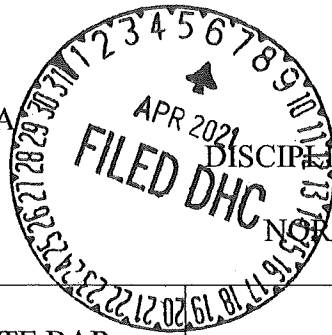


STATE OF NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
19 DHC 7

THE NORTH CAROLINA STATE BAR,  
Plaintiff

v.

ROBIN DALE FUSSELL, Attorney,  
Defendant

ORDER OF DISCIPLINE

THIS MATTER was heard on 1 – 3 March 2021 before a Hearing Panel of the Disciplinary Hearing Commission composed of Allison C. Tomberlin, Chair, and members Stephanie N. Davis and Heath R. Jenkins. Jennifer A. Porter represented Plaintiff, the North Carolina State Bar. Defendant, Robin Dale Fussell, appeared *pro se*.

Based upon the pleadings, the stipulated facts, and the evidence admitted at the hearing, the Hearing Panel hereby finds by clear, cogent, and convincing evidence the following:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar (“State Bar”), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, Robin Dale Fussell, who is also known as R. Dale Fussell and Dale Fussell (“Fussell”), was admitted to the North Carolina State Bar in 1981, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Rules of Professional Conduct.

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

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

4332 Water Oak Road

5. Fussell served as closing attorney and settlement agent for a transaction in which Equivest, LLC was to purchase real property located at 4332 Water Oak Road, Charlotte, NC 28211 (“the 4332 Water Oak Road property”) from Mary Wallace (“Wallace”) for \$53,000.00, pursuant to a February 23, 2009 Offer to Purchase and Contract (“purchase contract”) signed by the parties.

6. Pursuant to the purchase contract, Equivest, LLC was required to pay \$100.00 in earnest money and then \$52,900.00 at closing to Wallace for her real property.

7. John D. Heidinger (“Heidinger”), who was the manager of Equivest, LLC, retained Fussell to perform a title search on the 4332 Water Oak Road property and serve as closing attorney and settlement agent for this closing.

8. At Heidinger’s request, Fussell performed a title search of the 4332 Water Oak Road property and reported the results to Heidinger by e-mail dated February 25, 2009.

9. In his title search, Fussell found the following encumbrances on the 4332 Water Oak Road property: (1) delinquent property taxes for the years 2005-2008; (2) a judgment by Discover Bank against Wallace; and (3) a recorded deed of trust on the property in the amount of \$50,000.00 that was in foreclosure with a hearing scheduled for April 2009.

10. Fussell prepared a HUD-1 Settlement Statement for the closing of this transaction, with a settlement date of February 26, 2009.

11. The HUD-1 Settlement Statement stated that the buyer, Equivest, LLC, provided \$53,123.00 at closing.

12. The HUD-1 Settlement Statement stated that \$53,000.00 was the gross amount due to the seller, Wallace.

13. The HUD-1 Settlement Statement stated that the \$53,000.00 due to Wallace was being disbursed as follows: (1) \$3,379.14 to pay the 2005-2008 delinquent property taxes; (2) \$4,583.50 to Discover Bank to pay off Wallace’s judgment; and (3) \$45,037.36 to Wachovia Bank to pay off the prior mortgage secured by the deed of trust.

14. Fussell signed the HUD-1 Settlement Statement described above.

15. Wallace signed the HUD-1 Settlement Statement described above.

16. Heidinger signed the HUD-1 Settlement Statement described above for Equivest, LLC.

17. Fussell prepared a general warranty deed for the 4332 Water Oak Road property with Wallace as grantor and Equivest, LLC as grantee, dated February 26, 2009.

18. Wallace signed the general warranty deed Fussell prepared for the 4332 Water Oak Road property on February 26, 2009.

19. Fussell's assistant notarized Wallace's signature on the deed.

20. Fussell received the deed signed by Wallace in his fiduciary capacity as settlement agent for the transaction.

21. Fussell was obligated to hold the deed executed by Wallace in his fiduciary capacity unless and until he received appropriate closing funds for the purchase of the property.

22. Equivest, LLC did not provide Fussell with \$53,123.00 at closing in February 2009 as stated on the HUD-1 Settlement Statement.

23. Fussell did not disburse (1) \$3,379.14 to pay the 2005-2008 delinquent property taxes; (2) \$4,583.50 to Discover Bank to pay off Wallace's judgment; and (3) \$45,037.36 to Wachovia Bank to pay off the prior mortgage secured by the deed of trust on Wallace's behalf in February 2009.

24. The HUD-1 Settlement Statement was prepared by Fussell.

25. On March 26, 2009, Fussell recorded the deed signed by Wallace transferring the 4332 Water Oak Road property to Equivest, LLC with the Mecklenburg County Register of Deeds.

26. Fussell had not received any funds from or on behalf of Equivest, LLC to purchase the property from Wallace as of March 26, 2009.

27. Fussell did not disburse any funds to or for the benefit of Wallace for the purchase of this property from Wallace in February or March 2009.

28. Fussell did not disclose to Wallace that he was recording the deed from Wallace to Equivest, LLC without having received the purchase funds from Equivest, LLC for the property.

29. Fussell was not authorized to record the deed from Wallace to Equivest, LLC without having received the purchase funds from Equivest, LLC for the property with which to pay the consideration recited in the deed and the purchase contract.

30. The deed signed by Wallace was a general warranty deed that contained the statement that the title to the property being conveyed by the deed was free and clear of all encumbrances.

31. At the time Fussell recorded the deed signed by Wallace, he had received no funds from Equivest, LLC for this transaction and was not taking any contemporaneous action to make the disbursements listed on the HUD-1 Settlement Statement signed by the parties by which the prior encumbrances would have been satisfied.

32. The general warranty deed Fussell recorded misstated that the title was free and clear of all encumbrances when in fact at the time the deed was recorded the property remained encumbered by the delinquent property taxes for 2005-2008, Discover Bank's judgment, and the deed of trust held by Wachovia with no contemporaneous action taken that would clear the property of the encumbrances.

33. Subsequent to recording the deed from Wallace to Equivest, LLC with no consideration paid to or for the benefit of Wallace, Fussell assisted Heidinger in utilizing the 4332 Water Oak Road Property for the benefit of Heidinger and/or his company, Equivest, LLC.

34. On or about September 9, 2009, Fussell served as closing attorney and settlement agent in a transaction in which the 4332 Water Oak Road property was used by Equivest, LLC as collateral to secure a loan from Gray Dog Investments, Inc.

35. Fussell issued a preliminary opinion of title to the title insurance company with respect to the 4332 Water Oak Road property, with a search period through July 29, 2009.

36. Fussell reported in his preliminary opinion of title that the property was encumbered by (1) delinquent property taxes for the years 2005-2008; (2) the judgment by Discover Bank; and (3) the deed of trust on the property in the loan amount of \$50,000.00.

37. The title insurance company issued a Commitment for Title Insurance noting in the Exceptions section in Schedule B – Section II that the deed of trust and the Discover Bank judgment would be excepted from coverage in the title policy to be issued unless disposed of to the satisfaction of the title insurance company.

38. Fussell issued a final opinion of title to the title insurance company in which he mistakenly stated that the deed of trust in favor of Gray Dog Investments, Inc. was in first lien position.

39. Fussell disclosed on the final title opinion that the property taxes had not been paid.

40. Gray Dog Investments, Inc. was not in first lien position at the time Fussell submitted his final opinion of title to the title insurance company.

#### 6024 Black Bear Court

41. Fussell was the closing attorney and settlement agent for a transaction involving 6024 Black Bear Court, Charlotte, North Carolina in June 2012 in which Wells Fargo Bank, N.A., holder of a deed of trust encumbering the property ("lienor"), had agreed to release its lien on the property for less than full payoff of the amount owed to the lienor by the owner of the property, upon certain conditions (transaction hereinafter referred to as a "short sale").

42. The approved short sale offer was from MCRPH 85, LLC, buyer, to Michael Jewett, seller and grantor of the deed of trust held by Wells Fargo Bank, dated May 14, 2012 for \$34,300.00.

43. Wells Fargo Bank sent Fussell's assistant an e-mail on June 26, 2012 with the approved HUD-1 Settlement Statement and itemized requirements for the closing, which included the execution and return of the Short Sale Affidavit.

44. On June 28, 2012, Fussell and the buyer and seller signed a Short Sale Affidavit for the lienor in that transaction, Wells Fargo Bank, N.A.

45. When Fussell signed the Short Sale Affidavit on June 28, 2012, it was his understanding that it would be provided to the lienor.

46. In the Short Sale Affidavit Fussell signed on June 28, 2012, he and the parties certified the following: that there were no agreements, understandings, or contracts relating to the sale of the property that had not been disclosed to the lienor, and that none of the signatories had knowledge of any offer to purchase the property for a higher purchase price than the purchase price contained in the real estate purchase contract referenced in the affidavit, that had not been presented to the lienor.

47. The purchase contract referenced in the Short Sale Affidavit was the May 2012 Offer to Purchase and Contract by which MCRPH 85 LLC offered \$34,300.00 to purchase the property.

48. In the Short Sale Affidavit Fussell signed on June 28, 2012, Fussell and the parties acknowledged their understanding that the lienor was relying upon the statements made in the affidavit as consideration for the reduction in the payoff amount owed to the lienor and for the lienor's agreement to the sale of the property.

49. On June 28, 2012, Fussell was aware of the agreement and understanding for MCRPH 85 LLC to transfer the 6024 Black Bear Court property to Bluestone Investments, Inc. contemporaneously with its purchase.

50. On June 28, 2012, Fussell was aware of the Offer to Purchase and Contract dated June 27, 2012 by which Charlotte Residential Asset Fund, LLC offered \$55,000.00 for the 6024 Black Bear Court property with the settlement date of June 28, 2012.

51. Fussell served as closing attorney and settlement agent for the contemporaneous transactions in which MCRPH 85 LLC purchased the property in the short sale for \$34,300.00, MCRPH 85 LLC transferred the property to Bluestone Investments, Inc., and Charlotte Residential Asset Fund, LLC (CRAF) purchased the 6024 Black Bear Court property from Bluestone Investments, Inc. for \$55,000.00.

52. This higher purchase price offer had not been presented to the lienor.

53. Fussell did not present the higher purchase price offer to the lienor or ensure or verify that this higher purchase price offer had been presented to the lienor.

54. It was Fussell's understanding at the time of the transactions that the higher purchase price offer had not been presented to the lienor.

55. The agreement and understanding that MCRPH 85 LLC would transfer the 6024 Black Bear Court property to Bluestone Investments, Inc. and the agreement, understanding, and contract for Bluestone Investments, Inc. to sell the 6024 Black Bear Court property for a higher price on the same day as MCRPH 85 LLC's purchase had not been disclosed to the lienor.

56. Fussell did not disclose to the lienor the agreement and understanding that MCRPH 85 LLC would transfer the 6024 Black Bear Court property to Bluestone Investments, Inc. and the agreement, understanding, and contract for Bluestone Investments, Inc. to sell the 6024 Black Bear Court property for a higher price on the same day as MCRPH 85 LLC's purchase.

57. Fussell did not ensure or verify that the agreement and understanding that MCRPH 85 LLC would transfer the 6024 Black Bear Court property to Bluestone Investments, Inc. and the agreement, understanding, and contract for Bluestone Investments, Inc. to sell the 6024 Black Bear Court property for a higher price on the same day as MCRPH 85 LLC's purchase had been disclosed to the lienor.

58. It was Fussell's understanding at the time of the transactions that the agreement and understanding that MCRPH 85 LLC would transfer the 6024 Black Bear Court property to Bluestone Investments, Inc. and the agreement, understanding, and contract for Bluestone Investments, Inc. to sell the 6024 Black Bear Court property for a higher price on the same day as MCRPH 85 LLC's purchase had not been disclosed to the lienor.

59. In the 6024 Black Bear Court short sale, Fussell made certifications that were not accurate at the time the certifications were made.

60. Fussell closed the short sale transaction knowing that misrepresentations had been made to the lienor, with no corrective disclosure or authorization to proceed with closing.

#### Robert Barnett loans

61. In the following short sale closings, Fussell provided to the lienors HUD-1 Settlement Statements that misrepresented that the purchase was funded by cash from the buyer Carolina Home Buyers, LLC, when in fact the funding was provided by a loan from Robert Barnett:

- (a) 14517 Arbor Ridge Drive, Charlotte, NC 28273, deed recorded January 7, 2013
- (b) 2906 Crawford Brook Lane, Charlotte, NC 28269, deed recorded February 20, 2013
- (c) 5623 Wyalong Drive, Charlotte, NC 28227, deed recorded February 26, 2013

#### Earnest Money

62. For a period of several years, including from 2010 to 2013, Fussell failed to deposit and maintain in a trust account earnest money deposits provided to him for potential real estate transactions.

63. During that time period, Fussell deposited earnest money funds into personal bank accounts.

64. Fussell subsequently issued checks from his personal accounts for payment of the earnest money, either to deposit into his trust account for the closing or to refund the money to the appropriate recipient.

65. Fussell utilized three personal bank accounts for the deposit and disbursement of earnest money during this time period, beginning with a personal SunTrust account with account number ending in digits 8912 (“personal account x8912”) and a personal First Citizens Bank account with account number ending in digits 4925 (“personal account x4925”), and then primarily a personal First Citizens Bank account with account number ending in digits 1171 (“personal account x1171”).

66. In December 2013, Fussell ceased using a personal bank account for earnest money deposits and began depositing earnest money into his trust account.

67. Fussell delegated to a non-attorney assistant the task of accounting in his trust account records for the earnest money.

68. The non-attorney assistant created and utilized one ledger on which to record the deposits and disbursements of earnest money.

69. The non-attorney assistant failed to create an individual client ledger for the client for whom each earnest money deposit had been received and failed to track the deposit and disbursement of those client funds on such a client ledger.

70. Fussell failed to ensure that the requisite individual client ledgers were created at the time of the deposit of earnest money for the client and the funds for the client tracked on the individual client ledger.

71. Fussell’s failure to properly record earnest money deposits on individual client ledgers continued until about January 2015.

#### Preliminary Opinions of Title in Double-Closings

72. Fussell was the closing attorney and settlement agent for multiple sets of “double-closings” in which property was transferred more than once on or about the same day. These closings typically involved the owner (“A”) selling to a second party (“B”) which then sold the property to a third party (“C”).

73. In certain B-C transactions in certain double-closings, including those listed below, Fussell prepared and provided to a title insurance company a preliminary opinion of title

purporting to report the results of his examination of the record title for the property that stated that B owned the property when in fact A still owned the property, including as follows:

- a. 6931 Valley Haven Drive, Charlotte, NC 28211
  - i. Fussell prepared a preliminary opinion of title with a search date through June 3, 2013 that indicated the owner of the property was Carolina Home Buyers, LLC.
  - ii. The deed to Carolina Home Buyers, LLC was not recorded until June 13, 2013.
- b. 7615 Eben Drive, Charlotte, NC 28269
  - i. Fussell prepared a preliminary opinion of title with a search date through December 31, 2012 that indicated the owner of the property was Carolina Home Buyers, LLC.
  - ii. The deed to Carolina Home Buyers, LLC was not recorded until February 8, 2013.
- c. 6801 Glenmoor Drive, Charlotte, NC 28214
  - i. Fussell prepared a preliminary opinion of title with a search date through March 20, 2013 that indicated the owner of the property was Carolina Home Buyers, LLC.
  - ii. The deed to Carolina Home Buyers, LLC was not recorded until April 19, 2013.

74. The commitments for title insurance issued by the title insurance companies in the above-listed closings correspondingly inaccurately identified B as the owner when in fact A was still the owner.

75. In a December 2010 closing for 3008 Clemson Avenue, Charlotte, NC 28205, Fussell failed to identify in his preliminary opinion of title a deed of trust from grantor Equivest, LLC in favor of beneficiary Value Properties, LLC (“the Value Properties deed of trust”) that he had recorded in July 2009.

76. Fussell provided this preliminary opinion of title with this omission to the title insurance company.

77. The commitment for title insurance issued by the title insurance company correspondingly failed to include the Value Properties deed of trust in the Requirements provisions in Schedule B – Section I, in which it set out the requirement for “cancellation, release, termination, discharge, or satisfaction of record” of the items set out therein.

78. The buyer's lender required that it be provided with the commitment for title insurance and that Fussell comply with the requirements in Schedule B – Section I.

79. Fussell provided this title insurance commitment that omitted the Value Properties deed of trust to the buyer's lender in the December 1, 2010 transaction.

#### Conflict of Interest

80. In February 2012, Fussell closed transactions whereby Regent Bank sold 9 parcels of land to Wace Property Holdings LLC, and on the same day Wace Property Holdings LLC sold 6 of those parcels to entities related to Mikesell. These deeds were recorded February 14, 2012. The properties that were sold by Wace Property Holdings LLC on February 14, 2012 were as follows:

- a. 2540 Barringer Drive, Charlotte, NC 28209, sold to Bluestone Investments, Inc. for \$32,000.00
- b. 9510 Greyleaf Place, Charlotte, NC 28210, sold to Bluestone Investments, Inc. for \$900.00
- c. 7311 Meadowland Drive, Charlotte, NC 28215, sold to Charlotte Residential Asset Fund, LLC for \$49,200.00
- d. 1420 Rollingwood Drive, Charlotte, NC 28217, sold to Bluestone Investments, Inc. for \$33,500.00
- e. 6200 and 6204 Spanish Oak Road, Charlotte, NC 28227, sold to Bluestone Investments, Inc. for \$39,400.00

81. Fussell represented Wace Property Holdings LLC in the purchases of the 9 parcels from Regent Bank.

82. Fussell represented the Mikesell-related entities in the purchases of the 6 parcels from Wace Property Holdings LLC.

83. Fussell closed transactions, provided representation, and/or was otherwise aware of arrangements whereby Mikesell (via the applicable related entity) sold or negotiated sales of property purchased from Wace Property Holdings LLC for higher purchase prices close in time to the above transactions, including as follows:

- a. 6200 and 6204 Spanish Oak Road, Charlotte, NC 28227, sold by Bluestone Investments, Inc. to HTC Enterprises LLC Solo 401K Trust fbo Harpeet K. Chadha on February 14, 2012 (same day) for \$94,000.00
- b. 9510 Greyleaf Place, Charlotte, NC 28210, sold by Bluestone Investments, Inc. to Randal and Marcella Hetrick on May 24, 2012 for \$39,000.00

- c. 1420 Rollingwood Drive, Charlotte, NC 28217, under contract by Bluestone Investments, Inc. in June 2012 to sell for \$73,920.00; this contract was later terminated

84. On February 8, 2012, Mikesell e-mailed Fussell regarding the properties being purchased from Wace Property Holdings LLC and stated the following: "Regarding our back end transactions we would prefer the seller (being aaron and or phil)[sic] not be aware of our back end transactions we prefer our other side remain confidential . . . anytime there is profit on the other end the first part sometimes feels it is unfair and I just don't want to have to go there since I do so much business with aaron [sic]."

85. The person "aaron" referenced in Mikesell's e-mail was Aaron Guido, who was acting on behalf of Wace Property Holdings LLC.

86. The person "phil" referenced in Mikesell's e-mail was Phil Shannon, Special Asset Manager for Regent Bank.

87. Mikesell's request created circumstances in which Fussell could not communicate all information reasonably necessary to permit his client Wace Property Holdings LLC to make informed decisions regarding the representation and to provide competent and diligent representation to Wace Property Holdings LLC.

88. Mikesell's request that Fussell not share material information with concurrent client Wace Property Holdings LLC through its agent Aaron Guido created a conflict of interest for Fussell.

Based on the foregoing Findings of Fact, the Hearing Panel enters the following:

#### CONCLUSIONS OF LAW

1. All the parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, Robin Dale Fussell, and the subject matter.

2. Defendant's conduct, as set forth in the Findings of Fact above, constitutes "misconduct" and grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) and that Defendant violated the following Rules of Professional Conduct<sup>1</sup> in effect at the time of his conduct:

- (a) Rule 1.3;
- (b) Rule 1.7(a);
- (c) Rule 1.15-2(a),(b), and (d);
- (d) Rule 1.15-3(b)(5) and (f);
- (e) Rule 1.16(a)(1);

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<sup>1</sup> The citations to the Rules of Professional Conduct are to the version and numbering in effect at the time of Fussell's conduct.

- (f) Rule 5.3(b); and
- (g) Rule 8.4(c).

3. The Hearing Panel concludes that the remaining rule violations alleged in the Complaint are not established by the facts set forth in the Findings of Fact above.

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Panel hereby finds by clear, cogent and convincing evidence the following additional:

FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1 – 89 above are reincorporated as if set forth herein.
2. Fussell intended to commit acts that could have potentially caused significant harm to Mary Wallace and which did, in fact, cause her some harm for a period of time.
3. Fussell engaged in concurrent representation of Wace Property Holdings LLC and Mikesell and/or Mikesell-related entities which caused potential harm to Wace Property Holdings, LLC.
4. Fussell made substantial changes to his practice since 2013, including ensuring earnest money is now deposited into his trust account and individual client ledgers are created upon the deposit of earnest money for a client, and no longer conducting double closings.
5. Fussell made good faith efforts to make restitution and to rectify the consequences of his misconduct, including contributing monetarily to the settlement of the lawsuit brought by Wallace against Equivest, LLC by which her title to 4332 Water Oak Road in 2016 was restored.
6. Fussell presented evidence of good character.
7. These proceedings have been pending since 2014. Fussell has produced hundreds of closing files to the State Bar since 2014.
8. Fussell cooperated with the State Bar's investigation, timely responding to the State Bar's inquiries, and providing the requested records. Fussell has also had a cooperative attitude toward the DHC proceedings.
9. Fussell suffered significant professional harm when the DHC complaint was filed in 2019.
10. Fussell was licensed in 1981, has considerable experience in the practice of law, and during that time has had no prior discipline.
11. Fussell expressed remorse during the DHC proceedings.

12. Fussell acknowledged as wrongful the conduct he understood and believed was wrongful.

13. The Hearing Panel was convinced and finds that Fussell did not act with the intent to do anything wrong. Where Fussell did not readily acknowledge the wrongful nature of his conduct, Fussell did not understand that he was doing anything wrong.

Based on the foregoing Findings of Fact, Conclusions of Law, and Additional Findings Regarding Discipline, the Hearing Panel enters the following:

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel carefully considered all forms of discipline available to it.

2. The Hearing Panel considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f)(1), (2) and (3) of the Rules and Regulations of the State Bar and concluded that the following factors are applicable:

27 N.C. Admin. Code. 1B.0116(f)(1)

- a. Factor (B), Intent of Defendant to commit acts where the harm or potential harm is foreseeable;
- b. Factor (C), Circumstances reflecting Defendant's lack of honesty;
- c. Factor (G), Impairment of the client's ability to achieve the goals of the representation, arising from the conflict of interest found concerning Defendant's representation of Wace Properties Holdings, LLC and Sky Mikesell;
- d. Factor (H), Effect of Defendant's conduct on third parties, to wit: Mary Wallace;
- e. Factor (I), Acts of dishonesty and misrepresentation.

27 N.C. Admin. Code 1B.0116(f)(2)

- a. Factor (A), Acts of dishonesty and misrepresentation;

27 N.C. Admin. Code 1B.0116(f)(3)

- a. Factor (A), The absence of disciplinary offenses;
- b. Factor (C), Dishonest motive;
- c. Factor (D), Timely good faith efforts to make restitution or to rectify consequences of misconduct;

- d. Factor (F), Pattern of misconduct;
- e. Factor (G), Multiple offenses;
- f. Factor (K), Full and free disclosure to the hearing panel and a cooperative attitude toward the proceedings;
- g. Factor (L), Delay in disciplinary proceedings through no fault of Defendant;
- h. Factor (P), Remorse;
- i. Factor (Q), Good character and reputation;
- j. Factor (R), Vulnerability of the victim, to wit: Mary Wallace;
- k. Factor (S), Substantial degree of experience in the practice of law;
- l. Factor (V) Other factors, to wit: Defendant suffered additional professional harm when the Complaint was filed.

3. The circumstances of this case do not warrant disbarment in order to protect the public.

4. The Hearing Panel considered all disciplinary options available to it and determined that a stayed suspension with conditions is appropriate in this case, in light of both the potential for significant harm resulting from Defendant's conduct but also the effects already borne by Defendant, changes Defendant has already made, and other considerations set forth in the preceding paragraphs.

5. The Hearing Panel has considered all lesser sanctions and finds that discipline short of a stayed suspension would not adequately protect the public because entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses Defendant committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar of this State.

Based on the foregoing Findings of Fact, Conclusions of Law, and additional Findings of Fact and Conclusions of Law Regarding Discipline, the Hearing Panel hereby enters the following

#### ORDER OF DISCIPLINE

1. Defendant, Robin Dale Fussell, is hereby suspended from the practice of law for one year. The effective date of this Order is 30 days from service of this Order upon Defendant pursuant to 27 N.C. Admin. Code 1B.0128(c). This suspension is stayed from its inception subject to the terms set out below.

2. Defendant is taxed with the administrative fees and costs of this proceeding. Defendant shall pay the administrative fees and costs of this proceeding as assessed by the Secretary of the North Carolina State Bar. Defendant must pay the costs within 30 days of service upon him of the statement of fees and costs by the Secretary.

3. The one-year suspension of Defendant's law license is stayed for one year, with the stay in effect only as long as Defendant complies with the following conditions:

- a. Defendant pays all assessed administrative fees and costs associated with the hearing within 30 days of service upon him of the statement of fees and costs;
- b. Defendant responds to all letters of notice and requests for information from the North Carolina State Bar by the deadline stated in the communication;
- c. Defendant keeps the State Bar's Membership Department advised of his current business address, which address must be a street address, not a post office box or drawer and notifies the State Bar of any change of address within ten days of such change;
- d. Defendant timely complies with the mandatory State Bar continuing legal education requirements; and
- e. Defendant does not violate the Rules of Professional Conduct or the laws of the United States or any state or local government.

4. Unless Defendant's obligations under this Order are modified by further order of the DHC, Defendant's obligations under this Order end one year from the effective date of the Order.

5. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code 1B.0118 until all conditions of the stay of the suspension are satisfied.

Signed by the Chair with the consent of the other Hearing Panel members, this the 6th day of April, 2021.



Allison C. Tomberlin, Chair  
Disciplinary Hearing Panel