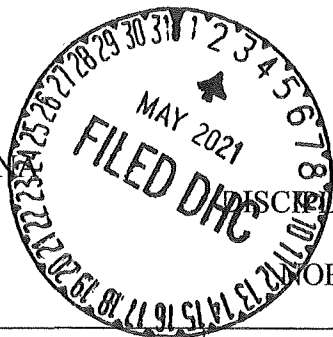


STATE OF NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
20 DHC 6

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

KENNETH G. ORDING, Attorney,

Defendant

CONSENT  
ORDER OF DISCIPLINE

THIS MATTER was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Shannon R. Joseph, Chair, and members Fred W. DeVore, III and Brandon Gosey. Jennifer A. Porter represented Plaintiff, the North Carolina State Bar. Defendant, Kenneth G. Ording, was represented by Alan M. Schneider.

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.

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, Kenneth G. Ording (“Ording”), was admitted to the North Carolina State Bar in 2005, 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, Ording was engaged in the practice of law in the State of North Carolina and maintained a law office in Hampstead, Pender County, North Carolina.

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

5. On May 16, 2018, Ording's trust accounts were the subject of a random audit by the North Carolina State Bar.

6. At the time of the random audit, Ording maintained two attorney trust accounts at Coastal Bank & Trust Company, account numbers ending in the digits 5668 ("TA 5668") and 5650 ("TA 5650").

7. Ording delegated trust accounting tasks, including the issuance of checks from his trust accounts, to his nonlawyer assistant(s).

8. Ording did not substantively supervise his staff's trust account activities, and did not independently review trust account reconciliations, bank statements, trust account checks, or trust account records.

9. Prior to the random audit, Ording failed to conduct reconciliations of his trust accounts in which he compared the total of all subsidiary trust account ledgers with a positive balance with his general ledger balance and his adjusted bank statement balance for each trust account quarterly (hereinafter "quarterly reconciliation").

10. Prior to the random audit, Ording failed to conduct reconciliations of his trust accounts in which he compared the balance of the trust account shown in his records and the bank statement balance for each trust account monthly.

11. Prior to the random audit, Ording did not each month review the bank statement and cancelled checks for his trust accounts.

12. Prior to the random audit, Ording did not review the statement of costs and receipts, client ledger, and cancelled checks of a random sample of representative transactions completed during the quarter on a quarterly basis for each trust account.

13. In addition to finding Ording had failed to conduct the required monthly and quarterly trust account reconciliations and reviews, the May 16, 2018 audit showed the following:

- a. Ording disbursed more funds from his trust account for clients than he had in the trust account for such clients;
- b. Ording failed to identify the source of funds if the source was not the client on deposit slips and bank receipts;
- c. Ording failed to maintain images of the front and back of cancelled checks; and
- d. Ording did not maintain required reconciliation reports for his trust accounts.

14. Further investigation of TA 5668 revealed that Ording's disbursements of more funds for clients than he had in TA 5668 for such clients from January 1, 2017 to June 30, 2018 created a deficiency of over \$30,000.00.

15. Additional investigation of Ording's trust accounts TA 5668 and TA 5650 through May 31, 2019 also revealed the following misconduct in addition to the findings from the random audit:

- a. Ording failed to promptly disburse entrusted funds, including funds that should have been disbursed for title insurance premiums and funds due to clients;
- b. Ording failed to maintain complete and accurate records of all entrusted property he received, including failing to create and maintain client ledgers for all clients for whom he deposited funds into a trust account;
- c. Ording failed to provide written accountings to clients at completion of disbursement or at least annually if funds held more than 12 months;
- d. Ording paid bank charges with entrusted funds;
- e. Ording failed to deposit mixed funds that included funds for filing and service fees for client CT into a trust account, instead depositing the funds into his operating account. In November 2018, when the time came to pay the filing and service fees, Ording's assistant issued the checks from TA 5650. Ording had no funds in TA 5650 for that client at that time; and
- f. Ording maintained and submitted inaccurate client ledgers for TA 5668 to the State Bar. The ledgers were altered to make client ledgers with negative balances resulting from Ording having disbursed more funds for those clients than he had in TA 5668 for the clients appear to have balances of zero as if no excessive disbursement had occurred. Those ledgers included the following: Day 2017, altered to state that a wire out in the amount of \$22,225.00 was for \$22,200.00; Frost 2017, altered to state that a wire received into TA 5668 in the amount of \$162,554.51 was for \$165,448.91; Sayre, altered to state that check #7061 issued from TA 5668 in the amount of \$14,872.02 was for \$14,372.02; and Stepp 2018, altered to state that a wire received into TA 5668 in the amount of \$61,228.99 was for \$62,819.89.

16. In addition to the November 2018 improper disbursement from TA 5650 for client CT described above, Ording continued to disburse more funds for clients than he had in the pertinent trust account for the client after the random audit and through May 31, 2019 as follows:

- a. On March 20, 2019, for client EH in TA 5650, Ording disbursed \$20.00 more to himself for attorney's fees that the client had in the trust account. Ording reimbursed TA 5650 in May 2019;

- b. On May 22, 2019, for the Estate of JS in TA 5650, Ording disbursed \$15.00 more for this matter from TA 5650 than he had in his trust account for this matter. Ording reimbursed TA 5650 in July 2019;
- c. In January 2019, Ording's final check for client Sperano-2018 cleared TA 5668. The total of the checks that cleared TA 5668 for this client exceeded the amount in TA 5668 for this client by \$1,066.95;
- d. In February and March 2019, for client Carroll-2019, four checks totaling \$40,682.32 cleared TA 5668 at a time when Ording had no money for Carroll-2019 in TA 5668 because he had deposited the funds for Carroll-2019 in TA 3043<sup>1</sup>. Ording reimbursed TA 5668 in March 2019;
- e. In February 2019, for client Clark-2019, three checks totaling \$857.50 cleared TA 5668 at a time when Ording had no money for Clark-2019 in TA 5668 because he had deposited the funds for Clark-2019 in TA 3043. Although he disbursed one check from TA 3043, he disbursed these other three checks from TA 5668. Ording reimbursed TA 5668 in March 2019;
- f. In February 2019, for client Jackson-2018, Respondent disbursed \$268.11 from TA 5668 at a time when he had no money identified for client Jackson-2018 in TA 5668; and
- g. In April 2019, Respondent's final check for client P. Sniff-2019 cleared TA 5668. The total of the checks that cleared TA 5668 for this client exceeded the amount in TA 5668 for this client by \$5.05.

17. Ording failed to maintain accurate client ledgers, including as follows:

- a. The Sperano-2018 ledger failed to include trust account check #7735 for \$1,066.95 that resulted in the excess disbursement of \$1,066.95; and
- b. The P. Sniff-2019 ledger failed to show the wire into the trust account that returned a prior wire out of the trust account less \$45.00, and failed to show the subsequent wire out of the trust account in an amount that caused the \$5.05 over-disbursement

18. In quarterly reconciliations conducted in 2019, including in May, June, and July 2019, for TA 5668 and TA 5650, Ording failed to identify and include all client balances, omitting clients for whom he had deposited funds into the pertinent trust account and not fully disbursed all funds for the client at the time of the reconciliation.

---

<sup>1</sup> Ording opened a new trust account at Coastal Bank & Trust, account number ending in digits 3043, in about December 2018, with the stated intent of utilizing it for real estate transactions and eventually closing TA 5668 which he had previously used for real estate transactions.

19. Ording made deposits into TA 5668 to remedy deficiencies created by his improper disbursements, but failed to identify for which clients' deficiencies he was depositing funds and in what amounts per client when he made these deposits.

20. Notwithstanding his failure to accurately identify client balances he should have in TA 5668, his failure to accurately identify deficiencies he had created in TA 5668, and his failure to identify for which clients he had deposited funds to cure deficiencies in TA 5668, Ording disbursed \$3,366.00 from TA 5668 to himself on May 31, 2019 in purported retrieval of personal funds he had deposited into TA 5668 to reimburse deficiencies.

21. Ording used a subsidiary trust account ledger titled EMD Ledger 2019 for TA 3043 on which he listed deposits of entrusted funds for specific clients, including AD and DJ/LJ.

22. Ording failed to create client ledgers for AD and DJ/LJ upon the deposit of their funds into the trust account listed on the EMD Ledger 2019.

23. Ording recorded bank fees against the funds listed on the EMD Ledger 2019, including a July 2019 wire fee.

24. The wire fee was deducted from the funds belonging to DJ/LJ listed on the EMD Ledger 2019 until Ording reimbursed the wire fee amount in August 2019.

25. Ording failed to maintain funds belonging to him in TA 3043 sufficient to maintain the account and provide funds for bank service charges and failed to maintain an appropriate administrative subsidiary trust account ledger for such funds and expenses.

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, Kenneth G. Ording, 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 compare the total of all subsidiary trust account ledgers with a positive balance with his general ledger balance and his adjusted bank statement balance for each trust account each quarter, Ording failed to conduct quarterly reconciliations of his trust accounts in violation of Rule 1.15-3(d)(1);

- (b) By failing to compare the balance of the trust account shown in his records and the bank statement balance each month for each trust account, Ording failed to conduct monthly reconciliations of his trust accounts in violation of Rule 1.15-3(d)(2);
- (c) By failing to review the bank statement and cancelled checks for his trust account each month for each trust account, Ording failed to conduct monthly reviews of his trust accounts in violation of Rule 1.15-3(i)(1);
- (d) By failing to review the statement of costs and receipts, client ledger, and cancelled checks of a random sample of representative transactions completed in his trust account during the quarter on a quarterly basis for each trust account, Ording failed to conduct quarterly reviews of his trust accounts in violation of Rule 1.15-3(i)(2);
- (e) By disbursing more funds for clients than he maintained in the pertinent trust account for such clients at that time, Ording failed to properly maintain and disburse entrusted funds in violation of Rule 1.15-2(a), (k), and (n);
- (f) By failing to promptly complete disbursements of entrusted funds, including funds that should have been disbursed for title insurance and funds due to clients, Ording failed to promptly disburse entrusted funds in violation of Rule 1.15-2(n) and failed to diligently complete disbursements for client matters in violation of Rule 1.3;
- (g) By failing to maintain complete and accurate records of his receipt and disbursement of entrusted funds per client, including failing to create and maintain client ledgers for all clients for whom he deposited funds into a trust account, failing to maintain accurate clients ledgers showing all receipt and disbursement of funds in the pertinent trust account per client, and failing to accurately identify all client balances he should be maintaining in his trust accounts, Ording failed to maintain required records in violation of Rule 1.15-3(b)(5) and failed to properly identify and maintain entrusted funds in violation of Rule 1.15-2(a);
- (h) By submitting to the State Bar inaccurate client ledgers that were altered to make client ledgers with negative balances resulting from Ording having disbursed more funds for those clients than he had in TA 5668 for the clients appear to have balances of zero as if no excessive disbursement had occurred, with reckless disregard for the truth or falsity of the ledgers he submitted, Ording engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- (i) By paying bank charges with entrusted funds, Ording failed to properly maintain and disburse entrusted funds in violation of Rule 1.15-2(a), (f), (k), and (n);
- (j) By failing to provide written accountings to clients at completion of disbursement or at least annually if funds held more than 12 months, Ording failed to provide clients with required accountings of the receipts and disbursements of all entrusted funds in violation of Rule 1.15-3(e);

- (k) By failing to deposit entrusted funds in his trust account, including funds received in combination with funds belonging to Ording for his attorney's fee, Ording failed to properly maintain and deposit entrusted funds in violation of Rule 1.15-2(a), (b), and (g);
- (l) By delegating trust accounting tasks, the issuance of checks from his trust account, to his nonlawyer assistant(s) and failing to substantively supervise his staff's trust account activities, and failing to independently review trust account reconciliations, bank statements, trust account checks, or trust account records, Ording failed to make reasonable efforts to ensure that the nonlawyer's conduct was compatible with his professional obligations in violation of Rule 5.3(b);
- (m) By failing to identify the source of funds deposited into the trust account on the record of deposit (deposit slips), Ording failed to maintain minimum records for his trust accounts in violation of Rule 1.15-3(b)(1);
- (n) By failing to maintain images of the front and back of cancelled checks, Ording failed to maintain minimum records for his trust accounts in violation of Rule 1.15-3(b)(2);
- (o) By failing to maintain required reconciliation reports for his trust accounts, Ording failed to maintain required records in violation of Rule 1.15-3(d)(3); and
- (p) By failing to identify for which clients' deficiencies he was depositing funds and in what amounts per client when he made these deposits, Ording failed to identify the client on whose behalf he was depositing funds into his trust account in violation of Rule 1.15-3(b)(1) and failed to properly identify and maintain entrusted funds in violation of Rule 1.15-2(a).

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 – 25 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 to clients for whom he should have been maintaining funds in trust, including repeated failures to identify and maintain funds in trust for clients and repeated improper disbursements from his trust accounts.

4. To the extent an attorney utilizes non-attorney assistants and/or software programs to carry out tasks for the trust account, the attorney remains responsible for supervising the assistants and/or reviewing the reports of the software program to ensure the trust account records, reviews, and reconciliations are in compliance with the Rules of Professional Conduct. By failing to sufficiently supervise his assistant and by failing to ensure his client ledgers accurately reflected the pertinent trust account transactions, Defendant caused significant harm and potential harm to clients with funds in his trust accounts by creating circumstances under which funds could be, and were, improperly disbursed from his trust accounts.

5. Despite notice from the State Bar of inaccuracies in his client ledgers and being provided with spreadsheets showing the actual bank transactions per client, Defendant continued to rely on his inaccurate client ledgers in his trust accounting and reconciliations.

6. Defendant did not consistently use the same client identifier per client across all pertinent trust account records, including the client ledger, trust account checks, and deposit slips, sometimes referring to the same client with different names or descriptions on these records. Defendant's failure to use one consistent client identifier per client across all pertinent trust account records hindered accurate identification of the clients for whom funds were disbursed from his various trust accounts and of the clients for whom funds remained in the respective trust accounts.

7. Defendant has funds in one of his trust accounts (TA 5668) for which he cannot identify the client(s) to whom the funds belong.

8. Defendant disbursed all funds from TA 5650 without having maintained and accounted for all clients for whom funds had been deposited into this trust account and not fully disbursed by disbursements identified as for such client in the bank records.

9. Defendant has no prior discipline.

10. Defendant acknowledges that his prior practices with his trust account have not been in compliance with the Rules of Professional Conduct, is remorseful, and has made efforts to come into compliance with the Rules.

11. Defendant has undertaken procedures designed to ensure each client's balance in the trust account is accurate and is checked prior to disbursements from the pertinent trust account for such client.

12. 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 factor 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 (B), Intent of Defendant to commit acts where the harm or potential harm is foreseeable.

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), absence of prior disciplinary offenses;

b. Factor (C), Absence of dishonest or selfish motive;

c. Factor (D), Timely good faith efforts to make restitution and to rectify consequences of misconduct;

d. Factor (F), A pattern of misconduct;

e. Factor (G), Multiple offenses;

f. Factor (K), Full and free disclosure to the Hearing Panel and a cooperative attitude toward the proceedings;

g. Factor (P), Remorse; and

h. 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 suspension 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 suspension with conditions for a stay of the suspension and/or for reinstatement designed to achieve and maintain full compliance with 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 suspension would not adequately protect the public for the following reasons:

- a. A suspension with conditions designed to ensure measures are in place to achieve and maintain full compliance with the trust account record-keeping, review, and reconciliation requirements of the Rules of Professional Conduct prior to Defendant continuing to practice law is necessary to protect clients and the public;
- b. Supervision under a stayed suspension is necessary to ensure all required corrections are made and sustained; and
- c. Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses Defendant committed and would send the wrong message to attorneys and 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, Kenneth G. Ording, is hereby suspended from the practice of law for four 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 four-year suspension is stayed for four 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 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:
  - (1) Ensuring a client identifier is used, and only one client identifier is used per client, on all pertinent trust account records, including on the client subsidiary trust account ledger, the general ledger, deposit slips, trust account checks, wire documentation, counter debits or credits, and any

other instrument by which funds are deposited into or disbursed from a trust account for the client;

- (2) 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;
- (3) 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;
- (4) Ensuring no entry is made on a client subsidiary trust account ledger other than entries for actual deposits into or disbursements from the trust account (e.g. billing/invoicing record-keeping must be done separately);
- (5) Ensuring a folder (paper or electronic) is created and maintained per client containing the most current client subsidiary trust account ledger and 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. For handwritten ledgers, the procedures must include ensuring that the copy of the handwritten ledger is clear and legible;
- (6) 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. For handwritten ledgers, the procedures must include Defendant verifying that each balance in the running balance column was calculated accurately and is correct and notating this verification in some manner on the ledger;
- (7) Ensuring clients are notified in writing upon each and every receipt of entrusted funds for the client;
- (8) Ensuring accountings are sent annually to clients for whom funds are held in trust for more than one year;
- (9) Timely completion of disbursements, including procedures for monitoring client balances and promptly disbursing all funds in trust for the client, and for monitoring outstanding checks and for taking action to complete

disbursements for checks that have not been negotiated and cleared the trust account within six months of issuance;

- (10) 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);
- (11) 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);
- (12) 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
- (13) 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).

- b. 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;
- c. Defendant and all attorneys and staff in his office will follow the written procedures provided to the Office of Counsel. Defendant shall provide each month, no later than the 15<sup>th</sup> day of the next subsequent month (e.g. certification for January due no later than February 15), 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;
- d. Defendant shall provide 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 for the three-way reconciliation normally required quarterly under Rule 1.15-3(d)(1). Defendant shall complete the entire form for each trust account and include with each such report all documents identified on the form for when the entire form is completed, along with the subsidiary trust account ledger for every client for whom funds were deposited,

maintained, or disbursed at any point in time during that month and any administrative ledger for Defendant's funds in the trust account to maintain the account. The copies of the subsidiary ledgers produced to and received by the State Bar must be clear and legible. The client subsidiary trust account ledgers shall contain an accurate and appropriate entry for each deposit and disbursement of funds for the client in the trust account with an accurate running balance, and shall not contain any other entries (e.g. billing/invoicing record-keeping must be done separately). For any account for which Defendant is utilizing iTracs reconciliation services, Defendant shall also provide the complete iTracs reconciliation package with all schedules and/or reports for the month. This documentation is due 15 days after the end of each month (e.g. documentation for January due February 15<sup>th</sup>, etc.);

- e. For the first six months of any 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 cancelled checks, and sign and date at the bottom of the form.
- f. Defendant shall provide monthly to the State Bar's Office of Counsel an updated Excel spreadsheet per trust account for any trust account he used in his practice of law that month, containing entries for all bank transactions in the account (including deposits, disbursements, bank charges, etc.) from the opening of the trust account through the end of the immediately preceding month. The spreadsheet shall include only deposits that have been credited to the account and disbursements that have cleared the account. This documentation is due 15 days after the end of each month (e.g. spreadsheet updated with entries for January due February 15<sup>th</sup>);
- g. Defendant shall provide each month, no later than the 15<sup>th</sup> day of the next subsequent month (e.g. certification for January due no later than February 15), a certification from the Trust Account Monitor verifying and certifying the following:
  - (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, that month across all applicable records, 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;
  - (4) That the Excel spreadsheets updated for that month and provided to the Office of Counsel contain and accurately reflect all deposits, disbursements, charges, or other items that were credited to or cleared the pertinent trust account in the month, contain only transactions that have actually been credited to or cleared the trust account, and contain an accurate identification of the client for whom the funds were deposited or disbursed; and
  - (5) That the Trust Account Monitor has checked any manual calculations on all client ledger (e.g. handwritten ledgers or any other type of ledger on which the calculations are done manually by a person rather than through a function of a software program) and certifies that all calculations on such ledgers are accurate;
- h. 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;
  - i. 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;
  - j. Defendant shall provide any trust account related documentation or records requested by the Office of Counsel within ten days of the request;

- k. 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;
- l. If a monthly three-way reconciliation report, a Trust Account Monitor review, a quarterly audit, or any 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;
- m. Defendant shall promptly complete disbursement and/or escheatment of all funds in the trust account ending in numbers x5668 according to the three-phase plan set out on page 7 of the March 15, 2021 Trust Account Monitor Certification previously provided to the Office of Counsel and incorporated herein by reference. All disbursements must be completed within six months of the entry of this order, and all escheatments must occur within thirty days of the earliest date statutorily permitted;
- n. For each calendar year of the stayed suspension, Defendant completes one additional hour of CLE on the topic of trust account management and/or reconciliations. This CLE requirement is 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; and
- s. Defendant does not violate the Rules of Professional Conduct or the laws of the United States or any state or local government.

4. Unless Defendant's obligations under this Order are modified by further order of the DHC, Defendant's obligations under this Order end four 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 four-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 any 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, within 5 days of receipt of such request. Defendant will be deemed to have received any such request 3 days after the date such request

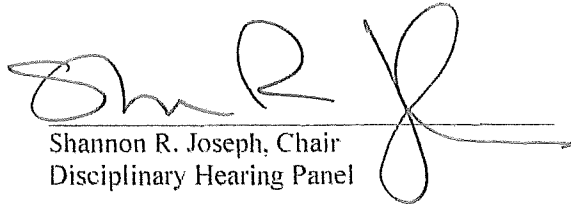
is sent to Defendant if the request is sent to the address Defendant provided the Membership Department of the State Bar pursuant to the preceding paragraph;

- e. Defendant disbursed to the proper recipients all identified client funds in any trust account he maintained at the time of his suspension;
- f. 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;
- g. 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, in the year immediately preceding his application for reinstatement under this paragraph;
- h. Defendant provided the written procedures described in paragraph 3.a. of this section to the Office of Counsel of the State Bar with his motion for stay or petition for reinstatement;
- i. 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;
- j. 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;
- k. 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;
- l. Defendant came into compliance with any outstanding continuing education or membership obligations at the time of the filing of his petition for reinstatement;
- m. Defendant did not violate any of the Rules of Professional Conduct in effect during the period of the suspension;
- n. Defendant did not violate any laws of the State of North Carolina or of the United States during the period of the suspension;
- o. 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

p. 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.

7. 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 3d day of May, 2021.

  
Shannon R. Joseph, Chair  
Disciplinary Hearing Panel


WE CONSENT:

  
\_\_\_\_\_  
Kenneth G. Ording  
Defendant

4-26-2021  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Alan M. Schneider  
Attorney for Defendant

4/28/2021  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Jennifer A. Porter, Deputy Counsel  
Attorney for Plaintiff

4/28/21  
\_\_\_\_\_  
Date