moving expenses, charges for secure disposal of client files, postage or other mailing expenses and compensation paid to any appointed trustee and/or the trustee's assistant for time and travel associated with the trusteeship. The State Bar shall send an invoice of wind-down expenses to Defendant at Defendant's last known address of record with the State Bar. Defendant shall not be eligible for any stay of suspension or reinstatement from suspension until he has reimbursed the State Bar for any wind-down expenses incurred.

6. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code 1B.0118 until all conditions of the stay of the suspension are satisfied.

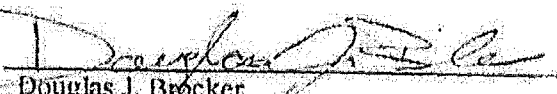
Signed by the Chair with the consent of the other Hearing Panel members, this the 26th day of May, 2021.


Stephanie N. Davis, Chair
Disciplinary Hearing Panel

WE CONSENT:


James E. Rogers
Defendant

May 17, 2021
Date


Douglas J. Brocker
Attorney for Defendant

May 17, 2021
Date


Jennifer A. Porter, Deputy Counsel
Attorney for Plaintiff

May 17, 2021
Date