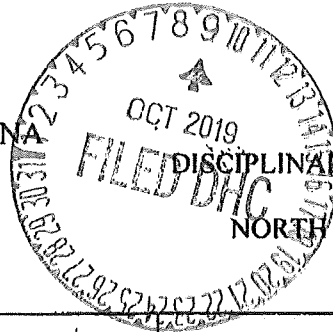


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
18 DHC 38

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

GARY S. LEIGH, Attorney,

Defendant

CONSENT ORDER OF  
DISBARMENT

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission (“DHC”) composed of Shannon R. Joseph, Chair, and members, Maya Madura Engle and Tyler B. Morris, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0115(i). Plaintiff was represented by Barry S. McNeill, Deputy Counsel for the North Carolina State Bar (“Plaintiff” or “State Bar”). Defendant, Gary S. Leigh (“Defendant” or “Leigh”), was represented by Alan M. Schneider, Cheshire, Parker, Schneider & Bryan, PLLC, Raleigh, North Carolina. Both Plaintiff and Defendant stipulate and agree to the findings of fact and conclusions of law recited in this Consent Order of Disbarment and to the discipline imposed. Defendant has freely and voluntarily stipulated to the findings of fact and consents to the conclusions of law and entry of the order of disbarment. 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 enters 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, Gary S. Leigh (“Defendant” or “Leigh”), was admitted to the State Bar on September 25, 1998, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North

Carolina, the Rules and Regulations of the North Carolina State Bar, and the Rules of Professional Conduct.

3. During all periods relevant hereto, Defendant was engaged in the practice of law in the State of North Carolina and practiced in Asheville, Buncombe County, Hickory, Catawba County, and Shelby, Cleveland County, North Carolina.

4. Defendant maintained an IOLTA trust account at the HomeTrust Bank (account number ending in -0545) ("trust account").

#### **FIRST CLAIM FOR RELIEF**

5. Defendant represented Alejandra Valdez and James Baxter in their respective personal injury claims resulting from a vehicle accident which occurred on April 21, 2013.

6. On April 26, 2013, Valdez and Baxter signed a retainer agreement providing that Defendant would receive 33 $\frac{1}{3}$ % of any settlement.

7. On January 20, 2014, Defendant sent demand letters on behalf of Valdez and Baxter to National General Insurance ("National General"), the insurer for the driver of the responsible vehicle in the accident.

8. In the demand letter for Valdez, Defendant indicated that Valdez had outstanding medical bills of \$5,014.92 (Mission Hospital - \$1,700.92; Asheville Radiology - \$99; and, Doster Chiropractic - \$3,215), and should be compensated for pain and suffering in the amount of \$15,044.76, for a total of \$20,059.68.

9. In the demand letter for Baxter, Defendant indicated that Baxter had outstanding medical bills of \$4,428.86 (Mission Hospital - \$1,195.86; Asheville Radiology - \$94; and, Doster Chiropractic - \$3,139), and should be compensated for pain and suffering in the amount of \$13,286.58, for a total of \$17,715.44.

10. In April of 2014, Defendant received National General's settlement checks for Valdez and Baxter.

11. The settlement check for Valdez was dated April 3, 2014 in the amount of \$7,900 and was made out payable to Defendant and Valdez.

12. The settlement check for Baxter was also dated April 3, 2014 in the amount of \$7,300.00 and was made out payable to Defendant and Baxter.

13. Under the retainer agreement, Defendant was due to receive as his contingency fee \$2,633.33 of Valdez's \$7,900 settlement and \$2,433.33 of Baxter's \$7,300 settlement.

14. Defendant's retainer agreement provided, and it was his practice in personal injury cases, that there was a standard \$150 for costs which would be charged to the client at the end of the case.

15. Defendant charged the \$150 fee irrespective of the actual cost he incurred in handling an individual client's personal injury case.

16. On or about April 15, 2014, Defendant met with Valdez and Baxter and had them sign release documents and their settlement checks so they could receive their respective proceeds from their settlements.

17. Defendant did not immediately deposit the settlement checks for Valdez and Baxter after obtaining their endorsements on their respective checks.

18. On May 13, 2014, before he had made the deposit of the settlement check for Valdez to his trust account, Defendant made a disbursement out of his trust account to Valdez by check number 5006 in the amount of \$1,251.75.

19. Valdez's check cleared the trust account on May 15, 2014.

20. Defendant did not deposit into his trust account the \$7,900 settlement check from National General to Valdez until May 16, 2014.

21. The May 15, 2014 disbursement by Defendant to Valdez in the amount of \$1,251.75 was paid by funds in Defendant's trust account belonging to other clients.

22. Similarly, on May 13, 2014, before he had made the deposit of the settlement check for Baxter to his trust account, Defendant made a disbursement out of his trust account to Baxter by check number 5007 in the amount of \$1,182.20.

23. Baxter's check cleared the trust account on May 15, 2014.

24. Defendant did not deposit into his trust account the \$7,300 settlement check from National General to Baxter until May 16, 2014.

25. Like the contemporaneous disbursement to Valdez, the May 15, 2014 \$1,182.20 disbursement by Defendant to Baxter was paid by funds in Defendant's trust account belonging to other clients.

26. Defendant told Valdez and Baxter that he would mail them receipts for the medical bills that he would be paying on their behalves from their respective remaining settlement proceeds.

27. Valdez and Baxter never received any further documents, receipts, or communications from Defendant, including an accounting of their entrusted funds in his trust account.

28. Between May 27, 2014 and June 6, 2014, as to Valdez's matter, Defendant disbursed from his trust account six (6) checks to himself totaling \$2,733.33, including an initial disbursement on May 27, 2014 (check no. 5018) in the amount of \$150 noting it was for "cost."

29. Following the disbursement of the \$1,251.75 to Valdez and the \$2,733.33 in disbursements to Defendant for his fee and costs, \$3,914.92 should have remained in the trust account for the payment of Valdez's medical providers.

30. Between May 27, 2014 and June 6, 2014, as to Baxter's matter, Defendant disbursed from his trust account seven (7) checks to himself totaling \$2,583.33, representing the 33⅓% of the settlement plus \$150 in costs per the Retainer Agreement.

31. Following the disbursement of \$1,182.20 to Baxter and the \$2,583.33 in disbursements to Defendant for his fee and costs, \$3,534.47 should have remained in the trust account for the payment of Baxter's medical providers.

32. Defendant failed to maintain a ledger of the receipts to and disbursements from the accounts of Valdez and Baxter.

33. On November 26, 2014, the balance in Defendant's trust account was \$148,885.55.

34. The \$148,885.55 balance in Defendant's trust account on November 26, 2014 included \$48,929.30 belonging to or being held on behalf of 32 clients, including not only Valdez and Baxter, but also settlement funds to be disbursed to the medical providers of clients Karen Michelle Caputo, Bethany MacQueen, Karen Weber, Amanda Danner, Caroline Hunter (now Caroline Crawford), and Ivy Miranda Fisher.

35. The remaining balance in Defendant's trust account on November 26, 2014 consisted of earned fees that Defendant commingled with his clients' entrusted funds.

36. Defendant had federal and state tax liens ("liens") filed against him in Buncombe County and Burke County as of November 2014.

37. The liens were for back personal income taxes, employer's quarterly withholding taxes, and penalties and interest owed by Defendant to the Internal Revenue Service ("IRS") for the years 2002 to 2012.

38. Defendant had advance notice that the IRS intended to garnish his trust account in light of his outstanding tax obligations.

39. Defendant took no action to warn his clients that their funds might be at risk or to protect the entrusted funds of his clients in the trust account from such garnishment.

40. Defendant's clients who had entrusted funds in his trust account as of November 26, 2014 did not grant permission for their funds to be used to satisfy Defendant's personal outstanding tax obligations.

41. On November 26, 2014, the IRS garnished Respondent's trust account in the amount of \$148,863.31 for Defendant's federal taxes owed, penalties, and fees.

42. After the garnishment and bank fee of \$75, a balance of \$22.24 remained in Defendant's trust account.

43. Among the funds garnished by the IRS were the \$3,914.92 in entrusted funds belonging to Valdez for her medical providers and the \$3,534.47 in entrusted funds belonging to Baxter for his medical providers, along with \$41,479.91 in entrusted funds belonging to 30 other clients, including the clients identified in Paragraph 34 above.

44. Defendant knew or should have known at the time of the IRS's garnishment of his trust account that entrusted funds belonging to his clients, including the entrusted funds of Valdez and Baxter, had been included in the garnishment.

45. After learning of the IRS's garnishment of the \$148,863.31 from his trust account, Defendant failed to account for and seek the return from the IRS of the entrusted funds of his clients which had been garnished by the IRS.

46. Following the IRS's garnishment, Defendant never replenished to his trust account any of his clients' entrusted funds (\$48,929.30) that had been garnished by the IRS to satisfy his personal tax obligations.

47. The IRS's seizure of the commingled client funds in Defendant's trust account, including Valdez's \$3,914.92, Baxter's \$3,534.47, and the \$41,479.91 belonging to 30 other clients, had the effect of converting the funds for Defendant's personal use insofar as the funds were used to satisfy Defendant's personal tax obligations.

48. By failing to take prompt action to safeguard his clients' entrusted funds, to recover the funds from the IRS after garnishment, or to replenish such funds to his trust account, Defendant enabled the \$3,914.92 in entrusted funds belonging to Valdez, the \$3,534.47 belonging to Baxter, and the \$41,479.91 belonging to 30 other of his clients to be used to satisfy Defendant's personal tax obligations.

49. On March 21, 2016 (a year and 10 months after Defendant received the settlement check from National General for Valdez), Defendant made a payment of \$1,000 toward Valdez's Doster Chiropractic bill.

50. The payment of the \$1,000 to Doster Chiropractic was not made from Valdez's entrusted funds in Defendant's trust account.

51. Defendant's payment of the \$1,000 reduced the balance on Valdez's Doster Chiropractic bill to \$2,215.

52. Defendant never paid from Valdez's entrusted settlement funds the outstanding medical bills referenced in Paragraph 8 above.

53. On March 21, 2016 (a year and 10 months after Defendant received the settlement check from National General for Baxter), Defendant made a payment of \$1,000 toward Baxter's Doster Chiropractic bill.

54. The payment of the \$1,000 to Doster Chiropractic was not made from Baxter's entrusted funds in Defendant's trust account.

55. Defendant's payment of the \$1,000 reduced the balance on Baxter's Doster Chiropractic bill to \$2,139.

56. Defendant never paid from Baxter's entrusted settlement funds the outstanding medical bills referenced in Paragraph 9 above.

57. Valdez and Baxter repeatedly attempted to find and contact Defendant about the payment of their medical providers but were unable to do so.

58. Defendant never paid from their entrusted settlement funds or from his own personal funds the outstanding medical bills of the 30 other clients who had positive balances (the remaining \$41,479.91) in his trust account as of November 26, 2014, including Karen Michelle Caputo, Bethany MacQueen, Karen Weber, Amanda Danner, Caroline Hunter (now Caroline Crawford), and Ivy Miranda Fisher.

59. Defendant never provided accountings of the entrusted funds in his trust account for the 30 other clients who had positive balances (the remaining \$41,479.91) in his trust account as of November 26, 2014, including Karen Michelle Caputo, Bethany MacQueen, Karen Weber, Amanda Danner, Caroline Hunter (now Caroline Crawford), and Ivy Miranda Fisher.

60. The State Bar served Defendant with a Letter of Notice in 16G0304 concerning Valdez's and Baxter's matters, and Defendant accepted service of the Letter of Notice in 16G0304 on August 31, 2016.

61. Defendant never provided a written response to the Letter of Notice in 16G0304 within fifteen (15) days or requested an extension of time for doing so.

62. Despite requests from staff counsel, Defendant failed to provide any quarterly or monthly reconciliations for his trust account.

63. Defendant failed to reconcile his trust account on a quarterly and monthly basis.

64. In August 2016, the State Bar froze Defendant's trust account and began an audit of the entrusted funds of clients which were or should have been remaining in the trust account.

65. On August 31, 2016, Defendant's trust account had a balance of \$33,482.07.

66. On August 31, 2016, the amount Defendant should have had in his trust account on behalf of his clients (including his clients before the IRS garnishment in November 2014 and his clients after that garnishment) was \$82,949.76.

67. On August 31, 2016, Defendant's trust account reflected a shortage of \$537.70 in entrusted clients' funds.

68. Defendant provided no explanation for the shortage of \$537.70 in entrusted clients' funds.

### **SECOND CLAIM FOR RELIEF**

69. Teresa Green was injured in a vehicular accident on August 25, 2014.

70. On February 4, 2015, Green retained Defendant to represent her in her claim against the driver of the responsible vehicle, who was insured by Allstate Insurance Company ("Allstate Insurance").

71. Under the retainer agreement signed by Green, Defendant's attorney fee was a 33 $\frac{1}{3}$ % contingency fee of the total settlement amount plus costs and expenses incurred.

72. On February 5, 2015, Defendant notified Allstate Insurance that he had been retained by Green.

73. Later in February 2015, Defendant negotiated a settlement on behalf of Green with Allstate Insurance.

74. On or about February 20, 2015, Defendant received a settlement check from Allstate Insurance on behalf of Green in the amount of \$75,000 and deposited the settlement check into his trust account.

75. The February 20, 2015 deposit of Green's \$75,000 settlement funds raised the balance in Defendant's trust account to \$75,022.24.

76. On February 24, 2015, Defendant disbursed to himself a partial attorney's fee of \$5,000 (attributed to Green's account) via check number 5130.

77. On March 3, 2015, Defendant disbursed to Green via check number 5131 her settlement proceeds in the amount of \$50,000.

78. That same day, Defendant disbursed to himself the remainder of his fee of \$20,000 via check number 5132, leaving a balance in his trust account of \$22.24.

79. Defendant then proceeded to the HomeTrust Bank branch (Branch #10) in Shelby, North Carolina, at approximately 10:46 a.m. on March 3, 2015.

80. Presenting check number 5132 in the amount of \$20,000, Defendant requested an Official Check from HomeTrust Bank in the amount of \$20,000 in exchange for check number 5132.

81. The teller issued Official Check #31021224 in the amount of \$20,000 to Defendant.

82. At approximately 11:39 a.m., Defendant went to at a different HomeTrust Bank branch at the Cleveland Mall (Branch #11) and deposited the Official Check #31021224 in the amount of \$20,000 to his trust account without attribution on the check or the deposit slip.

83. At approximately 11:43 to 11:46 a.m., Defendant withdrew the \$20,000 from his trust account again in Official Checks from HomeTrust Bank made payable to himself in the amounts of \$1,000 (#31115648) and \$19,000 (#31115649), without identifying the client on whose behalf the funds were withdrawn.

84. Defendant immediately cashed the Official Check (#31115648) for \$1,000.

85. Between March 3, 2015 and April 29, 2015, Defendant went to different bank branches and subsequently converted the \$19,000 Official Check to cash withdrawals each time under \$10,000 as follows: (1) using Official Check #31115649 in the amount of \$19,000, on March 27, 2015 at approximately 4:13 p.m. Defendant returned to the HomeTrust Bank branch (Branch #10) in Shelby, North Carolina and obtained a new Official Check (#31021303) in the amount of \$16,000 and received the remaining \$3,000 in cash; (2) using Official Check #31021303 in the amount of \$16,000, on April 2, 2015 at approximately 4:41 p.m. Defendant went to the HomeTrust Bank branch (Branch #2) in Asheville, North Carolina and obtained a new Official Check (#10222876) in the amount of \$15,000 and received the remaining \$1,000 in cash; (3) using Official Check 310222876 in the amount of \$15,000, on April 29, 2015 at approximately 2:43 p.m. Defendant returned to the HomeTrust Bank branch (Branch #10) in Shelby, North Carolina and obtained a new Official Check (#31021415) in the amount of \$6,000 and received the remaining \$9,000 in cash; and, (4) using Official Check #31021415 in the amount of \$6,000, on April 29, 2015 at approximately 3:12 p.m., Defendant returned to the HomeTrust Bank branch (Branch #11) at the Cleveland Mall and cashed out the remaining \$6,000.

86. Pursuant to 31 U.S.C. §§ 5313(a), 5325, banks are required to report deposits or withdrawals of \$10,000 or more in cash on a Currency Transaction Report ("CTR").

87. The failure to file a CTR report or using multiple transactions to avoid the reporting requirement ("structuring"), is a crime under federal law.

88. By his receipt of the \$20,000 in Official Checks for his attorney fees, followed by his failure to place the funds in the bank or enter them into his accounting system, or file the CTR federal form, and/or by his utilization of multiple transactions to avoid the CTR reporting requirement, Defendant committed one or more crimes in violation of 31 U.S.C.A. §§ 5322(a), 5324(a), 5331(a).

89. Defendant structured the transactions involving his \$20,000 fee from Green's matter to circumvent the CTR reporting requirement.

90. Defendant never provided Green a written accounting of her entrusted funds in his trust account.

91. Defendant failed to maintain a ledger of the receipts to and disbursements from the entrusted funds in Green's account.

### **THIRD CLAIM FOR RELIEF**

92. Tammy Ann Edwards suffered injuries in a vehicular accident on October 4, 2010.

93. On or about May 25, 2011, Edwards retained Defendant to represent her in her personal injury matter.

94. Beginning on or about August 19, 2011, Defendant notified the opposing party's insurance company, Liberty Mutual Insurance Company ("Liberty Mutual"), of his representation of Ms. Edwards.

95. On or about February 15, 2012, the claims representative for Liberty Mutual sent a follow up letter to Defendant noting that no response to its correspondence to Defendant's office had been received and requesting an update on Edwards's treatment and injury status.

96. The claims representative also requested copies of Edwards's medical reports and medical bills, a list of her medical providers, verification of any lost time and wages, and an authorization by Edwards for release of her medical information.

97. On or about March 26, 2012, Defendant wrote on behalf of Edwards to her medical providers, requesting bills and medical records related to her accident.

98. On October 2, 2013, at Defendant's request, Edwards paid the Clerk a \$200 filing fee for the filing of her personal injury complaint.

99. On October 4, 2013, the last day of the statute of limitations period for filing a lawsuit on Edwards's behalf, Defendant sought and obtained an extension of time to file

Edwards's complaint against the driver of the vehicle (Barry Jackson Wallin) that caused the accident and the owner of the vehicle (Red Bull North America).

100. Defendant did not name Wallin in the motion for an extension of time to file the complaint on behalf of Edwards.

101. Edwards telephoned Defendant on multiple occasions to check on the status of her personal injury action, but Defendant did not return Edwards's calls.

102. On October 24, 2013, Defendant filed a complaint on Edwards's behalf in *Tammy Edwards v. Red Bull Distribution Company, Inc., CT Corporation System, and Barry Jackson Wallin*, No. 13-CVS-04292 (Buncombe Co. Sup. Ct.), alleging negligence by the defendants in the accident that caused Edwards's injuries.

103. Defendant eventually returned Edwards's telephone calls and reported that he had been unable to locate Wallin in order to serve him with the summons and the complaint.

104. Defendant failed to accomplish service upon Wallin by publication.

105. On March 13, 2014, the court discontinued Edwards's action because Defendant failed to serve the defendants with the summons and complaint within the time allowed.

106. Defendant allowed the statute of limitations to expire on Edwards's personal injury claims against Red Bull and Wallin, and as a result Edwards was unable to pursue her cause of action against Red Bull and Wallin.

107. Edwards telephoned Defendant on numerous occasions attempting to obtain her file from Defendant, but Defendant did not return Edwards's calls.

108. The State Bar served Defendant with a Letter of Notice in 15G0167 concerning Edwards's matter on March 23, 2015 and on March 30, 2015 granted Defendant a 10-day extension of time (until Friday, April 10, 2015) to submit his written response to the Letter of Notice.

109. Defendant initially submitted an unacceptable unsigned response by e-mail on April 14, 2015, but did not provide a signed, written response to the Letter of Notice until May 8, 2015.

#### **FOURTH CLAIM FOR RELIEF**

110. Debra Grishkat, along with a passenger, Karen Husko, were injured in a vehicular accident in Wilmington, North Carolina on March 9, 2013.

111. The at-fault driver was Elizabeth Howell, who was insured by Auto Owners Insurance Company ("Auto Owners").

112. On or about March 19, 2013, Grishkat met with and retained Defendant to represent her in the matter.

113. The Retainer Agreement signed by Grishkat provided for a contingency attorney's fee of 33½% of the total settlement plus costs and expenses incurred.

114. Grishkat signed a Medical Release Authorization so that her medical providers, including Asheville Family Health and chiropractor Jason Phillips, could share their medical records and bills with Defendant.

115. On April 8, 2013, Defendant notified Auto Owners of his representation of Grishkat and Husko, although Husko never retained him.

116. Despite obtaining the Medical Release Authorization, Defendant never sent the authorization to Grishkat's medical providers, and never obtained her medical records and medical bills to send to Auto Owners.

117. During the remainder of 2013 and during 2014, Grishkat made attempts to contact Defendant about the status of her personal injury claim, but did not receive responses or return telephone calls from Defendant.

118. Because of Defendant's lack of responsiveness, Grishkat directly contacted Auto Owners, and was informed that Auto Owners had been ready to settle her claim but would not do so without acknowledgement from Defendant that he was no longer representing her.

119. Grishkat's return receipt letter to Defendant on October 27, 2014 was returned as unclaimed. In that letter, Grishkat documented that Defendant had not contacted her about her claim for more than a year and that she was ending their attorney-client relationship as a result.

120. Grishkat and her husband sent Defendant at least three e-mail messages, including one on April 28, 2015 informing him that he had been unresponsive to their messages and therefore Grishkat would be seeking other legal representation.

121. After receiving no response from Defendant, Grishkat filed a grievance against Defendant with the State Bar on June 22, 2015.

122. On July 24, 2015, Grishkat's husband contacted the State Bar's staff counsel to obtain current contact information for Defendant, and staff counsel provided the last known contact information for Defendant.

123. Grishkat's husband contacted Defendant and the next day, July 25, 2015, Defendant wrote to Auto Owners advising that he no longer represented Grishkat and Husko.

124. Grishkat thereafter furnished Auto Owners with the medical records and medical bills from her medical providers and reached a settlement on her personal injury claim.

Based on 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. The allegations contained in the Second claim for Relief are criminal offenses showing professional unfitness pursuant to 27 N.C. Admin. Code 1B.0103(17).

3. 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 take prompt action to safeguard his clients' entrusted funds, to recover the funds from the IRS after garnishment, or to replenish such funds to his trust account, Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).
- b) By failing to promptly pay Valdez's, Baxter's, and other identified clients' medical providers from their entrusted funds, and by failing to respond to communications from Valdez and Baxter about their matters, Defendant failed to act with reasonable diligence and promptness in representing clients in violation of Rule 1.3, Defendant failed to keep Valdez and Baxter reasonably informed about the status of their matters in violation of Rule 1.4(a)(3), and Defendant failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- c) By using the entrusted funds of other clients to make disbursements to Valdez and Baxter before he deposited their settlement checks into his trust account, and by using the entrusted funds of Valdez, Baxter, and other clients for his own personal benefit or for the benefit of another person other than the legal owner of such funds, Defendant violated Rule 1.15-2(k);
- d) By failing to promptly pay Valdez's, Baxter's, and other identified clients' respective medical providers from their entrusted funds, Defendant violated Rule 1.15(n);

- e) By charging clients a standard charge of \$150 for costs irrespective of the actual cost Defendant incurred in handling an individual client's case, Defendant charged and collected a clearly excessive amount for expenses in violation of Rule 1.5(a);
- f) By collecting a standard cost charge from clients and depositing such funds in his trust account, Defendant failed to hold and maintain entrusted property separate from the property of Defendant in violation of Rule 1.15-2(a) and Rule 1.15-2(f);
- g) By failing to perform quarterly and monthly reconciliations, Defendant violated Rule 1.15-3(d)(1), (2), and by failing to retain copies of the quarterly and monthly reconciliations for six years, Defendant violated Rule 1.15-3(d)(3);
- h) By failing to furnish Valdez, Baxter, and other identified clients accountings of their entrusted funds in his trust account, Defendant violated Rule 1.15-3(e);
- i) By structuring the transactions such that the bank would not report his receipt of cash on the CTR, Defendant engaged in criminal conduct reflecting adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);
- j) By making the March 3, 2015 deposit to his trust account without proper attribution, and by making the March 3, 2015 withdrawals from his trust account of \$1,000 and \$19,000 without proper attribution, Defendant violated Rule 1.15-2(g) and Rule 1.15-2(h);
- k) By making the \$20,000 disbursement to himself for his fee in Green's matter, and then redepositing the \$20,000 into his trust account with other clients' entrusted funds, Defendant commingled his funds with other clients' entrusted funds in violation of Rule 1.15-2(a);
- l) By failing to maintain a ledger containing the receipts to and disbursements from the entrusted funds in Green's account, Respondent violated Rule 1.15-3(b)(5), by failing to render to Green a written accounting of the receipts to and disbursements from her entrusted funds, Defendant violated Rule 1.15-3(e), and by failing to maintain complete and accurate records of Ms. Green's entrusted funds, Respondent violated Rule 1.15-3(g);
- m) By failing to name Wallin in the initial application and order to extend the time to file Edwards's complaint, by then failing to take

corrective action to name Wallin in the application, by his failing to locate and serve Wallin with the summons and complaint he filed on behalf of Edwards, by his allowing the statute of limitations to expire on Edwards's personal injury claims against Red Bull and Wallin, and by his failure to communicate with Edwards about her pending matter, Defendant failed to act with reasonable diligence and promptness in representing Edwards in violation of Rule 1.3, and Defendant failed to keep Edwards reasonably informed about the status of her matter in violation of Rule 1.4(a)(3); and,

- n) By failing to obtain and provide to Auto Owners Grishkat's medical records and medical bills in order to advance her claim, by his failure to communicate with Grishkat about her pending claim for more than a year, and by his failure to respond to Grishkat's inquiries and notifications that she was terminating their attorney-client relationship due to his unresponsiveness, Defendant failed to act with reasonable diligence and promptness in representing Grishkat in violation of Rule 1.3, and Defendant failed to keep Grishkat reasonably informed about the status of her matter in violation of Rule 1.4(a)(3).

4. 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)(3) in that Defendant failed to answer a formal inquiry of the North Carolina State Bar in a disciplinary matter as follows:

- a) By failing to timely respond in writing to the State Bar's Letters of Notice in 16G0304 and 15G0167, Defendant knowingly failed to respond to lawful demands for information from a disciplinary authority in violation of Rule 8.1(b).

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

#### **ADDITIONAL FINDINGS REGARDING DISCIPLINE**

1. The findings of fact in paragraphs 1 – 124 above are reincorporated as if set forth herein.
2. Defendant engaged in serial neglect of numerous clients and their matters that he was handling as their legal counsel.
3. Even after becoming aware of the IRS garnishment of his trust account, Defendant failed to take affirmative steps to identify and recover his clients' entrusted funds from the IRS.

4. Defendant was unable to identify his clients' entrusted funds that had been garnished by the IRS because of his failures to reconcile his trust account as required by the Rules of Professional Conduct and maintain basic trust account recordkeeping.

5. Defendant was a severe alcoholic at the time of these matters.

6. Defendant continues to engage with the Lawyer's Assistance Program ("LAP") and is in compliance with LAP's recommendations.

7. On June 11, 2004, Defendant received a Censure in Cleveland County Superior Court for failing to appear at a scheduled hearing on behalf of a criminal defendant he had been appointed to represent, *In the Matter of Gary S. Leigh*, No. 04-CRS-4162 (Cleveland Co. Sup. Ct.) See copy of Censure in 15G0167.

Based on the Findings of Fact and Conclusions of Law above and the additional Findings of Fact Regarding Discipline, the Hearing Panel finds by clear, cogent, and convincing evidence the facts contained in the conclusions it makes, set forth below, of the applicable factors listed in 27 N.C. Admin. Code 1B.0116(f):

#### **CONCLUSIONS REGARDING DISCIPLINE**

1. The Hearing Panel has carefully considered all 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.

2. The hearing panel has carefully considered all the factors enumerated in 27 N.C. Admin. Code 1B.0116(f)(1) of the Rules and Regulations of the North Carolina State Bar and concluded the following factors warrant suspension or disbarment:

- (B) Intent of Defendant to commit acts where the harm or potential harm is foreseeable;
- (C) Circumstances reflecting Defendant's lack of honesty, trustworthiness, or integrity;
- (D) Elevation of Defendant's own interest above that of the clients;
- (E) Negative impact of Defendant's actions on clients' or public's perception of the profession;
- (F) Negative impact of Defendant's actions on the administration of justice;
- (G) Impairment of the clients' ability to achieve the goals of the representation;
- (H) Effect of Defendant's conduct on third parties;
- (I) Acts of dishonesty, misrepresentation, deceit, or fabrication.

3. The hearing panel has carefully considered all the factors enumerated in 27 N.C. Admin. Code 1B.0116(f)(2) of the Rules and Regulations of the North Carolina State Bar and concluded the following factors are applicable:

- (A) Acts of dishonesty, misrepresentation, deceit, or fabrication;
- (D) Commission of a crime.

4. The hearing panel has carefully considered all the factors enumerated in 27 N.C. Admin. Code 1B.0116(f)(3) of the Rules and Regulations of the North Carolina State Bar and concluded the following factors are applicable:

- (A) Prior disciplinary offense in North Carolina;
- (C) Dishonest or selfish motive;
- (E) Indifference to making restitution;
- (F) A pattern of misconduct;
- (G) Defendant engaged in multiple offenses;
- (H) Effect of personal or emotional problems on the conduct;
- (J) Defendant has undergone interim rehabilitation;
- (K) Cooperative attitude toward the proceeding; and
- (S) Degree of experience in the practice of law.

5. The hearing panel has considered all other forms of discipline available and concludes, for the following reasons, that any sanction less than disbarment would fail to acknowledge the seriousness of the offenses committed by Defendant, would not adequately protect the public, and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar.

- a. The factors under 27 N.C.A.C. 1B §.0116(f)(1), (f)(2), and (f)(3) that are established by the evidence are of a nature that support disbarment;
- b. Defendant's conduct caused significant harm to numerous clients and caused potential significant harm to the legal profession, the public and the administration of justice;
- c. 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; and,

- d. The protection of the public and the legal profession requires that Defendant not be permitted to resume the practice of law until he demonstrates the following: that he has reformed; that he understands his obligations to his clients, the public, the courts, and the legal profession; and that reinstatement will not be detrimental to the public or the integrity and standing of the legal profession. The State Bar rule on reinstatement, 27 N.C. Admin. Code 1B.0129, requires disbarred lawyers to make such a showing before they may resume practicing law, whereas no such showing of reformation is required by the rule of attorneys whose licenses are suspended.

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

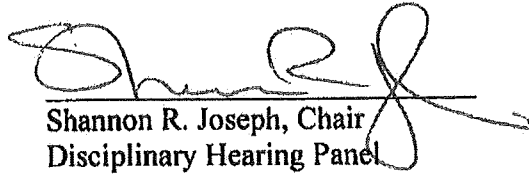
#### **ORDER OF DISCIPLINE**

1. Defendant, Gary S. Leigh, is hereby DISBARRED.
2. Defendant shall surrender his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon him.
3. Defendant shall pay the administrative fees and costs of this proceeding as assessed by the Secretary of the North Carolina State Bar within ninety (90) days of service of the notice of costs upon Defendant, or as may be extended by the panel for good cause shown by Defendant.
4. Within 15 days of the effective date of this Order, Defendant shall provide the State Bar's Office of Counsel with an address and telephone number at which clients, if any, seeking return of files can communicate with Defendant and obtain such files, and Defendant shall promptly provide client files to all clients who request return of their files.
5. Defendant shall promptly return client files in his possession, custody, or control to clients upon request, within five (5) days of receipt of such request. Defendant will be deemed to have received any such request three (3) days after the date such request is sent to Defendant if the request is sent to the address Defendant provided the State Bar pursuant to the preceding paragraph.
6. Defendant shall comply with the wind down provisions of 27 N.C. Admin. Code 1B .0128 of the State Bar Rules.
7. Prior to filing any petition for reinstatement, Defendant must have made restitution to all clients whose funds he maintained in trust but were garnished by the IRS


to pay his and his wife's personal tax obligations. Defendant also must have made restitution to the Client Security Fund for any claims paid to Defendant's affected clients.

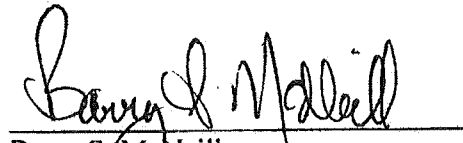
Signed by the undersigned Hearing Panel Chair with the consent of the other Hearing Panel members.

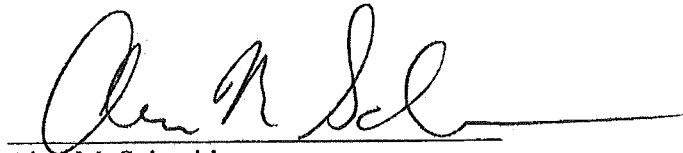
This the 9<sup>th</sup> day of October 2019.

  
Shannon R. Joseph, Chair  
Disciplinary Hearing Panel

Agreed and consented to by:

  
Gary S. Leigh  
Defendant

  
Barry S. McNeill  
Deputy Counsel  
The North Carolina State Bar

  
Alan M. Schneider  
Counsel for Defendant