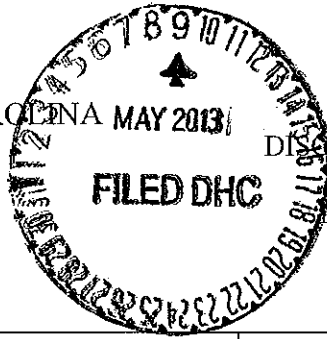


STATE OF NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
13 DHC 10

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

PHILLIP R. DIXON, Attorney,

Defendant

CONSENT  
ORDER OF DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Joshua W. Willey, Jr., Chair, and members William M. Claytor and Joseph Barlow Herget pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff was represented by Margaret T. Cloutier. Defendant, Phillip R. Dixon ("Dixon") was represented by Alan M. Schneider.

Both Plaintiff and Defendant stipulate and agree to the findings of fact and conclusions of law recited in this Consent Order and to the discipline imposed. Dixon has freely and voluntarily stipulated to the foregoing findings of fact and consents to the conclusions of law and entry of the Order of Discipline. Dixon 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, Phillip R. Dixon ("Dixon"), was admitted to the North Carolina State Bar in 1974, 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 or part of the relevant periods referred to herein, Dixon was engaged in the practice of law in the State of North Carolina and maintained a law office in Greenville, Pitt County, North Carolina.

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

5. Dixon's law practice included closing real estate transactions.

6. From about April 2006 through June 2009, Dixon employed J.W., a bookkeeper and certified paralegal, to assist him in conducting real estate closings.

7. J.W. prepared all documents for the closings, operated the closing software and prepared checks for Dixon's signature for the closings.

8. Dixon reviewed the closing documents, reviewed the title searches, signed all title certifications, signed the checks and conducted the closings.

9. Although J.W. did not have signature authority on the account, Dixon delegated operations and maintenance of the trust account to J.W.

10. Dixon did not conduct adequate monthly or quarterly reconciliations of his account that would have alerted him to certain irregularities.

11. While Dixon did regularly review closing files post closing, his review of the financial aspect of closings was limited to software-generated receipts and disbursements reports. These reports reflected the anticipated receipts and disbursements for each transaction, but did not show the actual activity in the trust account.

12. During the time J.W. was handling Dixon's trust account, J.W. embezzled entrusted funds from the trust account.

13. Because Dixon failed to adequately supervise J.W., Dixon did not detect J.W.'s theft of entrusted funds from the trust account.

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

#### CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction over Dixon and the subject matter of this proceeding.

2. Dixon'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 delegating handling of funds for real estate transactions such that he did not know that J.W. was embezzling entrusted funds from the trust account, Dixon failed to make reasonable efforts to ensure her conduct was compatible with Dixon's professional obligations in violation of Rule 5.3(b) and failed to properly maintain and disburse entrusted funds in violation of Rule 1.15-2(a) and (m); and
- (b) By delegating monthly and quarterly reconciliations of his real estate trust account without adequate supervision of J.W., Dixon failed to conduct the requisite monthly and quarterly reconciliations of his trust account in violation of Rule 1.15-3(d).

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. Although Dixon regularly reviewed closing files post closing, these measures were not adequate under the circumstances to ensure compliance with his professional obligations to confirm that entrusted funds were accounted for and disbursed appropriately.
2. Dixon's delegation without adequate supervision created circumstances that enabled J.W. to embezzle entrusted funds over a period of three years.
3. Dixon took appropriate action when he became aware of J.W.'s misconduct and expressed remorse for his legal assistant's misconduct and his lack of adequate oversight.
4. Dixon used his own funds to reimburse clients whose funds were embezzled by J.W. and to reimburse the trust account.
5. Dixon promptly reported J.W. to law enforcement authorities resulting in her prosecution and conviction.
6. Dixon has fully cooperated with the State Bar's review of his trust account.
7. Dixon received an Admonition in January 2011. However, the conduct in that matter occurred after the conduct in this matter.

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

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

#### CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has carefully considered all of the different forms of discipline available to it. 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 the following factors warrant suspension of Dixon's license:

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

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 no factors are present in this instance that would warrant disbarment.

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) Absence of dishonest or selfish motive;
- (b) Timely good faith efforts to make restitution;
- (c) Dixon engaged in a pattern of misconduct;
- (d) Dixon's full and free disclosure to the Hearing Panel and cooperative attitude toward the proceedings;
- (e) Dixon's remorse;
- (f) Dixon's good character and reputation; and
- (g) Dixon's substantial experience in the practice of law.

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

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 potential harm to the clients. The Panel further concludes that such discipline would fail to acknowledge the seriousness of the violations committed by Dixon and send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

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

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

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

#### ORDER OF DISCIPLINE

1. Defendant, Phillip R. Dixon, is hereby suspended from the practice of law for two years, effective 30 days from service of this Order upon Dixon.

2. Administrative fees and costs are taxed to Dixon.

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

(a) Dixon shall pay all administrative fees and costs of this proceeding as assessed by the Secretary within 30 days after service of the statement of costs on him;

(b) Within the first year of the stayed period of suspension, Dixon shall complete four hours of continuing legal education in the area of trust account management approved by the Office of Counsel of the State Bar. At least one such session shall be taken before the end of the next calendar quarter (i.e., by March 30, June 30, etc.) following the entry of this order and at least one such session shall be the Trust Accounting Rules Continuing Legal Education Program taught by Peter Bolac, Trust Account Compliance Counsel for The North Carolina State Bar. Dixon shall provide written proof of successful completion of the CLE courses to

the State Bar within ten days of completing the courses. These four hours are in addition to the continuing legal education requirements set out in 27 N.C.A.C. ID § .1518;

- (c) During the stayed suspension, Dixon shall personally perform the three-way reconciliations of all his trust accounts using the reconciliation method described in the State Bar Lawyer's Trust Account Handbook (revised May 2011) on pages 35-40. Dixon shall provide the three-way reconciliation report and all appropriate supporting documentation to the CPA as provided below within fifteen days of the end of each quarter;
- (d) Dixon shall engage the service of a Certified Public Accountant (CPA) to audit his trust account on a quarterly basis to ensure Dixon's compliance with the Rules of Professional Conduct.
  - i. The CPA must submit quarterly a written report to the Office of Counsel concerning the compliance of Dixon's reconciliations and trust account with the Rules of Professional Conduct, including but not limited to any accounting irregularities and any deviation from the requirements of the Rules of Professional Conduct, with a copy of the report sent simultaneously to Dixon. The CPA's reports are due no later than 30 days after the end of each quarter (each January 30, April 30, July 30, and October 30 during the period of stay). It is Dixon's sole responsibility to ensure the CPA completes and submits the reports as required herein;
  - ii. If any of the CPA reports note any irregularities or deficiencies, Dixon shall take all remedial action necessary to bring the trust account into compliance with the Rules of Professional Conduct and shall provide proof of the remedial action and compliance to the CPA and to the Office of Counsel of the State Bar within fifteen days of the date of the CPA's report;
  - iii. All CPA evaluations, reports, and services referred to herein will be completed and submitted at Dixon's sole expense; and
  - iv. Failure of Dixon to ensure the CPA submits any report required by this Order shall be grounds to lift the stay and activate the suspension;
- (e) Dixon shall not violate any state or federal laws or any provisions of the Rules of Professional Conduct during the period of the stayed suspension;

- (f) Dixon shall respond to all State Bar requests for information as required by Rule 8.1(b) of the Rules of Professional Conduct by the earlier of the deadline stated in the communication or within 30 days of receipt;
- (g) Dixon shall timely comply with all State Bar membership and Continuing Legal Education requirements; and
- (h) Dixon shall keep the North Carolina State Bar membership department advised of his current home and business street (not P.O. Box) addresses and telephone numbers.

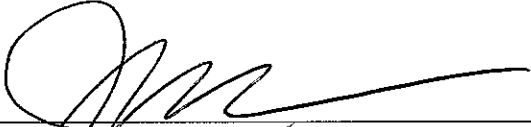
4. If Dixon fails to comply with any one or more of the conditions set out in this Order of Discipline, then the stay of the suspension of his law license may be lifted and the suspension activated as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

5. If the stay of the suspension is lifted and the suspension is activated for any reason, the DHC may enter an Order imposing such conditions as it deems necessary for the reinstatement of Dixon's license at the end of the suspension. Furthermore, Dixon will have complied with each of the following conditions before he will be eligible for reinstatement:

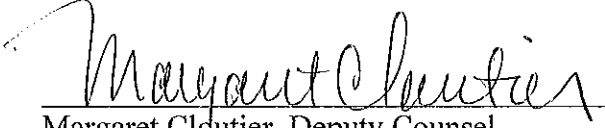
- (a) Submitted his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days from the effective date of the order activating his suspension;
- (b) Complied with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the North Carolina State Bar Discipline and Disability Rules on a timely basis;
- (c) Paid any outstanding disciplinary administrative fees and costs; and
- (d) Within 15 days of the effective date of the order activating the suspension Dixon shall have provided the State Bar with an address and telephone number at which clients seeking return of files could communicate with Dixon and obtain such files, and Dixon shall have promptly returned all files to clients upon request.

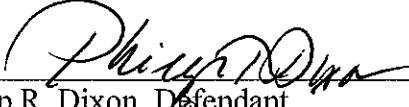
6. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of the stayed suspension.

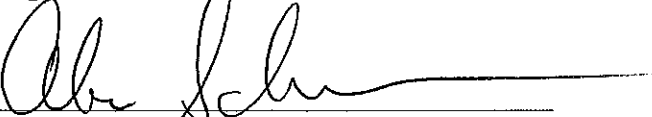
Signed by the Chair with the consent of the other Hearing Panel members, this the  
7<sup>th</sup> day of May, 2013.

  
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Joshua W. Willey, Jr.  
Chair, Disciplinary Hearing Panel

CONSENTED TO:

  
\_\_\_\_\_  
Margaret Cloutier, Deputy Counsel

  
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Phillip R. Dixon, Defendant

  
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Alan M. Schneider, Counsel for Defendant