

STATE OF NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
20 DHC 18

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

SCOTT H. SHELTON, Attorney,

Defendant

CONSENT ORDER
OF
DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Shannon R. Joseph, Chair, and members Fred W. DeVore, III and Jane B. Weathers. Alex G. Nicely represented Plaintiff, the North Carolina State Bar. Alan M. Schneider represented Defendant, Scott H. Shelton. Defendant waives a formal hearing in this matter. The parties stipulate and agree to the findings of fact and conclusions of law recited in this order, and consent to the discipline imposed by this order. By consenting to the entry of this order, Defendant knowingly, freely, and voluntarily waives his right to appeal this consent order or to challenge in any way the sufficiency of the findings and conclusions herein.

Based on the pleadings and the stipulated facts, and with the consent of the parties, 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, Scott H. Shelton, was admitted to the North Carolina State Bar on August 20, 1993, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina and 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. On June 6, 2018, the Disciplinary Hearing Commission ("DHC") entered a Consent Order of Discipline in *State Bar v. Scott H. Shelton*, 17 DHC 1 in which Defendant's license was suspended for three years. Defendant's suspension took effect on July 7, 2018.

4. Defendant was actively engaged in the practice of law in Henderson County, North Carolina until July 7, 2018, the effective date of Defendant's suspension in 17 DHC 1.

Representation of Client M.B.

5. Defendant served as closing attorney for M.B.'s purchase of a mobile home on August 31, 2015.
6. After Defendant failed to deliver to M.B. the title to the mobile home, M.B. and M.B.'s real estate agent attempted to contact Defendant on several occasions to no avail.
7. On April 13, 2016, almost eight months after the closing, Defendant informed M.B.'s agent that he would deliver the title after resolving a title issue with the Department of Motor Vehicles ("DMV").
8. In December 2016, M.B. sent Defendant a letter in which M.B. stated that he had not received the title and requested that Defendant contact him.
9. As of January 2017, neither M.B. nor M.B.'s agent had received any further communications from Defendant.
10. M.B. contacted the State Bar about not receiving the title and a grievance file was opened.
11. The State Bar mailed a Letter of Notice to Defendant at his address of record with State Bar Membership. The Letter of Notice was delivered on February 3, 2017.
12. Defendant was required to respond to the Letter of Notice within 15 days of receipt but failed to do so.
13. In a letter dated February 23, 2017, the State Bar encouraged Defendant to respond to the Letter of Notice, but Defendant failed to respond.
14. The Grievance Committee Chair issued a subpoena ordering Defendant to appear at the State Bar on March 16, 2017.
15. Defendant appeared at the State Bar on March 16, 2017 and was interviewed about several matters, including M.B.'s grievance.
16. During this interview, Defendant stated that he would go to his local DMV to resolve the matter.
17. M.B. finally received the title to his mobile home in April 2017.

Representation of Client U.S.

18. On July 24, 2015, Defendant served as U.S.'s closing attorney for property U.S. purchased in Flat Rock, North Carolina.
19. At the closing, U.S. requested that Defendant obtain title insurance for her.
20. When U.S. did not receive the title insurance policy for her property, she called Defendant's office several times and sent him a letter dated February 11, 2016 but did not receive a response.

21. On August 3, 2016, U.S. sent Defendant another letter about the title insurance policy.

22. In a September 13, 2016 email, Defendant advised U.S. that he had "obtained the final title policy ... subject to payment of the premium." He requested that U.S. send a \$348 check made payable to Defendant's trust account so that Defendant could purchase the title insurance policy.

23. U.S. complied with Defendant's request and mailed the check for \$348 to Defendant.

24. U.S.'s \$348 check was deposited in one of Defendant's trust accounts in September 2016, but Defendant did not purchase title insurance for U.S., nor did he respond to U.S.'s subsequent requests for information regarding the status of the title insurance.

25. On December 15, 2016 and January 4, 2017, U.S. emailed Defendant that she had not received the policy, but U.S. did not receive a response.

26. U.S. contacted the State Bar about not receiving the policy and a grievance file was opened.

27. The State Bar mailed a Letter of Notice to Defendant at his address of record with the State Bar. Defendant received the Letter of Notice on February 3, 2017.

28. Defendant was required to respond to the Letter of Notice within 15 days of receipt but failed to do so.

29. In a letter dated February 23, 2017, the State Bar encouraged Defendant to respond to the Letter of Notice but Defendant failed to respond.

30. The Grievance Committee Chair issued a subpoena ordering Defendant to appear at the State Bar on March 16, 2017.

31. Defendant appeared at the State Bar on March 16, 2017 and was interviewed about several matters, including U.S.'s grievance.

32. As of March 16, 2017, Defendant had not obtained U.S.'s title insurance.

33. In December 2017, U.S. filed a small claims action against Defendant because Defendant had yet to purchase her title insurance.

34. On January 4, 2018, the day U.S.'s case against Defendant was set for hearing, Defendant provided U.S. with proof of her title insurance policy and U.S. dismissed the small claims action.

Representation of Client S.R.

35. In May 2016, Defendant served as closing attorney for S.R., the buyer, and the sellers of two parcels of real property in Horse Shoe, North Carolina.

36. After Defendant discovered an issue with a lien on the title of a mobile home located on one of the parcels, the parties agreed to proceed with closing and that Defendant would hold \$5,000 in escrow to cover any expenses incurred in resolving the title issue.

37. Although Defendant did not resolve the mobile home title issue, he released the \$5,000 in escrow to the sellers on July 20, 2016.

38. Defendant did not inform S.R. or receive S.R.'s permission before releasing the escrowed \$5,000.

39. When S.R. received his property tax bill, he learned that he only owned one of the parcels because Defendant had failed to include both in the deed.

40. S.R. attempted to contact Defendant on multiple occasions but Defendant did not respond.

41. S.R. contacted the State Bar about the issue with the title in March 2017.

42. Defendant finally recorded the deed on the second parcel in June 15, 2017.

Representation of Client N.T.

43. In early 2017, N.T. paid a \$200 deposit and retained Defendant to settle a land dispute involving inherited property.

44. Throughout 2017, N.T. attempted to contact Defendant on multiple occasions without success.

45. N.T.'s real estate agent eventually went to Defendant's office and had Defendant call N.T. Defendant apologized and promised to work on N.T.'s matter immediately.

46. After Defendant's phone conversation with N.T., Defendant again ignored N.T.'s attempts to communicate.

47. Defendant did not pursue N.T.'s land dispute matter during this time.

48. N.T. left a message for Defendant indicating that she would file a grievance against Defendant if he did not respond.

49. Defendant responded and agreed to keep N.T. informed.

50. On April 5, 2018, Defendant requested a \$1,000 retainer to negotiate the partition of the inherited property.

51. N.T. paid the \$1,000 retainer and provided Defendant with the other party's mailing address.

52. Defendant mailed the necessary paperwork to a P.O. Box—not the mailing address that N.T. provided.

53. Defendant sent N.T. a copy of what he had sent the other party and stated that he would contact N.T. later the same week.

54. Defendant did not contact N.T. that week as he had said he would do.

55. Two weeks later, N.T. contacted Defendant, and Defendant informed N.T. that he had mailed the paperwork to a P.O. Box instead of the mailing address.

56. On May 21, 2018, after Defendant did not respond to N.T.'s multiple phone calls, N.T. sent Defendant a registered letter requesting a refund of \$1,000 and documents pertaining to her case.

57. Defendant did not respond.

58. N.T. contacted the State Bar and a grievance file was opened in June 2018.

59. After the State Bar opened a grievance concerning this matter, Defendant issued N.T. a refund on or around July 10, 2018.

60. In September 2018, N.T.'s new attorney sent Defendant a release, authorizing the release of N.T.'s file and followed up with phone calls but did not receive the file.

61. As of March 2019, Defendant had not provided N.T.'s file to N.T.'s new attorney.

62. During the relevant period referred to herein, Defendant was enjoined from accepting any funds from clients or third parties in a fiduciary capacity pursuant to a Consent Order of Preliminary Injunction entered by the Wake County Superior Court on November 8, 2016.

Representation of Property Owners Association

63. In January 2017, a property owners association ("association") retained Defendant to assist in recovering unpaid dues and maintenance expenses from a property owner.

64. On or around January 17, 2017, the association sent Defendant a \$2,000 check as an advance payment for Defendant's services. These funds were to be billed against as legal services were provided and as filing and other costs were incurred and would not be earned until legal services were rendered.

65. Defendant's trust accounts were frozen pursuant to the injunction referred to in paragraph 62 above, and Defendant did not deposit the \$2,000, which were entrusted funds, into any of his attorney trust accounts.

66. Defendant's receipt of the \$2,000 check was in violation of the November 8, 2016 injunction entered by the Wake County Superior Court.

67. Throughout 2017, the association's then-president repeatedly attempted to contact Defendant about the matter to no avail.

68. In January 2018, Defendant finally met with the then-president and had him sign a complaint against the homeowner.

69. In March 2018, G.P., the association's new president, contacted the clerk of court to check on the status of the action.

70. G.P. learned that Defendant had not filed the complaint.

71. On March 13, 2018, G.P. met with Defendant and signed a second complaint which Defendant stated he would file that afternoon.

72. At the March 13 meeting, Defendant informed G.P. that if the homeowner did not timely answer the complaint, Defendant would file a motion for entry of default on the 31st day after service.

73. Defendant did not file the complaint the afternoon of March 13 as he had said he would do.

74. Defendant filed the complaint on March 27, 2018.

75. In the March 13, 2018 meeting, in an April 2, 2018 email to Defendant and in a voicemail message, G.P. requested an accounting of the charges applied against the \$2000 retainer, but Defendant did not provide the accounting.

76. In early May 2018, G.P. reminded Defendant that he was to pursue entry of default if the homeowner did not timely file an answer to the association's complaint.

77. In a May 14, 2018 email to G.P., Defendant stated that he had prepared a motion for entry of default and would file it the following day once he verified with the clerk that no responsive pleading had been filed.

78. Even though no responsive pleading was filed, Defendant did not file the motion for entry of default as he had said he would do.

79. In a letter to Defendant dated May 28, 2018, the association terminated their relationship with Defendant and requested a refund of the retainer.

80. Defendant has not refunded any portion of the retainer.

81. The association retained new counsel to handle the legal matter for which Defendant had been previously retained.

82. On or about August 4, 2018, G.P. hand delivered a letter to Defendant's office requesting that Defendant provide the client file to the new attorney.

83. The new attorney made several requests for the client file, but Defendant did not provide the file.

84. On November 7, 2018, the State Bar filed a Motion for Order to Show Cause why Defendant should not be held in contempt for accepting the \$2,000 check while he was enjoined from handling entrusted funds and for failing to comply with another provision of the injunction.

85. On December 7, 2018, Defendant and the association's new attorney agreed that Defendant would refund the association \$1,080.

86. On December 7, 2018, Defendant emailed the association's new attorney, "The final check has been mailed today..."

87. Defendant did not refund the association \$1,080 until August 12, 2019.

Representation of Client J.V.

88. In 2016, Defendant served as closing attorney for J.V. in a real estate transaction in which J.V. was purchasing real property in Horse Shoe, NC.

89. In 2017, J.V. discovered that the deed to the property was never recorded.

90. J.V. went to Defendant's office and was told that Defendant was not in.

91. J.V. informed Defendant's office of the error with the deed and requested that Defendant contact him.

92. J.V. did not receive a call from Defendant and tried numerous times to contact Defendant to no avail.

93. J.V. contacted the State Bar about not receiving the title and a grievance file was opened.

94. The State Bar mailed a Letter of Notice to Defendant at his address of record with the State Bar. Defendant received the Letter of Notice on December 6, 2018.

95. Defendant responded to the Letter of Notice on December 22, 2018.

96. In his response, Defendant stated that after closing, he discovered a signature error on the deed that he was unable to correct prior to the freezing of his trust accounts pursuant to the injunction.

97. In his response, Defendant further stated that he would record the deed on December 27, 2018.

98. Defendant did not record the deed on December 27, 2018 as he had said he would do.

99. As a result of Defendant's failure to record the deed, J.V. had to retain another attorney to prepare and record the deed. The deed was recorded in April 2019.

Representation of Client L.H.

100. In January 2018, L.H. contacted Defendant seeking representation on several traffic charges.

101. Defendant agreed to represent L.H. for a fee of \$200 and sent L.H. a waiver of appearance.

102. L.H. paid the \$200 fee and promptly returned the signed waiver of appearance.

103. In April 2018, L.H. learned that she had been called and failed on the charges.

104. L.H. called Defendant's office and left him a message, but Defendant did not return the call.

105. Eventually, L.H. reached Defendant who informed her that her case "fell through the cracks" but that he would take care of it.

106. On May 16, 2018, Defendant entered a plea of responsible on L.H.'s behalf to a rear seat belt violation and paid the fine.

107. In June of 2018, L.H. had to pay a restoration fee to DMV as a result of the failure to appear.

108. L.H. left several messages for Defendant but he did not return the calls.

Misuse of Entrusted Funds

109. In 2016, Defendant maintained several attorney trust accounts for his law practice, including one with First Citizens Bank ending in digits 7777.

110. On September 1, 2016, First Citizens Bank notified the State Bar that a check drawn on this trust account in the amount of \$262,685.62 was presented against insufficient funds.

111. In a letter dated September 7, 2016, the State Bar asked Defendant to provide an explanation of the overdraft and bank records related to the overdraft.

112. Defendant did not respond to the letter.

113. The State Bar sent Defendant another letter dated September 27, 2016 again requesting that he provide the previously requested information.

114. Defendant did not respond to the letter.

115. As a result of Defendant's failure to respond and provide an explanation for the overdraft, the State Bar opened a grievance file.

116. State Bar Deputy Counsel contacted Defendant by phone and requested a response to the letters.

117. That same day, Defendant provided a written explanation and supporting documents.

118. Defendant responded that the overdraft was caused by the following: His office had two real estate closings on August 30, 2016. The funds in both closings were disbursed that day. However, Defendant's office did not deposit the funds for one of the closings until the following day which caused the overdraft.

119. The improper disbursement of funds resulted in the misuse of other clients' funds in the trust account.

120. Defendant provided documents supporting his explanation including the bank statement showing the deposit the following day.

Based upon the consent of the parties and the foregoing stipulated Findings of Fact, the Hearing Panel enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant and the subject matter of this proceeding.
2. Defendant's conduct, as set out in the stipulated Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:
 - (a) By failing to provide M.B. with title to his mobile home until approximately twenty months after the closing, Defendant failed to act with diligence and promptness in representing a client in violation of Rule 1.3;
 - (b) By failing to respond to M.B.'s requests for information about his title to the mobile home, Defendant failed to keep a client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3) and failed to promptly comply with a client's reasonable requests for information in violation of Rule 1.4(a)(4);
 - (c) By failing to respond to the State Bar's Letter of Notice in the M.B. grievance matter within 15 days of receipt of the letter, Defendant knowingly failed to respond to a lawful demand for information from a disciplinary authority in connection with a disciplinary matter in violation of Rule 8.1(b);
 - (d) By failing to timely obtain title insurance for client U.S., Defendant failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;
 - (e) By failing to respond to U.S.'s repeated inquiries about her title insurance, Defendant failed to keep a client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3) and failed to promptly comply with a client's reasonable requests for information in violation of Rule 1.4(a)(4);
 - (f) By failing to promptly disburse U.S.'s entrusted funds to obtain a title insurance policy, Defendant failed to promptly pay or deliver client funds to a third party as directed by a client in violation of Rule 1.15-2(n);
 - (g) By failing to respond to the State Bar's Letter of Notice in the U.S. grievance matter within 15 days of receipt of the letter, Defendant knowingly failed to respond to a lawful demand for information from a disciplinary authority in connection with a disciplinary matter in violation of Rule 8.1(b);
 - (h) By failing to respond to S.R.'s communication attempts, Defendant failed to promptly comply with a client's reasonable requests for information in violation of Rule 1.4(a)(4);

- (i) By releasing the \$5,000 in escrow without notifying or obtaining S.R.'s consent, Defendant failed to promptly inform a client of a decision with respect to which the client's informed consent was required in violation of Rule 1.4(a)(1), failed to keep a client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3), failed to disburse and distribute entrusted funds in accordance with Rule 1.15 in violation of Rule 1.15-2(a), and failed to pay or deliver entrusted funds to the sellers as directed by S.R. in violation of Rule 1.15-2(n);
- (j) By failing to respond to N.T.'s repeated communication attempts and inquiries about the status of the land dispute, Defendant failed to keep a client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3) and failed to promptly comply with a client's reasonable requests for information in violation of Rule 1.4(a)(4);
- (k) By failing to provide N.T.'s new attorney with N.T.'s client file, Defendant failed to take reasonably practicable steps upon termination of the representation to protect a client's interests in violation of Rule 1.16(d);
- (l) By failing to promptly file the association's complaint and failing to promptly file the association's motion for entry of default, Defendant failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;
- (m) By failing to inform the property owners association that he did not timely file a complaint and failing to respond to the association's communication attempts, Defendant failed to reasonably consult with a client about the means by which the client's objectives were to be accomplished in violation of Rule 1.4(a)(2), failed to keep a client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3) and failed to promptly comply with a client's reasonable requests for information in violation of Rule 1.4(a)(4);
- (n) By accepting the association's \$2,000 check and failing to deposit the entrusted funds into a trust account, Defendant failed to hold and maintain entrusted funds separate from the property of the lawyer in violation of Rule 1.15-2(a) and failed to promptly deposit entrusted funds into a general trust account or a dedicated trust account of the lawyer in violation of Rule 1.15-2(b);
- (o) By accepting and handling the association's entrusted funds at a time when he was enjoined by the Wake County Superior Court from accepting or handling entrusted funds, Defendant collected an illegal fee in violation of Rule 1.5(a) and engaged in conduct involving dishonesty, deceit and misrepresentation in violation of Rule 8.4(c);
- (p) By failing to provide the association with an accounting of all entrusted funds upon the association's request, Defendant failed to render to a client a written accounting of all receipts and disbursements of trust funds upon the client's reasonable request in violation of Rule 1.15-3(e);
- (q) By falsely stating to G.P. that Defendant would file the association's complaint on March 23, 2018 and by falsely stating to the association's new attorney that

Defendant had mailed out a refund check on December 7, 2018, Defendant engaged in conduct involving dishonesty, deceit and misrepresentation in violation of Rule 8.4(c);

- (r) By failing to properly record J.V.'s deed, Defendant failed to act with reasonable diligence and promptness in representing a client violation of Rule 1.3;
- (s) By stating that he would record the deed on December 27, 2018 and failing to do so, Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on his fitness as a lawyer in violation of Rule 8.4(c);
- (t) By not responding to J.V.'s repeated attempts to communicate about the status of the unrecorded deed, Defendant failed to keep a client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3) and failed to promptly comply with a client's reasonable requests for information in violation of Rule 1.4(a)(4);
- (u) By failing to ensure that L.H. was not called and failed and by failing to ensure that the called and failed was stricken and that there were no adverse consequences to L.H., Defendant failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;
- (v) By failing to respond to L.H.'s attempts to communicate about her case and about the called and failed, Defendant failed to keep a client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3) and failed to promptly comply with a client's reasonable requests for information in violation of Rule 1.4(a)(4); and
- (w) By failing to promptly deposit a client's entrusted funds after conducting a real estate closing and by disbursing funds from the trust account for the benefit of a client when there were no funds in the trust account for that client, thereby misusing other clients' entrusted funds, Defendant failed to properly maintain entrusted funds in violation of Rule 1.15-2(a), failed to promptly deposit entrusted funds into a trust account in violation of Rule 1.15-2(b), used entrusted funds for the benefit of someone other than the beneficial owner of the funds in violation of Rule 1.15-2(j) (presently codified as Rule 1.15-2(k)), and disbursed entrusted funds in a manner not authorized by or for the benefit of the client in violation of Rule 1.15-2(m) (presently codified as Rule 1.15-2(n)).

Upon the consent of the parties, the Hearing Panel also finds by clear, cogent, and convincing evidence the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. At the time of his suspension in 2018, Defendant had been licensed to practice law for nearly twenty-five years.
2. Defendant has the following prior professional discipline:

- (a) In February 2001, Defendant was admonished for representing a client in an appellate matter without possessing the legal knowledge required to competently handle the representation, failing to perfect a client's appeal and failing to keep the client informed about the status of the appeal;
- (b) In February 2001, Defendant was admonished for failing to perfect a client's appeal and failing to advise the client about the status of the appeal;
- (c) In February 2018, Defendant was censured for failing to diligently represent a client, failing to reasonably communicate with the client and engaging in conduct involving misrepresentation; and
- (d) In June 2018, Defendant was suspended from the practice of law for three years for failing to properly manage his trust account and disbursing more funds from the trust account for a client than were deposited into the trust account for that client.

3. Defendant's conduct caused significant and foreseeable harm to his clients, who were vulnerable because they were unfamiliar with the legal process and relied upon Defendant to protect their rights. Defendant's lack of diligence and failure to adequately communicate with his clients caused significant delays in his clients' cases and impaired his clients' abilities accomplish the goals of the representation. Defendant's failure to properly safeguard entrusted client funds resulted in significant harm to those clients whose funds were used for a purpose other than that which was intended by the clients.

4. Defendant's failure to follow the trust accounting Rules created the potential for significant harm to his clients. Allowing entrusted funds to be improperly maintained or disbursed places entrusted funds at risk of misapplication and erodes the confidence clients place in attorneys who handle their affairs.

5. Defendant's failure to timely respond to State Bar inquiries created the potential for significant harm to the profession, to the public and to the administration of justice. Such conduct indicates a disregard for the regulatory authority of the State Bar and impedes the legal profession's ability to self-regulate its members.

6. By engaging in multiple instances of client neglect, failing to communicate with his clients and failing to timely respond to State Bar inquiries, Defendant has displayed a pattern of misconduct.

7. Most of the conduct resulting in the Rule violations enumerated above occurred prior to entry of the Consent Order of Discipline in *State Bar v. Scott H. Shelton*, 17 DHC 1.

8. Defendant acknowledges and agrees that, as a condition of this Consent Order of Discipline, he voluntarily waives his right to petition for a stay of the suspension imposed in 17 DHC 1. Defendant acknowledges and agrees that his license to practice law will remain suspended for the entire three-year period of suspension imposed therein, and that the additional suspension imposed in this Order will not begin to run until the expiration of the three-year suspension imposed in 17 DHC 1.

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

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f)(1) and concludes that the following factors are applicable:

- (a) Intent of the defendant to commit acts where the harm or potential harm is foreseeable;
- (b) Elevation of the defendant's own interest above that of the client;
- (c) Negative impact of defendant's actions on the client's or the public's perception of the profession;
- (d) Impairment of the client's ability to achieve the goals of the representation;
- (e) Acts of dishonesty, misrepresentation, deceit, or fabrication; and
- (f) Multiple instances of failure to participate in the legal profession's self-regulation process.

2. The Hearing Panel considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f)(2) and concludes that while the factor of acts of dishonesty, misrepresentation, deceit or fabrication is present, it does not warrant disbarment in this instance.

3. The Hearing Panel considered all of the factors enumerated in 27 N.C. Admin. Code. 1B.0116(f)(3) and concludes the following factors are applicable:

- (a) Prior disciplinary offenses;
- (b) A pattern of misconduct;
- (c) Multiple offenses; and
- (d) Degree of experience in the practice of law.

4. The Hearing Panel considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension and disbarment, in considering the appropriate discipline to impose in this case.

5. In light of Defendant's disciplinary history, the significant harm to his clients, and the potential for significant harm to his clients, to the profession, to the public and to the administration of justice, the Hearing Panel concludes that no discipline short of suspension of Defendant's license would adequately acknowledge the seriousness of the offenses Defendant committed and send the proper message to attorneys and the public regarding the conduct expected of members of the Bar in this State.

Based upon the foregoing Findings of Fact, Conclusions of Law and the additional Findings of Fact and Conclusions Regarding Discipline, and with the consent of the parties, the Hearing Panel hereby enters the following:

ORDER OF DISCIPLINE

1. Defendant, Scott H. Shelton, is hereby suspended from the practice of law for five years, effective immediately upon the expiration of the three-year suspension imposed by the Order of Discipline in 17 DHC 1.

2. It is the intent of this Order that the five-year suspension of Defendant's license to practice law is a second, independent order of suspension to run consecutively to the three-year suspension imposed upon him in 17 DHC 1, such that Defendant is ineligible to petition for reinstatement for five years after the expiration of Defendant's suspension imposed in 17 DHC 1.

3. Within 30 days of the effective date of this Order, Defendant shall provide the State Bar with an address and telephone number at which clients seeking return of their files can communicate with Defendant and obtain such files, and Defendant shall promptly return all files to clients upon request. Defendant shall promptly refund any unearned or excessive fees due to clients in accordance with Rules 1.5 and 1.16 of the Rules of Professional Conduct.

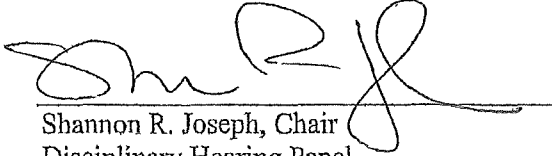
4. Defendant is taxed with the costs and administrative fees of this action as assessed by the Secretary. Defendant shall pay the costs and administrative fees within thirty days of service of the statement of costs and administrative fees upon him.

5. At the conclusion of the five-year suspension imposed by this Order, Defendant may petition for reinstatement to active practice by filing a verified petition with the Secretary of the State Bar. Defendant may file a petition for reinstatement up to 30 days prior to the end of the suspension in this matter, but he shall not be reinstated prior to the end of the additional five-year suspension period. In addition to complying with the general provisions for reinstatement listed in 27 N.C. Admin. Code 1B.0129(b), to be eligible for reinstatement Defendant must demonstrate by clear, cogent and convincing evidence that during the period of suspension he complied with the following conditions:

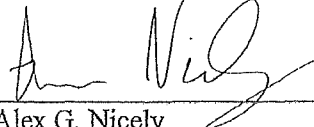
- (a) That, prior to petitioning for reinstatement, Defendant paid the costs and administrative fees of this action as assessed by the Secretary of the State Bar;
- (b) Defendant has kept the State Bar Membership Department advised of his current physical home and business addresses, his current telephone number and his current e-mail address, and has notified the Membership Department within ten days of any change in address, telephone number or e-mail address;
- (c) Defendant has accepted all certified mail from the State Bar and has responded to all letters of notice and requests for information from the State Bar by the deadline stated in the communication;
- (d) Defendant has timely complied with State Bar membership and continuing legal education requirements;


- (e) Defendant has paid any fees and costs assessed by the State Bar and the Client Security Fund by the applicable deadline;
- (f) Defendant has participated fully and timely in the State Bar's fee dispute resolution program when notified of any petitions for resolution of disputed fees; and
- (g) Defendant has not violated the Rules of Professional Conduct or any state or federal laws other than minor traffic violations during the period of suspension.

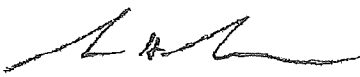
Signed by the Disciplinary Hearing Panel Chair with the consent of the other Hearing Panel members, this the 8 day of April 2021.


Shannon R. Joseph, Chair
Disciplinary Hearing Panel

AGREED AND CONSENTED TO BY:


Alex G. Nicely
Attorney for Plaintiff


Alan M. Schneider
Attorney for Defendant


Scott H. Shelton
Defendant