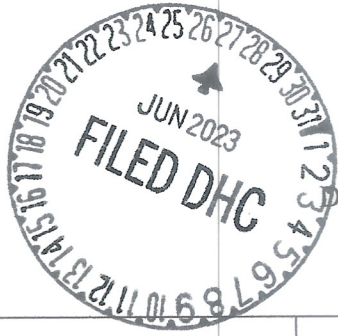


NORTH CAROLINA

WAKE COUNTY



BEFORE THE
 DISCIPLINARY HEARING COMMISSION
 OF THE
 NORTH CAROLINA STATE BAR
 22 DHC 12

THE NORTH CAROLINA STATE BAR,
 Plaintiff

v.

CHARLES R. GURLEY, Attorney,
 Defendant

ORDER OF
 DISCIPLINE

This matter came on for hearing on April 25-26, 2023 and May 17-18, 2023 by a hearing panel of the Disciplinary Hearing Commission composed of Margaret M. Hunt, Chair, and members, Brian O. Beverly and Kimberly W. Strach. G. Patrick Murphy and Robert W. Weston represented Plaintiff, the North Carolina State Bar. B. Geoffrey Hulse represented Defendant, Charles R. Gurley.

On August 15, 2022, the Chair of the Disciplinary Hearing Panel entered an Order Granting Judgment on the Pleadings ruling that the First through Fourth Claims of the Complaint were established by Defendant’s admissions. At the hearing of this matter, the State Bar announced its intent not to proceed on the Fifth Claim of the Complaint.

Based on the pleadings, the stipulated facts, and the evidence presented at hearing, and making credibility determinations related to testimony presented, 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, Charles R. Gurley (“Gurley” or “Defendant”), gained admission to the North Carolina State Bar in 1991 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. From 22 November 2017 until 7 November 2018 Defendant was enjoined by the Wake County Superior Court from engaging in the practice of law, as described in more detail below.
3. At all relevant times herein, Defendant was engaged in the practice of law in the State of North Carolina and maintained a law office in Goldsboro, Wayne County, North Carolina.
4. At all relevant times herein, Defendant practiced law as a solo practitioner and was the principal lawyer of his law firm with managerial authority for nonlawyers employed by his law firm.

5. At all relevant times herein, Defendant's practice involved a high volume of representing clients in traffic, infractions, misdemeanor, and felony cases.

6. Until approximately November 2017, Defendant charged traffic case clients a set amount for representation which included his attorney fee, fines, and court costs.

7. Defendant accepted installment payments for traffic cases, and his practice and custom was not to resolve a particular client's traffic case until he had received full payment from the client.

8. In traffic cases, there was often a delay of many months between a client's full payment to Defendant and the resolution of the client's matter.

9. Due to the volume of Defendant's practice, he often continued clients' traffic cases numerous times before he resolved them.

10. The specific sums due to the Clerk of Court for any particular client's court costs and fines would be determined once Defendant had resolved the client's matter, and the remainder of what the client paid would be Defendant's fee.

11. Because payments to Defendant from traffic case clients consisted in part of funds to be paid to the Clerk and in part of funds that would eventually be earned by Defendant, those payments were entrusted funds, required to be deposited into Defendant's trust account and maintained there through appropriate disbursement after resolution of the client's matter (i.e., payment for costs and fines disbursed to the Clerk and the remainder to Defendant).

12. During the period relevant to this action, Defendant maintained an attorney trust account with BB&T Bank, bearing an account number ending in 4916 ("trust account").

13. During the period relevant to this action, Defendant also maintained an operating account for his law practice, a BB&T account with an account number ending in 7929 ("operating account"), and on or about 16 June 2017, Defendant opened a bank account with The Little Bank, now Union Bank, with an account number ending in 2106 ("account 2106").

Egregious Trust Account Neglect and Mismanagement

14. Defendant's trust account was subject to procedural reviews in 1998 and 2012.

15. Both reviews found that Defendant was not conducting the required reconciliations of his trust account and was not depositing into his trust account mixed funds that consisted partly of entrusted funds and partly of earned fees.

16. The 2012 review found that Defendant's trust account had been dormant for three years.

17. Despite notice of the deficiencies found by the two procedural reviews, after 2012 and continuing through November 2017, Defendant did not ensure his handling of entrusted funds conformed to his obligations under the Rules of Professional Conduct.

18. Beginning in at least 2012 and continuing through November 2017, Defendant delegated responsibility for management of his trust account to his non-lawyer assistants.

19. After 2012, despite knowledge of his non-lawyer assistants' mismanagement of his trust account, Defendant failed to take reasonable remedial action to ensure his non-lawyer assistants' management of his trust account conformed to his professional obligations and responsibilities pursuant to the Rules of Professional Conduct.

20. From in or about 2012 and continuing through November 2017, Defendant did not conduct the required reconciliations of his trust account or ensure that either he or a non-lawyer employee was properly conducting the required reconciliations.

21. From in or about 2012 and continuing through November 2017, Defendant failed to consistently review the monthly bank statements and cancelled checks for his trust account.

22. From in or about 2013 and continuing through November 2017, Defendant stopped accessing information about his trust account using BB&T's website.

23. After Defendant stopped accessing online information about his trust account, Defendant did not personally review any bank records reflecting the activity in his trust account and did not personally review any bank records of any other account into which he deposited entrusted funds.

24. Defendant did not conduct required quarterly transaction reviews for his trust account or for any other account into which he deposited entrusted funds.

25. From in or about 2012 and continuing through November 2017, Defendant did not ensure that entrusted funds received from clients were deposited into and properly maintained in his trust account.

26. From in or about 2012 and continuing through November 2017, Defendant did not ensure that the records of deposits into his trust account or other account into which he deposited entrusted funds reflected the source and beneficial owner of the funds.

27. From in or about 2012 and continuing through November 2017, Defendant did not ensure that checks drawn on his trust account or drawn on any other account into which he deposited entrusted funds reflected identifying information of the client on whose balance of entrusted funds the item was drawn.

28. From in or about 2012 and continuing through November 2017, Defendant did not ensure that copies of cancelled trust account checks and monthly bank statements, as well as checks and monthly bank statements of any other accounts into which entrusted funds were deposited and from which entrusted funds were disbursed, were maintained with his trust account records.

The Holland Restitution Funds

29. From 25 January 2016 through 16 May 2016, the balance in Defendant's trust account was \$2.96.

30. On or about May and June 2016, Defendant represented client D. Holland in a criminal case.

31. In May and June 2016, Defendant received a total of \$70,000.00 from or on behalf of D. Holland for payment of restitution in her criminal case ("the Holland funds"). A court order required Holland to pay the \$70,000.00 restitution by 10 August 2016.

32. Defendant received \$55,000.00 of the Holland funds on or about 16 May 2016. The \$55,000.00 was deposited into Defendant's trust account.

33. \$7,500.00 of the Holland funds were transferred from Defendant's trust account into his operating account on 31 May 2016.

34. The activity in Defendant's operating account on and after 31 May 2016 caused the balance to drop below \$7,500.00; by 2 June 2016, the balance in Defendant's operating account was \$1,665.42.

35. Defendant received an additional \$6,000.00 of the Holland funds on or about 3 June 2016. The \$6,000.00 was deposited into Defendant's operating account.

36. The balance in Defendant's operating account dropped below \$6,000.00 on 1 July 2016 and was negative by 2 August 2016.

37. The \$13,500.00 of Holland funds deposited or transferred into Defendant's operating account as described in the preceding paragraphs was misapplied for the benefit of Defendant, Defendant's practice, other clients of Defendant, and/or other persons.

38. Defendant received an additional \$9,000.00 of the Holland funds on or about 27 June 2016. The \$9,000.00 was deposited into his operating account on 27 June 2016 but transferred into Defendant's trust account the following day.

39. Because Defendant had not ensured that the Holland funds were deposited and maintained in his trust account in their entirety, D. Holland's restitution could not be paid on 10 August 2016 as ordered by the court.

40. D. Holland's restitution was not paid until 15 August 2016.

41. D. Holland's restitution could only be paid on 15 August 2016 because funds from other sources, including Defendant's assistant, Melissa Milligan, were deposited into Defendant's trust account on 10 and 12 August 2016.

The Cobb Restitution Funds

42. The balance in Defendant's trust account on 25 October 2016 was \$2.96.

43. As of 25 October 2016, A. Cobb was a client of Defendant.

44. On 25 October 2016, a restitution check for \$50.00, drawn on Defendant's trust account for the benefit of A. Cobb, was presented for payment and returned for insufficient funds.

45. After the check for A. Cobb's restitution was returned for insufficient funds, Defendant did not make alternative arrangements to ensure that A. Cobb's restitution was paid.

Defendant's Failure to Comply with the State Bar's Requests for Information and a Superior Court Order to Produce Information, and Defendant Held in Civil Contempt

46. On or around 2 November 2016, the State Bar was notified that Defendant's trust account did not have sufficient funds to pay the \$50.00 check drawn on the trust account for the benefit of A. Cobb (as described above in paragraph 45 and hereinafter "the NSF").

47. The NSF became the basis for the opening of a grievance file against Defendant, bearing file no. 17G0002.

48. On numerous occasions between November 2016 and April 2017, the State Bar sought information and records from Defendant regarding the NSF.

49. After Defendant's office submitted some trust account records to the State Bar, the investigation of grievance file no. 17G0002 came to involve not just the NSF but also Defendant's handling of entrusted funds more broadly.

50. Between November 2016 and May 2017, Defendant was largely non-responsive to the State Bar's demands for information and records relating to his handling of entrusted funds.

51. On 20 March 2017, Defendant was personally served with a subpoena to appear and produce trust account records in grievance file no. 17G0002.

52. Defendant did not appear and produce trust account records to the State Bar as required by the subpoena served on him on 20 March 2017. Defendant did produce a limited amount of requested documentation to the State Bar on 24 and 30 March 2017.

53. On 17 May 2017, Defendant was personally served with the State Bar's Summons and Petition for Preliminary Injunction and Motion for Temporary Restraining Order.

54. The State Bar's request for injunctive relief from the court was predicated on Defendant's failure to respond meaningfully to the State Bar's demands for information and records regarding his handling of entrusted funds.

55. On 30 May 2017, an Order of Preliminary Injunction was entered against Defendant, prohibiting him from handling entrusted funds and requiring him to produce information and records to the State Bar.

56. In December 2016 and February 2017, Defendant's clients C. Boyd and H. Canady and client N. James' mother, B. James, filed fee dispute petitions with the State Bar ("fee disputes").

57. The State Bar served Defendant with Letters of Notice ("LONs") in the fee disputes filed by Boyd, Canady and James.

58. Defendant failed to respond to the LONs in the fee disputes initiated by Boyd, Canady and James.

59. When the State Bar did not receive a response from Defendant to the fee dispute LONs, the fee disputes were closed and referred for the opening of grievance files.

60. On 30 March 2017, the State Bar served Defendant with LONs in the grievances arising from the fee disputes filed by Boyd, Canady, and James.

61. Defendant failed to respond to the LONs in the Boyd, Canady and James grievances within 15 days as required.

62. Between May and November 2017, Defendant continued to fail entirely to respond to additional LONs served on him regarding grievances and fee disputes filed against him with the State Bar, except for the LON in grievance no. 17G0541. In grievance no. 17G0541, Defendant submitted a timely but incomplete response to the LON served upon him.

63. On 6 September 2017, Defendant was personally served with (1) a subpoena commanding his appearance at the State Bar and production of client files related to pending grievances, and (2) a letter demanding production of financial and client records pursuant to the injunction.

64. Defendant did not appear at the State Bar pursuant to the 6 September 2017 subpoena or produce any client files or financial records to the State Bar.

65. Due to Defendant's failure to produce records required by the injunction, the Superior Court in Wake County held Defendant in civil contempt of court on 6 November 2017.

66. On 16 November 2017, Defendant filed a motion to stay execution of judgment for civil contempt entered 6 November 2017.

67. Defendant asserted in his motion for stay of execution that he had provided to the State Bar "the records requested."

68. Defendant's statement that he had provided the records the State Bar sought from him was materially false; he had not fully complied with the State Bar's demands for financial and client records pursuant to the injunction.

69. Defendant did not appear at the 17 November 2017 hearing on his motion for stay of execution. Following proceedings at the hearing on Defendant's motion for stay of execution, the Court entered an Order that date denying Defendant's motion.

70. The order denying Defendant's motion to stay execution of the contempt judgment, *inter alia*, directed him to appear on 22 November 2017 and show cause why he should not be enjoined from practicing law for his failure to comply with the State Bar's demands for information from him.

71. On 22 November 2017, the Superior Court in Wake County entered an order enjoining Defendant from practicing law until such time as he fully complied with the State Bar's demands for information.

72. After Defendant was enjoined from practicing law, he began submitting responses to the LONs in the grievances to which he had previously failed to respond.

73. With respect to each grievance, Defendant was obligated to provide a "full and fair disclosure of all the facts and circumstances" pertaining to the alleged misconduct.

74. The responses Defendant provided to the State Bar, however, were superficial and incomplete; they failed to address the substance of the conduct described therein.

75. At least one of Defendant's responses contained a materially false statement: Defendant asserted in his 24 August 2018 supplemental response to grievance no. 18G0077 that he understood that his clients' funds were still being deposited into his trust account after 30 May 2017.

76. Defendant had knowledge of the falsity of the statement set forth in the preceding paragraph when he made it.

77. Between 26 April 2018 and 7 November 2018, there were four contested hearings on the issue of whether Defendant had fully complied with the State Bar's demands for information.

78. Defendant remained enjoined from practicing law until 7 November 2018, when the Court determined that Defendant had at least provided "facially corresponding but not necessarily substantively responsive" submissions to the State Bar's inquiries.

79. To date, Defendant remains in contempt of court.

Defendant Receives Entrusted Funds In Violation of Court Order

80. On or around 16 June 2017, Defendant opened a bank account with The Little Bank, now Union Bank, with an account number ending in 2106 ("account 2106").

81. Defendant opened account 2106 because, after entry of the injunction referenced above in paragraph 55, BB&T had frozen Defendant's trust and operating accounts.

82. Defendant did not establish account 2106 as an attorney trust account.

83. After entry of the 30 May 2017 order enjoining him from handling entrusted funds, Defendant continued to receive entrusted funds from clients.

84. Between the time Defendant's BB&T bank accounts were frozen and November 2017, account 2106 was the only bank account Defendant used for deposits and disbursements related to his law practice.

85. To the extent that entrusted funds Defendant received from clients after 30 May 2017 were deposited into a bank account, those entrusted funds were deposited into account 2106.

86. Most of the funds Defendant received from clients after 30 May 2017 were entrusted funds, but only a small portion of the entrusted funds received from clients were deposited into account 2106.

87. Defendant's records reflect clients paid him a total of \$15,466.00 between 2 and 27 October 2017.

88. Deposits into account 2106 between 2 and 27 October 2017 totaled \$10.00.

89. The entrusted funds Defendant received from clients between 2 and 27 October 2017 substantially exceeded \$10.00.

90. Defendant did nothing to ensure that the entrusted funds received from clients and not deposited into account 2106 between 2 and 27 October 2017 were kept safe and used only for the benefit of the legal or beneficial owner of the funds.

91. Defendant and/or Defendant's nonlawyer assistant misappropriated the entrusted funds received from clients and not deposited into account 2106.

92. Defendant also deposited earned fees into account 2106, thereby commingling entrusted funds with his own funds.

93. Defendant did nothing to ensure that the entrusted funds received from clients and deposited into account 2106 were kept safe and used only for the benefit of the legal or beneficial owner of the funds.

94. Defendant used the funds in account 2106 to pay his business and personal expenses, and clients' court costs and fines, without regard for whether any particular expenditure used Defendant's funds or client funds.

95. Defendant's commingling and failure to properly account for funds deposited in account 2106 resulted in entrusted funds being used for the benefit of Defendant and others besides the beneficial or legal owners of the funds.

96. On 17 November 2017, Defendant deposited into account 2106 \$375.00 in entrusted funds he received from client B. Sutton for resolution of a traffic ticket.

97. Before the funds deposited into account 2106 were disbursed for the benefit of B. Sutton, the balance in account 2106 dropped below \$375.00 on 20 November 2017.

98. Before the funds deposited into account 2106 were disbursed for the benefit of B. Sutton, on 30 November 2017, Defendant made a counter-withdrawal of \$60.00 from account 2106, leaving a balance of \$39.12.

99. At the time he made the counter withdrawal on 30 November 2017, Defendant knew or should have known that entrusted funds had been deposited into account 2106 and not yet paid from that account to or on behalf of the beneficial owners.

100. At the time he made the counter withdrawal on 30 November 2017, Defendant knew he was not entitled to disburse to himself most of the funds remaining in account 2106.

101. Defendant misappropriated a portion of B. Sutton's entrusted funds for his own benefit.

Defendant's Neglect of Client Cases and Failure to Refund Unearned Fees

102. Between October 2015 and October 2017, Defendant failed to appear in court on behalf of clients C. Boyd, B.L. Hinnant, N. James, E. Monroig, and C. Nunley.

103. Between June 2015 and October 2017, Defendant failed to pay promptly the court costs and fines of clients whose traffic citations he had resolved, including H. Canady, K. Barrera, J. Mozingo, K. Gurganus, and T. Reid.

104. In each of the cases referenced in the preceding paragraph where Defendant failed to pay promptly the court costs and fines on behalf of his clients:

- a. Defendant had received from or on behalf of the client entrusted funds to pay the client's court costs and fines; and
- b. The entrusted funds Defendant had received to pay the client's court costs and fines were not deposited into Defendant's trust account.

105. Defendant's failure to appear in court on behalf of his clients and to promptly tender to the Clerk the court costs and fines his clients had already paid him caused hardship for those clients, sometimes including receiving Department of Motor Vehicle notices of intent to suspend licenses, having to hire or obtain other attorneys to take over the case, imposition of additional fees, and the issuance of orders for their arrest.

106. Client T. Wilson, a resident of Missouri, was charged with Driving While Impaired while in North Carolina and paid Defendant \$1,200.00 to represent her.

107. Defendant agreed that Wilson could pay his fee in separate installments.

108. Wilson attended several court dates for the DWI charge as instructed by Defendant and the case was continued each time.

109. In March 2017, an order for Wilson's arrest ("OFA") was issued due to her failure to appear at a scheduled setting of the case.

110. In June and July 2017, Wilson attempted to contact Defendant about the status of her case.

111. In July 2017, Wilson paid Defendant's fee in full. Defendant advised Wilson that her case had been resolved.

112. In August 2017, Wilson attempted to renew her license and learned this driver's license was in a state of suspension because of the failure to resolve the DWI charge.

113. Defendant did not complete the representation of Wilson.

114. Wilson had to hire another attorney at a cost of \$1,500 to obtain a disposition of the DWI charge.

115. Similarly, Defendant did not complete his representation of some of his other clients referenced in paragraphs 102 and 103 above.

116. When Defendant was enjoined from practicing law in November 2017 (as described in paragraph 71), he had about 1,600 clients whose matters were pending at that time.

117. Defendant was ineligible to complete the representation of many of those 1,600 clients.

118. Traffic case clients whose matters Defendant did not complete due to the injunction included C. Aguilar-Sanchez, M. Butts, B. Lewis-Brown, B. Sutton, and S. Thomas.

119. Clients with criminal cases whose matters Defendant did not complete due to the injunction included S. Blackwell, J. Carreno, T. Cook, K. Harris, C. McCullen, N. Potter, and A. Woodham.

120. Many of Defendant's clients had already paid Defendant's entire quoted fee for representation in their cases.

121. Although Defendant was ineligible to complete the representation of many of his clients, he did not refund the unearned portion of the fee many of his clients paid.

122. By failing to refund the unearned portion of his fee to clients whose cases he was ineligible to resolve, Defendant collected fees that were clearly excessive and/or illegal.

Defendant's Failure to Pay Over Employee Taxes

123. During all times referred to herein through November 2017, Defendant had one or more employees who provided services for the benefit of Defendant's law firm.

124. When Defendant paid the employees of his law firm, Defendant was required by the Internal Revenue Code to withhold funds from his employees' paychecks to pay the employees' Social Security, Medicare, and federal income taxes ("employment taxes").

125. Defendant was required to collect, truthfully account for, and timely pay to the Internal Revenue Service (the "IRS") the employment taxes withheld for employees of his law firm.

126. Defendant was required to remit the employment taxes to the IRS on a periodic basis as specified in the Internal Revenue Code.

127. From the time the employment taxes were withheld until the time they were paid to the IRS, Defendant had a fiduciary duty to hold funds withheld from employees' paychecks for the benefit of the United States Department of the Treasury

128. Defendant willfully failed to remit employment taxes to the IRS within the time required by law for the following quarters:

- a. Third quarter of 2015;

- b. Fourth quarter of 2015;
- c. First quarter of 2016;
- d. Second quarter of 2016;
- e. Third quarter of 2016;
- f. Fourth quarter of 2016;
- g. First quarter of 2017; and
- h. Second quarter of 2017.

129. Defendant knew he had a legal duty to remit employment taxes to the IRS within the time periods specified in the Internal Revenue Code.

130. Defendant's failure to pay to the IRS the employment taxes for the third and fourth quarters of 2015, and in all of 2016 and the first and second quarters of 2017 was willful.

131. Pursuant to 26 U.S.C. § 7202, willful failure to collect, account for, and pay any tax imposed by the Internal Revenue Code is a felony.

Defendant's Failure to File Federal Income Tax Returns

132. During calendar years 2015 and 2016, Defendant's income exceeded the minimum threshold above which an individual is required to file federal and state income tax returns.

133. For these years, Defendant was aware of the deadlines for filing federal tax returns and paying any tax liability.

134. Defendant failed to file, within the times required by law, federal income tax returns showing his tax liability for tax years 2015 and 2016.

135. Defendant failed to pay, within the times required by law, his federal income tax liability for tax years 2015 and 2016.

136. Defendant's failure to file his federal income tax returns and/or pay his federal income tax liability for tax years 2015 and 2016 was willful.

137. Willful failure to file and/or pay federal income tax within the time required by law is a violation of 26 U.S.C. § 7203.

Based upon the foregoing Findings of Fact, the Hearing Panel makes the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the DHC has jurisdiction over Defendant, Charles R. Gurley, and over the subject matter of this proceeding.

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

A. Pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- 1) By failing to ensure that entrusted funds received from clients were deposited into and maintained in his trust account, Defendant failed to identify, hold, and maintain entrusted property separate from his property and deposit, disburse, and distribute entrusted property in accord with Rule 1.15, in violation of Rule 1.15-2(a);
- 2) By failing to ensure that records of deposits of entrusted funds into his trust account or into other bank accounts reflected the source and beneficial owner of the funds, Defendant failed to maintain records listing the source and name of the client or other person to whom the funds belong in violation of Rule 1.15-3(b)(1);
- 3) By failing to maintain copies of his cancelled trust account checks and copies of checks drawn on any other accounts disbursing entrusted funds, and by failing to ensure that all checks drawn on his trust account and other checks disbursing entrusted funds from any other account identified the client on whose balance the item was drawn, Defendant failed to maintain copies of items drawn on a trust account that identified the client on whose balance the item was drawn in violation of Rule 1.15-3(b)(2);
- 4) By failing to maintain copies of the monthly bank statements for his trust account and for other accounts into which he deposited entrusted funds, Defendant failed to maintain trust account records, which included all bank statements and other documents received from the bank with respect to the foregoing accounts, in violation of Rule 1.15-3(b)(4);
- 5) By failing to total the individual client balances in his trust account and other accounts into which he deposited entrusted funds and compare the total with his current bank statement balance for the accounts at least quarterly, Defendant failed to conduct the required quarterly reconciliations of his accounts in violation of Rule 1.15-3(d)(1);
- 6) By failing to compare the balance of his trust account and of other accounts into which he deposited entrusted funds as shown in his records with his current bank statement balance for his trust account and other accounts at least monthly, Defendant failed to conduct the required monthly reconciliations of his accounts in violation of Rule 1.15-3(d)(2);
- 7) By failing to review each month the bank statement and related cancelled checks for his trust account and for other accounts into which he deposited entrusted funds, Defendant failed to conduct the required monthly review of his account statements and checks in violation of Rule 1.15-3(i)(1);

- 8) By failing each quarter to review the statement of costs and receipts, client ledger, and cancelled checks for a random sample of representative trust account transactions and transactions in other accounts into which he deposited entrusted funds, Defendant failed to conduct the required quarterly transactions reviews in violation of Rule 1.15-3(i)(2);
- 9) By misappropriating the Holland restitution funds deposited and transferred into his operating account for his benefit and/or that of others, Defendant used entrusted property for his benefit or that of one besides the beneficial or legal owner of the funds in violation of Rule 1.15-2(k) and committed a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);
- 10) By delegating trust account management to his nonlawyer assistant(s) with no independent review, supervision, or procedures in place to ensure entrusted funds were handled appropriately, Defendant failed to make reasonable efforts to ensure his firm had effected measures giving reasonable assurances that his nonlawyer assistants' conduct was compatible with Defendant's professional obligations in violation of Rule 5.3(a); failed to make reasonable efforts to ensure that his nonlawyer assistants' conduct was compatible with his professional obligations in violation of Rule 5.3(b); and is responsible for all violations of the Rules of Professional Conduct enumerated in (1)-(9) above that his non-lawyer assistants committed concerning his trust account, pursuant to Rule 5.3(c);
- 11) By failing to ensure that the restitution payment for his client D. Holland was timely made and that the restitution payment for his client A. Cobb was made at all, Defendant failed to represent his clients with reasonable diligence and promptness in violation of Rule 1.3, and failed to promptly pay or deliver to third persons as directed by the clients entrusted property belonging to the clients and to which the clients were then entitled in violation of Rule 1.15-2(n);
- 12) By failing to respond to the State Bar's demands for records and information from him pursuant to the Order of Preliminary Injunction entered 30 May 2017, Defendant knowingly disobeyed an obligation under the rules of a tribunal in violation of Rule 3.4(c), engaged in conduct that was degrading to the tribunal in violation of Rule 3.5(a)(4), and engaged in conduct that was prejudicial to the administration of justice in violation of Rule 8.4(d);
- 13) By asserting in his motion for a stay of execution of the contempt judgment that he had already provided the requested records to the State Bar, Defendant asserted a position in a proceeding that was without basis in fact in violation of Rule 3.1; knowingly made a false statement of material fact in connection with a disciplinary matter in violation of Rule 8.1(a); engaged in conduct involving dishonesty, fraud, deceit or

misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c); and engaged in conduct that is prejudicial to the administration of justice in violation of Rule 8.4(d);

- 14) By failing to appear for the scheduled hearing on his motion for a stay of execution of judgment for civil contempt, Defendant engaged in conduct that was degrading to the tribunal in violation of Rule 3.5(a)(4) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- 15) By providing incomplete and superficial responses to the LONs and follow-up letters regarding numerous grievances even after he had been held in contempt of court for his failure to respond to the State Bar's demands for information, Defendant engaged in conduct that was degrading to the tribunal in violation of Rule 3.5(a)(4), failed to respond as required to lawful demands for information from a disciplinary authority in violation of Rule 8.1(b) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- 16) By knowingly providing a materially false statement to the State Bar in conjunction with grievance file number 18G0077, Defendant knowingly made a false statement(s) of material fact in conjunction with a disciplinary matter in violation of Rule 8.1(a) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);
- 17) By continuing to receive entrusted funds from clients after entry of the 30 May 2017 Order of Preliminary Injunction prohibiting him from doing so, Defendant knowingly disobeyed an obligation under the rules of a tribunal in violation of Rule 3.4(c) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- 18) By continuing to receive entrusted funds from clients after 30 May 2017 when he could not appropriately safeguard them by depositing them into a trust account and by commingling entrusted funds and earned fees in account 2106, Defendant failed to identify, hold, and maintain entrusted property separate from his property and deposit, disburse, and distribute entrusted property in accord with Rule 1.15 in violation of Rule 1.15-2(a);
- 19) By failing to deposit entrusted funds received after 30 May 2017 into a trust account and by depositing some of those entrusted funds into account 2106, Defendant failed to promptly deposit entrusted funds he had received into a trust account in violation of Rule 1.15-2(b);
- 20) By misappropriating to his own use entrusted funds received from clients after 30 May 2017 and not deposited into account 2106, Defendant used entrusted property for his benefit or that of one besides the beneficial or legal owner of the funds in violation of Rule 1.15-2(k), committed a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct

involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);

- 21) By creating a context in which his nonlawyer assistant could misappropriate entrusted funds received from clients after 30 May 2017 and not deposited into account 2106, Defendant failed to make reasonable efforts to ensure his firm had effected measures giving reasonable assurances that his nonlawyer assistant's conduct was compatible with Defendant's professional obligations in violation of Rule 5.3(a), and failed to make reasonable efforts to ensure that his nonlawyer assistant's conduct was compatible with his professional obligations in violation of Rule 5.3(b);
- 22) By misappropriating entrusted funds deposited into account 2106 for his own benefit and that of others besides the legal or beneficial owner of the funds, Defendant used entrusted property for his benefit or that of one besides the beneficial or legal owner of the funds in violation of Rule 1.15-2(k); committed a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);
- 23) By misappropriating a portion of B. Sutton's entrusted funds for his own benefit, Defendant used entrusted property for his benefit or that of one besides the beneficial or legal owner of the funds in violation of Rule 1.15-2(k), committed a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c).
- 24) By failing to appear in court on behalf of clients on scheduled court dates, Defendant failed to act with reasonable diligence and promptness in representing his clients in violation of Rule 1.3;
- 25) By failing to promptly pay court costs and fines on behalf of clients who had already tendered to Defendant funds for that purpose, Defendant failed to act with reasonable diligence and promptness in representing his clients in violation of Rule 1.3 and failed to promptly pay or deliver to a third party as directed by the client entrusted property belonging to the client and to which the client was currently entitled in violation of Rule 1.15-2(n);
- 26) By failing to respond to Wilson's requests for information about the status of her case and/or failing to notify her of the OFA and the process for resolving the OFA, Defendant failed to promptly comply with reasonable requests for information, failed to keep the client reasonably informed about the status of the matter, failed to reasonably consult with the client about the means by which her objectives would be accomplished, and failed to explain a matter to the extent reasonably necessary to permit the

client to make informed decisions regarding the representation in violation of Rules 1.4(a)(2), (3), and (4) and Rule 1.4(b);

- 27) By failing to refund to traffic case clients the entrusted funds paid to him for his fee that he had not earned and was ineligible to earn by completing those clients' representations, Defendant collected an illegal fee in violation of Rule 1.5(a);
- 28) By failing to refund the unearned fees paid by criminal case clients whose representations Defendant was ineligible to complete, Defendant collected a clearly excessive fee in violation of Rule 1.5(a);
- 29) By willfully failing to pay to the IRS the funds he was required to withhold from the paychecks of his law firm's employees as required by 26 U.S.C. § 7202, Defendant committed a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c); and
- 30) By failing to timely file his 2015 and 2016 federal income tax returns and/or timely pay his 2015 and 2016 federal income taxes, Defendant committed criminal acts that reflect adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c).

Based upon the foregoing, the Hearing Panel also finds by clear, cogent, and convincing evidence the following:

ADDITIONAL FINDINGS REGARDING DISCIPLINE

1. The findings of fact and conclusions of law above are reincorporated as if set forth herein.
2. Defendant was licensed in North Carolina in 1991 and has substantial experience in the practice of law. At the time of his conduct, Defendant knew or was willfully blind to the fact that his conduct described above would result in significant harm or potential harm.
3. By willfully failing to pay to the Internal Revenue Service the funds he was required to withhold from the paychecks of his law firm's employees, Defendant caused significant harm to the legal profession and the public as the public expects the legal profession to abide by the law. It is significantly harmful to the legal profession and the public' perception of the legal profession when a member of the State Bar engages in a criminal offense showing unfitness like Defendant's misappropriation of entrusted client funds and withholding taxes.
4. Defendant's intent to cause the resulting significant harm or potential significant harm is reflected in his commission of multiple violations for knowingly making false statements,

willfully failing to pay his taxes, committing crimes involving the misappropriation of client funds, and knowingly disobeying court orders.

5. Defendant had substantial notice of circumstances giving him reasons to question the competency, honesty and ability of non-lawyer assistants but he ignored, intentionally disregarded, or was willfully blind to the conduct of non-lawyer assistants for more than five years.

6. In two separate procedural trust account reviews conducted by Bruno DeMolli of the State Bar, Defendant was notified of his failure to conduct reconciliations and properly handle entrusted funds. After the 1998 procedural audit, Defendant told Mr. DeMolli that he suspected a non-lawyer assistant to whom he delegated his trust account management was embezzling money from his law practice.

7. Despite the clear findings of the 1998 and 2012 procedural reviews, Defendant maintained before the Hearing Panel that the procedural reviews showed that Defendant was managing his trust account appropriately, reflecting both dishonesty and a refusal to acknowledge the wrongful nature of his conduct.

8. Despite the clear findings of the 1998 and 2012 procedural reviews, Defendant's only material action to address the findings of the procedural reviews after 2012 was to occasionally ask his non-lawyer assistant: "Are you doing everything like Bruno told you to."

9. Defendant completely abdicated his trust account obligations and other professional obligations to his non-lawyer assistant, and continued to empower that non-lawyer assistant even after personally receiving numerous notices that the non-lawyer assistant was not performing those obligations, reflecting an intent to commit acts where the harm or potential harm is foreseeable.

10. By maintaining an unmanageably large caseload in his practice, Defendant serially neglected his clients, intentionally committed acts where the harm or potential harm was foreseeable, and elevated his own interest above that of the client.

11. After Defendant was enjoined from handling entrusted funds on May 30, 2017, he continued to receive entrusted funds from clients in direct violation of the court order and opened account 2106 where he deposited some entrusted funds. Violation of a court order by an attorney is significantly harmful to the administration of justice, the profession and the public because it undermines the authority of the court and the public's confidence that attorneys will abide by court orders.

12. It negatively impacts the public perception of the profession and significantly harms the administration of justice when a court must jail a lawyer due to the lawyer's repeated non-compliance with court orders.

13. After being enjoined from practicing law in November 2017, Defendant continued to fail to timely respond in any way to certain State Bar disciplinary matters, despite being ordered to do so by the Wake County Superior Court. Similarly, after being enjoined from practicing law, Defendant provided an untimely, facially deficient response to a State Bar inquiry concerning C. Boyd's matter containing a false statement of fact.

14. Defendant's failure to participate in the legal profession's self-regulation process by failing to meaningfully take steps to cure his contempt of court and respond fully and timely to the State Bar's inquiries for approximately a year during the period of his injunction from the practice of law caused significant harm to the administration of justice and the profession by requiring several hearings in Superior Court to assess his compliance.

15. It negatively impacts the public perception of the profession when a lawyer fails to cure his contempt of court for approximately one year and must be enjoined from practicing during that time as a result.

16. In 2015, foreclosure proceedings were commenced on Defendant's house. Defendant was personally served with notice of the foreclosure proceedings in 2015. Defendant's house was sold by foreclosure in 2016. Defendant testified at the hearing in this matter that the foreclosure was due to his non-lawyer assistant's failure to pay Defendant's mortgage. Nevertheless, Defendant continued to employ the same non-lawyer assistant until his injunction from the practice of law in November 2017 and entrusted her with management of his firm's operating and trust accounts, management of his court calendar, management of his e-mail, mail, and phones, and intake of funds from clients. After Defendant was enjoined from the practice of law in 2017, he falsely told multiple people and the Internal Revenue Service that he had no notice of the foreclosure proceedings until after his house was sold.

17. The court file in the 2015 foreclosure proceeding establishes that Defendant was personally served with notice of the foreclosure. When confronted with the court file documenting personal service of the notice, Defendant testified at the hearing that he asked the deputy who served him what the notice involved and was told it was probably a credit card matter. Defendant testified that he did not read what had been served on him, assumed the deputy was correct and gave the notice to his non-lawyer assistant to handle. Defendant's testimony on the service of the notice of foreclosure was not credible, and reflected adversely on Defendant's honesty and fitness to practice law.

18. This action is the culmination of numerous grievances against Defendant. It negatively impacts the public's perception of the profession and is significantly harmful to the profession and clients when a lawyer is found to be responsible for violations of the Rules of Professional Conduct in numerous grievances.

19. By failing to timely pay court costs and fines for clients and by failing to appear for clients with cases on court calendars, Defendant caused significant harmful to clients when the DMV sent his clients letters of notice of pending suspension of their driving privileges and the court issued process orders to clients for failing to appear on their court date.

20. On October 22, 2020, Defendant signed a Confession of Judgment in the amount of \$69,109 with the North Carolina State Bar Client Security Fund. The judgment was entered to reimburse the Client Security Fund for financial awards to approximately 70 clients of Defendant from whom he had received money and who suffered a loss due to the conduct of Defendant. Those 70 claims caused significant harm to the legal profession, clients and the administration of justice because in many cases the resolution of clients' uncomplicated legal matters was delayed,

and more complex circumstances were created for the clients, additional lawyers and the criminal justice system to resolve.

21. Defendant's misconduct resulted in the Superior Court having to appoint trustees to manage the cases of clients Defendant was representing at the time he was enjoined from practicing law. The trustees spent more than 300 hours managing Defendant's practice. Defendant's misconduct resulted in a practice monitor spending hundreds of hours supervising Defendant after he returned to the practice of law in 2018 under limited conditions.

22. By his non-compliance with orders of the Wake County Superior Court, Defendant significantly involved a Wayne County Superior Court judge as an intermediary to communicate on his behalf with the State Bar, the Wake County Superior Court, and the Wayne County Sheriff's Office, unnecessarily consuming court resources.

23. The practice injunction resulting from Defendant's non-compliance with court orders had significant adverse impacts on the Wayne County court system and forced it to devote resources to managing Defendant's voluminous caseload. While he was enjoined, cases of Defendant's clients had to be continued, new counsel appointed in some cases, a special client notification document for Defendant's clients had to be utilized by the District Court, and at least one special setting of Wayne County Superior Court had to be scheduled to manage his Superior Court cases. These circumstances caused significant harm to Defendant's clients, the administration of justice, and the profession. The public is significantly harmed, as is the public's perception of the legal profession, when vital resources have to be expended due to unconscionable conduct on the part of a member of the North Carolina State Bar as demonstrated by the facts of this disciplinary case. During the 2023 videotaped trial depositions of his former clients, C. Boyd and H. Canady, Defendant paid each witness a cash amount as restitution for the legal fees they paid to him in 2014. Defendant did not make restitution to C. Boyd or H. Canady before their videotaped depositions in this action, despite the significant passage of time since he represented them. Defendant's delay until making a public gesture indicated an indifference to making restitution.

24. Defendant has not made restitution to the Internal Revenue Service for the entirety of his unpaid employment taxes and has instead allowed that unpaid amount to remain in administrative abeyance, reflecting an indifference to making restitution.

25. Defendant's misconduct includes a pattern of mismanagement of his trust account and willful blindness to his trust account obligations since at least 1998, in addition to a pattern of neglect of his clients with traffic matters and disregard of legal processes.

26. During his testimony in the hearing of this matter, Defendant gainsaid certain facts of his misconduct, as well as violations of the Rules of Professional Conduct, that he admitted through his Answer and prehearing stipulations in this matter. Defendant testified that he did not read the stipulations before agreeing to them. Defendant's testimony on this issue was not credible and indicated a lack of trustworthiness, a refusal to acknowledge the wrongful nature of his conduct, and a continuation of Defendant's pattern of misconduct.

27. Defendant assigned blame to others for his own misconduct—including blaming his office assistant for a variety of failures, asserting that the State Bar’s failure to initiate disciplinary proceedings against him after the 1998 and 2012 procedural reviews indicated that “everything was fine” and he was managing his trust account consistent with the Rules of Professional Conduct, and accusing a sheriff’s deputy of not serving process on him—reflecting Defendant’s refusal to acknowledge the wrongful nature of his conduct.

28. Defendant’s misconduct led to additional attorneys’ fees, court costs, and administrative fees—in addition to the risk of loss of jobs or driver’s licenses—for clients for whom those expenses were significant, reflecting the vulnerability of Defendant’s victims.

29. Defendant’s testimony in the hearing of this matter revealed that he still completely lacks an understanding of the reconciliation process for a trust account, reflecting little remedial effort by Defendant and an ongoing risk of harm to the public if Defendant were ever to handle entrusted funds again.

30. Defendant cannot be trusted to maintain a trust account, and it negatively impacts clients and the public’s perception of the profession for lawyers to be able to comply with only a subset of their obligations under the Rules of Professional Conduct.

31. By embezzling entrusted funds, grossly mismanaging his trust account, making false statements, being held in contempt by the Superior Court, requiring the appointment of trustees to care for Defendant’s clients while he was enjoined from practicing, and causing monetary loss to numerous clients, Defendant caused significant harm to the profession.

32. Defendant betrayed the trust of his clients and the public, who should be able to trust attorneys to safeguard their funds, to be honest in the attorney’s statements and conduct, and to promptly and fully abide by court orders.

Based upon the Findings of Fact, Conclusions of Law and Additional Findings Regarding Discipline, the Hearing Panel, by clear, cogent and convincing evidence, enters the following:

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f)(1) of the Discipline and Disability Rules of the North Carolina State Bar and unanimously concludes that the following factors that warrant suspension or disbarment are present:

- i. Factor (A)—intent of Defendant to cause the resulting harm or potential harm;
- ii. Factor (B)—intent of Defendant to commit acts where the harm or potential harm is foreseeable;
- iii. Factor (C)—circumstances reflecting Defendant’s lack of honesty, trustworthiness, or integrity;
- iv. Factor (D)—elevation of Defendant’s own interest above that of the client;

- v. Factor (E)—negative impact of Defendant’s actions on the client’s or the public’s perception of the profession;
- vi. Factor (F)—negative impact of Defendant’s actions on the administration of justice;
- vii. Factor (G)—impairment of the client’s ability to achieve the goals of the representation;
- viii. Factor (H)—effect of Defendant’s conduct on third parties;
- ix. Factor (I)—acts of dishonesty, misrepresentation, deceit, or fabrication; and
- x. Factor (J)—multiple instances of failure to participate in the legal profession’s self-regulation process.

2. The Hearing Panel has considered the factors enumerated in 27 N.C. Admin. Code 1B.0116(f)(2) of the Discipline and Disability Rules of the North Carolina State Bar and unanimously concludes that the following factors apply:

- i. Factor (A)—acts of dishonesty, misrepresentation, deceit, or fabrication;
- ii. Factor (B)—impulsive acts of dishonesty, misrepresentation, deceit, or fabrication without timely remedial efforts;
- iii. Factor (C)—misappropriation or conversion of assets of any kind to which Defendant was not entitled, whether from a client or any other source; and
- iv. Factor (D)—commission of a felony.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f)(3) of the Discipline and Disability Rules of the North Carolina State Bar and unanimously concludes the following factors are applicable in this matter:

- i. Factor (C)—dishonest or selfish motive;
- ii. Factor (E)—indifference to making restitution;
- iii. Factor (F)—a pattern of misconduct;
- iv. Factor (G)—multiple offenses;
- v. Factor (M)—bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency;
- vi. Factor (N)—submission of false evidence, false statements, or other deceptive practices during the disciplinary process;

- vii. Factor (O)—refusal to acknowledge wrongful nature of conduct;
- viii. Factor (R)—vulnerability of victim; and
- ix. Factor (S)—significant degree of experience in the practice of law.

4. The Hearing Panel has considered all forms of discipline available but unanimously concludes that a censure, reprimand, admonition, or suspension would be insufficient discipline because of the gravity of the significant harm and the potential significant harm caused by Defendant's conduct to clients, the profession, the public, and the administration of justice.

5. Discipline short of disbarment would not be sufficient to adequately protect the public from future misconduct by Defendant for the following reasons:

- a. The factors under 27 N.C. Admin. Code 1B.0116(f) support imposition of disbarment as the appropriate discipline;
- b. Defendant has failed to fully admit to the wrongful nature of his conduct, has not been truthful in the disciplinary process, and has given the Hearing Panel no assurance that he would not engage in future violations of the Rules of Professional Conduct; and
- c. 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 to the public regarding the conduct expected of members of the Bar of this state.

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

ORDER OF DISCIPLINE

- 1. Defendant, Charles R. Gurley, is hereby DISBARRED.
- 2. Defendant shall surrender his law license and membership card to the Clerk of the DHC no later than forty-five days from service of this order upon him.
- 3. 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 administrative fees and costs within 30 days of service upon him of the statement of administrative fees and costs by the Secretary.
- 4. Within 15 days of the effective date of this Order, Defendant shall provide the State Bar with a street address and telephone number at which clients seeking return of files can

communicate with Defendant and obtain such files. Defendant must keep this information current with the State Bar, providing updated information to the State Bar within 15 days of any change.

5. Defendant shall promptly return client files in his possession, custody, or control to clients upon request, within 5 days of receipt of such request. Defendant will be deemed to have received any such request 3 days after the date such request is sent to Defendant if the request is sent to the address Defendant provided the State Bar pursuant to the preceding paragraph.

6. Defendant shall comply with all provisions of 27 N.C. Admin. Code 1B.0128 as set out therein.

7. If Defendant fails to fully comply with 27 N.C. Admin. Code 1B.0128, Defendant shall reimburse the State Bar for all expenses incurred by the State Bar in winding down Defendant's practice. Such expenses may include, but are not limited to, storage facility fees, rent payments, moving expenses, charges for secure disposal of client files, postage or other mailing expenses and compensation paid to any appointed trustee and/or the trustee's assistant for time and travel associated with the trusteeship. The State Bar shall send an invoice of wind-down expenses to Defendant at Defendant's last known address of record with the State Bar. Defendant shall not be eligible for reinstatement until he has reimbursed the State Bar for all wind-down expenses incurred.

Signed by the Disciplinary Hearing Panel Chair with the consent of the other hearing panel members, this the 27th day of June, 2023.

Margaret M Hunt
Margaret M. Hunt, Chair
Disciplinary Hearing Panel