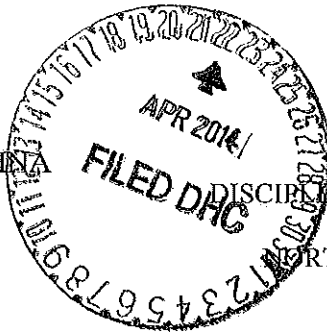


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE

DISCIPLINARY HEARING COMMISSION

OF THE

NORTH CAROLINA STATE BAR

13 DHC 13

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

WILLIAM S. BRITT, Attorney,

Defendant

ORDER OF DISCIPLINE

This matter was heard before a Hearing Panel of the Disciplinary Hearing Commission composed of Harriett Smalls, Chair, Joshua W. Willey, Jr., and Scott A. Sutton. Plaintiff was represented by Deputy Counsel Margaret Cloutier. Defendant, Williams S. Britt, appeared *pro se*. On September 9, 2013, the Hearing Panel granted partial summary judgment in favor of the State Bar concluding as a matter of law that Defendant violated Rules 1.15-2(a), (b), (f), (j) and (m) and Rule 1.15-3(d) of the Rules of Professional Conduct as alleged in the State Bar's Complaint. Based on the Hearing Panel's summary judgment order, the sole issues remaining for determination are whether Defendant violated Rules 8.4(b) and (c) of the Rules of Professional Conduct as alleged in the complaint and what, if any, discipline is appropriate for the violations established. Those matters came on for hearing on January 17 and March 28, 2014. Defendant was properly served with process and the matter came before the Hearing Panel with due notice to all parties.

FINDINGS OF FACT

Based on the Complaint and Answer, the Hearing Panel's Order Granting Partial Summary Judgment established the following:

FACTS ESTABLISHED BY SUMMARY JUDGMENT

1. Plaintiff, the North Carolina State Bar (hereinafter "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 Discipline and Disability Rules of the North Carolina State Bar promulgated thereunder.

2. Defendant, William S. Britt (hereinafter "Britt" or "Defendant"), was admitted to the North Carolina State Bar on March 28, 1981 and is, and was at all times referred to herein, an Attorney at Law licensed to practice in North Carolina, 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. During the times relevant herein, Defendant actively engaged in the practice of law in the State of North Carolina and maintained a law office in Lumberton, Robeson County, North Carolina.

4. Between January 1, 2009 and May 20, 2011 Defendant maintained a client trust account with RBC Bank, account number ending in the digits 7924 (hereinafter the "trust account").

5. Defendant used the trust account as a general trust account in which Defendant deposited and disbursed client funds.

6. Defendant negotiated the following checks made payable to "Law Office of William S. Britt" from the trust account without identifying any client account from which these disbursements were made (hereafter "unidentified disbursements"):

<u>Check No.</u>	<u>Date Cleared</u>	<u>Amount</u>
3002	10/22/09	\$ 2,500.00
3022	11/25/09	6,000.00
3036	12/24/09	3,500.00
3049	2/12/10	2,500.00
3056	2/25/10	5,000.00
3057	3/01/10	1,500.00
3058	3/03/10	5,000.00
3061	3/09/10	3,000.00
3216	5/06/10	800.00
3235	5/21/10	5,400.00
3243	5/26/10	2,500.00
3287	8/05/10	<u>1,500.00</u>
	Total	\$39,200.00

7. The unidentified disbursements listed above were not Defendant's fees or any other funds to which Defendant was entitled.

8. Defendant misappropriated entrusted client funds in the amount of \$39,200.00 from the trust account.

9. Defendant employed a nurse whose duties included review of medical records for clients.

10. Defendant disbursed funds from the trust account to the nurse monthly and typically in the amount of \$2,500.00. Defendant attributed some of these payments to a portion of attorney's fees due Defendant from particular clients' settlements.

11. Defendant additionally disbursed such funds from the trust account to the nurse that were not attributed to attorney's fees due from any particular clients' settlements as follows:

<u>Check No.</u>	<u>Date Cleared</u>	<u>Amount</u>
3001	10/26/09	\$ 2,500.00
3042	1/25/10	2,500.00
3050	2/23/10	1,500.00
3232	5/21/10	2,500.00
3263	6/28/10	2,000.00
3279	7/23/10	2,500.00
3297	8/18/10	2,500.00
3318	9/10/10	2,500.00
3334	10/14/10	<u>2,500.00</u>
	Total	\$21,000.00

12. Defendant did not have earned fees in the trust account to cover these disbursements, nor were there any other funds to which Defendant was entitled in the trust account at the times of the disbursements.

13. Defendant misappropriated entrusted client funds in the amount of \$21,000.00 from the trust account.

14. Defendant negotiated the following checks made payable to "Law Office of William S. Britt" from the trust account in payment of attorney fees before funds for each client were deposited into the account:

<u>Check No.</u>	<u>Date Cleared</u>	<u>Amount</u>	<u>Client</u>
2927	1/16/09	5,000.00	Floyd (09 sttlmnt)
3423	2/04/11	2,500.00	Singletary
3427	2/07/11	3,000.00	Singletary
3428	2/08/11	1,000.00	Singletary
3430	2/11/11	4,000.00	Singletary
3246	5/28/10	5,000.00	Suggs
3249	6/03/10	4,000.00	Suggs
3247	6/04/10	<u>500.00</u>	Suggs
	Total	\$25,000.00	

15. Defendant used entrusted funds held in a fiduciary capacity for other clients for these disbursements.

16. Defendant misappropriated entrusted client funds in the amount of \$25,000.00 from the trust account.

17. On or about November 16, 2010, check no. 3352 made payable to Linda Malone, RN in the amount of \$2,500.00 cleared the bank. Defendant attributed these funds to the account of Defendant's client I. Schiefelbein.

18. On or about November 17, 2010, check no. 3360 made payable to Donna Wright in the amount of \$200.00 cleared the bank. Defendant attributed these funds to the account of Defendant's client I. Schiefelbein.

19. On or about December 16, 2010, Defendant deposited into the trust account \$2,700.00 paid on behalf of his client I. Schiefelbein as fees due Defendant.

20. Malone and Wright were employees of Defendant. Defendant made the payments to his employees before he deposited the \$2,700.00 in fees for the Schiefelbein matter.

21. Defendant used entrusted funds held in a fiduciary capacity for other clients for the disbursements to Malone and Wright.

22. Defendant misappropriated entrusted client funds in the amount of \$2,700.00 from the trust account.

23. Defendant regularly advanced expenses from the trust account on behalf of clients who had no funds on deposit in the account. Such advancements included, but may not be limited to, the following:

<u>Check No.</u>	<u>Date Cleared</u>	<u>Payee</u>	<u>Client</u>	<u>Amount</u>
3373	1/04/11	Case Works, Inc.	Blackmon	246.05
3282	8/05/10	National Medical Consultants	Bullard	1,500.00
3305	9/03/10	Hoseby, Inc.	Bullard	653.05
3304	09/08/10	Patti Holland	Bullard	636.25
3338	10/26/10	Maureen Morabito, RN	Caudle	275.00
3333	10/07/10	Video Imaging (ck split)	A. Cooke	78.33
3333	10/07/10	Video Imaging (ck split)	P. Cooke	78.33
3368	12/07/10	Dr. Barry Williamson (ck split)	Finley	250.00
3255	6/17/10	Video Imaging	Harris	600.00
3280	7/23/10	Video Imaging	Harris	385.00
3303	09/08/10	Kings Court Reporting	Harris	1,385.15

3324	9/28/10	Setdepo LLC	Harris	1,870.09
3336	10/22/10	National Medical Consultants	Harris	500.00
3398	1/24/11	National Medical Consultants	Harris	1,300.00
3405	2/01/11	National Medical Consultants	Harris	1,275.00
3408	2/09/11	National Medical Consultants	Harris	1,300.00
3410	2/09/11	National Medical Consultants	Harris	1,300.00
3412	2/09/11	National Medical Consultants	Harris	3,050.00
3422	2/10/11	Dr. Christopher Manick	Harris	1,200.00
3424	2/11/11	Dr. Neal Patz	Harris	600.00
3435	2/23/11	Accelerated Court Reporters	Harris	285.00
3439	2/23/11	Metts Video	Harris	300.00
3456	3/22/11	Auros Legal Nurse Consulting	Harris	500.00
3457	3/23/11	National Medical Consultants	Harris	1,000.00
3458	3/23/11	Carolina Chiropractic	Harris	871.25
3425	2/09/11	Mark Valentine	Harris	750.00
3048	2/24/10	National Medical Consultants	Hamlin	1,000.00
3333	10/07/10	Video Imaging (ck split)	Leonard	388.25
3368	12/07/10	Dr. Barry Williamson (ck split)	Murray	250.00
3323	09/30/10	Adams & Holt	Olson	835.76
3048	2/24/10	National Medical Consultants	A. Parker	900.00
3438	2/22/11	Landa Videography	A. Parker	170.00
3053	3/02/10	Norton, Schell & Bisswell	Ragsdale	623.42
3367	12/07/10	Dr. Barry Williamson	Rising	2,500.00
3378	12/15/10	Video Imaging	L.Scheifelbein	600.00
2945	4/20/09	Dr. Barry Hainer	Stackhouse	1,600.00
2978	8/07/09	Dept. of Family Medicine	Stackhouse	2,400.00
3005	11/04/09	Garret Reporting Services	Stackhouse	527.95
3008	11/09/09	Office Depot	Stackhouse	489.20
3007	11/10/09	Mark Valentine	Stackhouse	735.00
3011	11/12/09	Mark Valentine	Stackhouse	2,450.00
3009	11/16/09	Pace Reporting Service	Stackhouse	665.45
3016	11/18/09	Mark Valentine	Stackhouse	1,150.00
3017	11/20/09	Debbie Destinations	Stackhouse	391.00
3014	11/23/09	Barry Hainer	Stackhouse	382.34
3015	11/27/09	Dept. of Family Medicine	Stackhouse	7,500.00
3024	11/30/09	Mark Valentine	Stackhouse	1,365.00
3023	12/01/09	Video Images	Stackhouse	1,000.00
3062	3/15/10	Barry Hainer	Stackhouse	271.47
3063	3/15/10	Aaron Waxman, MD	Stackhouse	2,312.50
3064	3/16/10	Legal EZ Video	Stackhouse	404.40
3226	5/21/10	Frederica Stephens	Stackhouse	507.00
3231	6/01/10	Carolina Infectious Disease	Stackhouse	1,000.00
3273	7/19/10	Carolina Infectious Disease	Stackhouse	2,000.00
3277	7/30/10	Dept. of Family Medicine	Stackhouse	4,600.00
3302	9/13/10	Carolina Infectious Disease	Stackhouse	1,000.00
3328	10/04/10	Carolina Infectious Disease	Stackhouse	1,000.00

3327	10/05/10	O'Brien & Linnie	Stackhouse	1,235.10
3399	01/07/11	Carolina Infectious Disease	Stackhouse	2,362.50
3228	5/20/10	Frederica Stephens	Suggs	1,304.00
3276	7/29/10	Carl Lowe, MD	Warwick	725.00
3366	12/07/10	Dr. Barry Williamson	Warwick	3,500.00
3426	2/14/11	Enterprise Economic Consulting	Warwick	<u>2,200.00</u>
			Total	\$74,533.84

24. Defendant used entrusted funds held in a fiduciary capacity for other clients for these disbursements.

25. Defendant misappropriated entrusted client funds in the amount of \$74,533.84 from the trust account.

26. Defendant disbursed from the trust account more funds on behalf of the following clients than he held for each client:

<u>Client</u>	<u>Amount</u>
McKinnion	443.06
P. Parker	1,104.00
Peterkin	786.00
Ragsdale	1,186.55
Sanders	580.62
L. Schiefelbein	<u>588.34</u>
Total	\$4,688.57

27. Defendant used entrusted funds held in a fiduciary capacity for other clients for these disbursements.

28. Defendant misappropriated entrusted client funds in the amount of \$4,688.57 from the trust account.

29. On or about September 8, 2009 Defendant deposited into the trust account \$90,000.00 from a settlement for the benefit of his client B. Spencer. This amount was in addition to \$95.00 Defendant already held in the account on B. Spencer's behalf.

30. Defendant disbursed for the benefit of B. Spencer \$785.00 more than he held in the trust account for B. Spencer.

31. Defendant's records show that Defendant was entitled to collect \$20,000.00 for attorney's fees in B. Spencer's case and that this amount included any costs advanced

by Defendant. Nevertheless, Defendant negotiated multiple checks payable to himself or for his benefit totaling \$23,119.60 which he attributed to B. Spencer's funds.

32. Defendant negotiated the last check to himself attributed to B. Spencer's settlement funds on or about May 11, 2010 in the amount of \$3,119.60.

33. At the time of the \$3,119.60 disbursement to himself, Defendant had no funds remaining in his trust account for B. Spencer.

34. Defendant was not entitled to the additional \$3,119.60 attributed to B. Spencer's settlement funds.

35. Defendant used entrusted funds held in a fiduciary capacity for other clients for the \$785.00 and \$3,119.60 disbursements.

36. Defendant misappropriated entrusted client funds in the amount of \$3,904.60 from the trust account.

37. In or about January 2009, Defendant deposited into the trust account \$30,000.00 from a settlement for the benefit of his client C. Floyd. According to Defendant's records, Defendant was to be reimbursed for expenses advanced in the amount of \$20,000.00, but was not to receive attorney's fees from the settlement.

38. Defendant's records show that Defendant expended \$12,052.53 from his operating account for the benefit of C. Floyd for expenses, not \$20,000.00. Nevertheless, Defendant negotiated checks payable to himself totaling \$23,000.00 which he attributed to C. Floyd's funds.

39. Defendant was not entitled to the additional \$10,947.47 attributed to C. Floyd's settlement funds.

40. Defendant negotiated the last check to himself attributed to C. Floyd's settlement funds on or about February 13, 2009 in the amount of \$5,000.00.

41. At the time of the \$5,000.00 disbursement to himself, Defendant only held \$2,000.00 in his trust account for C. Floyd.

42. Defendant thereafter disbursed \$218.90 to Carolina Court Reporting from the trust account on C. Floyd's behalf.

43. At the time of the \$218.90 disbursement to Carolina Court Reporting, Defendant had no funds remaining in his trust account for C. Floyd.

44. Defendant used entrusted funds held in a fiduciary capacity for other clients for \$3,000.00 of the \$5,000.00 disbursement and for the \$218.90 disbursement.

45. Defendant misappropriated \$7,947.47 from C. Floyd's funds and \$3,218.90 from the funds of other clients.

46. On or about December 22, 2010, Defendant deposited into the trust account \$10,000.00 from an unrelated settlement for the benefit of C. Floyd. Defendant disbursed \$8,000.00 of those funds for the benefit of C. Floyd.

47. On or about December 27, 2010, the \$10,000.00 was debited back to the trust account by the bank as a returned item chargeback.

48. The \$8,000.00 in checks Defendant disbursed against the \$10,000.00 cleared the bank by January 10, 2011.

49. Defendant did not deposit funds to replace the \$10,000.00, did not stop payment on the \$8,000.00 in checks he had written, and did not take any other steps to cover the checks he had written against the \$10,000.00 until March 28, 2011.

50. Because Defendant took no timely steps to remedy the shortfall created in the trust account by the \$10,000.00 chargeback, between December 27, 2010 and March 28, 2011, Defendant used \$8,000.00 in entrusted funds held in a fiduciary capacity for other clients.

51. Defendant misappropriated entrusted funds in the amount of \$8,000.00 from the trust account.

52. In or about December 2007, Defendant deposited into the trust account \$175,000.00 from a settlement for the benefit of his client J. Hunt. Defendant disbursed those funds for the benefit of J. Hunt.

53. Defendant's records show that Defendant was entitled to collect \$70,000.00 for attorney's fees in J. Hunt's case. Nevertheless, Defendant negotiated multiple checks payable to himself totaling \$72,000.00 which he attributed to J. Hunt's funds.

54. Defendant negotiated the last check to himself attributed to J. Hunt's settlement funds on or about January 31, 2011 in the amount of \$4,000.00.

55. At the time of the \$4,000.00 disbursement to himself, Defendant only had \$2,000.00 in his trust account for J. Hunt.

56. Defendant's records show that Defendant expended \$121.03 from his operating account for the benefit of J. Hunt for expenses. Nevertheless, Defendant negotiated a trust account check payable to himself totaling \$1,038.03 for expense reimbursement which he attributed to J. Hunt's settlement funds.

57. Defendant was not entitled to the additional \$2,000.00 in fees and \$917.00 in expenses attributed to J. Hunt's settlement funds.

58. Defendant used entrusted funds held in a fiduciary capacity for other clients for \$2,000.00 of the \$4,000.00 disbursement.

59. Defendant misappropriated the \$917.00 from J. Hunt's funds and \$2,000.00 from the funds of other clients.

60. On or about November 20, 2008, Defendant deposited into the trust account \$1,000.00 from his client C. Jacobs for payment of future expenses. On or about June 8, 2010, Defendant disbursed \$900.00 from the trust account on behalf of C. Jacobs.

61. On or about July 20, 2010, Defendant disbursed \$500.00 to National Medical Consultants, Inc. on behalf of C. Jacobs. That \$500.00 check cleared the bank on or about August 5, 2010.

62. At the time of the \$500.00 disbursement to National Medical Consultants, Inc., Defendant only held \$100.00 in his trust account for C. Jacobs.

63. Defendant used entrusted funds held in a fiduciary capacity for other clients for \$400.00 of the \$500.00 disbursement.

64. Defendant misappropriated entrusted client funds in the amount of \$400.00 from the trust account.

65. Defendant represented the Estate of B. Jacobs and obtained settlements in two matters. After disbursing his fees, reimbursing advanced expenses, and paying other expenses, Defendant was obligated to hold approximately \$177,056.90 for the benefit of the heirs of B. Jacobs.

66. As of May 20, 2011, the balance of Defendant's trust account was \$42,315.59. Defendant had insufficient funds in the trust account to distribute approximately \$177,056.90 to the heirs of B. Jacobs.

67. In the majority of instances where Defendant was entitled to earned fees from client funds in the trust account, Defendant did not disburse the full amount of his earned fees at or near the time that the funds were deposited. Instead, he disbursed the earned fees over periods of days, weeks or months.

68. Defendant did not reconcile the trust account at least quarterly between January 1, 2009 and May 20, 2011.

69. In or about 2011, Defendant received \$1,000.00 representing medical payments benefits on behalf of his client D. Kennedy.

70. Defendant did not deposit the \$1,000.00 he received on behalf of D. Kennedy into the trust account.

71. Defendant deposited into and disbursed from his operating account the \$1,000.00 for the benefit of D. Kennedy.

Based upon the pleadings and the evidence presented at the hearing, the Hearing Panel hereby finds by clear, cogent and convincing evidence the following:

FACTS ESTABLISHED AT THE HEARING

72. Defendant received funds on behalf of his clients as part of his representation of those clients, mostly in settlement of claims asserted by individual clients. The settlement funds were intended to be used for the benefit of each client on whose behalf the funds were received.

73. Defendant personally signed each check written from the trust account.

74. The number of deposits of client funds made per month during the audit period ranged from one to about eight and were of such volume as to be easily tracked without excessive effort.

75. At the time he wrote some of the checks itemized above, Defendant had personal financial difficulties, including significant IRS and Department of Revenue tax liens, several civil judgments of record, and foreclosure proceedings against his residence.

76. The checks to his nurse for compensation as itemized in Paragraph 11 and to his clients for advanced expenses as itemized in Paragraph 23 should have been paid from the operating account as they were not client obligations. Defendant did not have sufficient funds in his operating account to pay the nurse or the advanced expenses at the time he wrote some of the checks from the trust account.

77. Defendant borrowed \$20,000.00 and deposited it in the trust account in March 2009 to help cover a check written to a client who should have had funds in the account in the approximate amount of the check. Thus, Defendant knew he had a shortage in the trust account at that time.

78. Over the next two years, Defendant continued to write checks from the trust account to himself and his staff from funds to which he was not entitled, and to write checks relating to clients who had no funds on deposit in the trust account.

79. By continuing to write checks as described above, using entrusted funds for the benefit of himself and others who were not the rightful owners of those funds, Defendant compounded the shortage in the trust account from \$75,239.37 as of January 1, 2009 to \$235,964.46 as of May 20, 2011.

80. Defendant deposited into the trust account \$95,000.00 from a settlement for the benefit of his client the Estate of S. Locklear. Defendant received and deposited those funds in installments as follows: \$25,000.00 on February 12, 2010, \$25,000.00 on March 12, 2010, \$25,000.00 on April 14, 2010, and \$20,000.00 on May 18, 2010.

81. Each check was made payable to "Polly Locklear Admin Estate Samuel Locklear & Her Attorney William S. Britt."

82. Defendant signed Ms. Locklear's name on three of the checks without her permission and deposited the checks into his trust account.

CONCLUSIONS OF LAW

1. All the parties are properly before the Hearing Panel and the panel has jurisdiction over Defendant, William S. Britt, and over the subject matter.

Based on the Complaint and Answer, the Hearing Panel's Order Granting Partial Summary Judgment established the following:

CONCLUSIONS OF LAW ESTABLISHED BY SUMMARY JUDGMENT

2. Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. §84-28(b)(2) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of the actions as follows:

a. Defendant failed to properly maintain entrusted funds in violation of Rule 1.15-2(a), benefitted from entrusted funds in violation of Rule 1.15-2(j), and failed to properly disburse entrusted funds in violation of Rule 1.15-2(m) as follows:

A. By disbursing \$39,200.00 to himself from entrusted client funds to which he was not entitled and thereby misappropriating entrusted client funds,

B. By disbursing \$21,000.00 to his employee from entrusted funds to which neither he nor she was entitled and thereby misappropriating entrusted client funds,

C. By disbursing \$25,000.00 to himself for fees from the trust account before funds from which the fees were due were deposited into the account and thereby misappropriating other clients' funds,

D. By disbursing \$2,700.00 to his employees from the trust account before funds from which Defendant was due fees were deposited and thereby misappropriating other clients' funds,

E. By advancing expenses totaling \$74,533.84 from the trust account on behalf of clients who had no funds on deposit in the account and thereby misappropriating other clients' funds,

F. By disbursing from the trust account \$4,688.57 more for specific clients than he held in the account on behalf of those clients and thereby misappropriating other clients' funds,

G. By disbursing \$785.00 for the benefit of B. Spencer and \$3,119.60 to himself when he held no funds for B. Spencer in the trust account and thereby misappropriating \$3,904.60 of other clients' funds,

H. By disbursing \$23,000.00 to himself in C. Floyd's 2009 case when he was only entitled to \$12,052.53 and disbursing \$218.90 in expenses for Floyd, and by making such disbursements when he only held \$20,000.00 in the account for C. Floyd,

I. By failing to timely take steps to remedy the shortfall caused by the \$10,000.00 chargeback in C. Floyd's 2010 case and thereby misappropriating other clients' funds,

J. By disbursing to himself more funds than he was entitled to receive from J. Hunt's funds and disbursing more funds than he held in the trust account for J. Hunt and thereby misappropriating other clients' funds,

K. By disbursing \$500.00 on behalf of C. Jacobs when he did not have sufficient funds in the trust account for this disbursement and thereby misappropriating other clients' funds, and

L. By failing to maintain \$177,056.40 in the trust account for the benefit of the heirs of B. Jacobs;

b. Defendant failed to maintain entrusted funds separate from the property of the lawyer in violation of Rules 1.15-2(a) and (f) by failing to promptly disburse his earned fees from the trust account, instead leaving them co-mingled with client funds;

c. Defendant failed to total and reconcile the individual client balances with the current bank balance each quarter in violation of Rule 1.15-3(d) by not reconciling the trust account at least quarterly; and

d. Defendant failed to properly maintain entrusted funds separate from the property of the lawyer in violation of Rule 1.15-2(a), and failed to promptly deposit all trust funds in a general or dedicated trust account in violation of Rule 1.15-2(b) by depositing D. Kennedy's medical payments benefits check into his operating account.

Based on the record, the foregoing Findings of Fact (Facts Established by Summary Judgment and Facts Established at the Hearing), the Hearing Panel hereby makes by clear, cogent and convincing evidence the following:

CONCLUSIONS OF LAW ESTABLISHED AT THE HEARING

3. Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. §84-28(b)(2) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of the actions as follows:

a. Defendant misappropriated funds belonging to his clients, as described in the various findings of fact and specifically referred to in paragraphs 2(a)(A)-(L) of the Conclusions of Law Established by Summary Judgment above. Defendant received the funds in a fiduciary capacity and knowingly and willfully used such funds for purposes other than for which the funds were received, constituting the crime of embezzlement. Defendant thereby 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);

b. Defendant signed Polly Locklear's name to three of the settlement checks made payable to Polly Locklear Admin Estate Samuel Locklear and Her Attorney William S. Britt without Locklear's permission and deposited the checks into his trust account, constituting the crimes of forgery and uttering. Defendant thereby 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).

Based on the foregoing Findings of Fact, Conclusions of Law, and the evidence presented at the hearing, the Hearing Panel hereby finds by clear, cogent and convincing evidence the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Defendant was issued an Admonition in November 2004 for neglecting a client matter.

2. Ms. Faggins, the administratrix of the Estate of Bruce Jacobs, was unaware that the settlement funds Defendant had received were no longer in his trust account. Ms. Faggins repeatedly requested that the funds be transferred to the clerk of court or that the Clerk be provided copies of bank statements indicating the funds are on deposit with Defendant. Defendant was unable to take these steps as the funds were no long in his account.

3. Ms. Locklear, the administratrix of the Estate of Samuel Locklear, has been unable to close out the estate or pay out the funds due to the heirs. The funds from Ms.

Locklear's personal injury case have not been paid out to her since her case was settled in November 2010.

4. Because of their experiences with Defendant, Ms. Faggins and Ms. Locklear no longer trust attorneys to act in their best interests.

5. Although Defendant testified that he made arrangements to have sufficient funds to cover the deficiencies in the trust account, Defendant has not paid restitution to the clients whose funds should be held in his general trust account.

6. Defendant's comingling of his funds in the trust account, by failing to promptly withdraw his earned fees from a client's settlement funds, was motivated by his desire to prevent the IRS from seizing the funds from his operating account.

6. The crimes of embezzlement, forgery and uttering are felonies.

7. Defendant was diagnosed in 2011 with adjustment disorder and mild cognitive disorder. In 2013 he was again diagnosed with adjustment disorder and mild cognitive disorder by history.

8. Several of Defendant's colleagues and his pastor believe Defendant is truthful, trustworthy and a good attorney.

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

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel 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)(1) of the Rules and Regulations of the North Carolina State Bar and concludes that the following factors are present:

- (a) Intent of the Defendant to commit acts where the harm or potential harm is foreseeable;
- (b) Circumstances reflecting the Defendant's lack of honesty, trustworthiness, or integrity;
- (c) Elevation of Defendant's own interests above those of the clients;
- (d) Negative impact of Defendant's actions on the public's perception of the profession; and
- (e) Acts of dishonesty, misrepresentation, deceit or fabrication.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(2) of the Rules and Regulations of the North Carolina State Bar and concludes that the following factors are present:

- (a) Acts of dishonesty, misrepresentation, deceit or fabrication;
- (b) Misappropriation or conversion of assets of any kind to which Defendant or recipient is not entitled; and
- (c) Commission of a felony (embezzlement, forgery and uttering).

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 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) Prior discipline in the form of an Admonition issued in 2004;
- (b) Dishonest or selfish motive;
- (c) Indifference to making restitution;
- (d) Pattern of misconduct;
- (e) Multiple offenses;
- (f) Effect of personal or emotional problems on the conduct in question;
- (g) Full and free disclosure to the Hearing Panel and cooperative attitude toward the proceedings;
- (h) Good character and reputation among his colleagues; and
- (i) Degree of experience in the practice of law as he has practiced since 1981.

4. The Hearing Panel has considered lesser alternatives and finds that a public censure, reprimand, admonition, or suspension would not be sufficient discipline because of the gravity of the harm to Defendant's clients, and the potential significant harm Defendant's conduct caused to the public, the administration of justice, and the legal profession.

5. The Hearing Panel has considered all lesser sanctions and finds that discipline short of disbarment would not adequately protect the public, the profession and the administration of justice for the following reasons:

- (a) The factors under Rule .0114(w)(2) that are established by the evidence in this case are of a nature that support imposition of disbarment as the appropriate discipline;
- (b) Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses Defendant committed and would send the wrong message to attorneys and to the public regarding the conduct expected of members of the Bar of this state; and
- (c) Protection of the public requires that Defendant not be permitted to resume the practice of law unless and until he demonstrates that he has reformed, that he understands his obligations as an attorney, officer of the court, and as a citizen of this state and country. Disbarment is the only sanction that requires Defendant to demonstrate reformation before he may resume the practice of law.

Based upon the foregoing facts, findings and conclusions, the Hearing Panel hereby enters the following

ORDER OF DISCIPLINE

1. Defendant, William S. Britt, is hereby DISBARRED effective thirty days from the date this Order of Discipline is served on him.
2. Defendant shall surrender his law license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this Order upon Defendant.
3. Defendant shall pay the administrative fees and costs of this proceeding within 30 days of service of the statement of costs upon him by the Secretary of the State Bar.
4. Within 30 days of the effective date of this Order, Defendant will provide the North Carolina State Bar with the following:
 - a. Funds sufficient to allow the State Bar to disburse all amounts due to or payable on behalf of all of Defendant's clients who have or should have funds remaining in Defendant's trust account(s);
 - b. Current contact information for all clients who have or should have funds in the trust account(s). Defendant shall cooperate with the State Bar to account for and disburse all client funds as appropriate; and
 - c. An address and telephone number at which clients seeking return of files can communicate with Defendant and obtain such files.

5. Defendant shall return client files to clients within five days of receipt of such request. Defendant will be deemed to have received any such request three 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 this Order.

Signed by the Chair with the consent of the other Hearing Panel members, this the

22nd day of April, 2014.

A handwritten signature in cursive script, reading "Harriett Smalls", written over a horizontal line.

Harriett Smalls, Chair
Disciplinary Hearing Panel