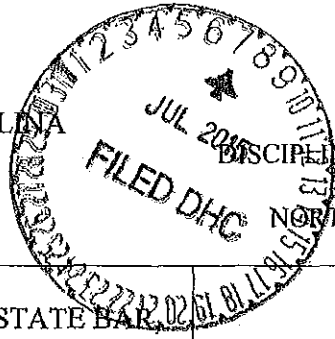


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
15 DHC 13

THE NORTH CAROLINA STATE BAR

Plaintiff

v.

THOMASINE E. MOORE, Attorney,

Defendant

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND CONSENT ORDER OF  
DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Barbara B. Weyher, Chair, and members Fred M. Morelock and Michael S. Edwards pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff was represented by Jennifer A. Porter. Defendant Thomasine E. Moore was represented by James E. Ferguson, II. Both Plaintiff and Defendant stipulate and agree to the findings of fact and conclusions of law recited in this Consent Order and to the discipline imposed. Defendant freely and voluntarily stipulates to the foregoing findings of fact and consents to the conclusions of law and entry of the Order of Discipline. Defendant freely and voluntarily waives any and all right to appeal the entry of this consent Order of Discipline.

Based upon the pleadings in this matter, the parties' stipulations of fact, and with the consent of the parties, the Hearing Panel hereby finds by clear, cogent, and convincing evidence the following

FINDINGS OF FACT

a. 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 North Carolina General Statutes, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

1. Defendant, Thomasine E. Moore ("Moore" or "Defendant"), was admitted to the North Carolina State Bar on August 24, 1975, 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.

2. Defendant was properly served with process and the matter came before the Hearing Panel with due notice to all parties.

3. During the relevant periods referred to herein, Defendant was engaged in the practice of law in the State of North Carolina and maintained a law office in Jacksonville, Onslow County, North Carolina.

4. Defendant has maintained attorney trust accounts in the course of her law practice, one at First Citizens Bank with account number ending in 6382 ("FCB trust account"), and one at Branch Banking and Trust Company (BB&T) with account number ending in 5389 (BB&T trust account").

5. Defendant has maintained operating accounts for her law practice, one at First Citizens Bank with account number ending in 0625 ("FCB operating account"), and one at BB&T with account number ending in 5354 ("BB&T operating account").

6. In 1999, Defendant represented minor child LC and obtained a settlement in her case. The settlement was approved by court order.

7. The court order approving LC's settlement required that certain funds that remained after payment of fees and costs to be invested "for the benefit of the minor child."

8. In accordance with the court's order, Defendant placed funds for LC for investment. This included Defendant placing a portion of the settlement proceeds received for LC for investment with Cape Securities, Inc. for LC's benefit.

9. In 2004, the investment account for LC was closed and a check in the amount of \$2,148.50 was sent to Defendant for LC.

10. LC was still a minor in 2004.

11. Upon receipt of the funds for LC, Defendant should have deposited the funds into an attorney trust account and held them in trust for LC, unless and until disbursed to LC or for her benefit. Because LC was still a minor in 2004, Defendant should have deposited the funds into her trust account and then disbursed them to an appropriate third party for investment of the funds in compliance with the court's order.

12. The \$2,148.50 disbursed from the investment account for LC to Defendant was not held in trust for LC, was not disbursed to LC, was not invested for LC, and was not otherwise used for her benefit.

13. The endorsement "for deposit only" stamp on the back of the cancelled check for the \$2,184.50 is not entirely legible, but indicates it was deposited into an account at First Citizens Bank associated with Defendant's law practice. It cannot be ascertained whether the stamp was for deposit into Defendant's operating account or trust account.

14. The financial institution at which Defendant maintained her operating and trust accounts no longer had records from 2004 when in 2013 the State Bar was contacted and commenced its investigation into what occurred with these funds.

15. Defendant maintains a client ledger card system for funds deposited into her trust account for clients. Defendant has no card or other record showing any deposit or maintenance of \$2,184.50 for LC in either trust account.

16. Examination of her trust account records arranged by Defendant while the State Bar's investigation was pending did not identify any funds being maintained for LC in Defendant's trust accounts for the time period examined, 2008-2013.

17. Defendant reimbursed LC for the \$2,148.50 in about April 2014.

18. In the course of the investigation concerning LC's funds, the State Bar examined records for Defendant's operating and trust accounts for the period of 2008 - 2013. The following deficiencies in Defendant's handling of entrusted funds and management of her trust accounts were identified:

- a. Failure to maintain a general ledger and compare the general ledger balance with the adjusted bank statement balance and with the sum of client ledger balances on a quarterly basis;
- b. Failure to maintain sufficient funds in her trust account for the client balances shown in her records;
- c. Deposit of mixed funds by credit card into her operating account, with subsequent transfer of the entrusted fund component amount into her trust account;
- d. Disbursement of funds from trust accounts to third parties for clients for whom she had no funds in the trust account or in excess of funds in the trust account for the client;
- e. Payment of bank charges from entrusted funds in the trust account;
- f. A \$300.00 payment for a personal line of credit from a trust account.

19. Defendant routinely reviewed her trust account and operating account bank statements.

20. Defendant identified the \$300.00 payment for her personal line of credit from her trust account and reimbursed the trust account prior to examination by the State Bar.

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 ensure entrusted funds received for LC were deposited into her trust account and maintained in trust for LC unless and until disbursed to LC or on LC's behalf, Defendant failed to deposit entrusted funds in a trust account in violation of Rule 1.15-2(b) and failed to properly maintain entrusted funds in violation of Rule 1.15-2(a) and (m);
- b. By failing to ensure the funds required by court order to be invested for LC were in fact invested and remained invested, Defendant failed to comply with the court's order approving LC's settlement in violation of Rule 8.4(d);
- c. By failing to compare her general ledger balance with the adjusted bank balance and the total of client balances for her trust accounts on a quarterly basis, Defendant failed to conduct the requisite quarterly reconciliations in violation of Rule 1.15-3(d)(1);
- d. By disbursing funds from her trust accounts for clients for whom she held no funds in the trust account or in excess of the funds held in the trust account for the client, Defendant failed to maintain other entrusted funds in trust in violation of Rule 1.15-2(a) and improperly disbursed entrusted funds for the benefit of recipients other than the legal or beneficial owner of the funds in violation of Rule 1.15-2(j) and (m);
- e. By failing to maintain sufficient funds in her trust account for her clients, Defendant failed to properly maintain entrusted funds in violation of Rule 1.15-2(a);
- f. Through payment of bank charges and a personal line of credit payment from her trust account, Defendant failed to maintain entrusted funds in violation of Rule 1.15-2(a), and improperly disbursed entrusted funds for the benefit of herself or recipients other than the legal or beneficial owner of the funds in violation of Rule 1.15-2(j) and (m); and
- g. By depositing mixed funds into her operating account, Defendant failed to deposit mixed funds into her trust account in violation of Rule 1.15-2(b) and (g).

Based upon the foregoing Findings of Fact and Conclusions of Law, and with the consent of the parties, the Hearing Panel finds by clear, cogent, and convincing evidence the following:

#### FINDINGS OF FACT REGARDING DISCIPLINE

1. During the course of her practicing, including in 2004, Defendant utilized assistants in depositing and disbursing entrusted funds and in maintaining records for her trust account. There were times when Defendant relied on her assistants to manage the trust account in lieu of personally reviewing the records.

2. When LC's mother approached Defendant in 2011 concerning LC's funds, Defendant provided LC's mother with inaccurate information regarding case documentation and what had occurred with the funds, until Defendant was able to obtain from Cape Securities the cancelled check showing that LC's funds had been sent to Defendant.

3. Defendant failed to ensure that LC's funds were properly handled and remained properly invested, impairing her client's goal of recovering compensation along with any earned interest or dividends as applicable from the investment ordered by the court while she was a minor.

4. Defendant's failure to ensure appropriate handling of LC's funds and her inaccurate responses when approached by LC's mother about the funds caused frustration and distress to LC and LC's mother and negatively impacted their perception of the profession.

5. The public is at risk and the public's perception of the profession is negatively impacted when an attorney fails to properly handle entrusted funds.

6. Defendant reimbursed LC for the amount the cancelled check showed had been sent to Defendant for LC.

7. Defendant has no prior discipline.

8. Defendant has been practicing law for 40 years.

9. There is no evidence of any dishonest or selfish motive on the part of Defendant.

10. The Hearing Panel has carefully 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.

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

#### CONCLUSIONS REGARDING DISCIPLINE

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

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and concludes the following factor warrants suspension:

- (a) Negative impact of Defendant's actions on client's or public's perception of the legal profession; and
- (b) Impairment of the client's ability to achieve the goals of the representation.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0114(w)(2) of the Rules and Regulations of the North Carolina State Bar and concludes no factors are present in this instance that would warrant disbarment.

4. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0114(w)(3) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are applicable in this matter:

- (a) No prior disciplinary offenses;
- (b) Absence of dishonest or selfish motive;
- (c) Timely good faith efforts to rectify the consequences of the Rule violations;
- (d) Defendant's full and free disclosure to the Hearing Panel and cooperative attitude toward the proceedings;
- (e) Defendant has practiced law for 40 years.

5. Defendant's failure to properly maintain, manage, and handle entrusted funds betrays a vital trust clients and the public place in attorneys and the legal profession.

6. Defendant's failure to ensure appropriate handling of LC's funds caused significant harm to a client.

7. Defendant's failure to properly maintain and handle entrusted funds in her trust accounts caused potential significant harm to her clients and the public.

8. The Hearing Panel has considered issuing an admonition, reprimand or censure but concludes that such discipline would not be sufficient discipline because of the gravity of the potential harm to the clients. The Panel further concludes that such discipline would fail to acknowledge the seriousness of the violations committed by Defendant and send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

9. This Hearing Panel has considered lesser alternatives and concludes that a stayed suspension with conditions is both necessary and sufficient to adequately protect the public.

10. For these reasons, this Hearing Panel finds that an order imposing discipline short of a stayed suspension of Defendant's law license would not be appropriate.

Based upon the foregoing Findings of Fact and Conclusions of Law and the Findings of Fact and Conclusions regarding discipline, and based upon the consent of the parties, the Hearing Panel enters the following:

#### ORDER OF DISCIPLINE

1. Defendant Thomasine E. Moore is hereby suspended from the practice of law for three years. This suspension is stayed immediately, as set forth in, and subject to the terms of, paragraph 3 below.

2. Defendant is taxed with the costs of this action as assessed by the Secretary. Defendant shall pay the costs within thirty days of service of the statement of costs upon her.

3. The three-year suspension is stayed for a period of three years as long as Defendant complies, and continues to comply during the period of the stay, with the following conditions:

- (a) Within 30 days of the effective date of this order, Defendant shall establish procedures to ensure that client funds are appropriately maintained and disbursed and that monthly and quarterly reconciliations of her trust accounts are properly conducted. If non-attorney assistants and/or a CPA will be used to assist with these tasks, Defendant shall establish procedures for personal review and supervision. No later than 30 days from the effective date of this order, Defendant shall submit these procedures to the Office of Counsel. Defendant shall make any adjustments required by the Office of Counsel to ensure compliance with the Rules of Professional Conduct;

- (b) Defendant shall provide three-way quarterly reconciliations for all trust accounts from January 1, 2014 through the end of the calendar quarter in which this order is entered, along with the corresponding client ledgers for all clients with funds in the trust accounts during that period, ledger for any personal funds maintained in the trust accounts for bank or credit card fees, trust account ledgers, and the bank statements, cancelled checks, and deposit slips for each month in the quarter. These reconciliations and corresponding documents shall be provided by the 15<sup>th</sup> day of the month immediately following the end of the calendar quarter in which this order is entered (for example, if this order is entered in the second calendar quarter of 2015, quarterly reconciliation documents for January 1, 2014 through June 30, 2015 would be due by July 15, 2015.)
- (c) Each month during the stay, Defendant shall provide the Office of Counsel of the State Bar with the three-way reconciliation described in the State Bar Lawyer's Trust Account Handbook for all trust accounts maintained by her. Defendant shall provide the three-way reconciliation report, client ledgers for all clients with funds in her trust accounts during that month, ledger for any personal funds maintained in the trust accounts for bank or credit card fees, trust account ledger, and the bank statements, cancelled checks, and deposit slips for each month. Defendant shall also provide documentation showing she followed the procedures established under paragraph (a) above. These documents are due on the 15<sup>th</sup> day of the following month (for example, the three-way reconciliation for the month of January would be due on February 15);
- (d) Each quarter, Defendant shall have a CPA audit all trust accounts and prepare an audit report. Defendant will be responsible for any associated costs. The CPA in this audit shall assess whether Defendant has present in the trust account(s) the client funds she should be maintaining for her clients at that time, as well as Defendant's compliance with Rule 1.15-2 and Rule 1.15-3. The CPA in this audit shall assess all items in the CPA Report Template which will be provided by the State Bar to Defendant, and the CPA may utilize the CPA Report Template to make his or her report. The quarterly audit reports from the CPA are due no later than 30 days after the end of the quarter -- for example, the CPA audit for the first quarter of the calendar year (January, February, and March) is due on April 30. The first quarter to be audited shall be the calendar quarter immediately subsequent to the calendar quarter in which this order is entered;
- (e) If either the monthly three-way reconciliation report or the CPA audit reveals any deviation from Defendant's obligations under Rule 1.15-2 or Rule 1.15-3, Defendant shall take remedial action within ten days of the date of the three-way reconciliation report or the CPA audit and shall

provide documentation showing the remedial action to the State Bar within two days of the date of the remedial action;

- (f) Defendant shall comply with any requests from the Office of Counsel to provide any information regarding her trust accounts or to sign and provide any release or authorization to allow the Office of Counsel to obtain information directly from any bank in which Defendant maintains a trust account, by the deadline stated in the request;
- (g) Defendant shall complete four hours of continuing legal education in the area of trust account management approved by the Office of Counsel of the State Bar. At least one such session shall be taken before the end of the calendar quarter (i.e., by March 30, June 30, etc.) immediately subsequent to the calendar quarter in which this order is entered and at least one such session shall be a CLE taught by the Trust Account Compliance Counsel for the North Carolina State Bar. Defendant shall provide written proof of successful completion of the CLE courses to the State Bar within ten days of completing the courses;
- (h) Defendant shall keep the North Carolina State Bar Membership Department advised of her current physical business address (not a Post Office box), telephone number, and e-mail address and shall notify the Bar of any change in address within ten days of such change;
- (i) Defendant shall accept all certified mail from the State Bar sent to the address on record with the Membership Department of the North Carolina State Bar;
- (j) Defendant shall respond to all letters of notice and requests for information from the North Carolina State Bar by the deadline stated therein with full and complete responses and all requested documentation;
- (k) Defendant will timely comply with the State Bar continuing legal education requirements and will pay all fees and costs assessed by the applicable deadline;
- (l) Defendant will pay all membership, Client Security Fund, and any other related dues, fees, and/or costs by the applicable deadline;
- (m) Defendant will not violate any of the Rules of Professional Conduct in effect during the period of the stay;
- (n) Defendant will not violate any laws of the State of North Carolina or of the United States during the period of the stay; and

- (o) Defendant paid the costs and fees of this proceeding as assessed by the Secretary within thirty days after the statement of costs and fees was served upon her.

4. Unless Defendant's obligations under this Order are modified by further order of the DHC, Defendant's obligations under this Order end three years from the effective date of the Order provided there are no motions or proceedings pending alleging lack of compliance with the conditions of the stay of the suspension. Pursuant to § .0114(x) of the North Carolina Discipline and Disability Rules, the DHC retains jurisdiction until all conditions of the stay of the suspension have been met. If a motion or proceeding alleging lack of compliance with the conditions for the stay of the suspension is pending when the period of the stay of the suspension would otherwise have terminated, the DHC retains the jurisdiction and ability to lift the stay of the suspension and activate the three year suspension in whole or in part if it finds that any of the conditions of the stay have not been met. The stay of the suspension and Defendant's obligation to comply with the conditions for the stay will continue until resolution of any such pending motion or proceeding.

5. If during the stay of the suspension Defendant fails to comply with any one or more of the conditions stated above, then the stay of the suspension may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

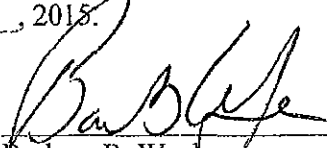
6. If the stay of the suspension is lifted and the suspension is activated for any reason, Defendant may apply for reinstatement after serving the activated suspension by filing a petition pursuant to § .0125 of the North Carolina State Bar Discipline and Disability Rules demonstrating compliance by clear, cogent, and convincing evidence with the requirements therein as well as the following requirements:

- (a) Defendant properly wound down her law practice and complied with the terms of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the State Bar Discipline & Disability Rules;
- (b) Defendant completed four hours of continuing legal education in the area of trust account management approved by the Office of Counsel of the State Bar, including at least one CLE by the Trust Account Compliance Counsel for the North Carolina State Bar, within the six months immediately preceding the filing of the petition for reinstatement;
- (c) Defendant established procedures by which she personally reconciles her trust accounts or by which she personally supervises any CPA or non-attorney assistant who she utilizes to reconcile her trust accounts. Defendant shall submit these procedures to the Office of Counsel 30 days prior to the filing of the petition for reinstatement. Defendant shall have made any adjustments required by the Office of Counsel to ensure compliance with the Rules of Professional Conduct and provided any corrected procedures with the petition;

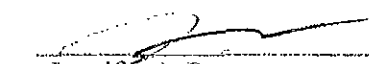
- (d) Defendant kept the Membership Department of the State Bar informed of her current information for her physical address (not a Post Office box), telephone number, and e-mail address throughout the period of her suspension;
- (e) Defendant accepted all certified mail from the State Bar sent to the address on record with the Membership Department of the North Carolina State Bar throughout the period of the suspension;
- (f) Defendant responded to all letters of notice and requests for information from the North Carolina State Bar by the deadline stated therein with full and complete responses and all requested documentation throughout the period of her suspension;
- (g) Defendant is in compliance with all continuing education and membership obligations at the time of the filing of her petition for reinstatement;
- (h) Defendant did not violate any of the Rules of Professional Conduct in effect during the period of the suspension;
- (i) Defendant did not violate any laws of the State of North Carolina or of the United States during the period of the suspension; and
- (j) Defendant paid all costs and fees of this disciplinary proceeding as assessed by the Secretary by the date of the filing of her petition for reinstatement.

6. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules until all conditions of the stay of the suspension are satisfied.

Signed by the Chair with the consent of the other Hearing Panel members, this the 7<sup>th</sup> day of July, 2015.

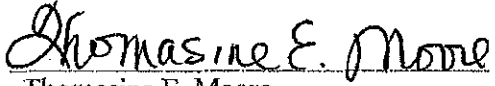
  
Barbara B. Weyher  
Chair, Disciplinary Hearing Panel

CONSENTED TO BY:

  
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Jennifer A. Porter  
Counsel for Plaintiff

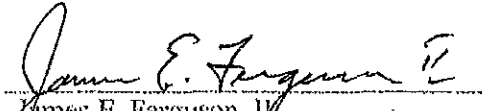
Date

6-22-15

  
\_\_\_\_\_  
Thomasine E. Moore  
Defendant

Date

6-3-2015

  
\_\_\_\_\_  
James E. Ferguson, IV  
Counsel for Defendant

Date

June 9, 2015