

STATE OF NORTH CAROLINA

WAKE COUNTY

THE NORTH CAROLINA STATE BAR

Plaintiff

v.

KEVIN P. BYRNES, Attorney,

Defendant

BEFORE THE

DISCIPLINARY HEARING COMMISSION

OF THE

NORTH CAROLINA STATE BAR

15 DHC 50

CONSENT ORDER OF
DISCIPLINE

This matter came before a hearing panel of the Disciplinary Hearing Commission composed of Steven D. Michael, Chair, Irvin W. Hankins, III and Patti Head. Carmen Hoyme Bannon represented Plaintiff. Eben T. Rawls III represented Defendant. 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 consent order. The parties 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.

Based on the foregoing and on the consent of the parties, the Hearing Panel hereby makes by clear, cogent and convincing evidence the following:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar, is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations promulgated by the North Carolina State Bar.

2. Defendant, Kevin P. Byrnes, was admitted to the North Carolina State Bar in August 1981, and is an Attorney at Law subject to the rules, regulations, and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. Byrnes was properly served with the summons and complaint in this matter.

4. During the relevant period referred to herein, Byrnes was actively engaged in the practice of law in Charlotte, Mecklenburg County, North Carolina.

5. In connection with his law practice, Byrnes maintained multiple attorney trust accounts.

6. During the period from 2003 through 2011, Byrnes did not reconcile his trust accounts by totaling individual client ledger balances and comparing them to the current trust account bank statement balances. Lawyers are required to perform this type of trust account reconciliation at least quarterly.

7. During this same period, Byrnes did not promptly deliver to all clients and/or third parties entrusted funds to which they were entitled. For example, Byrnes failed to pay the \$825.00 hazard insurance premium for a 2003 closing he performed for Larry and Julie Curtis. The \$825.00 balance remained in his trust account for more than eight years.

8. In April 2008, Byrnes closed an attorney trust account he had maintained at First Charter Bank, receiving a cashier's check for \$10,048.95, which represented the balance in the account at the time it was closed. Byrnes did not deposit those funds into another trust account. Byrnes did not maintain records documenting the beneficial owners of the \$10,048.95 in the First Charter Trust Account, and he never negotiated the cashier's check.

9. During the period from 2009 through 2011, Byrnes maintained two trust accounts at First Trust Bank (account number ending in -0276, referred to hereafter as the "general trust account," and account number ending in -2966, referred to hereafter as the "real estate trust account"), and one trust account at Suntrust Bank (account number ending in -4465).

10. In November 2011, the Wake County Superior Court entered an order of preliminary injunction prohibiting Byrnes from handling entrusted funds. As a result of this order, the banks placed holds on the three trust accounts referenced in paragraph 9, above. There has been no activity in the accounts since they were frozen in 2011.

11. At the time the accounts were frozen, there was a combined total of more than \$87,000.00 in the three trust accounts referenced in paragraph 9, above. Byrnes did not maintain sufficient documentation to allow him to identify the beneficial owners of approximately \$57,000.00 of those entrusted funds.

12. During the period from 2009 through 2011, Byrnes:

- (a) Issued checks from his general trust account made payable to "cash," including the following:
 - A \$4,000.00 check dated 21 January 2010;
 - An \$1,800.00 check dated 11 May 2010; and
 - A \$200.00 check dated 2 July 2010.
- (b) Failed to maintain individual client ledgers reflecting each client's balance of funds held in trust.

- (c) Did not provide written accountings to clients when all entrusted funds were disbursed, or at least annually.
- (d) Did not direct the banks at which he maintained trust accounts to notify the State Bar in the event an item drawn on the account was presented against insufficient funds.

13. On multiple occasions during the period from 2009 through 2011, Byrnes advanced funds from his general trust account on behalf of a client when he did not have funds (or did not have sufficient funds) in the account for the benefit of that client. For example:

- (a) In June 2008, Byrnes disbursed \$1,747.45 from his general trust account to pay real estate taxes for the Estate of Harold Brown. Byrnes held no funds in trust for the estate at that time. When Byrnes received \$1,747.45 on behalf of the Estate of Harold Brown in November 2008, he deposited it into his real estate trust account, not the general trust account from which he had made the corresponding disbursement.
- (b) Byrnes was the closing attorney for a June 2008 purchase of real estate by Stonehunt Development LLC. The closing proceeds were deposited into Byrnes' general trust account. Byrnes did not issue payment from his general trust account for the title insurance on this closing. Instead, in September 2009, Byrnes disbursed \$1,196.00 from his real estate trust account as payment for title insurance on the Stonehunt closing. There were no funds on deposit in the real estate trust account for the benefit of Stonehunt.
- (c) In October 2008, Byrnes issued two checks from his general trust account, each in the amount of \$2,500.00, in connection with his representation of Oscar Lopez. Byrnes did not make the \$5,000.00 deposit to cover these disbursements until October 2010.
- (d) In November 2009, Byrnes received \$947.00 in connection with his representation of William Belk, and deposited that amount into his general trust account. Approximately two weeks later, Byrnes issued a \$1,241.00 trust account check to himself in connection with the Belk matter. This disbursement exceeded the amount of funds Byrnes had in trust for Belk by \$294.00.
- (e) In May 2010, Byrnes was the closing lawyer for a refinance transaction for Bob and Lynn Sizemore. In connection with that closing, Byrnes disbursed \$566.94 more than he received in trust for the benefit of the Sizemores. This over-disbursement was not identified or corrected until January 2011.
- (f) In June 2011, Byrnes received \$89,801.23 as commissioner for the sale of property belonging to the Estate of Connie Harris. Byrnes

deposited those funds into his general trust account. Byrnes disbursed the entire \$89,801.23, plus an additional \$3,500.00 payment to Rosedale Funeral Home on behalf of the Estate of Connie Harris. No deposit was ever made to cover the \$3,500.00 over-disbursement on behalf of the estate.

14. By making the disbursements described in paragraph 13, above, Byrnes used funds entrusted to him by other clients to cover disbursements for the benefit of clients for whom he did not have funds (or did not have sufficient funds) on deposit. The beneficial owners of the funds in Byrnes' trust account did not authorize Byrnes to use their entrusted funds for the disbursements described in paragraph 13.

15. During the period from 2009 through 2011, Byrnes failed to maintain the following records for his trust accounts:

- (a) Documentation of the source of all deposits and the client on whose behalf the deposit was received.
- (b) Copies of all checks drawn on the accounts showing the recipient of the disbursement and the client balance against which it was drawn.
- (c) Complete, accurate general ledgers of receipts and disbursements identifying the client on whose behalf each receipt and disbursement was made.

16. During the period from 2009 through 2011, Byrnes disbursed funds from his general trust account by methods (i.e., debits, telephone transfers, and checks without client attributions) that did not reflect the recipient of the disbursement and/or the client balance against which it was drawn. Some of the disbursements without client attributions were payable to Byrnes.

17. Byrnes' trust accounts were randomly audited by the State Bar in September of 2010. The audit revealed multiple trust accounting deficiencies, as indicated in the First Claim for Relief above.

18. Byrnes was allowed 60 days from the date of the audit to correct the deficiencies in his trust accounts, but failed to do so.

19. In November 2010, January 2011, March 2011, and April 2011, the State Bar auditor made repeated requests of Byrnes for evidence that he had taken the necessary corrective measures. Although the auditor allowed multiple extensions of time for Byrnes to comply, as of May 2011, Byrnes still had not provided the documentation requested by the auditor.

20. When Byrnes failed to correct the deficiencies identified in the random audit, the State Bar opened grievance file 11G0659 to investigate his apparent violation of the Rules of Professional Conduct related to attorney trust accounts. In August 2011, Byrnes was served with a Letter of Notice and Subpoena for Cause Audit in grievance file 11G0659.

21. Byrnes partially complied with the subpoena for cause audit, but did not produce all of the documentation responsive to the subpoena.

22. In December 2011, the State Bar requested specific trust account information and documentation regarding, among other things, transfers between Byrnes' trust accounts, telephone transfers, and cash withdrawals. Byrnes failed to respond to this request.

23. During calendar years 2007, 2008, 2009, 2010, 2011, 2012, and 2013, Byrnes' income exceeded the minimum threshold above which an individual is required to file federal and state income tax returns.

24. In each of these tax years, Byrnes was aware of the deadlines for filing state and federal tax returns and paying any tax liability.

25. Byrnes failed to file, within the times required by law, federal income tax returns showing his tax liability for tax years 2007, 2008, 2009, 2010, 2011, 2012, and 2013.

26. Byrnes failed to pay, within the times required by law, his federal income tax liability for tax years 2007, 2008, 2009, 2010, 2011, 2012, and 2013.

27. In November 2014, the IRS filed a tax lien against Byrnes, indicating that he owed \$91,879.26 to the Department of the Treasury, and that the liability remained unpaid, despite demands for payment.

28. Byrnes failed to file, within the times required by law, North Carolina state income tax returns showing his tax liability for tax years 2007, 2008, 2009, 2010, 2011, 2012, and 2013.

29. Byrnes failed to pay, within the times required by law, his state income tax liability for tax years 2007, 2008, 2009, 2010, 2011, 2012, and 2013.

30. Byrnes' unpaid state income tax liability to the North Carolina Department of Revenue is in excess of \$16,000.00, not including penalties, interest, or fines.

31. Byrnes' failure to timely file federal and state income tax returns for tax years 2007, 2008, 2009, 2010, 2011, 2012, and 2013 was willful.

32. Byrnes' failure to timely pay state and federal tax liabilities due for tax years 2007, 2008, and 2009 was willful.

33. Pursuant to 26 U.S.C. § 7203, willful failure to file and pay federal income tax within the time required by law is a criminal act.

34. Pursuant to N.C.G.S. § 105-236(a)(9), willful failure to file and pay North Carolina income tax within the time required by law is a criminal act.

Based on the foregoing Findings of Fact, and with the consent of the parties, the Hearing Panel makes the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, Kevin P. Byrnes, and over the subject matter.

2. Defendant's conduct, as set forth in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-24(b)(2) and (b)(3) in that Defendant violated the Rules of Professional Conduct and § 84-24(b)(3) as follows:

- (a) By failing to perform quarterly reconciliations of his trust accounts, Defendant violated Rule 1.15-3(d);
- (b) By failing to promptly deliver to clients and/or third parties entrusted funds to which they were entitled, Defendant violated Rule 1.15-2(m);
- (c) By failing to deposit the entrusted funds from his First Charter Bank account into another trust account when he closed the First Charter account, Defendant failed to promptly deposit entrusted funds into a trust account in violation of Rule 1.15-2(b);
- (d) By failing to maintain documentation establishing the beneficial owners of the entrusted funds in the First Charter Bank account, Defendant failed to maintain complete and accurate records of all entrusted property he received in violation of Rule 1.15-3(g);
- (e) By failing to maintain sufficient documentation to allow him to identify the beneficial owners of approximately \$57,000.00 held in the three trust accounts Defendant maintained as of 2011, Defendant failed to maintain complete and accurate records of all entrusted property he received in violation of Rule 1.15-3(g);
- (f) By issuing trust account checks payable to "cash," Defendant violated Rule 1.15-2(i);
- (g) By failing to maintain individual client ledgers, Defendant failed to maintain ledgers containing a record of receipts and disbursement for each person or entity from whom and for whom funds were received and showing the current balance of funds held in the trust account for each such person or entity in violation of Rule 1.15-3(b)(5);
- (h) By failing to provide written accountings of entrusted funds to clients when all entrusted funds were disbursed and at least annually, Defendant violated Rule 1.15-3(e);
- (i) By failing to direct the banks at which he maintained trust accounts to notify the State Bar in the event that an item drawn on the trust account was presented against insufficient funds, Defendant violated Rule 1.15-2(k);

- (j) By using funds entrusted to him by other clients to cover disbursements for the benefit of clients for whom he did not have funds on deposit, Byrnes used entrusted property without authorization for the benefit of someone other than the beneficial owner of that property in violation of Rule 1.15-2(j);
- (k) By failing to maintain adequate documentation of deposits into his trust accounts, Defendant violated Rule 1.15-3(b)(1);
- (l) By disbursing funds from his trust account by methods that did not reflect the recipient of the disbursement and/or the client balance against which it was drawn, Defendant failed to maintain adequate documentation of disbursements in violation of Rule 1.15-3(b)(2) and (3), and made payments to himself from the trust account using items that did not capture the client balance upon which the disbursement was made in violation of Rule 1.15-2(h);
- (m) By failing to respond to inquiries from the State Bar regarding the investigation of his trust account and failing to fully comply with a State Bar subpoena, Defendant knowingly failed to respond to lawful demands for information from a disciplinary authority in violation of Rule 8.1(b), and knowingly failed to answer formal inquiries issued by the State Bar in a disciplinary matter in violation of N.C. Gen. Stat. § 84-28(b)(3);
- (n) By willfully failing to file his state and federal income tax returns for tax years 2007, 2008, 2009, 2010, 2011, 2012, and 2013, Defendant engaged in conduct involving dishonesty in violation of Rule 8.4(c) and committed criminal acts that reflect adversely on his trustworthiness or fitness as a lawyer in violation of Rule 8.4(b); and
- (o) By willfully failing to pay his state and federal income taxes for tax years 2007, 2008, and 2009, Defendant engaged in conduct involving dishonesty in violation of Rule 8.4(c) and committed criminal acts that reflect adversely on his trustworthiness or fitness as a lawyer in violation of Rule 8.4(b).

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

FINDINGS OF FACT REGARDING DISCIPLINE

1. Defendant has substantial experience in the practice of law.
2. There is no evidence that Defendant intended to harm his clients and there is no evidence of any dishonest or selfish motive on the part of Defendant. Although Defendant inadvertently misused client funds for the benefit of other clients, there is no

evidence that Defendant knowingly or intentionally used entrusted funds for his own benefit..

3. Defendant's conduct in over-disbursing entrusted funds from his trust account caused significant potential harm to his clients whose entrusted funds were used for the benefit third parties without their knowledge or consent. Defendant's conduct also impaired his clients' abilities to achieve the goals of their respective representations by, for example, delaying the satisfaction of all financial obligations associated with their real estate transactions.

4. Conducting quarterly reconciliations of the trust account is the lynchpin of proper maintenance and protection of entrusted funds. Had Defendant been conducting quarterly reconciliations, he would have seen balances remaining for various clients which would have signaled that work, such as obtaining the title policy, still needed to be done for these clients. Additionally, had Defendant been conducting quarterly reconciliations, he would have maintained awareness of whose funds were in his trust account. Defendant's failure to reconcile his trust account and failure to maintain proper trust account records was a pattern of misconduct that demonstrates Defendant's intent to commit acts where potential harm is foreseeable.

5. Improperly maintaining and disbursing client funds—even inadvertently—places entrusted funds at risk and has the potential to cause significant harm to the standing of the profession in the eyes of the public because it shows a lawyer's disregard for his fiduciary duties as an attorney.

6. When lawyers violate the law in their business and personal affairs, including noncompliance with generally applicable tax laws, it brings disrepute upon the legal profession and undermines public confidence in lawyers.

7. In 34 years of practice, Defendant has had no prior disciplinary offenses.

8. Defendant suffers from chronic anxiety and depression, which compromised his ability to manage his personal and professional responsibilities, including properly monitoring and documenting entrusted funds and tending to his personal financial obligations.

9. Defendant has been fully cooperative in this disciplinary proceeding.

10. Defendant acknowledges that the conduct described in this order was wrong. He has expressed genuine remorse for his actions, and a commitment never to engage in such misconduct again. Although it appears that no client was injured or negatively impacted by the Defendant's conduct, he understands and regrets how his conduct has negatively impacted public perception of the legal profession. He has expressed sincere commitment to corrective actions in both personal and professional endeavors. Defendant has also expressed a desire to be a resource to other professionals overwhelmed by personal or professional burdens.

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

CONCLUSIONS OF LAW REGARDING DISCIPLINE

1. The Hearing Panel has carefully considered all of the different forms of discipline available to it. In addition, the Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w) of the Discipline and Disability Rules of the North Carolina State Bar.

2. The Hearing Panel concludes the following factors from § .0114(w)(1) warrant consideration of suspension of Defendant's license:

- (a) Defendant committed acts or omissions where the harm or potential harm was foreseeable;
- (b) Defendant's actions had a potentially negative impact on the public's perception of the profession; and
- (c) Defendant's actions impaired his clients' abilities to achieve the goals of the representation.

3. The Hearing Panel has considered all of the factors enumerated in § .0114(w)(2) and concludes that although Defendant engaged in technical misappropriation and in acts of dishonesty with respect to his income tax returns, disbarment is not necessary to protect the public in this case.

4. The Hearing Panel has considered all of the factors enumerated in § .0114(w)(3) and concludes the following factors are applicable in this matter:

- (a) Defendant's lack of prior disciplinary offenses;
- (b) The absence of a selfish motive;
- (c) Pattern of misconduct;
- (d) Multiple offenses;
- (e) Personal or emotional problems that affected the conduct in question;
- (f) Cooperative attitude toward the proceedings;
- (g) Remorse; and
- (h) Degree of experience in the practice of law.

5. 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 misconduct at issue and the harm or potential harm Defendant's misconduct caused to clients and the profession.

6. When a lawyer engages in criminal acts reflecting adversely on his trustworthiness or fitness, it is among the most serious types of professional misconduct and typically warrants imposition of a lengthy active suspension or disbarment. Under other circumstances, the misconduct in this case would warrant more serious discipline. However, the Hearing Panel finds and concludes that the unique circumstances surrounding this case justify lesser discipline than would otherwise be appropriate. The factors that particularly warrant lesser discipline include:

- (a) Defendant's long history of practice without prior discipline;
- (b) The fact that Defendant's depression and anxiety were major contributing factors in his failure to properly manage entrusted funds and to satisfy his income tax obligations;
- (c) The fact that prior to the entry of this Order, the Defendant had voluntarily filed all delinquent tax returns;
- (d) Defendant's acknowledgment of wrongdoing, genuine expression of remorse; his voluntary and proactive compliance with tax filing requirements; his continuing and ongoing treatment and therapy with skilled mental health professionals; and his commitment to never repeating the misconduct all reflect that the most serious levels of discipline are not necessary to protect the public.

7. The Hearing Panel finds that an order imposing discipline short of suspension of Defendant's law license would not adequately protect the public, the legal profession, or the administration of justice for the following reasons:

- (a) The Rule violations and factors under § .0114(w)(1) and (w)(3) that are present in this case are of a nature that support imposition of suspension as the appropriate discipline; and,
- (b) Entry of less serious discipline would fail to acknowledge the seriousness of the offenses Defendant committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar in this State.

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

ORDER OF DISCIPLINE

1. The license of Defendant, Kevin P. Byrnes, is hereby suspended for five years, effective 30 days from the date of service of this order upon Defendant.

2. Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following the effective date of this Order.

3. Defendant shall comply with the wind down provisions contained in Rule .0124 of the North Carolina State Bar Discipline and Disability Rules, 27 N.C. Admin. Code 1B § .0124. As provided in § .0124(d), Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within 10 days of the effective date of this order, certifying he has complied with the wind down rule.

4. Defendant is taxed with the administrative fees and the costs of this action as assessed by the Secretary. Defendant shall pay the costs and administrative fees of this action as assessed by the Secretary prior to seeking reinstatement or a stay of any portion of the suspension.

5. Within 30 days after service of this Order, Defendant shall provide the State Bar's Office of Counsel with an address and telephone number at which clients seeking their files can communicate with Defendant. Defendant shall promptly return all files to his clients upon request.

6. After serving no less than two years of the suspension, Defendant may apply for a stay of the remaining period of suspension imposed by this Order by filing a verified petition with the Secretary of the North Carolina State Bar. In addition to complying with the general provisions for reinstatement listed in Rule .0125 of the North Carolina State Bar Discipline & Disability Rules, to be eligible for a stay of the remaining period of suspension, Defendant must demonstrate compliance with the following conditions by clear, cogent, and convincing evidence:

- (a) Defendant shall timely comply with paragraphs 2-5 of this section of the Order of Discipline;
- (b) Defendant shall complete four hours of trust account continuing legal education, approved in advance by the Office of Counsel, including at least one that includes discussion of quarterly reconciliations of trust accounts taught by Trust Account Compliance Counsel for the North Carolina State Bar;
- (c) Within 30 days of this Order's effective date, Defendant shall retain a CPA to assist in the reconciliation of Defendant's trust accounts¹ and identification all clients whose funds are deposited in the accounts or are missing from the accounts. Any costs associated with retaining the CPA shall be at Defendant's sole expense. When Defendant's trust accounts are

¹ The requirements in this paragraph and paragraph 6(d) apply to the three trust accounts identified in Finding of Fact #9 above, and to the \$10,048.95 from Defendant's First Charter Trust Account, described in Finding of Fact #8.

reconciled, Defendant shall provide the Office of Counsel with a reconciliation report from the CPA that includes the identification of: (i) every client whose funds are in Defendant's trust accounts; (ii) the appropriate recipients of those clients' funds; (iii) any shortage in the accounts; and (iv) any funds which cannot in the exercise of due diligence be identified and are therefore subject to escheat;

- (d) As of the date of this Order, Defendant is enjoined from handling entrusted funds by the Wake County Superior Court (case no. 11 CVS 17756). Within 90 days after the reconciliation of Defendant's trust accounts described in the preceding paragraph, and after obtaining the approval of the Office of Counsel, Defendant shall petition the Wake County Superior Court to dissolve the injunction. Within 30 days after the injunction is dissolved, Defendant shall reimburse to his trust accounts any shortage identified in the reconciliation and properly disburse all funds in his trust accounts, including escheating all unidentified funds in accordance with Rule 1.15-2(q). When all of the entrusted funds are disbursed, Defendant shall close all of the trust accounts he maintained prior to the date of this Order;
- (e) Defendant shall file any outstanding federal and state income tax returns along with all associated schedules and attachments thereto, and Defendant shall timely file all federal and state income tax returns that come due during the period of active suspension. Defendant shall provide proof of these filings to the Office of Counsel within 30 days of filing;
- (f) Defendant shall pay all outstanding state and federal tax liabilities, fines, and penalties, and Defendant shall timely pay all state and federal tax liabilities, fines, and penalties accrued during the period of active suspension. If applicable, Defendant shall comply with the terms of payment plans with the IRS and N.C. Department of Revenue for payment of back taxes, interest, and penalties during the period of active suspension;
- (g) Defendant shall respond to all communications from the Internal Revenue Service and the North Carolina Department of Revenue;
- (h) Defendant shall execute any written waivers and releases necessary to authorize the Office of Counsel to confer with the Internal Revenue Service or the North Carolina Department of Revenue for the purpose of determining whether Defendant has complied with all requirements of this Order. Defendant shall not revoke these waivers and releases during the period of active suspension;
- (i) Defendant shall comply with all treatment recommendations of the clinicians from whom he is receiving treatment for depression and anxiety;
- (j) Prior to or at the time of filing any petition for reinstatement or stay, Defendant shall provide written releases to the North Carolina State Bar

Office of Counsel, authorizing all clinicians from whom he received any recommended treatment during the period of active suspension to communicate with the Office of Counsel and to release to the Office of Counsel records relating to his treatment;

- (k) Defendant shall ensure that each provider from whom he received any recommended treatment during the period of active suspension generates a written report to the State Bar setting forth: (i) a description of Defendant's participation in and compliance with treatment, (ii) the clinician's opinion as to whether Defendant has any physical or mental impairment, or other condition or illness that could adversely affect his ability to practice law; and (iii) the clinician's recommendations, if any, regarding ongoing treatment. The reports shall be provided to the Office of Counsel prior to or at the time Defendant files any petition for stay or reinstatement;
- (l) Defendant shall have the burden of establishing by clear and convincing evidence that, at the time he seeks reinstatement or a stay of the suspension, he does not have any physical or mental impairment, or other condition or illness that significantly impairs his professional performance, judgment or competence.
- (m) Defendant shall keep the North Carolina State Bar membership department advised of his current physical home and business addresses and telephone numbers, and shall notify the membership department within 10 days of any change to his contact information;
- (n) Defendant shall accept all certified mail from the North Carolina State Bar and respond to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication;
- (o) Defendant shall timely comply with State Bar membership and continuing legal education requirements, and pay all fees and costs assessed by the State Bar and the Client Security Fund by the applicable deadline;
- (p) Defendant shall participate fully and timely in the State Bar's fee dispute resolution program when notified of any petitions for resolution of disputed fees; and
- (q) Defendant shall not violate the Rules of Professional Conduct or any state or federal laws other than minor traffic violations during the period of active suspension.

7. If Defendant successfully seeks a stay of the suspension of his law license pursuant to this Order, the stay will continue in force only as long as Defendant complies with the following conditions:

- (a) Each month that Defendant operates a trust account in connection with his law practice, Defendant shall provide the Office of Counsel with an accurate three-way reconciliation (as described in the State Bar Lawyer's Trust Account Handbook) for all trust accounts he maintains. With each monthly three-way reconciliation report, Defendant shall also submit accurate client ledgers for all clients with funds in the trust account(s) during that month, a ledger for any personal funds maintained in the trust account(s) to cover bank or credit card fees, his general trust account ledger(s), and the bank statements, cancelled checks, deposit slips, and any other document or instruction (such as wire or electronic transfer records) regarding the deposit or disbursement of entrusted funds. These documents are due on the 15th day of the following month – for example, the trust account documentation for the month of January is due on February 15;
- (b) Each quarter that Defendant operates a trust or fiduciary account in connection with his law practice, Defendant shall have a CPA audit those accounts. Defendant will be responsible for any associated costs. This audit shall assess whether Defendant has in his trust account the client funds he should be maintaining for his clients at that time, as well as Defendant's compliance with Rule 1.15-2 and Rule 1.15-3. 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;
- (c) 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 10 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 5 days of the date of the remedial action;
- (d) Defendant shall comply with all requests from the Office of Counsel for information regarding his trust account(s), and with all requests to execute releases or authorizations that will allow the Office of Counsel to obtain information directly from any bank in which Defendant maintains a trust or fiduciary account;
- (e) Defendant shall timely file all federal and state income tax returns that come due during the period of stayed suspension. Defendant shall provide proof of these filings to the Office of Counsel within 30 days of filing;
- (f) Defendant shall timely pay all state and federal tax liabilities, fines, and penalties accrued during the period of stayed suspension. If applicable, Defendant shall comply with the terms of payment plans with the IRS and N.C. Department of Revenue for payment of back taxes, interest, and penalties during the period of stayed suspension;

- (g) Defendant shall respond to all communications from the Internal Revenue Service and the North Carolina Department of Revenue;
- (h) Defendant shall execute any written waivers and releases necessary to authorize the Office of Counsel to confer with the Internal Revenue Service or the North Carolina Department of Revenue for the purpose of determining whether Defendant has complied with all requirements of this Order. Defendant shall not revoke these waivers and releases during the period of stayed suspension;
- (i) Defendant shall comply with all recommendations for ongoing treatment set forth in the clinicians' reports described in paragraph 6(k), above.
- (j) Defendant shall provide a written release to the North Carolina State Bar Office of Counsel, authorizing all providers from whom he is receiving any ongoing treatment to communicate with the Office of Counsel and to release to the Office of Counsel records relating to his compliance with treatment recommendations. Defendant shall not revoke these releases during the period of the stay.
- (k) Defendant shall ensure that all providers from whom he is receiving any ongoing treatment send a quarterly written report to the State Bar confirming that he is complying with treatment recommendations and is not suffering from any physical or mental condition that significantly impairs his professional judgment. The reports shall be due each January 30, April 30, July 30, and October 30 during the stayed suspension.
- (l) Defendant shall keep the North Carolina State Bar membership department advised of his current physical home and business addresses and telephone numbers, and shall notify the membership department within 10 days of any change to his contact information;
- (m) Defendant shall accept all certified mail from the North Carolina State Bar and respond to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication;
- (n) Defendant shall timely comply with his State Bar membership and continuing legal education requirements, and pay all fees and costs assessed by the State Bar and the Client Security Fund by the applicable deadline;
- (o) Defendant shall participate fully and timely in the State Bar's fee dispute resolution program when notified of any petitions for resolution of disputed fees; and
- (p) Defendant shall not violate the Rules of Professional Conduct or any state or federal laws other than minor traffic violations during the period of stayed suspension.

8. If Defendant fails to comply with any one or more of the conditions stated in Paragraph 7 above, then the stay of the suspension of his law license may be lifted as provided in 27 N.C. Admin. Code 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

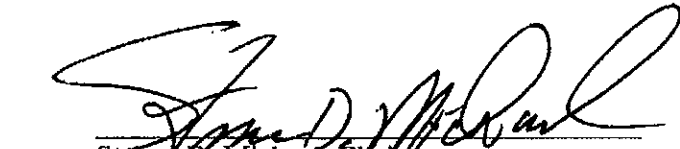
9. If Defendant does not seek a stay of the suspension, or if some part of the suspension is stayed and thereafter the stay is revoked, Defendant must provide in his application for reinstatement clear, cogent, and convincing evidence of the following:

- (a) Compliance with the general provisions for reinstatement listed in 27 N.C. Admin. Code 1B § .0125; and
- (b) Compliance with the conditions set out in paragraph 6, above.

10. Nothing in this Order shall prohibit the State Bar from investigating and, if necessary, pursuing disciplinary action against Defendant for additional misconduct discovered or reported which occurred during the same time period as the conduct addressed in this Order.

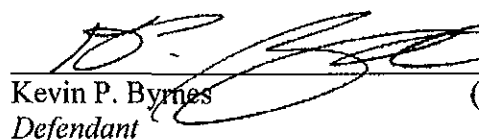
11. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the suspension, and any stay thereof, and until all of the conditions in paragraph 6 above are satisfied.

Signed by the undersigned Chair with the knowledge and consent of the other members of the Hearing Panel, this is the 21st day of January, 2016, *nunc pro tunc* January 15, 2016.


Steven D. Michael, Chair
Hearing Panel

CONSENTED TO BY:


Eben T. Rawls III
Attorney for Defendant

 01-18-2016
Kevin P. Byrnes
Defendant (DATE)

Carmen H. Bannon

Carmen Hoyme Bannon

Attorney for Plaintiff