

STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
18 DHC 34 R

THE NORTH CAROLINA STATE BAR

Plaintiff

v.

KENNETH B. HOLMES, Attorney,

Defendant

CONSENT ORDER
TO STAY THE BALANCE
OF SUSPENSION

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission (“DHC”) composed of Shannon R. Joseph, Chair, William A. Oden and Synthia Scott Kearney pursuant to a petition by Defendant for a stay of the remainder of the suspension imposed by the Consent Order of Discipline in *The North Carolina State Bar v. Kenneth B. Holmes*, 18 DHC 34. Plaintiff, the North Carolina State Bar, was represented by Alex G. Nicely. Defendant, Kenneth B. Holmes, was represented by Joshua T. Walthall.

Based upon Defendant’s petition, Plaintiff’s response, a review of the records of the North Carolina State Bar and the consent of the parties, the Hearing Panel hereby finds by clear, cogent and convincing evidence 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, Kenneth B. Holmes (“Holmes”), was admitted to the North Carolina State Bar in 2005, and is, and was at all times material hereto, an attorney licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the State Bar, and the Rules of Professional Conduct prior to the suspension of his license to practice law pursuant to the Consent Order of Discipline entered in 18 DHC 34.

3. On September 30, 2019, a hearing panel of the Disciplinary Hearing Commission entered an Order of Discipline suspending Holmes for a period of five years, effective 30 days from service of the Order of Discipline upon Holmes.

4. The Order of Discipline provides that after no less than two years, Holmes may apply for a stay of the remaining period of suspension by filing a motion in the cause and demonstrating by clear, cogent and convincing evidence that he has met all conditions for a stay set out in the Order of Discipline.

5. Holmes accepted service of the Order of Discipline through his legal counsel on October 4, 2019. Thus, Holmes's five-year DHC suspension became effective on November 5, 2019.

6. Holmes was eligible to seek a stay of the remaining period of suspension on November 5, 2021, two-years from the effective date of his suspension.

7. Pursuant to 27 N.C. Admin. Code 1B.0118(c)(1), Holmes was permitted to file a motion to stay his suspension "no earlier than 60 days before the first date of eligibility to apply for a stay."

8. On February 1, 2024, Holmes filed a petition requesting a stay of the remaining portion of his active suspension and seeking reinstatement to active status subject to the continuing conditions set forth in the Consent Order of Discipline

9. Upon review of Holmes's Petition and supporting documentation, as well as an independent review of the records maintained by the State Bar, the State Bar filed a response on February 29, 2024, acknowledging that Holmes has substantially complied with all of the conditions for obtaining a stay of the remaining portion of his suspension.

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

CONCLUSIONS OF LAW

1. All the parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, Kenneth B. Holmes, and the subject matter of this proceeding.

2. Holmes has satisfied the requirements set forth in 27 N.C. Admin. Code 1B.0128 and .0129 and the conditions established in the Consent Order of Discipline for a stay of his suspension and reinstatement to active status, subject to the terms of the Consent Order of Discipline entered in 18 DHC 34.

3. Holmes's reinstatement to active status should be conditioned upon continued compliance with the conditions and requirements in the Consent Order of Discipline.

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

ORDER

1. The remainder of the five-year suspension of Holmes's law license imposed by the Consent Order of Discipline in 18 DHC 34 is hereby stayed and Holmes is reinstated to the active practice of law in North Carolina, effective upon entry of this Order.

2. The stay of the remaining suspension is subject to the terms, conditions and requirements set forth in the Consent Order of Discipline in 18 DHC 34. Holmes's status as an active member of the North Carolina State Bar during the term of the stay of suspension is

contingent upon his compliance with all of the conditions set forth in paragraphs 14(a) through 14(i) of the Consent Order of Discipline, which is attached hereto and hereby incorporated by reference as Exhibit 1.

3. If Holmes fails to comply with any one or more of the conditions set out in the Consent Order of Discipline, then the stay of the suspension of his law license may be lifted as provided in 27 N.C. Admin. Code 1B .0118.

4. The Disciplinary Hearing Commission will retain jurisdiction of this matter throughout the remainder of the suspension and any stay thereof.


5. Pursuant to 27 N.C. Admin. Code 1B .0118(e), Holmes is taxed with the costs and administrative fees of this proceeding.


Signed by the Chair with the consent of the other hearing panel members, this the 18th day of March, 2024.


Shannon R. Joseph, Chair
Disciplinary Hearing Panel

CONSENTED TO BY:

Kenneth B. Holmes
Kenneth B. Holmes
Defendant


Joshua T. Walthall
Attorney for Defendant


Alex G. Nicely
Attorney for Plaintiff



STATE OF NORTH CAROLINA

BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR 18 DHC 34

WAKE COUNTY

THE NORTH CAROLINA STATE BAR, Plaintiff

v.

KENNETH B. HOLMES, Attorney, Defendant

ORDER OF DISCIPLINE

This matter came on for hearing on 17-18 June 2019 by a hearing panel of the Disciplinary Hearing Commission composed of Allison C. Tomberlin, Chair, Shannon R. Joseph, and Michael S. Edwards. Leonor Bailey Hodge and Alex G. Nicely represented Plaintiff, the North Carolina State Bar. Defendant, Kenneth B. Holmes, was represented by W. Terry Sherrill. The parties consent to the discipline imposed by this order.

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

FINDINGS OF FACT

- 1. Plaintiff, the North Carolina State Bar ("Plaintiff" or "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 promulgated thereunder.
2. Defendant, Kenneth B. Holmes ("Defendant" or "Holmes"), was admitted to the North Carolina State Bar on 2 April 2005 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 relevant period referred to herein, Holmes actively engaged in the practice of law in the State of North Carolina and maintained a law office in Statesville, Iredell County, North Carolina.
4. Holmes maintained a general trust account, BB&T Bank IOLTA account ending in no. 9837 ("trust account").
5. Beginning in or about 2013, Holmes represented M. Boger ("Boger") in a personal injury matter.

6. Pursuant to the contingent fee contract, Holmes was entitled to collect as his legal fee 1/3 of the amount he recovered for Boger.
7. In or about April 2014, Holmes settled Boger's personal injury claim for \$75,000.
8. On or about 8 April 2014, Holmes deposited the full amount of Boger's settlement proceeds into the trust account.
9. Holmes made the following disbursements of Boger's funds:
 - a. On or about 10 April 2014, \$5,000 disbursement to Boger by check no. 1169;
 - b. On or about 17 April 2014, \$30,000 disbursement to Boger by check no. 1174;
 - c. On or about 17 April 2014, \$35,000 disbursement to himself by check no. 1175 made payable to BB&T;
 - d. On or about 2 May 2014, \$2,700 disbursement to himself by check no. 1177 made payable to cash;
 - e. On or about 5 May 2014, \$2,000 disbursement to himself by check no. 1178 made payable to cash;
 - f. On or about 6 October 2014, \$300 disbursement to Boger by check no. 1193;
 - g. On or about 8 February 2016, \$1,000 disbursement to Boger by check no. 1222;
 - h. On or about 9 February 2017, \$158.65 disbursement to his law firm by check no. 1266 made payable to the Holmes Law Firm;
 - i. On or about 14 February 2017, \$106.65 disbursement to his law firm by check no. 1268 made payable to the Holmes Law Firm.
10. In or about April or May 2014, Holmes asked Boger to borrow \$3,000 of Boger's settlement proceeds.
11. Boger agreed to make the loan to Holmes and gave \$3,000 to Holmes.
12. Although Boger agreed to loan Holmes the funds, Holmes and Boger did not agree to the specific terms of the loan, including the terms upon which the loan was to be repaid.
13. Holmes did not advise Boger in writing of the desirability of seeking the advice of independent legal counsel on the transaction.

14. Holmes did not give Boger a reasonable opportunity to seek the advice of independent legal counsel.

15. Holmes was required to maintain \$3,000 of Boger's settlement proceeds in trust on behalf of Boger for payment of a Medicaid lien.

16. Holmes failed to maintain any of Boger's funds in the trust account for payment of the Medicaid lien.

17. Holmes misrepresented to Boger that he maintained in the trust account the funds for payment of Boger's Medicaid lien.

18. To date, Holmes has failed to pay Boger's Medicaid lien.

19. On or about 27 August 2013, Holmes was appointed to represent Boger in defense of allegations of violation of felony probation in Iredell County criminal case no. 11 CRS 51433.

20. Holmes also represented Boger in other criminal matters.

21. Boger came frequently to Holmes' office to discuss Boger's legal matters.

22. After one of Boger's matters, a DWI case, had been on a trial calendar a few times, Holmes received a telephone call from the prosecutor instructing Holmes to be ready for trial the next day.

23. After this call, Holmes met in person with Boger and a few persons Boger brought with him as potential trial witnesses.

24. The next day in court, Holmes again met with Boger.

25. Boger brought to the court meeting a different witness than the one he brought with him on the previous day.

26. After discussions between Holmes and Boger about the testimony of the new witness, Boger agreed to enter a plea rather than proceed to trial.

27. Holmes appeared in court for Boger in the DWI case and other cases on all the scheduled court dates.

28. In 2018, Holmes' trust account was the subject of an investigative audit.

29. The investigative audit revealed the following deficiencies in Holmes' trust account management:

- a. Failure to identify on the face of several transfers and other items payable to Holmes the client balance from which such disbursements were made;

- b. Commingling his personal funds in the trust account with entrusted client funds;
- c. Failure to list the source of deposits on deposit slips;
- d. Failure to promptly disburse entrusted funds;
- e. Disbursing funds from the trust account by items payable to cash;
- f. From 1 March 2014 through 30 September 2016, failure to total the individual client balances shown on the ledger of the trust account and reconcile them with the current bank statement balance for the trust account as a whole at least quarterly;
- g. From 1 October 2016 through 5 July 2017, failure to prepare quarterly a reconciliation report that showed the balance as it appeared in the general ledger for the trust account, the total of all subsidiary ledger balances, and the adjusted bank balance;
- h. Failure to reconcile monthly the balance of the trust account as shown on the lawyer's records with the current bank statement balance for the account.

30. Holmes had previously been notified of similar deficiencies in his trust account management after a random audit in 2009.

31. The investigative audit also revealed that on or about 1 March 2014 the balance in the trust account was below the amount Holmes was required to maintain in trust for his clients.

32. Specifically, Holmes no longer maintained funds in trust for the following personal injury clients: Etheridge-Harper, Etheridge, Nichols, and Turner.

33. Holmes was required to maintain funds in the trust account for these clients as of 1 March 2014 in the following amounts:

- a. Etheridge-Harper - \$1,168.68;
- b. Etheridge - \$1,000.00;
- c. Nichols - \$2,287.73; and
- d. Turner - \$1,320.00.

34. Holmes was required to maintain funds in the above-listed amounts for payment of his clients' medical liens.

35. In 2013, Holmes deposited the settlement checks for each of the clients listed in paragraph 33.

36. Holmes failed to disburse payment for Etheridge-Harper's and Etheridge's medical liens until 2017.

37. Holmes used other clients' entrusted funds for these payments.

38. Because Holmes did not reconcile his trust account, he was not aware that he used other clients' entrusted funds for these payments.

39. Holmes failed to disburse payment for Nichols' medical lien until 2015.

40. Holmes used other clients' entrusted funds for this payment.

41. Because Holmes did not reconcile his trust account, he was not aware that he used other clients' entrusted funds for this payment.

42. Holmes failed to disburse payment for Turner's medical lien until 2016.

43. Holmes used other clients' entrusted funds for this payment.

44. Because Holmes did not reconcile his trust account, he was not aware that he used other clients' entrusted funds for this payment.

45. Holmes was also required to maintain \$3,400.00 in the trust account for his client A. Thrasher ("Thrasher") as of 1 March 2014.

46. In or about December 2013, Holmes contacted V. Smith ("Smith") about providing a bail bond for Thrasher.

47. Thrasher had previously been a client of Smith.

48. Holmes was listed along with J. Rice on a form provided to Smith in support of the effort to obtain a bail bond for Thrasher, but Holmes did not sign any documentation indicating that he would serve as a surety for the Thrasher bond.

Based upon the foregoing 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, Kenneth Holmes, and over the subject matter.

2. The facts did not support the conclusion that Defendant served as a surety on a bail bond for A. Thrasher in violation of Rule 8.4(b).

3. Defendant's motion for dismissal of the Fourth Claim for Relief in the Complaint is granted.

4. Holmes' conduct, as set forth in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

- a. By failing to pay Boger's Medicaid lien, Defendant failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3, failed to properly distribute entrusted funds in violation of Rule 1.15-2(a), and failed to promptly pay to the client, or third persons as directed by the client, entrusted property belonging to the client and to which the client is currently entitled in violation of Rule 1.15-2(m)¹;
- b. By failing to maintain funds in the trust account for payment of Boger's Medicaid lien, Defendant failed to properly maintain entrusted funds in violation of Rule 1.15-2(a);
- c. By misrepresenting to Boger that he maintained in the trust account funds for payment of Boger's Medicaid lien, Defendant engaged in conduct involving misrepresentation in violation of Rule 8.4(e);
- d. By borrowing \$3,000 of Boger's funds, Defendant entered into a prohibited business transaction with a client in violation of Rule 1.8(a);
- e. By failing to identify on the face of several transfers and other items payable to him the client balance from which such items were drawn, Defendant failed to properly maintain entrusted funds in violation of Rule 1.15-2(a), failed to indicate on items payable to the lawyer the client balance from which the items were drawn in violation of Rule 1.15-2(h), and failed to maintain minimum records required for a general trust account in violation of Rule 1.15-3(b);
- f. By failing to list the source of deposits into the trust account on deposit slips, Defendant failed to properly maintain entrusted funds in violation of Rule 1.15-2(a) and failed to maintain minimum records required for a general trust account in violation of Rule 1.15-3(b);
- g. By failing to promptly disburse his clients' funds in payment of their medical liens, Defendant failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 and failed to properly distribute entrusted funds in violation of Rule 1.15-2(a);
- h. By disbursing funds from the trust account by item payable to cash, Defendant failed to properly maintain entrusted funds in violation of Rule 1.15-2(a) and disbursed entrusted funds by bearer item in violation of Rule 1.15-2(i);

¹ Now codified as Rule 1.15-2(n).

- i. By failing to total the individual client balances shown on the ledger of the trust account and reconcile it with the current bank statement balance for the trust account as a whole at least quarterly and failing to prepare quarterly a reconciliation report that showed the balance as it appeared in the general ledger for the trust account, the total of subsidiary ledger balances, and the adjusted bank balance, Defendant failed to perform quarterly reconciliations of his trust account in violation of Rule 1.15-3(d);
- j. By failing to reconcile monthly the balance of the trust account as shown on his records with the current bank statement balance for the account, Defendant failed to perform monthly reconciliations of his trust account in violation of Rule 1.15-3(d);
- k. By failing to maintain in the trust account funds entrusted to him by his clients for payment of medical liens and disbursing them for the benefit of someone other than the legal or beneficial owners, Defendant failed to properly maintain entrusted funds in violation of Rule 1.15-2(a) and used entrusted property for the personal benefit of persons other than the legal or beneficial owner in violation of Rule 1.15-2(j)²;
- l. By unknowingly misappropriating his clients' entrusted funds, Defendant used entrusted property for his personal benefit in violation of Rule 1.15-2(j)³; and
- m. By misrepresenting to his clients that he maintained their funds in the trust account after they had been completely disbursed, Defendant engaged in conduct involving misrepresentation in violation of Rule 8.4(c).

5. The facts did not support the conclusion that Defendant knowingly misappropriated Boger's entrusted funds in violation of Rule 1.15-2(j)⁴ and committed a criminal act in violation of Rule 8.4(b).

6. The facts did not support the conclusion that Defendant failed to keep Boger informed about the status of his case in violation of Rules 1.4(a)(3) and (4).

7. The facts did not support the conclusion that Defendant failed to perform any meaningful work on behalf of Boger in violation of Rule 1.3.

² Now codified as Rule 1.15-2(k).

³ Now codified as Rule 1.15-2(k).

⁴ Now codified as Rule 1.15-2(k).

8. The facts did not support the conclusion that Defendant's failure to promptly disburse his clients' funds in payment of their medical liens violated Rule 1.15-2(m)⁵.

9. The facts did not support the conclusion that Defendant knowingly misappropriated his clients' entrusted funds in violation of Rule 8.4(b).

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Panel hereby makes by clear, cogent, and convincing evidence the following:

ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE

1. Boger made several attempts to determine whether Defendant had paid his Medicaid lien and suffered harm as a result of Holmes' false representations about the status of his lien.

2. Boger was vulnerable in that he relied upon Defendant for legal counsel and advice regarding several issues including payment of his Medicaid lien.

3. After Boger was incarcerated, his sister made several attempts to contact Defendant on behalf of Boger to find out the status of payment of his Medicaid lien. Defendant did not respond to many of her efforts. On one occasion, Defendant scheduled an in-person meeting with Boger's sister and then failed to show up or call to cancel.

4. Defendant has no prior discipline.

5. A cornerstone of client trust in an attorney is that the attorney will properly protect and maintain entrusted funds. Failure to do so erodes the confidence clients place in attorneys who handle their affairs and harms the profession.

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

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has considered all of the factors contained in 27 N.C. Admin. Code 1B.0116(f)(1) and concludes that the following factors that warrant suspension or disbarment 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;

⁵ Now codified as Rule 1.15-2(n).

- (c) Elevation of the defendant's own interest above that of the client;
- (d) Negative impact of defendant's actions on client's or public's perception of the profession;
- (e) Negative impact of the defendant's actions on the administration of justice;
- (f) Impairment of the client's ability to achieve the goals for the representation; and
- (g) Acts of dishonesty, misrepresentation, deceit, or fabrication.

2. The Hearing Panel has considered all of the factors contained in 27 N.C. Admin. Code 1B .0116(f)(2) and concludes that the following factor exists that warrants consideration of disbarment:

- (a) Acts of dishonesty, misrepresentation, deceit, or fabrication.

3. The Hearing Panel has considered all of the factors contained in 27 N.C. Admin. Code 1B.0116(f)(3) and concludes that the following are applicable in this matter:

- (a) No prior disciplinary offenses in North Carolina;
- (b) Dishonest or selfish motive;
- (c) A pattern of misconduct;
- (d) Multiple offenses;
- (e) Vulnerability of the victim;
- (f) Cooperative attitude toward the proceedings; and
- (g) Defendant has experience in the practice of law.

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

5. Defendant had notice since 2009 random audit of the deficiencies in his trust account management but failed to correct such deficiencies and properly maintain entrusted funds.

6. Defendant's failure to pay Boger's Medicaid lien caused harm to Boger.

7. Defendant's misrepresentations to Boger about the status of his Medicaid lien caused potential significant harm to Boger.

8. Defendant's failure to respond to Boger's attempts and the attempts made on Boger's behalf to discuss the status of the Medicaid lien caused significant harm to Boger.

9. Defendant's misrepresentations to clients about the status of their medical liens caused potential significant harm to such clients.

10. Defendant's conduct, if continued or tolerated by the State Bar, poses potential significant harm to future clients and the profession.

11. The Hearing Panel has considered all lesser sanctions including: censure, reprimand, and admonition but concludes that such discipline would not be sufficient discipline because of the gravity of the potential harm to the clients. The Panel further concludes that such discipline would fail to acknowledge the seriousness of the violations committed by Defendant and send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar of this State.

12. The Hearing Panel has considered disbarment but concludes disbarment is not necessary to protect the public from future misconduct by Defendant.

13. After considering lesser alternatives and disbarment, this Hearing Panel concludes that a suspension is necessary to adequately protect the public from future misconduct by Defendant.

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

ORDER OF DISCIPLINE

1. Defendant, Kenneth B. Holmes, is hereby suspended from the practice of law for five years, effective 30 days from service of this order on Holmes.
2. Defendant is taxed with the administrative fees and costs for this action.
3. Defendant shall pay within 30 days of service of the statement of costs and fees for this action, all costs and administrative fees assessed.
4. Defendant shall submit his law license and membership card to the Secretary of the State Bar no later than 30 days following the effective date of this order.
5. Defendant shall comply with the wind-down provisions contained in 27 N.C. Admin. Code 1B.0128.

6. If Defendant fails to fully comply with 27 N.C. Admin. Code 1B.0128, Defendant shall reimburse the State Bar for all expenses incurred by the State Bar in winding down Defendant's practice. Such expenses may include, but are not limited to, storage facility fees, rent payments, moving expenses, charges for secure disposal of client files, postage or other mailing expenses and compensation paid to any appointed trustee and/or the trustee's assistant for time and travel associated with the trusteeship. The State Bar shall send an invoice of wind-down expenses to Defendant at Defendant's last known address of record with the State Bar. Defendant shall not be eligible for stay or reinstatement until he has reimbursed the State Bar for all wind-down expenses incurred.

7. Within 30 days of 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 return all files to his clients within 10 days of the request. A file request sent to the address provided by Defendant pursuant to this paragraph is deemed received within 3 days of the date of the request.

8. Within 90 days of this order's effective date, Defendant, at his own expense, shall retain a certified public accountant or other qualified accounting professional (hereafter collectively "CPA") approved in advance by the Office of Counsel, who shall audit his trust accounts to identify the beneficial owners of all funds in Defendant's trust accounts. Defendant will cooperate with the CPA to ensure the audit is completed in a timely fashion. Upon completion of the audit, the CPA shall provide the State Bar with a written final audit report identifying the owner(s) of entrusted funds in Defendant's trust accounts and the amount of such funds Defendant is required to have in the account for such persons. It is Defendant's sole responsibility to ensure the CPA completes and submits the reports required herein. The audit and any associated reports will be solely at Defendant's expense.

9. Within 60 days of completion of the CPA's audit of Defendant's trust accounts, Defendant shall petition the court to deposit funds into the account to replenish any shortage in the account identified by the CPA audit and to disburse all identified client funds in Defendant's accounts that are due or overdue for distribution to their rightful owners.

10. Within 15 days of any court order authorizing Defendant to replenish the trust account and/or disburse entrusted funds, Defendant shall fully comply with the terms of such order.

11. Defendant shall comply with Rule 1.15-2(r) regarding all unidentified funds in Defendant's trust accounts and with Chapter 116B of the General Statutes within 30 days of being statutorily permitted to escheat funds to the state.

12. Defendant shall complete for each year of active suspension two hours of CLE in trust account management. This requirement is in addition to any CLE requirement imposed by 27 N.C. Admin. Code 1B.0129.

13. 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 motion in the cause and demonstrating by clear, cogent, and convincing evidence the following:

- a. Defendant properly wound down his law practice and complied with the requirements of 27 N.C. Admin. Code 1B.0128;
- b. Defendant has complied with the general provisions of 27 N.C. Admin. Code 1B.0129;
- c. Within 90 days of this order's effective date, Defendant, at his own expense, retained a CPA, approved in advance by the Office of Counsel, to audit his trust accounts in accordance with the requirements of paragraph 8 above;
- d. Within 60 days of completion of the CPA's audit of Defendant's trust accounts, Defendant petitioned the court to deposit funds into the account to replenish any shortage in the account identified by the CPA audit and to disburse all identified client funds in Defendant's accounts that are due or overdue for distribution to their rightful owners in accordance with requirements of paragraph 9 above;
- e. Within 15 days of any court order authorizing Defendant to replenish the trust account and/or disburse funds, Defendant fully complied with the terms of such order;
- f. Defendant complied with Rule 1.15-2(r) regarding all unidentified funds in Defendant's trust accounts and complied with Chapter 116B of the General Statutes within 30 days of being statutorily permitted to escheat funds to the state;
- g. Defendant returned to the client within 10 days of the request the client file of such client;
- h. Defendant has kept the State Bar Membership Department advised of his current business address and notified the State Bar of any change of address within 10 days of such change; Defendant's address must be a street address, not a post office box or drawer;
- i. Defendant has responded to all communications from the State Bar, including communications from the Attorney Client Assistance Program, within 30 days of receipt or by the deadline stated in the communication, whichever is sooner;

- j. Defendant has participated in good faith in the State Bar's fee dispute resolution process for any petition of which he receives notice after the effective date of this order;
- k. That at the time of his motion for stay, Defendant is current in payment of all State Bar membership dues, fees, and costs, including all Client Security Fund assessments and other charges or surcharges the State Bar is authorized to collect from him, and including all judicial district dues, fees, and assessments;
- l. That at the time of his motion for stay, there is no deficit in Defendant's completion of mandatory Continuing Legal Education (CLE) hours, in reporting such hours or in payment of any fees associated with attendance at CLE programs;
- m. That for each year of active suspension that preceded the motion for stay, Defendant has completed two hours of additional CLE in trust account management beyond the minimum CLE requirement for each such year as provided in paragraph 12 above;
- n. Defendant has not violated the Rules of Professional Conduct or the laws of the United States or any state or local government during his suspension; and
- o. Defendant timely paid all administrative fees and costs assessed against him in this proceeding as reflected on the statement of costs and fees.

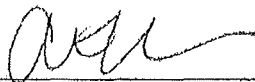
14. If Defendant obtains a stay of suspension of his law license, such stay will continue in effect only as long as Defendant complies with the following conditions:

- a. Defendant provides monthly to the State Bar's Office of Counsel a written report of the three-way reconciliation of all attorney trust accounts to which he has access using the State Bar's Reconciliation Report form available on the State Bar's website and the reconciliation method described in the State Bar Lawyer's Trust Account Handbook, rev. 11/2017, pages 34-43;
- b. Defendant provides monthly with each three-way reconciliation report for the account and period covered by the report; (1) a list of clients whose funds are held in the trust account that includes the amount of each client's funds; (2) subsidiary ledger for any personal funds of Defendant in the account; (3) general ledger; (4) bank statement; and (5) canceled checks;

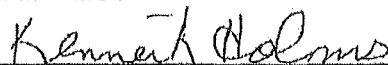
- c. Defendant provides any other trust account related documentation or records requested by the Office of Counsel within 10 days of the request;
- d. Defendant completes annually 1 additional hour of CLE on the topic of trust account management. This CLE requirement is in addition to Defendant's other CLE requirements;
- e. Defendant keeps the State Bar's Membership Department advised of his current business address, which address must be a street address, not post-office box or drawer;
- f. Defendant notifies the State Bar of any change of address within 10 days of such change;
- g. Defendant responds to all communications from the State Bar, including communications from the Attorney Client Assistance Program, within 30 days of receipt of such communication or by the deadline stated in the communication, whichever is sooner;
- h. Defendant participates in good faith in the State Bar's fee dispute resolution process for any petition of which he receives notice after the effective date of this order; and
- i. Defendant does not violate the Rules of Professional Conduct or the laws of the United States or any state or local government.

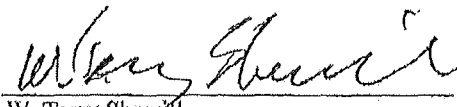
15. If Defendant does not seek a stay or fails to obtain a stay of the active suspension of his law license, or if some portion of the suspension is stayed and thereafter the stay is lifted or revoked, Defendant must comply with the requirements of paragraphs 13 (a) through (o) above before being reinstated to the practice of law.

Signed by the Chair with the consent of the other Hearing Panel members this the 30 day of September, 2019.


 Allison C. Tomberlin, Chair
 Disciplinary Hearing Panel

WE CONSENT TO THE DISCIPLINE
 IMPOSED:

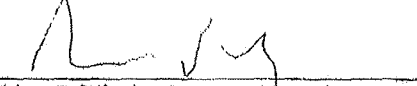

 Kenneth Holmes
 Defendant



W. Terry Sherrill
Attorney for Defendant



Leann Bailey Hodge, Deputy Counsel
Attorney for Plaintiff



Alex G. Nicely, Deputy Counsel
Attorney for Plaintiff