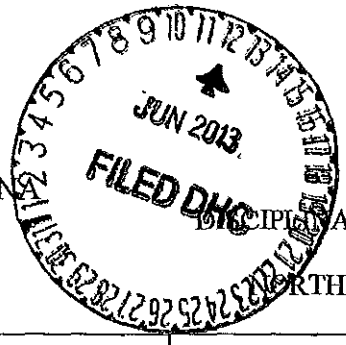

STATE OF NORTH CAROLINA WAKE COUNTY	BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR 12 DHC 4
THE NORTH CAROLINA STATE BAR, Plaintiff v. REID C. JAMES, Attorney, Defendant	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND CONSENT ORDER OF DISCIPLINE

THIS MATTER was considered by a hearing panel of the Disciplinary Hearing Commission composed of M.H. Hood Ellis, Chair, Harriett T. Smalls, and Karen B. Ray pursuant to 27 N.C. Admin. Code 1B § .0114 of the Rules and Regulations of the North Carolina State Bar. Plaintiff, the North Carolina State Bar, was represented by Brian P.D. Oten. Defendant, Reid C. James, represented himself. Defendant waives a formal hearing in this matter and both parties stipulate and consent to the entry of this Order and to the discipline imposed. Defendant waives any right to appeal this consent Order or to challenge in any way the sufficiency of the findings.

Based upon the pleadings in this matter, the parties' stipulations of facts, and with the consent of the parties, the hearing panel enters by clear, cogent, and convincing evidence the following

FINDINGS OF FACT

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

2. Defendant, Reid C. James ("Defendant" or "James"), was admitted to the North Carolina State Bar on 11 February 1982 and is, and was at all times referred to herein, 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.

3. During the times relevant herein, James actively engaged in the practice of law in the State of North Carolina and maintained a law office in Gastonia, Gaston County, North Carolina.

4. On or about 4 June 2008, James received $17,250.00 in entrusted funds to hold for the benefit of Brian Robinson ("Robinson") in connection with a business transaction between Robinson and a third party. The agreement between Robinson and the third party provided that Robinson was entitled to receive the entirety of the entrusted funds provided to James upon conclusion of Robinson's business transaction.

5. James did not deposit the $17,250.00 in entrusted funds into his attorney trust account or any other fiduciary account. Instead, James's office manager deposited the entrusted funds into his operating account.

6. During June 2008, James made no disbursement from his operating account for Robinson's benefit or for the third party's benefit.

7. At the end of June 2008, James's operating account should have maintained a balance of at least $17,250.00.

8. At the end of June 2008, the balance of James's operating account was $14,274.23.

9. In July 2008, Robinson's transaction concluded and Robinson became entitled to receive the entire $17,250.00 of entrusted funds held by James as described above. James was instructed to disburse the entrusted funds to Robinson pursuant to the terms of the agreement between Robinson and the third party.

10. In July 2008, James made one disbursement from his operating account for Robinson's benefit, to wit: by check no. 09880 dated 17 July 2008, James paid Robinson $7,000.00.

11. At the end of July 2008, James's operating account should have maintained a balance of at least $10,250.00.

12. At the end of July 2008, the balance of James's operating account was $1,158.86.

13. James used the entrusted funds for his personal and/or business expenses without authorization from Robinson or the third party to Robinson's business transaction. James's use of the entrusted funds was for his personal benefit and did not benefit Robinson, the third party to Robinson's business transaction, or any other individual at the direction of Robinson or the third party.

14. James did not provide Robinson with the remainder of the entrusted funds held for Robinson's benefit until April 2009.

15. From at least December 2006 to May 2012, James maintained an attorney trust account at Wachovia Bank bearing account number ending in 0436 (formerly an attorney trust account at SouthTrust Bank bearing account number ending in 043) (hereinafter "the Wachovia account" or "James's trust account") into which James deposited entrusted client funds.

16. James did not perform all quarterly or monthly reconciliations of the Wachovia account as required by the Rules of Professional Conduct.

17. James did not maintain proper client ledgers which accurately tracked the deposit and withdrawal of all clients' funds in the Wachovia account.

18. On or about 30 December 2008, Wachovia Bank automatically transferred $229.99 from James's trust account to James's lawyer operating account bearing account number ending in 0326 (hereinafter "James's operating account") to cover an overdraft in James's operating account.

19. James did not reimburse his trust account for the $229.99 removed to cover an overdraft on his operating account until November 2011.

20. On multiple occasions, James did not deposit entrusted client funds into the Wachovia account. Rather, James placed these funds in a safe.

21. On or about 16 June 2010, James deposited $17,000.00 belonging to Heather Warner into his trust account.

22. James or James's office manager made the following disbursements of Warner's funds from his trust account:

a. On or about 16 June 2010, check #1623 in the amount of $1,000.00 payable to Reid C. James;

b. On or about 17 June 2010, check #1625 in the amount of $1,500.00 payable to Reid C. James;

c. On or about 29 June 2010, check #1627 in the amount of $6,222.98 payable to Heather Warner;

d. On or about 2 July 2010, check #1630 in the amount of $4,192.92 payable to Reid C. James;

e. On or about 13 August 2010, check #1637 in the amount of $2,084.10 payable to Heather Warner;

f. On or about 8 September 2010, check #1635 in the amount of $1,500.00 payable to Carolina Physical Medicine & Rehab; and

g. On or about 23 September 2010, check #1636 in the amount of $1,500.00 payable to RS Medical.

23. James disbursed a total of $18,000.00 from his trust account for Warner's benefit.

24. James failed to accurately track the amounts disbursed from his trust account for Warner's benefit, resulting in James disbursing $1,000.00 beyond the sum retained in James's trust account belonging to Warner.

25. James used other clients' funds on deposit in his trust account to cover the $1,000.00 over-disbursement attributed to Warner's settlement.

26. On multiple occasions between January 2007 and May 2012, James disbursed funds from his trust account beyond the sum retained in his trust account for a particular client. These over-disbursements totaled at least $2,777.38.

27. By over-disbursing funds from his trust account as described above, James used other clients' funds on deposit in his trust account without the permission of his clients or the beneficial owner of the funds to cover the various over-disbursements for the benefit of a third party who was not the beneficial owner of the funds.

28. On at least two occasions between January 2007 and May 2012, James commingled his personal funds with entrusted client funds by failing to promptly withdraw earned fees from his trust account.

29. James did not identify the client(s) associated with at least two checks drawn on the Wachovia account.

30. James gave his office manager signature authority for his trust account and allowed his office manager to issue checks drawn on the trust account without James's supervision or approval, many of which resulted in the over-disbursements and commingling of personal funds with entrusted client funds noted above.

31. James delegated his responsibility to create, maintain, and review the trust account records required by the Rules of Professional Conduct and his responsibility to review his operating account records to his office manager. James's office manager failed to carry out her assigned duties and James failed to take reasonable steps to review his office manager's conduct.

32. In November 2009, the State Bar conducted a random audit of James's trust account.

33. During the State Bar's random audit, the State Bar requested further information from James concerning his trust account. James was required to provide the requested information to the State Bar by 21 January 2010.

34. James did not timely provide the requested information to the State Bar.

35. On 8 February 2010, 15 March 2010, and 9 April 2010, the State Bar notified James of his failure to provide the requested information and again requested further information concerning his trust account.

36. James received the State Bar's 9 April 2010 communication by facsimile on 9 April 2010 and was required to provide the requested information within ten (10) days of receiving the State Bar's communication.

37. James did not timely provide the requested information to the State Bar.

Based upon the foregoing Findings of Fact, the panel enters the following

CONCLUSIONS OF LAW

1. All parties are properly before the hearing panel and the panel has jurisdiction over Defendant, Reid C. James, and the subject matter of this proceeding.

2. James's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-28(b)(2) & (3) as follows:

(a) By depositing entrusted funds into his law firm's operating account, James failed to hold entrusted property separate from his own or his law firm's own property in violation of Rule 1.15-2(a) and failed to deposit entrusted funds in a fiduciary account or general trust account in violation of Rule 1.15-2(c); and

(b) By using entrusted funds for his personal and business expenses without authorization from the legal or beneficial owner of the funds, James used entrusted funds for his personal benefit and the benefit of a person other than the legal or beneficial owner of the funds in violation of Rule 1.15-2(j);

(c) By failing to maintain proper client ledgers and by failing to perform monthly and quarterly reconciliations of his trust accounts, James failed to adequately monitor and maintain his attorney trust account in violation of Rule 1.15-3(b)(5) and Rules 1.15-3(d)(1) and (2);

(d) By allowing his attorney trust account to serve as overdraft protection for his operating account such that entrusted funds were automatically debited from the trust account when there was a shortfall in the operating account, James failed to hold entrusted property separate from his property in violation of Rule 1.15-2(a) and used entrusted funds for his personal benefit or a person other than the beneficial owner of the funds in violation of Rule 1.15-2(j);

(e) By failing to deposit entrusted funds received from his clients into his trust account, James failed to properly maintain entrusted client funds in violation of Rules 1.15-2(a) & (b);

(f) By disbursing funds from his trust account without the permission of the beneficial owner(s) of the funds and for the benefit of individuals other than the beneficial owner(s) of the funds, James failed to preserve

entrusted funds provided to him in violation of Rules 1.15-2(a) and (b) and used entrusted funds for the benefit of someone other than the beneficial owner(s) of the funds in violation of Rule 1.15-2(j);

(g) By failing to promptly remove earned fees from his trust account, James failed to segregate funds belonging to himself from entrusted client funds in violation of Rule 1.15-2(f);

(h) By failing to identify the clients associated with at least two withdrawals from his Wachovia trust account, James failed to properly maintain entrusted funds in his attorney trust account in violation of Rule 1.15-2(a) and Rule 1.15-3(b)(2);

(i) By failing to supervise and review his office manager's disbursements of entrusted funds from his trust account, James failed to make reasonable efforts to ensure a nonlawyer's conduct was compatible with his professional obligations in violation of Rule 5.3(b); and

(j) By failing to timely provide the information requested by the State Bar, James knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b).

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

ADDITIONAL FINDINGS REGARDING DISCIPLINE

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

2. There is an absence of any evidence that Defendant intended to harm his clients.

3. Defendant's office manager deposited Brian Robinson's funds in Defendant's operating account without Defendant's knowledge or consent. Defendant's subsequent use of Robinson's funds for personal and business expenses, while inappropriate and preventable had Defendant exercised proper supervision of his staff and his bank accounts, was unintentional. Nevertheless, Defendant's failure to supervise his office's handling of entrusted funds caused significant harm to Brian Robinson, who was unnecessarily deprived of his earned funds for a period of nine months.

4. Defendant's conduct in over-disbursing entrusted funds from his trust account caused significant harm to his clients whose entrusted funds were used for the benefit of someone other than the beneficial owner of the funds without their knowledge or consent. Defendant's conduct also created a significant risk of impairing his clients' ability to achieve the goals of their respective representations by compromising their financial ability to do so.

5. Conducting quarterly reconciliations of the trust account is the lynchpin of proper maintenance and protection of entrusted funds. Defendant's continued failure to reconcile his trust account, failure to maintain proper trust account records, and failure to supervise his office manager's handling of funds and drafting of checks on his trust account demonstrates a pattern of misconduct and demonstrates Defendant's intent to commit acts where the potential harm is foreseeable.

6. Defendant's conduct 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.

7. Defendant failed to exercise any amount of supervision and failed to review the acts of his office manger, S.J., after delegating nearly all of his responsibilities in safeguarding entrusted client funds to S.J. S.J. failed to properly receive and disburse entrusted client funds and failed to maintain proper trust account records in accordance with the Rules of Professional Conduct. S.J. failed to alert Defendant of the deficiencies in Defendant's trust account and took steps to limit Defendant's knowledge of the status of his trust account. Nevertheless, Defendant is solely responsible for safeguarding client funds entrusted to him and for maintaining proper trust account records as required by the Rules of Professional Conduct. Defendant's complete failure to supervise and review S.J.'s efforts demonstrates Defendant's intent to commit acts where the potential harm is foreseeable, and Defendant's conduct impaired his clients' ability to achieve the goals of their respective representations.

8. Defendant has no prior disciplinary offenses.

Based upon the Findings of Fact, Conclusions of Law, and Additional Findings Regarding Discipline, the hearing panel also enters the following

CONCLUSIONS REGARDING DISCIPLINE

1. The hearing panel has carefully considered all of the different forms of discipline available to it. In addition, the hearing panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0114(w)(3) of the Rules and Regulations of the North Carolina State Bar and finds the following factors are applicable in this matter:

a. Defendant's lack of prior disciplinary offenses;

b. Defendant pattern of misconduct; and

c. Defendant's substantial experience in the practice of law.

2. The hearing panel has carefully considered all 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 and concludes that although acts of unintentional misappropriation are present in this case, disbarment is not necessary in order to protect the public.

3. The hearing panel has carefully 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 finds the following factors warrant suspension of Defendant's license:

a. Defendant's intent to commit acts where the harm or potential harm was foreseeable;

b. Defendant's actions had a potential negative impact on his clients' and the public's perception of the legal profession;

c. Defendant's conduct impaired his clients' ability to achieve the goals of their respective representations; and

d. Defendant failed on multiple occasions to participate in the legal profession's self-regulation process by failing to timely respond to the State Bar's 8 February 2010, 15 March 2010, and 9 April 2010 requests for information.

4. The hearing panel has considered all other forms of discipline available and concludes 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.

5. Due to Defendant's gross failure to adequately create, maintain, and review the trust account records required by the Rules of Professional Conduct, Defendant's complete failure to supervise his office manager's conduct, the significant harm suffered by Defendant's clients as a result of Defendant's conduct, and the significant potential harm resulting from Defendant's conduct, the hearing panel concludes that active suspension of Defendant's license for a set period of time is the only discipline that will adequately protect the public from future transgressions by Defendant, that acknowledges the seriousness of the offenses Defendant committed, and that sends a proper message to attorneys and the public regarding the conduct expected of members of the Bar of this State. Defendant should, however, be allowed to petition for a stay of a portion of the active suspension imposed herein, upon Defendant's compliance with certain conditions designed to correct Defendant's handling of entrusted funds and designed to protect the public from future transgressions by Defendant.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Findings Regarding Discipline, the hearing panel enters the following

ORDER OF DISCIPLINE

1. The license of Defendant, Reid C. James, is hereby suspended for five years. This Order is effective 30 days after service of the Order upon Defendant.

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 date of this Order. Defendant shall comply with the wind down provisions contained in Rule .0124 of the North Carolina State Bar Discipline and Disability Rules, located at 27 N.C. Admin. Code 1B § .0124.

3. Defendant shall pay the costs and administrative fees of this proceeding as assessed by the Secretary, including the costs of all depositions and transcriptions of depositions taken in this case, within 60 days of service of the statement of costs and administrative fees upon him.

4. Three years after the effective date of this Order, Defendant may seek a stay of the remaining period of suspension imposed by this Order by filing a petition with the Secretary of the North Carolina State Bar. In order to be eligible for a stay of the remaining period of suspension, Defendant must demonstrate by clear, cogent, and convincing evidence that, in addition to complying with the general provisions for reinstatement listed in 27 N.C. Admin. Code 1B § .0125 of the North Carolina State Bar Discipline & Disability Rules, he has complied with the following conditions:

(a) Defendant is presently enjoined from handling entrusted funds by the Wake County Superior Court (case no. 12 CVS 6619). Within 90 days of this Order's effective date, Defendant must petition the Wake County Superior Court seeking permission to reimburse to his trust account all funds identified by the State Bar as missing from his trust account and disburse all identified client funds existing in his trust account to the beneficial owner(s) of the funds pursuant to the order of the court. Defendant shall diligently pursue the petition and comply with any subsequent order of the Court;

(b) Defendant must retain a CPA, approved in advance by the Office of Counsel, who is willing and able to render the services required by paragraph 6(d) below. Any costs associated with retaining a CPA for purposes of this Order shall be at Defendant's sole expense;

(c) Defendant must complete: six hours of continuing legal education focused on trust account practices and methods and compliance with the requirements of the Rules of Professional Conduct related to entrusted funds, and six hours of continuing legal education focused on law office management. Such courses must be approved in advance by the Office of Counsel. Defendant must provide the Office of Counsel with proof of completion within ten days of completion of the course. Any costs associated with these additional hours of continuing legal education shall be at Defendant's sole expense; and

(d) Defendant must pay the costs and administrative fees of this proceeding as assessed by the Secretary, including the costs of all depositions and

transcriptions of depositions taken in this case, as reflected in paragraph 3 above.

5. 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 three year period but shall not be reinstated prior to the end of that three year period.

6. 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 be the sole person in his office to create, maintain, and review all trust account records required by the Rules of Professional Conduct. With the exception of receiving limited assistance from a CPA as required by this Order, Defendant shall not delegate any trust account record-keeping responsibilities to his staff;

(b) Defendant shall not allow his present office manager, S.J., to:

i. Receive, disburse, or otherwise handle any funds received by Defendant's office;

ii. Participate in any way in the creation, maintenance, and/or review of trust account records required by the Rules of Professional Conduct; and

iii. Participate in the operation of his law practice or law office in any way;

(c) Each quarter Defendant shall provide the Office of Counsel with the 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, client ledgers for all clients with funds in the trust account(s) during that quarter, 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, and deposit slips for each quarter. These documents are due no later than 15 days after the end of the quarter – for example, the three-way reconciliation report for the first quarter of the calendar year (January, February, and March) is due on April 15;

(d) Each quarter, Defendant shall have a CPA audit his trust account(s) and provide a quarterly audit report to the State Bar. This audit shall assess whether Defendant has in his trust account the client funds he should be maintaining for his clients at that time, shall assess Defendant's compliance with Rule 1.15-2 and Rule 1.15-3, and shall note any deficiencies

discovered while reviewing Defendant's trust account. The CPA's audit shall include addressing the items on the Accountant Checklist for Probation Cases which will be provided by the State Bar to Defendant. The CPA shall provide the audit reports to the Office of Counsel 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. Defendant shall ensure the CPA timely submits the quarterly audit reports to the Office of Counsel as described herein;

(e) 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 appropriate 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;

(f) All evaluations, reports, and services of the CPA will be completed and submitted at Defendant's sole expense;

(g) 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 has deposited entrusted funds by the deadline stated in the request;

(h) Defendant shall keep the North Carolina State Bar Membership Department advised of his current physical business address (not a Post Office box), telephone number, and e-mail address and shall notify the Bar of any change in address, telephone number, or e-mail address within ten (10) days of such change;

(i) 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 (15) days of receipt, whichever is later;

(j) Defendant shall pay all Membership dues and Client Security Fund assessments and comply with all Continuing Legal Education requirements on a timely basis;

(k) Defendant shall participate fully and timely in the fee dispute program when notified of any petitions for resolution of disputed fees;

(l) Defendant shall not violate the laws of any state or of the United States; and

(m) Defendant shall not violate any provision of the Rules of Professional Conduct.

7. If an order staying any period of this suspension is entered and Defendant fails to comply with any one or more of the conditions referenced in Paragraph 6, then the stay of the suspension of his law license may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

8. If Defendant does not seek a stay of the suspension of his law license 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 paragraph 4 (a) – (d) above; and

(c) Assurance of compliance with the conditions set out in paragraph 6 (a) & (b).

9. 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.

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

Signed by the Chair with the consent of the other hearing panel members, this the 12th day of June, 2013.

M.H. Hood Ellis, Chair
Disciplinary Hearing Panel

CONSENTED TO BY:

Brian P.D. Oten
Deputy Counsel
North Carolina State Bar
Counsel for Plaintiff

Reid C. James
Defendant