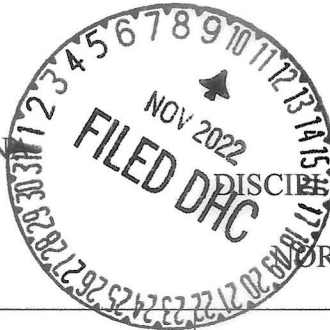


STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
22 DHC 5

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

WILLIE R. BROOKS, JR., Attorney,

Defendant

CONSENT
ORDER OF DISCIPLINE

THIS MATTER was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Stephanie N. Davis, Chair, and members Jaye P. Meyer and Jane B. Weathers. Jennifer A. Porter and Thomas L. Crosby represented Plaintiff, the North Carolina State Bar. Defendant, Willie R. Brooks, Jr., was represented by Joshua Walthall.

The parties stipulate and agree to the findings of fact and conclusions of law recited in this Consent Order. The parties consent to the discipline imposed by this Order. By consenting to this Order, Defendant knowingly, freely, and voluntarily waives his right to appeal this Consent Order or to challenge in any way the sufficiency of the findings.

Based upon the stipulated facts and upon 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, Willie R. Brooks, Jr. ("Brooks"), was admitted to the North Carolina State Bar in 1982, 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, Brooks was engaged in the practice of law in the State of North Carolina and maintained a law office in Monroe, Union County, North Carolina.

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

5. On March 6, 2019, Brooks' trust account was the subject of a random audit by the North Carolina State Bar.

6. At the time of the random audit, Brooks maintained an attorney trust account at Fifth Third Bank, account number ending in the digits 9043 ("FTB 9043").

7. Prior to the random audit, Brooks failed to conduct reconciliations of his trust account in which he compared for each trust account the total of all subsidiary trust account ledgers with a positive balance with his general ledger balance and his adjusted bank statement balance for each trust account quarterly. (hereinafter "quarterly reconciliation").

8. Prior to the random audit, Brooks failed to conduct reconciliations of his trust account in which he compared for each trust account the balance of the trust account shown in his records and the bank statement balance for each trust account monthly.

9. In addition to finding Brooks had failed to conduct the required monthly and quarterly trust account reconciliations, the March 6, 2019 audit showed the following:

- a. Brooks disbursed more funds from his trust account for clients than he had in the trust account for that client;
- b. Brooks' client ledgers contained dates that did not reconcile with bank dates of deposit; and
- c. Brooks failed to sign, date, and maintain reconciliation reports.

10. In the course of the subsequent grievance investigation, the State Bar asked Brooks to provide three-way quarterly reconciliations of FTB 9043.

11. The reconciliations Brooks provided showed he had over \$89,000.00 in FTB 9043 for which he could not identify the client owners of the funds.

12. The records examined during the course of the subsequent investigation established that Brooks improperly disbursed entrusted funds, improperly provided financial assistance to clients, and habitually failed to deposit entrusted funds in traffic cases for court costs and fines into his trust account.

Traffic Court Clients

13. From November 15, 2016 through March 15, 2019, Brooks routinely failed to deposit entrusted funds in traffic cases for court costs and fines into his trust account.

Improper Disbursement of Funds to Brooks

14. On October 5, 2018, Brooks improperly disbursed \$66.67 to himself from FTB 9043 attributed to client B. Castro.

15. B. Castro did not have \$66.67 in FTB 9043, so this disbursement misused other entrusted funds in FTB 9043.

16. Brooks disbursed entrusted funds to himself in purported reimbursement of advanced costs for which there was no substantiation, including as follows:

	Client	Check #	Date	Amount	Unsubstantiated
a.	T. Barnes	12265	12/01/15	\$25.48	\$15.48
b.	B. Gomez Ceballos	11632	06/05/14	\$25.00	\$15.00
c.	S. Chatmon	13784	02/03/20	\$41.18	\$13.38
d.	V. Avila Gutierrez	13120	01/14/19	\$48.15	\$9.66
e.	J. Hernandez	13195	03/14/19	\$29.50	\$14.50
f.	R. M. Ibarra	12895	08/01/18	\$28.75	\$2.25 ¹
g.	M. Martinez	10600	01/23/13	\$10.45	\$10.45 ²
h.	M. McCarty	11830	09/18/14	\$11.25	\$11.25
i.	F. McIlwain	13616	09/07/19	\$31.75	\$31.75 ³
j.	J. Medina	11402	07/26/13	\$53.28	\$10.45
k.	B. Perez	11816	09/18/14	\$20.49	\$10.49
l.	L. Phifer	10786	06/14/13	\$20.65	\$20.65
m.	G. Villa Ramirez	13718	12/04/19	\$30.25	\$17.25 ⁴
n.	M. Sanchez	11790	08/18/14	\$20.46	\$10.46
o.	J. Jacobo Vigil	13238	03/29/19	\$44.73	\$2.57
p.	D. Watkins	10575	01/14/13	\$74.50	\$74.50
q.	J. Williams	12606	09/13/17	\$265.49	\$5.00
r.	J. Williams	12622	09/25/17	\$10.00	\$10.00
s.	J. Zavala	11555	03/18/14	\$19.25	\$19.25

¹ Later reimbursed to trust account by Defendant on March 4, 2019.

² Paid advanced cost of \$10.45 on July 6, 2012 but reimbursed himself from the trust account twice, once by trust account check 10568 on January 14, 2013, and then again with the check noted in the chart.

³ Paid advanced costs totaling \$31.75 in February 2018 but reimbursed himself from the trust account twice, once by trust account check 12816 on May 21, 2018, and then again with the check noted in the chart. He later reimbursed \$31.75 to the trust account on November 20, 2019.

⁴ Defendant advanced costs totaling \$43.25 between October 2018 and April 2019, but he only identified \$30.25 worth of costs in his first document production to the State Bar. On September 23, 2019 by trust account check 13635 he reimbursed himself \$30.25, and then again in the same amount by the check noted in the chart, thereby over-reimbursing himself by \$17.25.

Improper Disbursements to Others

17. On multiple occasions, Brooks disbursed funds to clients in personal injury cases prior to the clients' personal injury settlement funds being deposited into FTB 9043 and/or prior to the funds being available for disbursement.

18. In certain cases, the disbursement practice described in the preceding paragraph resulted in the misuse of other entrusted funds in FTB 9043, including but not limited to disbursements attributed to clients A. Mendoza, B. Gutierrez, K. Dent, and D. Vargas.

19. On at least one occasion Brooks issued a trust account check to pay costs for a client when he had no funds in the trust account for the client, as follows:

- a. On August 16, 2012, Brooks issued check 10260 from another trust account he maintained at that time, account at Fifth Third Bank ending in numbers 6557, to pay \$10.45 to Archivus, LLC for medical records for client J. Medina.
- b. He had no funds in this trust account for J. Medina at that time.

Financial Assistance and Improper Loans to Clients

20. Brooks provided financial assistance to clients by improper loans to clients, then later reimbursed himself for those loans as "costs" he assessed against those clients, including as follows:

- a. B. Ceballos Gomez, \$350 for earwax removal, advanced on 10/9/13;
- b. D. Davenport, \$200 for medical treatment, advanced on 11/29/17;
- c. K. Dent, \$595 total for medical treatment, advanced on 2/3/17, 8/29/17, 9/6/17;
- d. R. Massey, funds for living expenses, transportation, and medical treatment totaling \$348 on 10/31/12, 1/10/13, 1/22/13, 3/4/13, 3/20/13, 4/10/13;
- e. L. Najera, \$500 for vehicle insurance deductible, advanced on 3/10/14;
- f. J. Williams, \$250 for transportation to and from work, advanced on 9/11/17.

21. Brooks did not disclose and transmit in writing the terms of the loans made.

22. Brooks did not advise the above clients in writing of the desirability of seeking independent legal counsel, nor did he afford the clients a reasonable opportunity to seek independent legal counsel for the transaction.

23. None of the above clients gave informed consent, in writing signed by the client, to the essential terms of the transaction and the role of Brooks in the transaction, including whether Brooks represented the client in the transaction.

Failure to Fully and Timely Respond to State Bar

24. Brooks was served with a letter of notice by the State Bar on August 7, 2019.

25. The due date for Brooks' response to the letter of notice was extended to August 30, 2019.

26. Brooks provided no response to the letter of notice until September 9, 2019;

27. October 21, 2019, the State Bar sent to Brooks, through his counsel, a letter with questions for Brooks' response.

28. Brooks provided no response to the State Bar's inquiries in its October 21, 2019 letter.

29. On December 11, 2019, the State Bar sent Brooks a letter, through counsel, asking for a response to its October 21, 2019 inquiries.

30. Brooks provided a partial response on December 18, 2019.

31. On February 27, 2020, the State Bar sent an e-mail to Brooks' counsel with questions for Brooks' response, due March 6, 2020.

32. Brooks did not respond to the State Bar's February 27, 2020 e-mail until March 17, 2020, after prompting by the State Bar.

33. On May 11, 2020, the Chair of the Grievance Committee of the State Bar issued a cause audit subpoena to Brooks, with a production due date of June 5, 2020.

34. Brooks accepted service of the subpoena through counsel on May 20, 2020.

35. The cause audit subpoena instructed Brooks to produce trust account and operating account records from January 1, 2013 through April 30, 2020, as well as complete client files for any client from whom Brooks received entrusted funds.

36. Pursuant to Brooks' request, an extension was given until July 17, 2020.

37. Brooks requested additional time.

38. Brooks was instructed to produce what he had by the due date of July 17, 2020 and to produce remaining subpoenaed documents by July 31, 2020.

39. Brooks provided an unsigned narrative response to questions on July 15, 2020.
40. Brooks produced no records by July 17, 2020 or by July 31, 2020.
41. On August 5, 2020, Brooks produced some, but not all, of the subpoenaed documents.
42. On August 13, 2020, the State Bar sent Brooks, through counsel, a letter identifying missing records and setting a due date of August 31, 2020 for production of the missing records.
43. On August 27, 2020, Brooks produced some, but not all, of the subpoenaed documents.
44. On September 21, 2020, the State Bar sent Brooks, through counsel, a letter identified missing records and set a due date of October 5, 2020 for production of the missing documents.
45. In its September 21, 2020 letter, the State Bar noted that the client file documents that Brooks had provided failed to include documentation of costs due and advanced by Brooks, and requested specific documentation of advanced costs for each trust account reimbursement check included on a list provided with the letter.
46. Brooks did not provide the missing records by October 5, 2020.
47. On October 6, October 19, October 23, and November 3, 2020, Brooks produced some, but not all, of the subpoenaed documents.
48. On November 6, 2020, the State Bar sent Brooks, through counsel, a letter noting Brooks' failure to timely and fully comply with the State Bar's document requests, identifying a number of items requiring response, and setting a due date of November 30, 2020, later extended to December 30, 2020.
 - a. The items requiring response included documentation showing actual payment for the vast majority of advanced costs requested in the September 21, 2020 letter.
49. On December 23, 2020, Brooks produced additional documents, but not all of the missing records.
50. After correspondence in 2021 between the State Bar and Brooks, through counsel, Brooks provided some additional documentation on September 6, 2021.
51. On September 7, 2021, the State Bar sent Brooks a letter, though counsel, requesting full, complete, unredacted client files including any and all communications and documentation with medical providers, for nine specific clients, due September 30, 2021.

52. Brooks failed to comply with the State Bar's document request and did not provide the requested client file documents.

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

CONCLUSIONS OF LAW

1. All the parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, Willie R. Brooks, Jr., and the subject matter.

2. Pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- (a) By failing to compare the total of all subsidiary trust account ledgers with a positive balance with his general ledger balance and his adjusted bank statement balance for each trust account each quarter, Brooks failed to conduct quarterly reconciliations of his trust accounts in violation of Rule 1.15-3(d)(1);
- (b) By failing to compare the balance of the trust account shown in his records and the bank statement balance each month for each trust account, Brooks failed to conduct monthly reconciliations of his trust accounts in violation of Rule 1.15-3(d)(2);
- (c) By failing to maintain required reconciliation reports for his trust accounts, Brooks failed to maintain required records in violation of Rule 1.15-3(d)(3);
- (d) By failing to maintain complete and accurate records of his receipt and disbursement of entrusted funds per client, including failing to create and maintain client ledgers for all clients for whom he deposited funds into a trust account, failing to maintain accurate clients ledgers showing all receipt and disbursement of funds in the pertinent trust account per client, and failing to accurately identify all client balances he should be maintaining in his trust accounts, Brooks failed to maintain required records in violation of Rule 1.15-3(b)(5) and failed to properly identify and maintain entrusted funds in violation of Rule 1.15-2(a);
- (e) By improperly disbursing entrusted funds from his trust accounts, including for clients either in excess of funds in the trust account for the client or at a time when the client had no funds in the trust account available for disbursement for the client, Brooks failed to properly maintain and disburse entrusted funds in violation of Rule 1.15-2(a), (k), and (n);
- (f) By improperly disbursing entrusted funds to himself from FTB 9043, including disbursements with no basis to show entitlement to the funds, Brooks improperly disbursed entrusted funds to himself in violation of Rule 1.15-2(a), (k), and (n);

- (g) By providing clients in personal injury cases with funds for purposes not constituting court costs or expenses of litigation, including living expenses, travel expenses, insurance deductibles, and medical treatment, Brooks provided financial assistance to clients in violation of Rule 1.8(e);
- (h) By advancing funds to clients in personal injury cases and then reimbursing himself from the clients' settlement proceeds without informing them in writing of the terms of the transaction and the desirability of seeking the advice of independent legal counsel, without providing the clients with a reasonable opportunity to seek the advice of independent legal counsel, and without acquiring from the client informed consent in writing, Brooks engaged in improper business transactions with clients in violation of Rule 1.8(a);
- (i) By failing to deposit entrusted funds in his trust account for his traffic court clients, Brooks failed to properly maintain and deposit entrusted funds in violation of Rule 1.15-2(a) and (b);
- (j) By failing to timely and fully respond to the inquiries of the State Bar and the production requests of the State Bar made by inquiry and by subpoena, Brooks knowingly failed to respond to a lawful demand for information from a disciplinary authority in connection with a disciplinary matter in violation of Rule 8.1(b); and

3. Pursuant to N.C. Gen. Stat. § 84-28(b)(3), for failing to answer the formal inquiries of the State Bar in a disciplinary matter.

Based on the foregoing Findings of Fact and Conclusions of Law, the stipulated facts, and upon the consent of the parties, the Hearing Panel hereby finds by clear, cogent and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1 – 52 above are reincorporated as if set forth herein.
2. In addition to the instances listed above in paragraph 20, Defendant also provided financial assistance to T. Waters.
3. In addition to the instance identified above in paragraph 19, Defendant also improperly disbursed funds from his trust account (FTB 9043) for costs for the benefit of T. Waters when he had no funds in that trust account for T. Waters.
4. In addition to the improper disbursements to himself identified in paragraphs 14-16 above, Defendant also improperly disbursed \$150.00 from his trust account (FTB 9043) to himself in July 2019 attributed as attorney's fees for client I. Jimenez when he had previously collected his attorney fee from this client's funds in May 2019 and had no funds for the client in that trust account.

5. In addition to the improper disbursements described above in the Findings of Fact, Defendant improperly disbursed funds encumbered by perfected statutory medical liens to recipients other than the lienholders.

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

7. The trust account record-keeping, review, and reconciliation requirements of the Rules of Professional Conduct are designed to assist with the proper protection, maintenance, and disbursement of entrusted funds, and to facilitate prompt detection and correction of any errors. Defendant's failure to have complied with these requirements as set out above caused significant harm to clients for whom he should have been maintaining funds in trust, including repeated failures to identify and maintain funds in trust for clients and repeated improper disbursements from his trust accounts.

8. Defendant did not consistently use the same client identifier per client across all pertinent trust account records, including the client ledger, trust account checks, and deposit slips, sometimes referring to the same client with different names or descriptions on these records. Defendant's failure to use one consistent client identifier per client across all pertinent trust account records hindered accurate identification of the clients for whom funds were disbursed from his various trust accounts and of the clients for whom funds remained in the respective trust accounts.

9. Defendant has funds in one of his trust accounts (FTB 9043) for which he cannot identify the client(s) to whom the funds belong.

10. Defendant received an admonition (private reprimand) in 1985 for failing to deposit a personal injury settlement into his trust account and delaying payment to a client's physician.

11. Defendant received an admonition in 1997 for failure to promptly disburse closing funds, failure to comply with reasonable requests for information from a client, and lack of competence in a real estate closing/disbursement.

12. Defendant received an admonition in 2002 for neglect of an estate and failure to promptly disburse entrusted funds.

13. Defendant received a letter of warning in 2019 for allowing someone else to sign a client's name to release and inducing a notary to prepare a false jurat.

14. Defendant acknowledges that his prior practices with his trust account have not been in compliance with the Rules of Professional Conduct, is remorseful, and has made efforts to come into compliance with the Rules.

15. The Hearing Panel finds by clear, cogent, and convincing evidence the facts contained in the conclusions set out below of the applicable factors regarding discipline from those listed in 27 N.C. Admin. Code 1B.0116(f).

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

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel carefully considered all of the different forms of discipline available to it.

2. The Hearing Panel considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f).

3. The Hearing Panel concludes that the following factor from 27 N.C. Admin. Code 1B.0116(f)(1), which are to be considered in imposing suspension or disbarment, are present in this case:

- a. Factor (B), Intent of Defendant to commit acts where the harm or potential harm is foreseeable.

4. The Hearing Panel considered the factors listed in 27 N.C. Admin. Code 1B.0116(f)(2), which are factors warranting consideration of disbarment, and concluded no factors in this section of the rule are present in this case.

5. The Hearing Panel concludes that the following factors from 27 N.C. Admin. Code 1B.0116(f)(3), which are to be considered in all cases, are present in this case:

- a. Factor (A), Prior disciplinary offenses;
- b. Factor (B), Remoteness of prior offenses;
- c. Factor (C), Absence of dishonest or selfish motive;
- d. Factor (D), Timely good faith efforts to make restitution and to rectify consequences of misconduct;
- e. Factor (F), A pattern of misconduct;
- f. Factor (G), Multiple offenses;
- g. Factor (P), Remorse;
- h. Factor (S), Degree of experience in the practice of law; and
- i. Factor (T), Issuance of a letter of warning to Defendant within the three years immediately preceding the filing of the complaint.

6. The Hearing Panel considered all of the disciplinary options available to it and determined that a suspension is appropriate in this case, in light of the significant harm and potential harm caused by Defendant's conduct to his clients and the profession. A suspension with conditions for a stay of the suspension and/or for reinstatement designed to achieve and maintain full compliance with the trust account record-keeping, review, and reconciliation requirements of the Rules of Professional Conduct is necessary to protect clients and the public.

7. The Hearing Panel has considered all lesser sanctions and finds that discipline short of a suspension would not adequately protect the public for the following reasons:

- a. A suspension with conditions designed to ensure measures are in place to achieve and maintain full compliance with the trust account record-keeping, review, and reconciliation requirements of the Rules of Professional Conduct prior to Defendant continuing to practice law is necessary to protect clients and the public;
- b. Supervision under a stayed suspension is necessary to ensure all required corrections are made and sustained; and
- c. 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 the public regarding the conduct expected of members of the Bar of this State.

Based on the foregoing Findings of Fact, Conclusions of Law, additional Findings of Fact and Conclusions of Law Regarding Discipline, and with the consent of the parties, the Hearing Panel hereby enters the following

ORDER OF DISCIPLINE

1. Defendant, Willie R. Brooks, Jr., is hereby suspended from the practice of law for four years. The effective date of this Order is 30 days from service of this Order upon Defendant pursuant to 27 N.C. Admin. Code 1B.0128(c).

2. Defendant shall surrender his law license and bar card to the Clerk of the DHC no later than 30 days from service of this order upon him.

3. Defendant is taxed with the administrative fees and costs of this proceeding. Defendant shall pay the administrative fees and costs of this proceeding as assessed by the Secretary of the North Carolina State Bar. Defendant must pay the costs within 30 days of service upon him of the statement of costs by the Secretary.

4. Within 15 days of the effective date of this Order, Defendant shall provide the State Bar with an address and telephone number at which clients seeking return of files can communicate with Defendant and obtain such files. Defendant must keep this information current with the State Bar, providing updated information to the State Bar within 15 days of any change.

5. Defendant shall promptly return client files in his possession, custody, or control to clients upon request, within 5 days of receipt of such request. Defendant will be deemed to have received any such request 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 all provisions of 27 N.C. Admin. Code 1B.0128 as set out therein.

7. Defendant may apply to the DHC for a stay of this suspension upon providing with his motion for stay the documentation identified below and demonstrating the following by clear, cogent, and convincing evidence:

- a. Defendant timely complied with the immediately preceding paragraphs 2-6;
- b. Defendant has established written procedures – to be provided with any motion for stay or petition for reinstatement – setting forth the personnel to be involved, the documents to be utilized, and the process to be implemented, to accomplish the following:
 - (1) Ensuring a client identifier is used, and only one client identifier is used per client, on all pertinent trust account records, including on the client subsidiary trust account ledger, the general ledger, deposit slips, trust account checks, wire documentation, counter debits or credits, and any other instrument by which funds are deposited into or disbursed from a trust account for the client;
 - (2) Ensuring a client subsidiary trust account ledger is created for the client at the time of any deposit of entrusted funds into a trust account for the client;
 - (3) Ensuring an accurate and appropriate entry is made on the client subsidiary trust account ledger for the client at the time of any deposit or disbursement of funds for the client in the trust account;
 - (4) Ensuring no entry is made on a client subsidiary trust account ledger other than entries for actual deposits into or disbursements from the trust account (e.g. billing/invoicing record-keeping must be done separately);
 - (5) Ensuring a folder (paper or electronic) is created and maintained per client containing the most current client subsidiary trust account ledger and a copy of each deposit slip and deposited item for any deposits made for the client into a trust account and a copy of every trust account check, wire confirmation, or other instrument by which funds were disbursed from the trust account for the client;

- (6) Ensuring the client subsidiary trust account ledger is checked and the balance of funds in the trust account for the client is verified prior to any disbursement of funds being made from the trust account for the client;
- (7) Ensuring accurate identification of perfected statutory medical liens;
- (8) Ensuring perfected medical liens are honored and disbursements in cases with perfected liens are made according to statute;
- (9) Ensuring letters to providers accurately state the circumstances of the amount being disbursed to the provider;
- (10) Ensuring copies of any bank instruments or other documentation showing actual payment of advanced costs by Defendant (e.g. canceled checks, receipts identifying the client matter, the amount paid, and the method of payment, etc.) is placed into and maintained in each respective client file;
- (11) Ensuring no reimbursements from the trust account for advanced costs are made unless the respective client file contains copies of bank instruments or other documentation showing actual payment of advanced costs in an amount equal to or greater than the reimbursement to be made from the trust account;
- (12) Ensuring that all entrusted funds, including any funds for payment of court costs or fines, are deposited into the trust account for the client;
- (13) Ensuring all communications from the State Bar are received by Defendant, reviewed by Defendant, and timely responded to by Defendant in a manner by which Defendant is aware of the response and all accompanying documents being provided;
- (14) Ensuring Defendant thoroughly reviews his records, including the above-referenced folder for any pertinent client, and gains an accurate understanding of the pertinent facts, events, and circumstances prior to communicating with the client or any representative of the State Bar or a local district bar;
- (15) Ensuring the client subsidiary trust account ledger is checked and the balance of funds in the trust account for the client is verified prior to any disbursement of funds being made from the trust account for the client;
- (16) Ensuring clients are notified in writing upon each and every receipt of entrusted funds for the client;

- (17) Ensuring accountings are sent annually to clients for whom funds are held in trust for more than one year;
 - (18) Ensuring that trust account checks that have not been negotiated and cleared the trust account within six months of issuance are promptly investigated and action is promptly taken to complete those disbursements;
 - (19) Ensuring funds are promptly disbursed to medical providers and government entities with claims (e.g. Medicare), and that files with disbursements not yet completed to such providers and entities are periodically reviewed at least every three months and efforts made to obtain any necessary information and complete the disbursement(s);
 - (20) Timely monthly reconciliations of every trust account compliant with Rule 1.15-3(d)(2) and preparation and maintenance of the records required by Rule 1.15-3(d)(2) and (3);
 - (21) Timely quarterly reconciliations of every trust account compliant with Rule 1.15-3(d)(1) and preparation and maintenance of the records required by Rule 1.15-3(d)(1) and (3);
 - (22) Timely monthly reviews of every trust account compliant with Rule 1.15-3(i)(1) and preparation and maintenance of the records required by Rule 1.15-3(i)(1) and (5); and
 - (23) Timely quarterly reviews of every trust account compliant with Rule 1.15-3(i)(2) and (3) as applicable, and maintenance of the records required by Rule 1.15-3(i)(2), (3), and (5).
- c. Defendant has provided to the Office of Counsel an Excel spreadsheet per trust account for any trust account he intends to use in his practice of law, utilizing the format that will be provided to him by the Office of Counsel, containing entries for all bank transactions in the account (including deposits, disbursements, bank charges, etc.) from the opening of the trust account through the end of the month immediately preceding the month in which he files his motion for stay, along with a certification from the Trust Account Monitor that the Excel spreadsheets contain and accurately reflect all deposits, disbursements, charges, etc. in the pertinent trust account for the designated period of time and contain an accurate identification per bank transaction of the client for whom funds were deposited or disbursed by the transaction;
- d. Defendant has provided to the Office of Counsel a written report of the three-way reconciliation of all attorney trust accounts to which he has access at the time of entry of this Order and for any trust account he intends to use in his practice of law, reconciling the accounts as of the end of the month immediately preceding the filing of his motion for stay, using the State Bar's Reconciliation Report form from the

State Bar's website and the reconciliation methods described in the State Bar Lawyer's Trust Account Handbook on the State Bar's website for the three-way reconciliation normally required quarterly under Rule 1.15-3(d)(1). Defendant shall complete the entire form for each trust account and include with each such report all documents identified on the form for when the entire form is completed, along with the client subsidiary trust account ledger for every client for whom funds were deposited, maintained, or disbursed at any point in time during that month. The client subsidiary trust account ledgers shall contain an accurate and appropriate entry for each deposit and disbursement of funds for the client in the trust account with an accurate running balance, and shall not contain any other entries (e.g. billing/invoicing record-keeping must be done separately);

- e. Defendant shall provide an audit report conducted by an accountant of each attorney trust account for which he provided a three-way reconciliation pursuant to the preceding paragraph that confirms that each respective trust account contains all funds that should be maintained in the respective trust account for the clients for whom funds were deposited into the trust account;
- f. With respect to the \$89,985.70 that was in the trust account identified as "Balance to Be Reconciled – 9043" on Defendant's 2nd quarter 2021 trust account reconciliation, Defendant shall have identified the client owners of the funds, with the identifications consisting of a list by client with each client's respective balance and the intended recipient (e.g. medical provider, etc.), totaling \$89,985.70, and documentation of disbursements where appropriate or an explanation for why disbursement is not appropriate or cannot be accomplished with the exercise of due diligence, and the plan for disbursement and/or escheatment of those funds as applicable. For any amount for which Defendant cannot identify a client owner, Defendant shall have provided to the Office of Counsel a detailed description of the records examined and efforts made to try to identify the client owner(s) and shall have provided an assessment of whether the funds qualify for escheatment under applicable statutes and a plan for escheatment if appropriate;
- g. Defendant shall have sent accountings pursuant to Rule 1.15-3(e) to all clients for whom balances were identified in that \$89,985.70 amount, either in the form of a final account for those clients for whom disbursement was completed or in the form of an annual account, as applicable;
- h. Defendant has made arrangements in writing for a Trust Account Monitor approved by the Office of Counsel of the North Carolina State Bar. Defendant will be responsible for any associated costs. The Trust Account Monitor shall agree in writing – such documentation to be included with any motion for stay or petition for reinstatement – to do the following:
 - (1) Review all transactions in any and all trust accounts utilized by Defendant each month, no later than the 15th day of the next subsequent month (e.g. review the

transactions for January no later than February 15), with such review to include per trust account review of the bank statements, canceled checks, deposit slips, deposited items, any bank instrument by which funds were deposited into or disbursed from the trust account, the general ledger for the trust account, and the subsidiary trust account ledgers including those required by Rule 1.15-3(b)(5) for all clients for whom funds were received, disbursed, or maintained in the trust account in that month;

- (2) Verify and certify for the month that all bank transactions (including all deposits, disbursements, bank charges, etc.) are recorded on a general ledger for the trust account and on an appropriate subsidiary trust account ledger and all entries on all general ledgers and subsidiary trust account ledgers accurately reflect the corresponding bank transaction;
- (3) Verify and certify that a client identifier was used, and the same client identifier was consistently used per client, across all applicable records that month, including on the client's subsidiary trust account ledger, on the general ledger, on any trust account check or other instrument disbursing funds from the trust account, and on any deposit slip depositing funds for the client into the trust account;
- (4) Verify and certify that the Excel spreadsheets Defendant will be required to provide to the Office of Counsel, set out in more detail herein, contain and accurately reflect all deposits, disbursements, charges, etc. in the pertinent trust account for the month and contain an accurate identification of the client for whom the funds were deposited or disbursed;
- (5) Verify and certify that no trust account checks were given to any recipient and/or disbursements otherwise made for any client from the trust account prior to sufficient funds for that client having been deposited into the trust account and irrevocably credited to the trust account and made available for disbursement for that client;
- (6) Verify and certify that the client from whose funds in the trust account a disbursement was made is identified for all disbursements from the trust account, and that no disbursements were made from the trust account in excess of the funds in the trust account for that client;
- (7) Verify and certify that all entrusted funds received for clients, including for payment of court costs or fines, were deposited into the trust account;
- (8) Describe and certify all actions taken, efforts made, and the status to identify the clients for whom \$89,985.70 was in the trust account identified as "Balance to Be Reconciled – 9043" on Defendant's 2nd quarter 2021 trust account reconciliation, with the identifications consisting of a list by client with each

client's respective balance and the intended recipient (e.g. medical provider, etc.), totaling \$89,985.70; and

- (9) Verify and certify that no reimbursements for advanced costs to Defendant were made from the trust account without documentation in the respective client file showing Defendant had actually previously paid that specific amount or more for the client from his business or personal funds;
- i. Defendant shall have arranged for an attorney approved by the Office of Counsel to serve as Practice Monitor. Defendant shall be solely responsible for the payment of the Practice Monitor. This Practice Monitor will be an attorney in good standing with the North Carolina State Bar who actively represents clients in personal injury matters and has done so for at least the immediately preceding five years. Defendant shall provide with any motion for stay or petition for reinstatement the Practice Monitor's written agreement to serve as Practice Monitor and engage in the activities set forth in this paragraph. Defendant shall meet with the Practice Monitor at least monthly to review all of Defendant's pending cases. The Practice Monitor will supervise all client matters and will specifically review for perfected medical liens pursuant to N.C. Gen. Stat. § 44-49 and 44-50 and will ensure perfected medical liens and any other statutory claims upon personal injury proceeds (e.g. Medicare) are accurately identified and that all disbursements of personal injury proceeds are made appropriately in light of any such perfected medical liens or other claims. The Practice Monitor shall ensure that Defendant handles all matters in a timely fashion and that Defendant communicates adequately with his clients. Defendant will ensure that the Practice Monitor submits written reports to the Office of Counsel each quarter for the preceding quarter, confirming that the meetings are occurring, that Defendant is meeting deadlines and conferring with clients, that perfected medical liens and other claims are being accurately identified, and that all disbursements of personal injury proceeds are made *appropriately in light of any such perfected medical liens or other claims*. The reports shall be received in the Office of Counsel each January 15, April 15, July 15 and October 15 throughout the period of stayed suspension; and
- j. Defendant shall have arranged for an accountant approved by the Office of Counsel to audit all of his trust accounts each quarter. Defendant shall be solely responsible for the payment of the accountant. Defendant shall provide with any motion for stay or petition for reinstatement the accountant's written agreement to audit Defendant's trust accounts and provide reports as set forth in this paragraph. Each quarter, Defendant shall have an accountant audit all trust accounts. This audit shall assess whether Defendant has in the trust account(s) the client funds he is required to maintain for clients at that time, as well as Defendant's compliance with Rule 1.15-2 and Rule 1.15-3. The audit shall address the items on the Report Template form which will be provided by the State Bar to Defendant. The quarterly audit reports are due no later than 30 days after the end of the quarter – for example, the audit for the first quarter of the calendar year (January, February, and March) is due on April 30.

8. If the DHC stays Defendant's suspension, the remaining period of Defendant's suspension shall be stayed for four years. The stay of Defendant's suspension of his law license will continue in effect only as long as Defendant complies with the following conditions:

- a. Defendant shall make any adjustments to his written procedures produced pursuant to paragraph 7.b. above required by the Office of Counsel to ensure compliance with the Rules of Professional Conduct and shall provide revised written procedures within 15 days of notice from the Office of Counsel;
- b. Defendant shall provide each month, no later than the 15th day of the next subsequent month (e.g. certification for January due no later than February 15), a certification by him that all written procedures were followed by him, by any other attorneys in his firm, and by all staff in his firm with respect to all trust accounts and all trust account transactions that month. If there was any failure to follow a written procedure, any and all such deficiencies shall be identified, explained, and corrective action implemented to ensure the procedure at issue is followed in the future. If Defendant identifies a need to change any procedure, Defendant must submit to the Office of Counsel the proposed change with explanation for approval, and must receive approval prior to implementing the change;
- c. Defendant shall provide 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 from the State Bar's website and the reconciliation methods described in the State Bar Lawyer's Trust Account Handbook on the State Bar's website for the three-way reconciliation normally required quarterly under Rule 1.15-3(d)(1). Defendant shall complete the entire form for each trust account and include with each such report all documents identified on the form for when the entire form is completed, along with the client subsidiary trust account ledger for every client for whom funds were deposited, maintained, or disbursed at any point in time during that month. The client subsidiary trust account ledgers shall contain an accurate and appropriate entry for each deposit and disbursement of funds for the client in the trust account with an accurate running balance, and shall not contain any other entries (e.g. billing/invoicing record-keeping must be done separately). This documentation is due 15 days after the end of each month (e.g. documentation for January due February 15th, etc.);
- d. Defendant shall provide monthly to the State Bar's Office of Counsel an updated Excel spreadsheet per trust account for any trust account he used in his practice of law that month, containing entries for all bank transactions in the account (including deposits, disbursements, bank charges, etc.) from the opening of the trust account through the end of the immediately preceding month. This documentation is due 15 days after the end of each month (e.g. spreadsheet updated with entries for January due February 15th);

- e. Defendant shall provide each month, no later than the 15th day of the next subsequent month (e.g. certification for January due no later than February 15), a certification from the Trust Account Monitor verifying and certifying the following:
- (1) That the Trust Account Monitor reviewed all transactions in any and all trust accounts utilized by Defendant each month, with such review including per trust account review of the bank statements, canceled checks, deposit slips, deposited items, any bank instrument by which funds were deposited into or disbursed from the trust account, the general ledger for the trust account, and the subsidiary trust account ledgers including those required by Rule 1.15-3(b)(5) for all clients for whom funds were received, disbursed, or maintained in the trust account in that month;
 - (2) That all bank transactions for all trust accounts (including all deposits, disbursements, bank charges, etc.) are recorded on a general ledger for the respective trust account and on an appropriate subsidiary trust account ledger and all entries on all general ledgers and subsidiary trust account ledgers accurately reflect the corresponding bank transaction;
 - (3) That a client identifier was used, and the same client identifier was consistently used per client, across all applicable records that month, including on the client's subsidiary trust account ledger, on the general ledger, on any trust account check or other instrument disbursing funds from the trust account, and on any deposit slip depositing funds for the client into the trust account;
 - (4) That the Excel spreadsheets Defendant provides to the Office of Counsel, set out in more detail herein, contain and accurately reflect all deposits, disbursements, charges, etc. in the pertinent trust account for the month and contain an accurate identification of the client for whom the funds were deposited or disbursed;
 - (5) That no trust account checks were given to any recipient and/or disbursements otherwise made for any client from the trust account prior to sufficient funds for that client having been deposited into the trust account and irrevocably credited to the trust account and made available for disbursement for that client;
 - (6) That the client from whose funds in the trust account a disbursement was made is identified for all disbursements from the trust account, and that no disbursements were made from the trust account in excess of the funds in the trust account for that client;

- (7) That all entrusted funds received for clients, including for payment of court costs or fines, were deposited into the trust account;
 - (8) All actions taken, efforts made, and the status to identify the clients for whom \$89,985.70 was in the trust account identified as "Balance to Be Reconciled – 9043" on Defendant's 2nd quarter 2021 trust account reconciliation, with the identifications consisting of a list by client with each client's respective balance and the intended recipient (e.g. medical provider, etc.), totaling \$89,985.70; and
 - (9) That no reimbursements for advanced costs to Defendant were made from the trust account without documentation in the respective client file showing Defendant had actually previously paid that specific amount or more for the client from his business or personal funds.
- f. Within ten days of any report by the Trust Account Monitor that he or she cannot make any of the above-required certifications due to inaccuracies, deficiencies, or other reasons, Defendant shall correct any inaccuracies, deficiencies, or other issues identified by the Trust Account Monitor resulting in the Trust Account Monitor's inability to make a required certification and shall provide documentation to the North Carolina State Bar Office of Counsel of the correction(s) and a certification from the Trust Account Monitor verifying that all necessary corrections have been made and making the certification he or she was previously unable to make;
 - g. Defendant shall provide any trust account related documentation or records requested by the Office of Counsel within ten days of the request;
 - h. Defendant shall meet with the Practice Monitor at least monthly to review all of Defendant's pending cases. The Practice Monitor will supervise all client matters and will specifically review for perfected medical liens pursuant to N.C. Gen. Stat. § 44-49 and 44-50 and will ensure perfected medical liens and any other statutory claims upon personal injury proceeds (e.g. Medicare) are accurately identified and that all disbursements of personal injury proceeds are made appropriately in light of any such perfected medical liens or other claims. The Practice Monitor shall ensure that Defendant handles all matters in a timely fashion and that Defendant communicates adequately with his clients. Defendant will ensure that the Practice Monitor submits written reports to the Office of Counsel each quarter for the preceding quarter, confirming that the meetings are occurring, that Defendant is meeting deadlines and conferring with clients, that perfected medical liens and other claims are being accurately identified, and that all disbursements of personal injury proceeds are made appropriately in light of any such perfected medical liens or other claims. The reports shall be received in the Office of Counsel each January 15, April 15, July 15 and October 15 throughout the period of stayed suspension;

- i. Each quarter, Defendant shall have an accountant audit all trust accounts. Defendant will be responsible for any associated costs. This audit shall assess whether Defendant has in the trust account(s) the client funds he is required to maintain for clients at that time, as well as Defendant's compliance with Rule 1.15-2 and Rule 1.15-3. The audit shall address the items on the Report Template form which will be provided by the State Bar to Defendant. The quarterly audit reports are due no later than 30 days after the end of the quarter – for example, the audit for the first quarter of the calendar year (January, February, and March) is due on April 30;
- j. If during the stay of the suspension any Trust Account Monitor, Practice Monitor, or accountant previously approved by the State Bar to provide the services set out in this Order is no longer available to serve, Defendant shall make arrangements for a replacement and shall submit the name and information about the proposed replacement to the Office of Counsel for approval within 15 days of such unavailability and need for replacement;
- k. Defendant shall complete the disbursement and/or escheatment of the funds referenced in paragraph 7.f. above. Defendant shall provide monthly to the State Bar's Office of Counsel an update per client balance and per remaining unidentified amount of the status of disbursement or escheatment as applicable. This documentation is due 15 days after the end of each month (e.g. update for January due February 15th)
- l. If a monthly three-way reconciliation report, a Trust Account Monitor review, a quarterly audit, or other review reveals any deviation from Defendant's obligations under Rule 1.15-2 or Rule 1.15-3, Defendant shall take remedial action and shall, within ten days of the date of such report, review, or audit, provide documentation to the Office of Counsel showing the remedial action. If State Bar review revealed the deviation, Defendant shall take remedial action within ten days of the date of the correspondence notifying him of the issue;
- m. For each calendar year of the stayed suspension, Defendant shall complete two additional hours of continuing legal education (CLE) on the topic of trust account management and two additional hours of CLE on personal injury law that include whenever possible the topics of medical liens and appropriate disbursements of personal injury proceeds. These CLE requirements are in addition to Defendant's other CLE requirements;
- n. Defendant shall keep the State Bar's Membership Department advised of his current business address, which address must be a street address, not a post office box or drawer;
- o. Defendant shall notify the State Bar of any change of address within 10 days of such change;

- p. Defendant shall timely and fully respond 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;
- q. Defendant shall participate 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
- r. Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or any state or local government.

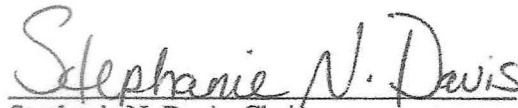
9. If during any stay of the suspension Defendant fails to comply with any one or more of the conditions stated above, then the stay of the suspension of Defendant's law license may be lifted as provided in 27 N.C. Admin. Code 1B.0118.

10. If Defendant does not apply for a stay of the suspension, or any stay of the suspension is lifted and the suspension is re-activated for any reason, Defendant may apply for reinstatement after serving the suspension or activated suspension, as applicable, by filing a petition pursuant to 27 N.C. Admin. Code 1B.0129 demonstrating compliance by clear, cogent, and convincing evidence with the requirements therein, as well with the following requirements:

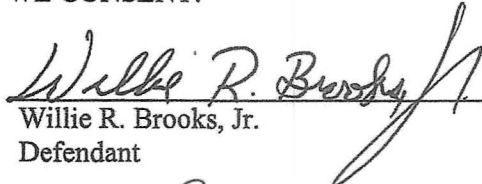
- a. Defendant complied with paragraphs 7.a. through 7.g. above;
- b. Defendant shall have promptly returned client files in his possession, custody, or control to clients upon request, within 5 days of receipt of such request. Defendant will be deemed to have received any such request 3 days after the date such request is sent to Defendant if the request is sent to the address Defendant provided the Membership Department of the State Bar pursuant to paragraph 4 above;
- c. Defendant disbursed to the proper recipients all identified client funds in any trust account he maintained at the time of his suspension;
- d. Defendant complied with Rule 1.15-2(r) and Chapter 116B of the General Statutes regarding any and all abandoned or unidentified funds in any trust account of Defendant's within 30 days of being statutorily permitted to escheat funds to the State;
- e. Defendant completed four hours of CLE in the area of trust account management including at least one CLE by the Trust Account Compliance Counsel for the North Carolina State Bar, and two hours of CLE on personal injury law that include the topics of medical liens and appropriate disbursements of personal injury proceeds in the year immediately preceding his application for reinstatement under this paragraph;

- f. Defendant kept the Membership Department of the State Bar informed of his current information for his physical address (not a Post Office box), telephone number, and e-mail address throughout the period of his suspension;
- g. Defendant accepted all certified mail from the State Bar sent to the address on record with the Membership Department of the North Carolina State Bar throughout the period of the suspension;
- h. Defendant responded timely and fully to all letters of notice and requests for information from the North Carolina State Bar by the deadline stated therein with full and complete responses and all requested documentation throughout the period of his suspension;
- i. Defendant came into compliance with any outstanding continuing education or membership obligations at the time of the filing of his petition for reinstatement;
- j. Defendant did not violate any of the Rules of Professional Conduct in effect during the period of the suspension;
- k. Defendant did not violate any laws of the State of North Carolina or of the United States during the period of the suspension;
- l. Defendant paid all costs and fees of this proceeding as assessed by the Secretary by the date of the filing of his petition for reinstatement; and
- m. If Defendant failed to fully comply with 27 N.C. Admin. Code 1B.0128, Defendant shall reimburse the State Bar for any and 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 any stay of suspension or reinstatement from suspension until he has reimbursed the State Bar for any wind-down expenses incurred.

Signed by the Chair with the consent of the other Hearing Panel members, this the 10th
day of November, 2022.



Stephanie N. Davis, Chair
Disciplinary Hearing Panel

WE CONSENT:




Willie R. Brooks, Jr.
Defendant

November 8, 2022
Date




Joshua Walthall
Attorney for Defendant

November 8, 2022
Date



Jennifer A. Porter, Deputy Counsel
Attorney for Plaintiff

November 8, 2022
Date



Thomas L. Crosby, Deputy Counsel
Attorney for Plaintiff

November 8, 2022
Date