

STATE OF NORTH CAROLINA

WILKES COUNTY



THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

FILE NOS.: 17 CRS 50505, 50506, 50507,  
50508, 50509, 50510, 50511, 50512, 50513,  
50514, 50515, 50516, 50517, 50518, 50519

STATE OF NORTH CAROLINA

v.

RONALD TYSON FERRELL

*Filed 4/10/17 11:02 am CW*

CONSENT ORDER OF DISCIPLINE

THIS MATTER came before the undersigned Superior Court Judge upon request by the parties to impose professional discipline against Defendant Ronald Tyson Ferrell in connection with his tender of a guilty plea in the above referenced files as well as additional misconduct committed by Defendant. Ronald Tyson Ferrell was represented by Dudley A. Witt and David B. Freedman. Brian P.D. Oten appeared on behalf of the North Carolina State Bar. Defendant waives a formal hearing in this matter, including any notice requirement concerning this Court's imposition of professional discipline. The parties stipulate and agree to the findings of fact and conclusions of law recited in this order, and consent to the discipline imposed by this order. By consenting to the entry of 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 and conclusions herein.

Based upon the parties' stipulations of fact, and with the consent of the parties, the Court hereby enters the following

FINDINGS OF FACT

1. Defendant, Ronald Tyson Ferrell (hereafter "Defendant" or "Ferrell"), was admitted to the North Carolina State Bar on 22 March 1991 and is an attorney at law licensed to practice in North Carolina, subject to the rules, regulations and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.
2. During the relevant period referred to herein, Ferrell was actively engaged in the practice of law in Wilkesboro, Wilkes County, North Carolina.
3. From at least February 2012 through July 2015, Ferrell maintained a trust account in connection with his law practice at Yadkin Bank, account number ending in 4391 ("trust account").
4. Ferrell used his trust account as a general trust account.

5. From at least February 2012 through July 2015, Ferrell also maintained a business operating account in connection with his law practice at Yadkin Bank, account number ending in 4871 (“operating account”).

6. From at least February 2012 through July 2015, Ferrell employed his wife and nonlawyer assistant Kristy Ferrell (“KF”) as an office manager with his firm.

7. Ferrell also employed his wife’s nonlawyer ex-husband, Randell Waddell (“RW”), as an assistant with his firm.

8. Ferrell had managerial and direct supervisory authority over KF and RW during their employment with his firm.

9. While employed with Ferrell’s firm, Ferrell delegated to KF his responsibilities of maintaining proper records concerning his trust account and monitoring the firm’s handling of entrusted funds.

10. Ferrell also gave KF access to Ferrell’s trust account checkbook, Ferrell’s operating account, and online access to both Ferrell’s trust account and operating account.

11. Ferrell failed to supervise the employees of his law firm, including KF and RW, and otherwise failed to review his employees’ handling and monitoring of entrusted funds received by his firm and/or deposited in his trust account.

12. In early 2015, Ferrell observed KF transferring funds between his trust account and his firm’s operating account without properly attributing the funds to a particular client or otherwise ensuring the transfer of funds was justified.

13. Upon discovering this activity, Ferrell failed to undertake a full review of the trust account.

14. Although Ferrell admonished KF for the inappropriate transfer, Ferrell continued to delegate to KF his responsibilities in handling the firm’s entrusted funds.

15. Ferrell also did not take subsequent steps to monitor his trust account or monitor KF’s handling of entrusted funds, including failing to review his trust account’s bank statements and failing to reconcile his account.

16. Between February 2012 and July 2015, KF and RW misappropriated over \$100,000.00 of entrusted funds from Ferrell’s clients, including cash payments of entrusted funds paid by the clients to the firm and entrusted funds that had been deposited in the firm’s trust account.

17. Ferrell’s failure to supervise KF’s and RW’s work, combined with his failure to reconcile and review his trust account as required by the Rules of Professional Conduct, enabled KF’s and RW’s theft of client funds.

18. During the periods of time recited above that Ferrell maintained an attorney trust account, KF, RW, or another employee with Ferrell's law firm

- a. Made multiple disbursements of funds from Ferrell's trust account without maintaining any record in the bank documents or otherwise identifying the client against whose balance in the trust account the disbursements were being made;
- b. Failed to identify the client(s) associated with funds deposited into Ferrell's trust account, including funds deposited into his trust account from a credit card processing service; and
- c. Deposited and disbursed entrusted client funds into and from Ferrell's business operating account.

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

- a. Ferrell failed to review his trust account's bank statements, failed to conduct monthly and quarterly reconciliations of his trust account, failed to maintain accurate client ledgers that accurately identified and tracked, per client, the funds received and disbursed for each client, and otherwise failed to monitor his trust account;
- b. Ferrell failed to preserve entrusted client funds deposited in his trust account, including funds received for the benefit of clients Moore, Mathis, and Ashley;
- c. Ferrell failed to ensure that all entrusted client funds received by his firm from clients were deposited in his trust account, including funds received for the benefit of client Freeman;
- d. Ferrell did not always review his trust account records to ensure that he had sufficient funds in his trust account belonging to a particular client prior to disbursing funds for that client;
- e. Ferrell disbursed funds from his trust account to or on behalf of clients using funds belonging to other clients, resulting in negative client balances within the trust account and funds being used for the benefit of someone other than the beneficial owner of the funds.

20. During 2014, 2015, and 2016, Ferrell represented clients Ellington, Caputo, Gindlesperger, Powell, Mathis, Clanton, Myers, Minton, Miller, Golden, Zacharias, Greene, and Morgan concerning their respective traffic citations in Wilkes County.

21. Ferrell failed to appear at scheduled court dates and/or failed to timely pay applicable court costs and fines for the clients listed in paragraph 20 above, resulting in some clients receiving notices from the North Carolina Department of Motor Vehicles threatening their driver's licenses with suspension.

22. During this same time period, Ferrell delegated to KF his responsibilities of maintaining an accurate and updated calendar to ensure Ferrell timely resolved his clients' cases.

23. KF did not consistently update Ferrell on his clients' cases and did not inform Ferrell of all hearing dates and/or deadlines associated with his clients' cases.

24. After learning of his failures to appear and/or missed deadlines in his clients' cases, Ferrell failed to undertake a full review of his office management procedures.

25. Ferrell failed to file, within the times required by law, federal and state income tax returns showing his tax liability for tax years 2013, 2014, and 2015.

26. Ferrell failed to pay, within the times required by law, his federal and state income tax liability for tax years 2013, 2014, and 2015.

27. Ferrell's failure to file federal and state income tax returns and failure to timely pay tax liabilities due for tax years 2013, 2014, and 2015 was willful.

28. During tax years 2013, 2014, and 2015, Ferrell failed to deduct and withhold taxes from the wages paid to employees.

29. Willful failure to file a tax return and willful failure to collect any tax imposed by the Internal Revenue Code and the North Carolina Department of Revenue are criminal offenses pursuant to 26 U.S.C. § 7202, 26 U.S.C. § 7203, N.C. Gen. Stat. § 105-236(a)(8), and N.C. Gen. Stat. § 105-236(a)(9), respectively.

30. Willful failure to file a tax return is a criminal offense showing professional unfitness pursuant to 27 N.C. Admin. Code 1B § .0103(17).

31. On 10 April 2017, Ferrell pled guilty to 15 misdemeanor offenses of failure to withhold tax, failure to file tax returns, and failure to pay tax in Wilkes County file nos. 17 CRS 50505, 50506, 50507, 50508, 50509, 50510, 50511, 50512, 50513, 50514, 50515, 50516, 50517, 50518, and 50519.

Based upon the foregoing Findings of Fact and with the consent of the parties, the Court makes the following

#### CONCLUSIONS OF LAW

1. The courts of this State have inherent authority to take disciplinary action against attorneys licensed to practice law in North Carolina.

2. This Court has jurisdiction over Ferrell and over the subject matter of this proceeding.

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

- (a) By failing to review his nonlawyer assistant's handling and record-keeping of entrusted funds, thereby enabling his nonlawyer assistants to misappropriate entrusted funds from his clients, Ferrell failed to supervise his nonlawyer assistants to the extent necessary to ensure that their conduct was compatible with Ferrell's professional obligations in violation of Rule 5.3(b);
- (b) By failing to reconcile his trust accounts on a monthly and quarterly basis, Ferrell failed to conduct the requisite reconciliations of his trust accounts in violation of Rules 1.15-3(d)(1) and (2);
- (c) By failing to accurately track, per client, the funds received and disbursed for each client, Ferrell failed to properly identify and maintain entrusted funds in violation of Rules 1.15-2(a) and 1.15-3(b)(5);
- (d) By failing to monitor and safeguard the entrusted funds that he held for the benefit of his clients, including clients Moore, Mathis, Ashley, and Freeman, Ferrell failed to safeguard entrusted client funds in violation of Rules 1.15-2(a) and (b);
- (e) By advancing funds for a client from funds belonging to another client who was not the beneficiary of those funds, Ferrell used or pledged entrusted property for the personal benefit of a person other than the legal or beneficial owner of that property in violation of Rules 1.15-2(a), (k), and (n);
- (f) By failing to appear at his clients' scheduled court dates and by failing to timely pay the court costs and fines associated with his clients' traffic tickets, Ferrell failed to act with reasonable diligence in representing a client in violation of Rule 1.3, failed to promptly pay entrusted funds to a third party as directed by his client in violation of Rule 1.15-2(m), and engaged in conduct that was prejudicial to the administration of justice in violation of Rule 8.4(d);
- (g) By failing to file federal and state income tax, withheld tax, and/or employment tax returns, Ferrell committed criminal acts that reflect adversely on his honesty, trustworthiness, or fitness in other respects in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c); and
- (h) By failing to timely pay federal and state income tax, and by failing to deduct and withhold taxes from the wages paid to employees, Ferrell committed criminal acts that reflect adversely on his honesty, trustworthiness, or fitness in other respects in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c).

Based upon the consent of the parties, the Court also finds by clear, cogent, and convincing evidence the following

## FINDINGS OF FACT REGARDING DISCIPLINE

1. KF and RW are the sole sources of embezzlement in this case. There is no evidence indicating that Ferrell participated in KF's and RW's ongoing misappropriation or that he was aware of the misappropriation at the time it occurred. Furthermore, the evidence demonstrates that KF and RW took steps to conceal their activity from Ferrell, including forging a client's signature on two settlement checks in August 2014 and responding to Bar inquiries sent to Ferrell's email address without Ferrell's knowledge or authorization.

2. Although KF and RW committed criminal acts in misappropriating funds from Ferrell's trust account independent of Ferrell, Ferrell's excessive delegation coupled with his failure to supervise and failure to conduct the required quarterly reconciliations created the circumstances that enabled KF and RW to embezzle entrusted funds. Conducting quarterly reconciliations of the trust account is the lynchpin of proper maintenance and protection of entrusted funds. Ferrell repeatedly failed to monitor the activity in his trust account and otherwise failed to make reasonable efforts to ensure that the client funds entrusted to his care remained protected. Ferrell also failed to make reasonable efforts to ensure that his non-lawyer assistant's conduct was compatible with his professional obligations in the handling of entrusted funds in the trust account, and Ferrell displayed poor judgment by continuing to delegate his professional obligations to KF after witnessing KF's improper transfer of funds from the trust account. Ferrell's conduct demonstrates a pattern of misconduct and demonstrates his intent to commit acts where the potential harm was foreseeable.

3. Ferrell's conduct placed entrusted funds at risk and has 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.

4. Ferrell's conduct – to wit: neglect of multiple client matters, failure to adequately communicate with his clients, failure to timely resolve the matters for which he was retained, failure to properly supervise his employees, and failure to safeguard entrusted client funds – impaired his clients' ability to achieve the goals of the representation and unnecessarily delayed resolution of his clients' pending cases.

5. Although there is evidence that KF and RW took steps to conceal their activity from Ferrell, including but not limited to failing to inform Ferrell of new clients, scheduled court dates, and the firm's receipt of settlement checks, Ferrell's interactions with his clients over this time period and the State Bar's pursuit of an injunction against Ferrell should have reasonably notified him that his law office was not providing him with all of the information needed to fulfill his professional responsibilities. Ferrell, however, did not undertake a review of his law office, his trust account, or his employees' activities despite multiple warning signs. Ferrell's lack of a meaningful response to his clients' expressed concerns, to being informed of his repeated failure to properly tend to his clients' cases, or to being enjoined from handling entrusted funds again demonstrates a pattern of misconduct and demonstrates his intent to commit acts where the potential harm was foreseeable. Ferrell's lack of prompt action in this

regard also demonstrates his failure to rectify the consequences of his misconduct and his indifference to making restitution to the clients harmed by his and his employees' conduct.

6. Ferrell is genuinely remorseful for his own misconduct and his unfortunate judgment, acknowledges the seriousness of his misconduct, and accepts responsibility for his misconduct. Ferrell's judgment was clouded by his marital relationship with KF and his desire to believe that his wife had not taken advantage of his trust.

7. Ferrell's delay in filing his state and federal taxes and his delay in paying state taxes was willful in that he was solely responsible for complying with his known personal tax obligations.

8. When lawyers violate the law in their business and personal affairs, it brings disrepute upon the legal profession and undermines public confidence in lawyers.

9. Ferrell, who was admitted to the North Carolina State Bar in 1991, has substantial experience in the practice of law.

10. Ferrell has no prior disciplinary record concerning his license to practice law.

11. KF and RW have been convicted for their criminal conduct referenced herein. As a result of those convictions, KF and RW have been ordered to pay restitution to the victims of their criminal activity.

12. The Court 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 Court also enters the following

#### CONCLUSIONS REGARDING DISCIPLINE

1. The Court considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0114(w) of the Discipline and Disability Rules of the North Carolina State Bar.

2. The Court has considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors warrant suspension of Defendant's license:

- (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.

3. The Court concludes that none of the factors enumerated in 27 N.C. Admin. Code 1B § .0114(w)(2) of the Rules and Regulations of the North Carolina State Bar are present in this case.

4. The Court has considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0114(w)(3) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are applicable in this matter:

- (a) Defendant's lack of prior disciplinary offenses;
- (b) Lack of timely, good faith efforts to make restitution or to rectify the consequences of the misconduct;
- (c) Indifference to making restitution;
- (d) Defendant engaged in a pattern of misconduct;
- (e) Defendant engaged in multiple offenses;
- (f) Defendant is genuinely remorseful; and
- (g) The effect of personal or emotional problems on the conduct in question.

5. Defendant's neglect, failure to communicate, failure to timely resolve the matters for which he was retained, and failure to safeguard entrusted client funds caused significant harm to his clients.

6. Defendant's failure to properly safeguard entrusted client funds and properly supervise his non-lawyer assistant caused significant harm to his clients whose funds were used for a purpose other than that which was intended by the clients.

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

8. The Court has considered issuing an admonition, reprimand or censure but concludes that such discipline would not be sufficient discipline because of the gravity of the potential harm to the clients. The Court further concludes that such discipline would fail to acknowledge the seriousness of the offenses committed by Defendant and send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

9. The Court concludes that Defendant's conduct warrants and can only be addressed through imposition of a suspension on Defendant's law license. The Court further concludes that such Defendant should be allowed to petition for a stay of the suspension after serving an active portion of the suspension upon Defendant's compliance with conditions outlined below that will ensure the public is protected from future transgressions by Defendant as well as ensure Defendant's continued adherence to the Rules of Professional Conduct.

Based upon the foregoing findings of fact and conclusions of law and the findings of fact and conclusion regarding discipline, and based upon the consent of the parties, the Court enters the following

ORDER OF DISCIPLINE

1. Defendant, Ronald Tyson Ferrell, is hereby suspended from the practice of law for five years. This Order, including the suspension of Defendant's license, shall be effective upon filing.

2. Defendant is taxed with the costs and any administrative fees of this action.

3. 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.

4. Defendant has informed the Court that he has wound-down his law practice prior to entry of this Order. To the extent not already complied with, 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.

5. Within 10 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. If Defendant fails to fully comply with 27 N.C. Admin. Code 1B § .0124 and the Court appoints a trustee to wind down any portion of Defendant's practice, Defendant shall reimburse the State Bar for 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 the trustee and/or the trustee's assistant for time and travel associated with the trusteeship. After the Court has discharged the trustee, the State Bar shall send an invoice of wind-down expenses to Defendant at Defendant's last known address of record with the North Carolina State Bar. Defendant shall not be eligible for reinstatement until he has reimbursed the State Bar for all wind-down expenses incurred.

7. Any subsequent review of this Order, including any petition for a stay of this suspension or any petition for reinstatement from suspension, shall be filed with the Secretary of the North Carolina State Bar and shall be conducted by the Disciplinary Hearing Commission pursuant to 27 N.C. Admin. Code 1B § .0114 et seq.

8. After serving no less than two years of the suspension, Defendant may apply for a stay of the remaining period of suspension imposed by this Order by filing a verified petition with the Secretary of the North Carolina State Bar. 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 has timely complied with paragraphs 2-6 of this section of the Order of Discipline, including payment of any costs and administrative fees assessed as a result of this disciplinary proceeding or any related administrative fees imposed by the North Carolina State Bar;
- (b) That, not more than 90 days after the effective date of this Order, Defendant was evaluated by a licensed and qualified psychiatrist or psychologist. Such psychiatrist/psychologist shall be approved in advance by the North Carolina State Bar Office of Counsel. Such psychiatrist/psychologist shall certify under oath whether, based on his or her independent and comprehensive evaluation of Defendant and in his or her professional opinion, Defendant currently has any physical, mental, psychological, behavioral, cognitive, or emotional illness, disorder, or other condition that impairs Defendant's ability to practice law, that impacts Defendant's ability or willingness to comply with the Rules of Professional Conduct, and/or that poses a risk of harm to the public if he engages in the practice of law. Defendant shall sign an authorization form consenting to the release of all medical records and information related to Defendant's evaluation to the Office of Counsel, and Defendant shall not revoke that release. Defendant shall simultaneously provide a copy of such signed authorization to the Office of Counsel and the psychiatrist/psychologist. Defendant shall direct the evaluating psychiatrist/psychologist described herein to provide a written report of such evaluation and recommended treatment, if any, to the Office of Counsel within 30 days of the evaluation taking place. All expenses of such evaluation, report(s), and production of records shall be borne by Defendant;
- (c) Defendant has complied with all treatment recommendations of the evaluating psychiatrist/psychologist described in paragraph (b) above. Defendant shall sign an authorization form consenting to the release of any medical records and information related to Defendant's treatment to the Office of Counsel, and Defendant will not revoke that release. Defendant shall simultaneously provide a copy of such signed authorization to the Office of Counsel and his treatment provider(s). Within 30 days of beginning treatment, Defendant shall direct his treatment provider(s) to provide the Office of Counsel with a written report detailing Defendant's treatment. Defendant shall also direct his treatment provider(s) to provide the Office of Counsel with a written report concerning Defendant's condition, Defendant's compliance with the treatment plan, and Defendant's progress resulting from treatment. Such report shall be received by the Office of Counsel prior to or with Defendant's application for reinstatement. Defendant shall also comply with any and all requests from the Office of Counsel seeking updates on the status of his ongoing treatment within fifteen (15) days of receipt of such requests. All expenses of such treatment, report(s), and production of records shall be borne by Defendant;

- (d) That, not more than 90 days before he petitions for reinstatement, Defendant has been evaluated by a licensed and qualified psychiatrist or psychologist. Such psychiatrist/psychologist shall be approved in advance by the North Carolina State Bar Office of Counsel. Such psychiatrist/psychologist shall certify under oath whether, based on his or her independent and comprehensive evaluation of Defendant and in his or her professional opinion, Defendant currently has any physical, mental, psychological, behavioral, cognitive, or emotional illness, disorder, or other condition that impairs Defendant's ability to practice law, that impacts Defendant's ability or willingness to comply with the Rules of Professional Conduct, and/or that poses a risk of harm to the public if he engages in the practice of law. Defendant bears the burden of proving that he does not suffer from any such impairing condition at the time of reinstatement. Defendant shall sign an authorization form consenting to the release of all medical records and information related to Defendant's evaluation to the Office of Counsel, and Defendant shall not revoke that release. Defendant shall simultaneously provide a copy of such signed authorization to the Office of Counsel and the psychiatrist/psychologist. Defendant shall direct the evaluating psychiatrist/psychologist described herein to provide a written report of such evaluation and recommended treatment, if any, to the Office of Counsel within 30 days of the evaluation taking place. All expenses of such evaluation, report(s), and production of records shall be borne by Defendant;
- (e) Defendant has arranged for an active member of the North Carolina State Bar to serve as his law practice monitor. Defendant's practice monitor shall be an attorney in good standing who practices law in Defendant's judicial district and who has been approved by the Office of Counsel. The monitor shall agree to supervise all client matters and will ensure that Defendant handles all client matters in a timely fashion, including promptly responding to his clients, attending all scheduled court dates, and diligent pursuit of his clients' matters. Defendant shall agree to meet once a month with his monitoring attorney, report the status of all current client matters to the monitor, cooperate with the monitoring attorney, and provide any information the monitoring attorney deems reasonably necessary to ensure that Defendant is properly and timely handling all client matters. The monitor will submit written quarterly reports of this supervision to the Office of Counsel, such reports due on the following dates as they occur during the stay of this suspension: January 15, April 15, July 15, and October 15. Defendant bears the responsibility of ensuring the monitoring attorney sends a written report each quarter to the Office of Counsel as described above. This monitoring will occur for the duration of any stay of this suspension. Defendant will pay the cost, if any, charged by the monitor for this supervision. Defendant must make the arrangements for this monitoring attorney and supply the Office of Counsel with a letter from the monitoring attorney confirming his or her agreement to perform the duties listed above;
- (f) Defendant has completed eight hours of trust account continuing legal education programs, approved in advance by the Office of Counsel, including at least one

that includes discussion of quarterly reconciliations of the trust account taught by Trust Account Compliance Counsel for the North Carolina State Bar;

- (g) Defendant has timely filed his federal and state income tax returns along with any associated schedules and attachments thereto, and shall provide proof of these filings to the Office of Counsel within 30 days of filing;
- (h) Defendant shall timely pay all state and federal tax liabilities, fines, and penalties accrued during the stay period;
- (i) Defendant has kept the North Carolina State Bar membership department advised of his current physical home and business addresses and telephone numbers;
- (j) Defendant has 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;
- (k) Defendant has timely complied with his State Bar membership and continuing legal education requirements, and paid all fees and costs assessed by the State Bar and the Client Security Fund by the applicable deadline. However, because KF and RW have been ordered to pay restitution to the victims of their criminal activity, Defendant shall not be responsible for reimbursing the Client Security Fund for reimbursements made by the Fund to victims of KF's and RW's criminal activity;
- (l) Defendant has participated fully and timely in the State Bar's fee dispute resolution program when notified of any petitions for resolution of disputed fees; and
- (m) Defendant has not violated the Rules of Professional Conduct or any state or federal laws other than minor traffic violations during the period of suspension.

9. Defendant may file a petition seeking a stay of the remaining period of suspension and setting forth the above requirements up to 30 days prior to the end of the 2 year period but shall not be reinstated prior to the end of that 2 year period.

10. If Defendant successfully seeks a stay of the suspension of his law license pursuant to this Order, the stay will continue in force only as long as Defendant complies with the following conditions:

- (a) Defendant shall continue to comply with all treatment recommendations of the evaluating psychiatrist/psychologist described in paragraph 8(d) above as well as his treatment provider(s) described in paragraph 8(c) above. Defendant shall direct his treatment provider(s) to provide the Office of Counsel with semi-annual written reports concerning Defendant's condition, Defendant's compliance with the treatment plan, and Defendant's progress resulting from

treatment for the duration of any stay of his suspension. Such reports shall be received by the Office of Counsel every June 1 and December 1. Defendant shall also comply with any and all requests from the Office of Counsel seeking updates on the status of his ongoing treatment within fifteen (15) days of receipt of such requests. If Defendant switches treatment providers during any stayed period of his suspension, Defendant shall sign an authorization form consenting to the release of any medical records and information related to Defendant's treatment to the Office of Counsel, and Defendant will not revoke that release. Defendant shall simultaneously provide a copy of such signed authorization to the Office of Counsel and his new treatment provider(s). Within 30 days of starting treatment with the new provider(s), Defendant shall direct such new treatment provider(s) to provide the Office of Counsel with a written report detailing Defendant's treatment plan, as well as the semi-annual written reports described above. All expenses of such treatment and reports shall be borne by Defendant;

- (b) Defendant shall meet with his law practice monitor as described in paragraph 8(e) above. Defendant shall meet at least once a month with his monitoring attorney, report the status of all current client matters to the monitor, cooperate with the monitoring attorney, and provide any information the monitoring attorney deems reasonably necessary to ensure that Defendant is properly and timely handling all client matters. Defendant shall direct his law practice monitor to submit written quarterly reports of this supervision to the Office of Counsel, such reports due on the following dates as they occur during the stay of this suspension: January 15, April 15, July 15, and October 15. Defendant bears the responsibility of ensuring the monitoring attorney sends a written report each quarter to the Office of Counsel as described above. This monitoring will occur for the duration of any stay of this suspension. Defendant will pay the cost, if any, charged by the monitor for this supervision;
- (c) Defendant shall cooperate with the Office of Counsel and make appropriate arrangements for an alternate monitoring attorney if needed during any stay of this suspension;
- (d) Defendant is presently enjoined from handling entrusted funds by the Wake County Superior Court. Should Defendant successfully petition the court to lift the injunction, Defendant shall take all reasonable steps to promptly disburse the funds remaining in his Yadkin Bank trust account, including escheating any unidentified funds at the appropriate time. After disbursing all funds from the Yadkin Bank trust account, Defendant shall close the Yadkin Bank trust account. Should Defendant choose to operate a trust or fiduciary account in connection with his law practice, Defendant shall open a new trust and/or fiduciary account to operate in connection with his law practice;
- (e) Each quarter 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 an accurate three-way reconciliation described in the State Bar

Lawyer's Trust Account Handbook for all trust accounts maintained by him. Defendant shall provide the three-way reconciliation report, accurate client ledgers for all clients with funds in the trust account(s) during that quarter, a ledger for any personal funds maintained in the trust account(s) for bank or credit card fees, his general 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. Defendant shall certify with each quarterly report that he has personally reviewed the reconciliation report(s) and all relevant ledgers, bank statements, cancelled checks, deposit slips, and deposit items associated with the report(s). These documents are due no later than 30 days after the end of the quarter – for example, the three-way reconciliation for the first quarter of the calendar year (January, February, and March) is due on April 30;

- (f) Each quarter that Defendant operates a trust or fiduciary account in connection with his law practice, Defendant shall employ a CPA approved in advance by the North Carolina State Bar Office of Counsel to assist Defendant in monitoring and reconciling his trust account(s) as required by the Rules of Professional Conduct. Defendant shall have that CPA audit Defendant's trust account(s), and 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 (including all supporting documentation) 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;
- (g) If either the monthly three-way reconciliation report or the CPA audit reveals any deviation from Defendant's obligations under Rule 1.15-2, Rule 1.15-3, or Rule 1.15-4, 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;
- (h) Defendant shall have sole signatory authority on all general trust accounts, dedicated trust accounts, and fiduciary accounts maintained by Defendant and shall not allow the use of signature stamps, or electronic signature in lieu of his hand affixed signature. Defendant shall retain sole possession of all trust account or fiduciary account checks, and Defendant shall retain sole possession of all usernames and passwords used for online banking access for any trust or fiduciary accounts;
- (i) Defendant shall certify annually on or before June 30 to the North Carolina State Bar that all general trust accounts, dedicated trust accounts, and fiduciary

accounts maintained by Defendant or his law firm are administered, to the best of his knowledge, in compliance with the requirements of Rule 1.15 (including all subparts) or that he is exempt from this provision because Defendant does not maintain any trust or fiduciary accounts for North Carolina client funds;

- (j) Defendant's failure to timely submit any report or materials required by this Order shall be grounds to lift the stay and re-activate the suspension;
- (k) 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;
- (l) Defendant shall timely file during the period of stay his federal and state income tax returns along with any associated schedules and attachments thereto and shall provide proof of these filings to the Office of Counsel within 30 days of filing;
- (m) Defendant shall timely pay all state and federal tax liabilities, fines, and penalties accrued during the stay period;
- (n) Defendant shall execute any written waivers and releases necessary to authorize the Office of Counsel to confer with the Internal Revenue Service or the North Carolina Department of Revenue for the purpose of determining whether Defendant has cooperated and complied with all requirements of this Order. Defendant will not revoke these waivers and releases at any time during the period of stay;
- (o) Defendant shall keep the North Carolina State Bar membership department advised of his current physical home and business addresses and telephone numbers;
- (p) 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;
- (q) 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;
- (r) 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

- (s) Defendant shall not violate the Rules of Professional Conduct or any state or federal laws other than minor traffic violations.

11. 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 et seq. of the North Carolina State Bar Discipline and Disability Rules.

12. 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) Compliance 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) Compliance with the conditions set out in paragraphs 8(d) and 8(f); and
- (c) Compliance with all federal and state tax obligations.

13. Nothing in this Order shall prohibit the State Bar from investigating and, if necessary, pursuing disciplinary action against Defendant for additional misconduct discovered or reported which occurred during the same time period as the conduct addressed in this Order.

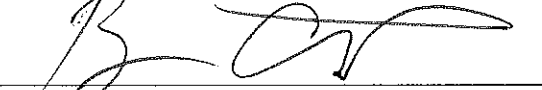
14. The Disciplinary Hearing Commission will assume jurisdiction of this matter pursuant to 27 N.C. Admin. Code 1B § .0114 et seq. of the North Carolina State Bar Discipline and Disability Rules throughout the suspension, and any stay thereof.

Ordered this the 10<sup>th</sup> day of April, 2017.




Patrice A. Hinnant  
Superior Court Judge Presiding

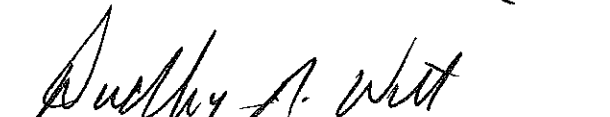
CONSENTED TO BY:



Brian P.D. Oten, Deputy Counsel  
Attorney for the North Carolina State Bar



Ronald Tyson Ferrell  
Defendant



Dudley A. Witt  
David B. Freedman  
Attorneys for Defendant