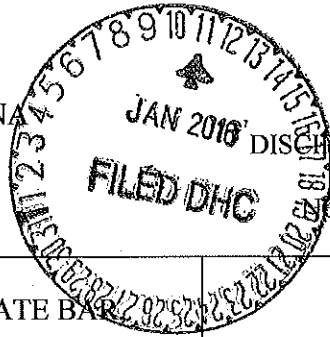


STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
15 DHC 26

THE NORTH CAROLINA STATE BAR

Plaintiff

v.

JONATHAN S. McELROY, Attorney,

Defendant

CONSENT
ORDER OF DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Fred M. Morelock, Chair, and members Renny W. Deese and Patti Head pursuant to 27 N.C. Admin. Code 1B § .0114 of the Rules and Regulations of the North Carolina State Bar. Jennifer A. Porter represented Plaintiff, the North Carolina State Bar. Defendant, Jonathan S. McElroy, was represented by James H. Mills. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Defendant freely and voluntarily waives any and all right to appeal the entry of this consent order of discipline. Based upon the stipulations of fact and 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, Jonathan S. McElroy ("McElroy"), was admitted to the North Carolina State Bar in 1999, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Rules of Professional Conduct.

3. During all or part of the relevant periods referred to herein, Defendant was engaged in the practice of law in the State of North Carolina and maintained a law office in Asheville, Buncombe County, North Carolina.

4. Defendant was properly served with process, a hearing in this matter was set, and the matter came before the Hearing Panel with due notice to all parties.

5. From about May 1, 1999 to January 31, 2006, Defendant maintained an attorney trust account at Bank of America. From about September 6, 2002 to August 5, 2014, Defendant maintained an attorney trust account at Wells Fargo.

6. During the periods of time recited above that Defendant maintained an attorney trust account, Defendant engaged in the following conduct:

- a. Defendant routinely failed to conduct monthly and quarterly reconciliations of the trust account(s);
- b. Defendant failed to accurately identify and track, per client, the funds received and disbursed for each client;
- c. Defendant failed to show on certain trust account checks the client against whose balance in the trust account funds were being disbursed by said check, or did not accurately show the client against whose balance in the trust account funds were being disbursed;
- d. Defendant failed to show on trust account deposit records the client to whom the funds being deposited into the trust account belonged, or did not accurately show the client to whom the funds belonged;
- e. Defendant disbursed funds for clients by methods, including counter withdrawals, that failed to identify the client against whose balance in the trust account the disbursements were being made;
- f. Defendant wired attorney fees to himself from his trust account on multiple occasions without any record in the bank documents identifying the client against whose balance in the trust account the disbursements were being made;
- g. Defendant commingled his funds with client funds, both by depositing his personal funds into the trust account and by leaving earned fees in the trust account;
- h. Defendant failed to appropriately disburse funds in real estate transactions, including by failing to make designated disbursements, by disbursing more or less than he should have, and by making disbursements not listed on the HUD-1 Settlement Statement;
- i. Defendant failed to timely complete final title opinions and disburse title insurance premiums from real estate closings; and
- j. Defendant disbursed more funds from his trust account for clients than he had in the trust account for the clients.

7. In about July 2014, at Defendant's request made pursuant to the State Bar's request for trust account records, AM attempted to reconcile client balances and the trust account. In the course of this activity, AM made changes to Defendant's records and attempted

to have positive balances disbursed, negative balances fixed, and other errors corrected. In the course of doing so, Defendant disbursed \$316.00 to himself from client MP's funds in the trust account, of which Defendant was at most only entitled to \$95.00.

8. On August 5, 2014, Defendant was enjoined by Consent Order of Preliminary Injunction from any further handling of entrusted funds.

9. Defendant did not make any arrangements that would enable him to continue to represent clients in real estate closings while not handling entrusted funds pursuant to the Consent Order of Preliminary Injunction. Consequently, the Consent Order of Preliminary Injunction effectively terminated his representation of clients who had retained him to close their real estate transactions and engage in the attendant receipt and disbursement of funds. Yet Defendant did not return client files to clients or otherwise act to protect their interests.

10. Defendant failed to inform clients with pending and upcoming real estate transactions that he was enjoined from handling entrusted funds and of his consequent inability to close their upcoming real estate transactions.

11. After the filing of the Consent Order of Preliminary Injunction, Defendant was generally unavailable to his clients and failed to respond to his clients' requests for information concerning upcoming real estate closings.

12. In about July 2014, clients KC and NC (the Cs) retained Defendant to represent them in a small claims matter, and informed him of an upcoming court date.

13. Defendant indicated to the Cs that he would obtain a continuance of the hearing date in their small claims case.

14. The Cs contacted Defendant's office the day prior to their court date in the small claims case and were told Defendant had gotten the hearing date continued and that Defendant would inform them of the rescheduled date. Accordingly, the Cs did not go to court on the scheduled hearing date in their small claims case.

15. Defendant had not obtained a continuance of the hearing date.

16. Defendant did not appear for the Cs at the hearing in their small claims case.

17. The hearing occurred as scheduled in the Cs' small claims case and judgment was entered against the Cs.

18. The Cs made multiple attempts to communicate with Defendant about their small claims case and have requested their client file from Defendant. Defendant has failed to respond to the Cs' inquiries and has failed to provide them with their client file.

19. Defendant failed to comply with requests for information from the State Bar as follows:

- a. The State Bar served Defendant with a subpoena on June 3, 2014 requiring production of trust account records in grievance file 14G0542, including client file documents such as HUD-1 Settlement Statements. Defendant failed to provide the client file documents; and
- b. The State Bar served Defendant with letters of notice in grievance files 14G0894 and 14G0995 on October 28, 2014. Defendant did not respond to either letter of notice.

Based upon the above stipulated facts and with the consent of the parties, the Hearing Panel hereby makes the following:

CONCLUSIONS OF LAW

All the parties are properly before the Hearing Panel and the Hearing Panel has jurisdiction over the Defendant, Jonathan S. McElroy, and the subject matter.

1. The Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline as follows:

- (a) By failing to reconcile his trust accounts monthly and quarterly, Defendant failed to conduct the requisite reconciliations of his trust accounts in violation of Rules 1.15-3(d)(1) and (2);
- (b) By failing to accurately track, per client, the funds received and disbursed for each client, Defendant failed to properly identify and maintain entrusted funds in violation of Rule 1.15-2(a);
- (c) By failing to show on cancelled checks the client against whose balance in the trust account funds were being disbursed by said check and by failing to show on trust account deposit records the client to whom the funds being deposited into the trust account belonged, Defendant failed to maintain required minimum records for his trust account in violation of Rules 1.15-3(b)(1) and (2);
- (d) By disbursing funds by methods that failed to show the name of the client against whose balance in the trust account funds were being disbursed, including by counter withdrawals and by wires to himself of attorney's fees, Defendant failed to maintain required minimum records for his trust account in violation of Rule 1.15-3(b)(3) and used an improper item to disburse fees or expenses to himself in violation of Rule 1.15-2(h);
- (e) By depositing personal funds into his trust account and leaving earned fees in his trust account, Defendant failed to maintain entrusted funds separate from his property in violation of Rule 1.15-2(a) and deposited funds belonging to him into a trust account in violation of Rule 1.15-2(f);

- (f) By failing to disburse funds in accordance with the HUD-1 Settlement Statement and/or otherwise as designated for disbursement, Defendant failed to properly maintain and disburse entrusted funds in violation of Rule 1.15-2(a) and (m);
- (g) By failing to timely complete final title opinions and disburse title insurance premiums for clients, Defendant failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 and failed to properly disburse entrusted funds in violation of Rule 1.15-2(m);
- (h) By failing to appear for the Cs at the hearing in their small claims case and failing to take any action on their behalf in their small claims case, Defendant failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;
- (i) By disbursing to himself funds in excess of the amount to which he was entitled from the client funds of MP in his trust account, and by disbursing more funds for clients than he had in his trust account for said clients, Defendant failed to properly maintain and disburse funds in violation of Rule 1.15-2(a), (j), and (m);
- (j) By failing to inform clients for whom his representation included receiving and disbursing entrusted funds of the filed Consent Order of Preliminary Injunction that prevented him from carrying out that representation and by failing to return client files to such clients and/or making any alternate arrangements for such clients, Defendant failed to keep his clients informed in violation of Rule 1.4(a)(3) and (b) and failed to protect his clients' interests upon termination of the representation in violation of Rule 1.16-(d);
- (k) By failing to respond to the inquiries of clients who had retained Defendant for real estate transactions as well as the inquiries of the Cs regarding their small claims case, Defendant failed to communicate with his clients in violation of Rule 1.4(a)(4); and
- (l) By failing to provide documents subpoenaed from him by the State Bar and failing to respond to letters of notice from the State Bar with which he had been served, Defendant knowingly failed to respond to lawful demands for information from a disciplinary authority in violation of Rule 8.1(b).

2. Pursuant to N.C. Gen. Stat. § 84-28(b)(3), for failure to answer the formal inquiry issued by the North Carolina State Bar in a disciplinary matter.

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

FINDINGS OF FACT REGARDING DISCIPLINE

1. Defendant has substantial experience in the practice of law.

2. There is no evidence of any dishonest or selfish motive on the part of Defendant.
3. Defendant's failure to diligently and accurately monitor and track the funds he deposited into and disbursed from his trust account per client resulted in flawed, untrustworthy internal trust account records and a significant amount of funds for whom the client on whose behalf the funds were in the trust account could not be identified.
4. Defendant's conduct in overdisbursing entrusted funds from his trust account caused potential significant harm to his clients whose entrusted funds were at risk of being misused for the benefit of someone other than the beneficial owner of the funds without their knowledge or consent. The overdisbursements also caused potential significant harm by creating the risk that those clients who had funds in the trust account at the time of the overdisbursements would be found to have had their entrusted funds misused and thus receive less than the amount that should have been in the trust account for them.
5. Defendant's failure to timely complete final title opinions and disburse title insurance premiums impaired his clients' ability to achieve the goals of their respective representations by delaying the conclusion of their real estate transactions and compromising their financial ability to do so.
6. The lenders in the residential real estate transactions closed by Defendant were vulnerable clients in that it was solely through Defendant that the title insurance premium from the loan proceeds held by Defendant in his trust account could be disbursed to the title insurance company and the title policy obtained.
7. The title insurance companies are third parties affected by Defendant's failure to timely disburse title insurance premiums and complete final title opinions. Defendant's failure to pay the premium and provide the necessary final title opinion impedes the title insurance company's ability to issue title policies.
8. Conducting quarterly reconciliations of the trust account is the lynchpin of proper maintenance and protection of entrusted funds. Had Defendant been conducting quarterly reconciliations, he would have seen balances remaining for various clients which would have signaled that work, such as obtaining the title policy, still need to be done in the file. Additionally, had Defendant been conducting quarterly reconciliations, he would have also had to identify the funds in his trust account and would have maintained awareness of whose funds were in his trust account and the appropriate disbursement of those funds. Defendant's continued failure to reconcile his trust account and failure to maintain proper trust account records demonstrates a pattern of misconduct and demonstrates Defendant's intent to commit acts where the potential harm is foreseeable.
9. Defendant's conduct – allowing client funds to be improperly maintained or disbursed, even if inadvertently – placed entrusted funds at risk and had the potential to cause significant harm to the standing of the profession in the eyes of the public because it shows his disregard for his duties as an attorney. Such erosion of public confidence in attorneys tends to sully the reputation of, and fosters disrespect for, the profession as a whole. Confidence in the legal profession is a building block for public trust in the entire legal system.

10. Defendant's failure to respond to the inquiries and demands from the State Bar hampered and delayed the State Bar's audit of his trust account and ability to identify funds in the trust account. His failure to respond to the State Bar interfered with the State Bar's ability to regulate attorneys and undermined the privilege of lawyers in this State to remain self-regulating.

11. Defendant failed to notify clients and respond to inquiries when the Consent Order of Preliminary Injunction was entered, significantly impacting clients with upcoming scheduled real estate transactions. Such clients had to find other attorneys to close their transactions. Some clients had to pay again, or arrange for another to pay, money they needed to bring to closing but which was frozen in Defendant's trust account.

12. Defendant failed to appear in court for the Cs and failed to otherwise protect their interests, resulting in judgment being entered against the Cs and taking away their opportunity to present their case.

13. Defendant has no prior disciplinary offenses.

14. Defendant has experienced substance abuse problems and mental health problems during the time period at issue in the Complaint in this case.

15. The Hearing Panel has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension, and disbarment, in considering the appropriate discipline to impose in this case.

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

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has 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 § .0114(w) of the Discipline and Disciplinary Rules of the North Carolina State Bar.

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

- (a) intent of the defendant to commit acts where the harm or potential harm is foreseeable;
- (b) Defendant's actions had a potential negative impact on his clients' and the public's perception of the legal profession;
- (c) impairment of the client's ability to achieve the goals of the representation;
- (d) effect of Defendant's conduct on third parties; and

- (e) multiple instances of failure to participate in the legal profession's self-regulation process.

4. The Hearing Panel has considered all of the factors enumerated in § .0114(w)(2) of the Rules and Regulations of the North Carolina State Bar and concludes no factors are present in this instance that would warrant disbarment.

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

- (a) absence of prior disciplinary offenses;
- (b) absence of a dishonest or selfish motive;
- (c) a pattern of misconduct;
- (d) multiple offenses;
- (e) effect of any personal or emotional problems on the conduct in question;
- (f) vulnerability of Defendant's clients; and
- (g) Defendant's substantial experience in the practice of law.

6. Defendant's failure to properly maintain entrusted funds caused significant harm and potential significant harm to his clients.

7. Defendant's conduct caused significant harm to his buyer and lender clients, whose funds were not properly maintained and disbursed and who did not receive the desired product of the intended disbursements (e.g. title policies).

8. Defendant's conduct caused potential significant harm to both his clients and to the title insurance companies. The absence of title policies could have been, or could be in the future, significantly harmful to the client and the title insurance company if a title issue arose or arises.

9. Defendant's failure to appear in court for the Cs and failure to otherwise protect their interests caused significant harm to the Cs.

10. Defendant's failure to notify clients and respond to inquiries when the Consent Order of Preliminary Injunction was entered caused significant harm to clients with upcoming scheduled real estate transactions.

11. Defendant's failure to respond to the inquiries and demands from the State Bar resulted in significant harm to the profession, interfering with the State Bar's ability to regulate attorneys and undermining the privilege of lawyers in this State to remain self-regulating.

12. Defendant's conduct, if continued or tolerated by the Bar, poses potential significant harm to future clients.

13. The Hearing Panel has considered admonition, reprimand, and censure as potential discipline but finds that admonition, reprimand, or censure would not be sufficient discipline because of the gravity of the harm to clients and the threat of potential significant harm to the public.

14. The Panel finds that any sanction less than suspension would fail to acknowledge the seriousness of the offenses committed by Defendant, would not adequately protect the public, and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar in this State.

15. Due to Defendant's numerous violations of the Rules of Professional Conduct, the public can only be adequately protected by a period of active suspension of Defendant's law license. Defendant should be allowed the opportunity to apply for a stay of a portion of the suspension imposed by this Order upon compliance with certain conditions designed to ensure protection of the public and to ensure Defendant's compliance with the Rules of Professional Conduct.

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

ORDER OF DISCIPLINE

1. The license of Defendant, Jonathan S. McElroy, is hereby suspended for five years.

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

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

4. Defendant is taxed with the administrative fees and the costs of this action as assessed by the Secretary. Defendant shall pay the costs and administrative fees of this action as assessed by the Secretary within 30 days of service of the statement of costs upon him.

5. Within 15 days of the effective date of this Order, Defendant shall provide the State Bar with an address and telephone number at which clients seeking return of files can communicate with Defendant and obtain such files, and Defendant shall promptly return all files to his clients upon request.

6. After serving no less than three years of the suspension, Defendant may apply for a stay of the remaining period of suspension imposed by this Order by filing a verified motion with the DHC. In addition to complying with the general provisions for reinstatement listed in

Rule .0125 of the North Carolina State Bar Discipline & Disability Rules, to be eligible for a stay of the remaining period of suspension Defendant must demonstrate compliance with the following conditions by clear, cogent, and convincing evidence:

- (a) Defendant shall have timely complied with paragraphs 2-5 of this section of the Order of Discipline;
- (b) Defendant shall have completed eight hours of trust account continuing legal education programs, including at least one that includes discussion of quarterly reconciliations of the trust account taught by the Trust Account Compliance Counsel for the North Carolina State Bar within the twelve months immediately preceding filing the motion for stay;
- (c) Defendant shall have promptly responded to all inquiries from title companies, lenders, and clients regarding any outstanding title policies;
- (d) Defendant shall have retained a CPA, approved in advance by the Office of Counsel, who is willing and able to render the services required by paragraph 8(c) below. Any costs associated with retaining a CPA for purposes of this Order shall be at Defendant's sole expense;
- (e) Defendant shall have obtained a mental health evaluation and substance abuse evaluation within one year of the effective date of this order by an appropriate provider approved by the Office of Counsel of the North Carolina State Bar. Defendant shall be in compliance with all substance abuse and/or mental health treatment recommendations of the provider(s), and shall have complied with all treatment recommendations during the period of the active suspension. The evaluation(s) and treatment shall be obtained at Defendant's expense;
- (f) That within ten days of obtaining the substance abuse and mental health evaluations described above, Defendant signed the appropriate releases and medical authorizations to allow his providers to communicate information about his conditions and care to the North Carolina State Bar. Defendant shall not revoke these releases;
- (g) Defendant shall have provided the releases or authorizations specified in paragraph (f) above to the State Bar with his petition for stay, or by the deadline established in any earlier request by the State Bar for such releases or authorizations;
- (h) Defendant shall have provided to the State Bar any reports, medical records, or evaluations requested by the North Carolina State Bar at his expense, by the deadline stated in the State Bar's request;
- (i) Defendant shall have obtained a certification from a duly qualified provider approved by the State Bar that he does not suffer from any substance abuse issue, mental health issues, mental disease or defect, or psychological condition that would interfere with his ability to practice law and that he will not cause harm to

the public if he is allowed to resume the practice of law. Defendant will ensure that this certification is provided to the State Bar at least 30 days prior to filing any petition for stay;

- (j) Defendant shall have kept the North Carolina State Bar membership department advised of his current physical home and business addresses and telephone numbers;
- (k) Defendant shall have accepted all certified mail from the North Carolina State Bar and responded to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication or within fifteen days of receipt of such communication, whichever is earlier;
- (l) Defendant shall have remedied any membership or continuing legal education (CLE) deficits or outstanding requirements or payments and be current on all membership and CLE obligations;
- (m) Defendant shall have participated fully and timely in the State Bar's fee dispute resolution program when notified of any petitions for resolution of disputed fees; and
- (n) Defendant shall have not violated the Rules of Professional Conduct or any state or federal laws other than minor traffic violations during the period of suspension.

7. The decision to grant or deny a stay to Defendant is entirely discretionary. The Hearing Panel will consider whether Defendant has complied with Rules .0124 and .0125 of the North Carolina State Bar Discipline & Disability Rules and the conditions in this Order of Discipline, as well as whether reinstatement of Defendant will cause harm or potential harm to clients, the profession, the public, or the administration of justice.

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

- (a) Each month that Defendant operates a trust or fiduciary account in connection with his law practice, Defendant shall personally review his records and prepare an accurate three-way reconciliation as described in the State Bar Lawyer's Trust Account Handbook for all trust accounts maintained by him. Defendant shall use the form provided in the State Bar's Trust Account Handbook for this purpose. Each month, Defendant shall provide the Office of Counsel of the State Bar with the three-way reconciliation report(s), accurate client ledgers for all clients with funds in the trust account(s) during that month, ledger for any personal funds maintained in the trust account(s) for bank or credit card fees, his trust account ledger, and the bank statements, cancelled checks, deposit slips, and any other document or instruction (such as wire or electronic transfer activity) regarding the deposit or disbursement of funds into/from his trust account for each month. These documents are due on the 15th day of the following month – for example,

the three-way reconciliation and documents for the month of January is due on February 15;

- (b) Each month that Defendant operates a trust or fiduciary account in connection with his law practice, Defendant shall provide the Office of Counsel of the State Bar with a list of clients for whom Defendant collected funds for title insurance premiums but for whom Defendant has not submitted the final title opinion and premium to the title insurance company. The list shall contain the name of the client, the date of the closing, the reason why the final title opinion and premium has not been submitted, and an estimated date for completion. This list is due on the same day each month as the three-way quarterly reconciliation required in the above paragraph;
- (c) Each quarter that Defendant operates a trust or fiduciary account in connection with his law practice, Defendant shall have a CPA audit his trust accounts. Defendant will be responsible for any associated costs. This audit shall assess whether Defendant has in his trust account the client funds he should be maintaining for his clients at that time, as well as Defendant's compliance with Rule 1.15-2 and Rule 1.15-3. The CPA's audit shall include addressing the items on the form which will be provided by the State Bar to Defendant. The quarterly audit reports from the CPA are due no later than 30 days after the end of the quarter – for example, the CPA audit for the first quarter of the calendar year (January, February, and March) is due on April 30;
- (d) If either the monthly three-way reconciliation report or the CPA audit reveals any deviation from Defendant's obligations under Rule 1.15-2 or Rule 1.15-3, Defendant shall take remedial action within 10 days of the date of the three-way reconciliation report or the CPA audit and shall provide documentation showing the remedial action to the State Bar within 2 days of the date of the remedial action;
- (e) Defendant shall comply with any requests from the Office of Counsel to provide any information regarding his trust accounts or to sign and provide any release or authorization to allow the Office of Counsel to obtain information directly from any bank in which Defendant maintains a trust account, by the deadline stated in the request;
- (f) Defendant shall meet at least quarterly with a provider approved in advance by the Office of Counsel for substance abuse and mental health assessment, and shall comply with all of the provider's treatment recommendations;
- (g) Defendant shall keep the North Carolina State Bar membership department advised of his current physical home and business addresses and telephone numbers;

- (h) Defendant shall accept all certified mail from the North Carolina State Bar and respond to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication or within fifteen days of receipt of such communication, whichever is earlier;
- (i) Defendant shall timely comply with his State Bar membership and continuing legal education requirements, and pay all fees and costs assessed by the State Bar and the Client Security Fund by the applicable deadline;
- (j) Defendant shall participate fully and timely in the State Bar's fee dispute resolution program when notified of any petitions for resolution of disputed fees; and
- (k) Defendant shall not violate the Rules of Professional Conduct or any state or federal laws other than minor traffic violations.

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

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

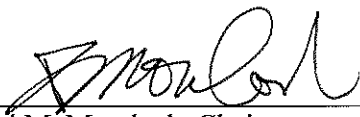
- (a) That Defendant complied with the general provisions for reinstatement listed in 27 N.C. Admin. Code 1B § .0125 of the North Carolina State Bar Discipline & Disability Rules;
- (b) That Defendant timely complied with paragraphs 2-5 of this section of the Order of Discipline;
- (c) That Defendant completed eight hours of trust account continuing legal education programs, including at least one that includes discussion of quarterly reconciliations of the trust account taught by the Trust Account Compliance Counsel for the North Carolina State Bar within the twelve months immediately preceding filing the application for reinstatement;
- (d) That Defendant promptly responded to all inquiries from title companies, lenders, and clients regarding any outstanding title policies;
- (e) That Defendant obtained a mental health evaluation and substance abuse evaluation within one year of the effective date of this order by an appropriate provider approved by the Office of Counsel of the North Carolina State Bar. Defendant shall be in compliance with all substance abuse and/or mental health treatment recommendations of the provider(s), and shall have complied with all

treatment recommendations during the period of the active suspension. The evaluation(s) and treatment shall be obtained at Defendant's expense;

- (f) That within ten days of obtaining the substance abuse and mental health evaluations described above, Defendant signed the appropriate releases and medical authorizations to allow his providers to communicate information about his conditions and care to the North Carolina State Bar. Defendant shall not revoke these releases;
- (g) That Defendant provided the releases or authorizations specified in paragraph (f) above to the State Bar with his application for reinstatement, or by the deadline established in any earlier request by the State Bar for such releases or authorizations;
- (h) That Defendant provided to the State Bar any reports, medical records, or evaluations requested by the North Carolina State Bar at his expense, by the deadline stated in the State Bar's request;
- (i) That Defendant obtained a certification from a duly qualified provider approved by the State Bar that he does not suffer from any substance abuse issue, mental health issues, mental disease or defect, or psychological condition that would interfere with his ability to practice law and that he will not cause harm to the public if he is allowed to resume the practice of law. Defendant will ensure that this certification is provided to the State Bar at least 30 days prior to filing any application for reinstatement;
- (j) That Defendant kept the North Carolina State Bar membership department advised of his current physical home and business addresses and telephone numbers;
- (k) That Defendant accepted all certified mail from the North Carolina State Bar and responded to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication or within fifteen days of receipt of such communication, whichever is earlier;
- (l) That Defendant remedied any membership or continuing legal education (CLE) deficits or outstanding requirements or payments and is current on all membership and CLE obligations;
- (m) That Defendant participated fully and timely in the State Bar's fee dispute resolution program when notified of any petitions for resolution of disputed fees; and
- (n) That Defendant did not violate the Rules of Professional Conduct or any state or federal laws other than minor traffic violations during the period of suspension.

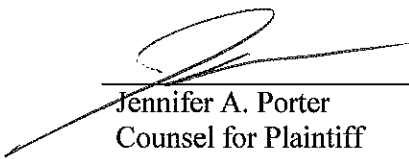
11. Should a stay of the suspension imposed herein be granted, the Disciplinary Hearing Commission will retain jurisdiction pursuant to 27 N.C. Admin. Code 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules until all conditions are satisfied.

Signed by the Chair with the consent of the other hearing panel members, this the 11th day of January, ~~2015~~ 2016




Fred M. Morelock, Chair
Disciplinary Hearing Panel

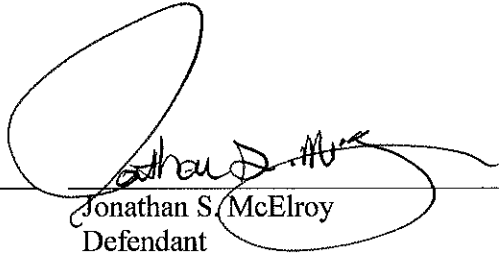
CONSENTED TO BY:



Jennifer A. Porter
Counsel for Plaintiff



James H. Mills
Counsel for Defendant



Jonathan S. McElroy
Defendant