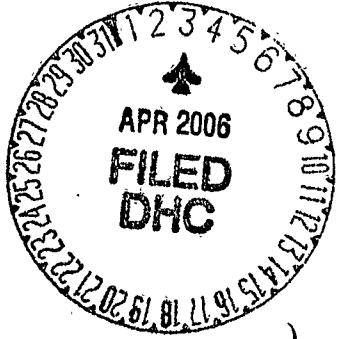


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NORTH CAROLINA

WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF  
THE NORTH CAROLINA STATE BAR  
05 DHC 28

The North Carolina State Bar,  
Plaintiff

v.

Randal S. Marsh, Attorney,  
Defendant

**Order of Discipline**

This matter was heard on 24 February 2006 before a Hearing Committee of the Disciplinary Hearing Commission composed of the Chair, W. Steven Allen, Sr. and members Tommy W. Jarrett and Johnny A. Freeman, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). The Plaintiff was represented by David R. Johnson and William Farrell, Deputy Counsel. Defendant Randal S. Marsh was present and was represented by David W. Yates. Based upon the record and the evidence introduced at the hearing, the Hearing Committee, by clear, cogent, and convincing evidence, hereby makes the following:

**Findings of Fact**

1. The Plaintiff, the North Carolina 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. The Defendant, Randal S. Marsh (hereinafter Defendant), was admitted to the North Carolina State Bar on 19 August 1978, 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 all or a portion of the relevant periods referred to herein, Defendant was actively engaged in the private practice of law in Watauga County, North Carolina.

4. Defendant was properly served with process and the hearing was held with due notice to all parties.

5. On or about 22 May 1990, Margaret Nigel Herndon (hereafter "Herndon") executed an irrevocable trust agreement (hereafter "Herndon trust") as grantor naming Defendant and Frankie P. Newlin (hereafter "Newlin") as trustees. The beneficiary of the Herndon trust was Marsha Mary Smith (hereafter "Smith"). The terms of the trust required the trustees to use the trust corpus and income for the benefit of Smith during her lifetime. Upon Smith's death, the trustees were given discretion under the instrument on distribution of the balance of the trust assets.

6. On 23 September 1991, Margaret Nigel Herndon conveyed two tracts of real property to the Herndon Trust.

7. At some time before 1997, both Herndon and Smith died leaving the final distribution of the assets of the Herndon trust to the discretion of its trustees. At the time, the sole remaining asset of the trust was the real property conveyed in September 1991.

8. The Herndon trust tract of real property was involved in a condemnation proceeding with the North Carolina Department of Transportation (hereafter "DOT") during August 1999.

9. On or about 16 August 1999, the DOT deposited \$100,500.00 with the Clerk of Court of Watauga County for payment for the Herndon trust property as a result of the condemnation proceeding.

10. The trustees of the Herndon trust were defending the condemnation action on the basis that the fair market value of the trust property was more than the \$100,500.00 deposited by DOT with the Clerk.

11. On or about 16 September 1999, an order was entered by Superior Court Judge James Baker to disburse the \$100,500.00 deposited with the Clerk before the determination of the final amount to be paid by DOT. The order required the Clerk to disburse \$873.76 to

Watauga County and the Town of Boone for payment of the 1999 ad valorem taxes due each governmental taxing authority. The balance of \$99,626.25 was ordered paid to the Herndon Trust.

12. On or about 17 September 1999, the Clerk of Court issued two checks as a result of the order of Judge Baker. One check was payable to the Watauga County Tax Administrator in the amount of \$873.76 and was delivered directly to the Tax Administrator. The other check was made payable to Randall [sic] Marsh, Trustee for Margaret Herndon in the amount of \$99,626.25. The Clerk delivered this check to Defendant on or about the day it was issued. Defendant did not deposit the check in any trust or fiduciary account.

13. At the time the check for \$99,626.25 was issued to Defendant, he and his co-trustee had agreed to use the condemnation proceeds to purchase a tract of real property then owned by the heirs of the Paul Carroll Estate. At the time, the Carroll Estate heirs had an agreement with a real estate broker named Dale Ward (hereafter "Ward") for Ward to purchase the property for \$140,000.00.

14. The Herndon trust did not have sufficient proceeds to pay the entire sales price of the Carroll Estate property. Defendant entered into an arrangement with Ward under which the trust would use the proceeds of the condemnation proceeds to partially pay for the Carroll Estate property and Ward would furnish the balance of purchase price. Defendant also entered into an oral agreement with Ward that the Herndon trust would pay the balance of the purchase price for the property as soon as the condemnation action was settled. Defendant then prepared a deed from the Carroll Estate heirs to Ward and his spouse, not the Herndon Trust. Defendant did not prepare or require any documentation between the Herndon trust and Ward to show that the trust had any interest in the property. There was no contract or other instrument documenting the agreed upon sale to the trust by Ward. Defendant did not ask Ward to issue a note or execute any deed of trust or other security for the funds provided by the Herndon Trust for purchase of this property.

15. On 21 September 1999, Defendant took the check for \$99,626.25 issued to him as trustee by the Clerk to Centura Bank. He endorsed the check in his name as trustee. He then

received four cashiers checks from Centura Bank payable to the heirs of the Carroll Estate as follows:

<i>Payee</i>	<i>Amount</i>
Betsy A. Cox	\$22,422.32
James Carroll	\$22,422.32
Michael D. Carroll and Roger Carroll	\$44,844.64
Nancy J. Hicks	\$ 9,422.33
Total	\$99,111.61

16. Defendant received the balance of the proceeds from the Clerk's check, \$ 514.64, in cash from Centura Bank.

17. Defendant did not deposit the \$514.64 that he received in cash in any trust or fiduciary bank account.

18. Defendant delivered the four Centura Bank cashiers checks to the named payees, either directly or through intermediaries, for partial payment on the conveyance of the Carroll Estate property to Ward on or about the date the checks were issued, 21 September 1999.

19. The deed to the Carroll Estate property from the heirs to Ward and his spouse was recorded at the Watagua County Register of Deeds Office on 13 December 1999. Defendant made no effort to document any interest in the property in the name of the Herndon Trust at that time.

20. The Herndon trust was issued a check for the final proceeds in the DOT condemnation action in the amount of \$69,500 on or about 8 June 2001.

21. Defendant held the final proceeds check payable to the Herndon Trust until 8 August 2001. On that date, Defendant opened a bank account in the name of the Herndon trust and deposited \$69,250 of the \$69,500 check for the condemnation proceeds at that time. Defendant had a cashier's check issued for the \$250 balance payable to the mediator who mediated the condemnation action.

22. After receipt of the additional proceeds from the condemnation action, Defendant and Newlin contacted Ward to complete the purchase of the Carroll Estate property. Ward

informed Defendant and Newlin that he had sold part of the property to raise cash. Ward further informed them that he had acquired adjacent property and would be willing to sell the remaining part of the original tract plus the newly acquired property. Defendant and Newlin decided not to buy the property and asked Ward for repayment of the Herndon Trust funds used by Ward to buy the original property. Ward did not have funds available to repay the Herndon Trust. Defendant made no effort to obtain a note or other documentation that Ward would repay the trust funds at that time.

23. On or about 6 September 2001, Defendant asked Newlin if the trust would loan \$45,700.00 to Defendant's parents on a short term basis. Newlin agreed as long as there was a note and collateral and the loan was repaid by 31 December 2001. Defendant did not prepare or obtain a deed of trust or other collateral in favor of the Herndon Trust to secure the loan. Defendant claims to have prepared a note, but cannot produce a copy of any note executed by his parents in favor of the trust. Defendant withdrew the \$45,700.00 from the Herndon Trust bank account on or about 6 September 2001. On or about 18 December 2001, Defendant deposited \$45,700.00 back into the Herndon Trust bank account.

24. After the Bar informed Defendant that it was conducting an inquiry into the Herndon Trust transaction, Defendant obtained a letter from Ward acknowledging the arrangement for use of the Herndon Trust proceeds to finance the purchase of the Carroll Estate property. Defendant made no other effort to have Ward repay the indebtedness before this action was filed. During February 2006, Ward issued a note and an assignment of another note to the Herndon Trust for repayment of the funds to the Herndon Trust.

25. At some time in 2000 or 2001, Defendant began a ministry with his wife named Marks of Grace. One of the missions of the ministry was to support birthmothers who were interested in placing children for private adoption and facilitating placements of children with prospective adoptive parents. Defendant was held out by the ministry as the "adoption lawyer."

26. As a result of his ministry and law practice, Defendant regularly represents prospective adoptive parents in private adoption proceedings. Defendant has conducted between 100 and 200 private adoptions since starting his practice.

27. Defendant's adoption practice involves "open" adoptions in which the birthmother and the prospective adoptive parents know each other and the birthmother approves the adoptive parents. Under North Carolina law, prospective adoptive parents may pay for the living and other pre-birth care expenses of the birthmother and up to six weeks of post-birth living expenses, but may not otherwise pay the birthmother. The law requires a complete and accurate disclosure and accounting of funds paid or agreed to be paid in association with the adoption by or on behalf of the prospective adoptive parents be filed with the court. Also by statute, a licensed adoption placement agency must prepare a home assessment of the prospective adoptive parents before they are eligible to adopt.

28. In the course of representation of parties involved in these private adoption proceedings, Defendant regularly receives funds from prospective adoptive parents intended for payment to himself for his legal fees, to the adoption placement agencies for their services, and to the birthmother for living and care expenses.

29. Occasionally, Defendant will facilitate a prospective adoption between a birthmother and an adoption couple where one of the parties decides to stop the adoption arrangement after the prospective adoptive couple has paid expenses for the birthmother. In such cases, Defendant arranges for any subsequent prospective couple to reimburse the expenses paid by the prior adoptive couple. Defendant regularly collects the funds for such reimbursements from the successor prospective adoptive couple.

30. Defendant does not maintain a general attorney trust account and does not deposit the funds he collects from prospective adoptive couples into a trust or other fiduciary account.

31. In the late winter or early spring of 2002, Defendant was contacted by an expectant couple then living in Florida about helping with the adoption of a child expected to be born about 1 August 2002. The birthmother was not married, but lived with a long-time boyfriend with whom she had had two other children. Defendant arranged for the relocation of the birthmother and her boyfriend from their prior residence in Florida to Mountain City, Tennessee.

32. After relocating the birthmother to Mountain City, Tennessee, Defendant facilitated a prospective adoption arrangement between the birthmother and a couple named

Neal. The Neals began paying for the relocation and living expenses of the birthmother. The birthmother was relocated to Creston, North Carolina and then to Fayetteville, North Carolina. After a couple of months with this arrangement, the birthmother decided to no longer consider the Neals for prospective adoption and the arrangement was terminated.

33. During or about April 2002, Defendant facilitated another prospective adoption between this birthmother and a couple named Sturgill. The Sturgills began paying the living expenses of the birthmother. However, in mid to late June 2002, the birthmother decided to end the prospective adoption arrangement with the Sturgills.

34. During the spring of 2002, Chris and Robin Behrer (hereafter "the Behrers" collectively) consulted with Julia Childers (hereafter "Childers") about becoming adoptive parents through private adoption. Childers ran an adoption agency at the time. Childers conducted the home assessment study for the Behrers. The Behrers were residents of Catawba County, North Carolina.

35. Childers and the Defendant were social acquaintances and Childers referred couples to Defendant for prospective adoptions.

36. In late June 2002, Childers informed the Behrers that she was aware through Defendant of a potential adoption with an expectant birthmother. As a result, the Behrers communicated with Defendant about a possible adoption.

37. Defendant informed the Behrers that the birthmother's due date was in August. Defendant further advised that the Behrers would need to pay him \$17,000.00 for fees and expenses associated with the adoption. The \$17,000.00 included a \$3,000.00 fee for Defendant's services, \$3,000.00 as a fee to the private adoption agency, and \$11,000.00 in pre- and post-birth expenses for the care of the birthmother, including food, housing, medical care, and other similar expenses. This amount included funds to reimburse the Sturgills and the Neals for the expenses previously paid by them.

38. The Behrers delivered a certified or cashiers check to Defendant for \$17,000.00 shortly after agreeing to allow the Defendant to arrange and prepare the necessary legal services for the private adoption. The Defendant did not deposit the check into a trust or fiduciary account.

39. Defendant sent, or caused to be sent, 19 payments totaling \$6,565.00 to the birthmother or her boyfriend for living expenses by Western Union money order over the period from 4 May 2002 through 15 October 2002. The individual money orders paid (including service charges) are shown in the following schedule:

<i>Date</i>	<i>Payee</i>	<i>Amount</i>
5/4/2002	Boyfriend	222.00
5/14/2002	Boyfriend	220.00
5/17/2002	Boyfriend	491.00
5/20/2002	Mother	115.00
5/21/2002	Boyfriend	55.00
5/24/2002	Boyfriend	116.00
6/14/2002	Mother	114.00
6/19/2002	Mother	65.00
6/25/2002	Mother	280.00
7/17/2002	Mother	384.00
7/19/2002	Boyfriend	123.00
7/24/2002	Mother	65.00
7/30/2002	Mother	805.00
7/31/2002	Mother	45.00
8/30/2002	Mother	385.00
8/30/2002	Mother	601.00
9/14/2002	Mother	115.00
9/17/2002	Mother	125.00
10/15/2002	Mother	2239.00

In addition, Defendant sent a Western Union money order to David Sturgill in the amount of \$475.00 on 22 April 2002 for his use to pay for expenses of the birthmother while Sturgill was visiting the birthmother.

40. Over the next few weeks, the Behrers had regular communications with Defendant and the birthmother.

41. On 4 August 2002, the birthmother gave birth to a female child in Cumberland County.

42. On 4 August 2002, Defendant went to the hospital in Cumberland County. Defendant met with the birthmother alone and presented a series of documents Defendant had prepared for the birthmother to consent to the adoption of the female child by the Behrers. Among the documents that Defendant presented to the birthmother were a consent to adoption

and a revocation of consent to adoption. Defendant reviewed these documents with the birthmother and witnessed their execution. Defendant then prepared a second consent to adoption, presented it to the birthmother, and witnessed its execution. Defendant then met alone with the birthmother's boyfriend for execution by him of a consent to adopt, revocation, and second consent to adopt. Defendant notarized each of the documents as required. Under North Carolina law, the birthparents have up to seven days to revoke their initial consent for adoption their child. If that consent is revoked and a second consent is thereafter given, the second consent becomes irrevocable unless procured by coercion or duress.

43. On 5 August 2002, Defendant and the Behrers were informed by a social worker at the hospital that the birthmother had changed her mind and wanted to revoke the consent for adoption in favor of the Behrers. Defendant and the Behrers were also informed that the Cumberland County Department of Social Services intended to file a petition with the Juvenile Court in Cumberland County to challenge the second consent.

44. Defendant then informed the Behrers that he could not represent them in the Cumberland County proceedings because he would be a witness. Defendant then returned the \$17,000.00 check given to him by the Behrers.

45. On 6 August 2002, Defendant filed a petition in Catawba County on behalf of the Behrers for the adoption of the female child based upon the adoption documents executed by the birthmother and her boyfriend.

46. Defendant then arranged for another attorney to represent the Behrers in Cumberland County. During the month of August, the Behrers provided two checks totaling \$4,500 to pay the fees of this other attorney. At Defendant's request, the Behrers then paid \$12,500 in cash to Defendant in three separate payments during August and September. Defendant represented to the Behrers that these cash payments would be used for the payment of the birthmother's expenses as agreed, including reimbursement of the prior prospective adoptive couples, to pay his attorney fees, and to pay the adoption agency. Defendant did not provide any written statement of how the funds would be used. Defendant did not deposit any of the new funds he received from the Behrers into a trust or fiduciary account.

47. Shortly after Defendant filed the adoption petition in Catawba County, representatives of the Cumberland County Department of Social Services filed a petition with the Juvenile Court in Cumberland County to review the consents to the adoption given by the birthmother. The Cumberland County Juvenile Court held a series of hearings from August 2002 through March 2003 concerning the adoption consent by the birthmother.

48. While the Cumberland County Juvenile Court was considering the matter, Defendant continued pursuing the Catawba County adoption petition on behalf of the Behrers. In November 2002, Defendant prepared and filed an accounting for the funds paid by the Behrers with respect to the adoption with the Catawba County court that identified payments of \$3,000.00 to the adoption agency, \$3,000.00 to him for a fee, and \$11,000 to the birthmother for care expenses. The accounting was signed by the Behrers. At the time, Defendant knew that the amounts reported to the court were not correct.

49. At least \$14,000.00 of the \$17,000.00 check originally delivered to Defendant by the Behrer was given to Defendant in a fiduciary capacity with the intent that the Defendant deliver the funds to third parties on behalf of the Behrers. Defendant did not make any disbursements from these funds on behalf of the Behrers. After Defendant returned the \$17,000 check to the Behrers, at least \$9,500.00 of the \$12,500 in cash paid to Defendant was given to Defendant in a fiduciary capacity with the intent that Defendant deliver the funds to third parties on behalf of the Behrers. Defendant has not accounted for the use and disbursement of these funds to the Behrers.

50. In early March 2003, the Behrers discharged both Defendant and the other attorney hired through Defendant's referral. The Behrers were able to complete the adoption on their own.

51. In April 2003, Defendant delivered a cashier's check to the Neals for \$3,100 and to the Sturgills for \$3,000 to reimburse them for expenses incurred during the adoption proceedings.

52. Defendant did not maintain any receipts or records of the actual expenses paid to the birthmother by any of the three couples or provide any accountings for expenses paid on their

behalf by Defendant. Defendant did not ask the Neals or the Sturgills for any records showing their actual expenses paid.

53. Defendant generally does not maintain any records of actual expenses paid to of for birthmothers or provide any accountings to prospective adoptive parents for funds that he receives and disburses on their behalf.

Based upon the foregoing **Findings of Fact**, the Hearing Committee enters the following:

#### **Conclusions of Law**

1. All parties are properly before the Hearing Committee and the committee has jurisdiction over Randal S. Marsh and the subject matter. By appearing and participating in the proceedings without objection, Marsh waived any and all defects in the service of the summons and complaint and in the notice of the hearing.

2. Marsh'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) in that the conduct violated the Revised Rules of Professional Conduct in effect at the time of the conduct as follows:

- (a) By exchanging the \$99,626.25 check payable to the Herndon Trust from the Clerk for cashiers' checks and cash, Defendant failed to maintain fiduciary funds in a proper manner in violation of Rule 1.15-2(a) and failed to deposit funds belonging to another received by him as a lawyer in a trust or fiduciary account in violation of Rule 1.15-2(c);
- (b) By receiving and using the \$ 514.64 that he received in cash from the \$99,626.25 check payable to the Herndon Trust without any accounting to the trust, Defendant failed to maintain the minimum records for the receipt and disbursement of fiduciary funds in violation of Rule 1.15-3(a), and failed to account for fiduciary funds in violation of Rule 1.15-3(e);
- (c) By delivering to the sellers of the Carroll Estate property \$99,111.61 in Herndon Trust proceeds and allowing the property to be conveyed to a third party without any documented benefit or security for the trust, Defendant failed to properly disburse proceeds held in trust in violation of

Rule 1.15-2(m) and handled a legal matter without adequate preparation in violation of Rule 1.1(b); and

- (d) By not obtaining a note and/or a security for the \$45,700 loan to his parents from the Herndon Trust, Defendant engaged in a conflict of interest with the trust in violation of Rule 1.7(b).
- (e) By not depositing the \$17,000.00 check from the Behrers in a trust or fiduciary account, Defendant failed to properly deposit funds received or placed under his control in an appropriate account in violation of Rule 1.15-2(b) or (c);
- (f) By failing to account for the disbursement of the funds to the Behrers, Defendant has failed to render a complete and accurate accounting of client or fiduciary funds in violation of Rule 1.15-3(d) or (e);
- (g) By filing an accounting with the court for the adoption expenses that Defendant knew was not correct, Defendant made a false statement of material fact to the court in violation of Rule 3.3(a);
- (h) By not depositing funds he received from prospective adoptive parents in a trust or fiduciary account, Defendant has failed to properly deposit funds received or place under his control in an appropriate account in violation of Rule 1.15-2(b) or (c);

Based upon the foregoing **Findings of Fact and Conclusions of Law**, and upon additional clear, cogent, and convincing evidence, the Hearing Committee hereby makes these additional:

#### **Findings of Fact Regarding Discipline**

1. Defendant has no prior disciplinary record.
2. Defendant has not filed personal federal income tax returns since at least 1993.

Based on the **Findings of Fact** and **Conclusions of Law** above and the additional **Findings of Fact Regarding Discipline**, the Hearing Committee makes the following:

**Conclusions with Respect to Discipline**

1. Defendant's misconduct is aggravated by the following factors:
  - (a) Substantial experience in the practice of law;
  - (b) multiple offenses; and
  - (c) a pattern of misconduct.
2. Defendant's misconduct is mitigated by the following factors:
  - (a) No prior disciplinary record; and
  - (b) an absence of dishonest or selfish motive.
3. The aggravating factors outweigh the mitigating factors.
4. The Defendant's conduct caused substantial harm to the trust in that approximately \$100,000 in trust assets were disbursed without adequate security and that the trust has lost income on that \$100,000 for a significant period. Further, Defendant's conduct had the potential to cause significant harm to his adoption clients in that Defendant has failed to take adequate and appropriate measures to assure that the funds collected from these clients are safeguarded and used only as statutorily permitted.
5. The Hearing Committee has carefully considered all of the different forms of sanction available to it and finds that any sanction of less than suspension of Defendant's license would not be appropriate in this case. Further, an Order of Discipline imposing discipline less than a suspension would not sufficiently protect the public because Defendant's conduct involved the improper handling of and accounting for money belonging to others to whom Defendant had a fiduciary duty. Entry of any Order imposing lesser discipline than suspension would fail to acknowledge the seriousness of the offenses that the Defendant has committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar. The only sanction in this case that can adequately protect the public is

suspension of the Defendant's license for a period of time. By staying the suspension upon compliance with conditions, a means is provided to help assure that Defendant does not engage in future violations of the Rules of Professional Conduct.

6. The Committee's decision in this matter to suspend Defendant's license and stay the suspension upon compliance with certain conditions is based upon the unique facts involved in this case and the fact that the Committee did not find any misappropriation or dishonest conduct by Defendant.

Based upon the foregoing **Findings of Fact, Conclusions of Law** and the **Findings of Fact Regarding Discipline**, and the **Conclusions with Respect to Discipline**, the Hearing Committee enters the following:

#### **Order of Discipline**

1. The Defendant's license to practice law in the State of North Carolina is hereby suspended for three years, effective thirty days after service of this Order of Discipline on the Defendant. The suspension is stayed for a period of three years as long as Defendant complies with the following conditions:

- (a) Within 90 days after service of this order, Defendant will satisfactorily complete at his own expense a law office management course approved by the Office of Counsel of the North Carolina State Bar of at least eight hours with an emphasis on ethics and trust account management and pay the costs thereof. Within 10 days after completion of the course, Defendant will be responsible for seeing that the provider of the training course has certified to the Office of Counsel that Defendant has satisfactorily completed the course and paid the costs;
- (b) Immediately upon service of this order, Defendant will establish a general attorney trust account and will maintain the trust account in accordance with the applicable rules and regulations of the North Carolina State Bar at all times. Within 10 days after the account is established, Defendant will provide the Office of Counsel of the North Carolina State Bar with the name of the bank and the account number of the trust account. Thereafter,

Defendant will provide the Office of Counsel of the North Carolina State Bar with the name of the bank and the account number of any new trust or fiduciary account established by Defendant for any purpose or any change to any existing account, such as closing the account, within ten days of the event;

- (c) Within ten days of service of this order, Defendant will also provide the Office of Counsel of the North Carolina State Bar with the name and account number of all bank accounts, whether or not denominated as an operating account, trust account, or otherwise and regardless of whether or not Defendant has signatory authority, in which Defendant deposits funds received from clients or persons or entities with whom he has a fiduciary relationship for any purpose, including fees and expenses, with an identification of the nature of the account;
- (d) Upon request by the Office of Counsel of the North Carolina State Bar, Defendant will furnish a valid, signed form permitting the Office of Counsel to obtain records of any bank account in which Defendant deposits any funds received from any client;
- (e) Defendant will have a licensed CPA conduct an audit of all bank accounts of any type in which he has received or disbursed client or fiduciary funds or property on a semi-annual basis at his own expense, including all trust accounts he may maintain, and will direct the CPA to provide a copy of each audit report to the Office of Counsel of the North Carolina State Bar within thirty (30) days of the last day of June and December of each calendar year during the period of this order (i.e. reports are due no later than July 30 and January 30 for the period covering the prior 6 months). The first such report will be provided by 30 July 2006 and cover the period from the date of service of this order through 30 June 2006;
- (f) During the period of the stay, Defendant will permit audits of any his trust, business, operating, and personal bank accounts by the Office of Counsel

of the North Carolina State Bar at any time upon ten days advance written notice by the Office of Counsel. Such audits will be conducted at Defendant's expense. The Office of Counsel will not exercise the right to randomly audit the Defendant's bank accounts more than twice each year. Such limitation on audits will not preclude the North Carolina State Bar from conducting any audits for cause pursuant to the rules during the period of the stay;

- (g) During the entire period of the stay, Defendant will timely file all federal and state tax returns required by law and timely pay all required taxes during the period of suspension, including without limitation, any returns due in 2006. Defendant will provide the Office of Counsel of the North Carolina State Bar with written verification in the form of a copy of a signed and dated return, certified by him as true and accurate, that he has filed all required personal and business tax returns with the North Carolina Department of Revenue and the Internal Revenue Service, including but not limited to income tax returns, during each year the stayed suspension, including those due in 2006. This written verification shall be sent within thirty days of the date the return is filed and in no event more than thirty days after the due date of the return. If Defendant requests an extension for filing a return, then the Defendant will provide a copy of the request for extension within ten days of the filing the request and the required written verification of filing the return will be provided to the Office of Counsel of the North Carolina State Bar within one week of the extended due date of that return. If Defendant claims any exemption from filing a return, Defendant will provide a statement from a licensed CPA to the Office of Counsel setting forth the reason for the exemption;
- (h) Within 30 days of service of this order, Defendant will provide the Office of Counsel of the North Carolina State Bar with a valid, signed authorization for the Office of Counsel to request records from the North Carolina Department of Revenue and the Internal Revenue Service

showing that required tax returns have been filed and all taxes due have been paid;

- (i) Within seven days after service of this Order, Defendant will resign as co-trustee of the Herndon Trust and provide a copy of the resignation to the Office of Counsel of the North Carolina State Bar. Defendant will not serve as a trustee of any trust during the period of suspension;
- (j) Defendant will keep the North Carolina State Bar Membership Department advised of his current mailing addresses;
- (k) Defendant will respond to all communications from the North Carolina State Bar within 30 days of receipt or by the deadline stated in the communication, whichever is sooner;
- (l) Defendant will not violate the Revised Rules of Professional Conduct or any local, state, or federal laws during his suspension;
- (m) Defendant will pay all North Carolina State Bar membership dues and Client Security Fund assessments and comply with all Continuing Legal Education (CLE) requirements on a timely basis; and
- (n) Defendant will pay all costs of this proceeding, including the costs of his deposition and the witness expenses, within 90 days of service upon him of the statement of costs as assessed by the Secretary.

2. If the stay of the suspension is lifted and the suspension is activated for any reason, Defendant will comply with the following conditions precedent to reinstatement following the completion of the suspension:

- (a) Defendant will have submitted his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days from the effective date of the order activating his suspension;


- (b) Defendant will have complied with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the N.C. State Bar Discipline & Disability Rules on a timely basis;
- (c) Defendant will have complied with conditions (a) through (m) of paragraph 1 of this Order;
- (d) Defendant will have complied with all orders of the Disciplinary Hearing Commission and any courts;
- (e) Defendant will not have engaged in the practice of law or violated any of the Revised Rules of Professional Conduct in any capacity during the suspension;
- (f) Defendant will not have violated any local, state, or federal laws during the suspension; and
- (g) Defendant will have paid all costs of this proceeding as assessed by the Secretary.

2. Defendant will pay all costs of this proceeding, including the costs of his deposition and the witness expenses, within 90 days of service upon him of the statement of costs as assessed by the Secretary.

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

Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Committee.

This the 29<sup>th</sup> day of March, 2006



W. Steven Allen, Sr., Chair  
Disciplinary Hearing Committee