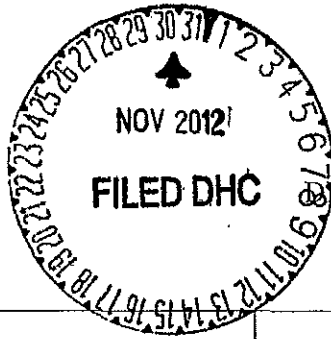


NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
10 DHC 03

THE NORTH CAROLINA STATE BAR,  
Plaintiff

v.

DIEDRA LYNN WHITTED, Attorney,  
Defendant

CONSENT ORDER

Defendant, Diedra Lynn Whitted (“Whitted” or “Defendant”) was ordered to appear and show cause why the stay of the suspension imposed by the Consent Order of Discipline entered and filed in this case on June 23, 2010 should not be lifted and the suspension activated. This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of M.H. Hood Ellis, Chair, and members Steven D. Michael and Percy L. Taylor pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(x). Plaintiff was represented by G. Patrick Murphy. Defendant was represented by Irving Joyner. Based upon the pleadings and the consent of the parties, the Hearing Panel hereby finds by the greater weight of the evidence the following:

#### FINDINGS OF FACT

1. On June 23, 2010, a Consent Order of Discipline (hereinafter “the Order”) was entered in this matter. The Order was served on Defendant on June 30, 2010.
2. The Order imposed a three year suspension stayed for three years. The stay of the suspension was conditioned upon compliance with the conditions stated in the Order.
3. The Order, at paragraph 2(b) on page 6, required Defendant to meet the following condition throughout the stay of the suspension:

Defendant shall arrange for a member of the North Carolina State Bar to serve as her law practice monitor. The selected monitor must be an active member of the North Carolina State Bar in good standing who practices law in the judicial district in which Defendant maintains her primary office of her practice and who has been approved by the Office of Counsel of the North Carolina State Bar. The selected monitor cannot be her legal counsel in this proceeding. The selected monitor must agree to so serve and agree to meet with Defendant at least monthly to review Defendant’s cases. The monitor will supervise all client matters and will ensure Defendant is, among other duties, handling all client matters in a timely fashion, responding promptly to her clients, and maintaining her

trust account records as required by the Rules of Professional Conduct. The monitor will submit written quarterly reports of this supervision to the Office of Counsel of the State Bar; such reports shall be due on the following dates as they occur during the stayed suspension: January 15, April 15, July 15, and October 15. This monitoring will occur for the duration of any stay of this suspension. Defendant will pay the cost, if any, charged by the monitor for this supervision. Defendant must make the arrangements for this monitoring attorney and supply the Office of Counsel of the State Bar with a letter from the monitoring attorney confirming their agreement to perform the duties listed above within ninety (90) days from service of this Order on Defendant.

4. Defendant failed to timely comply with the condition in paragraph 3 above. Defendant did not finalize arrangements for a practice monitor until June 21, 2012. A contributing factor in defendant's failure to comply with the Order was a series of miscommunications and misunderstandings which occurred between her attorney, the attorney who had agreed to serve as the monitoring attorney and defendant regarding details of the monitoring responsibilities. The parties had met in a timely manner, but execution of the specifics was delayed due to these misunderstandings.

5. The Order, at paragraphs 2(c) and 2(d) on page 7, required Defendant to meet at least once a month with her monitoring attorney, to whom she would report the status of all current client matters, cooperate with the monitoring attorney and provide any information the monitoring attorney deemed reasonably necessary to ensure Defendant was, among other duties, handling all client matters in a timely fashion, responding promptly to her clients, and maintaining her trust account records as required by the Rules of Professional Conduct. Defendant was required to ensure that the monitoring attorney sent a written report each quarter to the Office of Counsel of the State Bar as described above.

6. Defendant failed to timely comply with the conditions contained in paragraphs 2(c) and 2 (d) on page 7 of the Order. Defendant did not begin meeting with her practice monitor until June 21, 2012.

7. On March 14, 2012, Bruno DeMolli, an auditor for the North Carolina State Bar, performed a random audit on Defendant's trust account. DeMolli's audit found that Defendant 1) was not maintaining client ledgers for each person or entity from whom or for whom trust money had been received as required by Rule 1.15-3(b)(5); 2) was not performing monthly reconciliations of her trust account as required by Rule 1.15-3(d)(2); 3) was not performing quarterly reconciliations of her trust account as required by Rule 1.15-3(d)(1); and 4) was not retaining deposit slips prior to February 2012 as required by Rule 1.15-3(b)(1).

#### CONCLUSIONS OF LAW

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

2. Defendant failed to comply with the following conditions of the stay of her suspension contained in the Order:

- a. That she make appropriated arrangements for a monitoring attorney and supply the Office of Counsel of the State Bar with a letter from the monitoring attorney confirming their agreement to perform the duties listed in paragraph 2(b) on page 6 of the Order within ninety (90) days from service of the Order on Defendant; and
- b. That Defendant meet at least once a month with her monitoring attorney, to whom she would report the status of all current client matters, cooperate with the monitoring attorney and provide any information the monitoring attorney deemed reasonably necessary to ensure Defendant was, among other duties, handling all client matters in a timely fashion, responding promptly to her clients, and maintaining her trust account records as required by the Rules of Professional Conduct as required by paragraphs 2 (c) and 2(d) on page 7 of the Order.

Based upon the foregoing Findings of Fact and Conclusions of Law the Hearing Panel enters the following:

#### ORDER

1. The stay entered in the Order filed in this matter on June 23, 2010 is lifted. The license of the Defendant, Diedra Lynn Whitted, is hereby suspended for three (3) years, effective upon the filing of this order with the Clerk.

2. The three-year suspension is stayed for a period of three years commencing on the date this order is filed as long as Whitted complies, and continues to comply during the period of the stay, with the following conditions:

- a. That she complies with conditions 2(b), (c), (d), (e), (f), (g) and (h) contained in the ORDER OF DISCIPLINE section, on pages 6 and 7, of the Order filed in this matter on June 23, 2010. Those conditions are incorporated in this order by reference.
- b. Within ninety (90) days of the filing of this order, the Defendant will employ a certified public account, at her expense, to examine her trust account and identify the beneficial owners of all funds held in her trust account. On or before March 31, 2013, Defendant shall provide the report of the CPA to the Office of Counsel of the North Carolina State Bar. Once the beneficial owners have been identified, Defendant shall disburse entrusted funds as required by law and the Rules of Professional Conduct of The North Carolina State Bar within 30 days of Defendant's receipt of the CPA's report.
- c. During the period of stayed suspension, Defendant will provide the Office of Counsel copies of monthly and quarterly reconciliations of her trust account. The copies shall be provided to the Office of Counsel by the 15<sup>th</sup> of the month following the date the reconciliation was required to be completed pursuant to Rule 1.15-3(d).

- d. Defendant shall complete six (6) hours of continuing legal education within the first year of the period of stayed suspension focused on the proper management of a lawyer's trust account. These six (6) hours are in addition to the continuing legal education requirements contained in 27 N.C.A.C. 1D § .1518. Defendant shall forward to the Office of Counsel documentation showing compliance with this condition on or before January 6, 2014.
- e. Defendant shall continue to participate in the PALS Program and follow the recommendations of the health care providers associated therewith.


3. If Defendant fails to comply with any one or more of the conditions stated in Paragraph 2 above, then the stay of the suspension of her law license may be lifted as provided in 27 N.C.A.C. 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules. If the stay granted herein is lifted or the suspension of Defendant's license is activated for any reason, before a subsequent stay of the suspension can be entered Defendant must show by clear, cogent, and convincing evidence that she has complied or has arranged to comply with each of the conditions referenced in Paragraph 2.

4. All costs of this action are taxed to Defendant. Defendant must pay the costs of this action within 30 days of service upon her of the statement of costs by the Secretary.

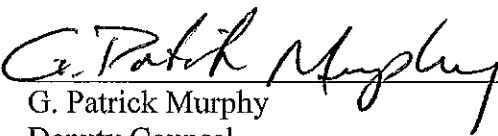
5. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C.A.C. 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of the stayed suspension.

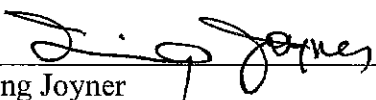
Signed by the undersigned Chair of the Disciplinary Hearing Panel with the consent of the other Hearing Panel members.

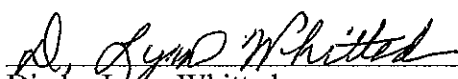
This the 30<sup>th</sup> day of November 2012

  
 M.H. Hood Ellis, Chair  
 Disciplinary Hearing Panel

CONSENTED TO BY:

  
 G. Patrick Murphy  
 Deputy Counsel  
 Attorney for Plaintiff

  
 Irving Joyner  
 Attorney for Defendant

  
 Diedra Lynn Whitted  
 Defendant