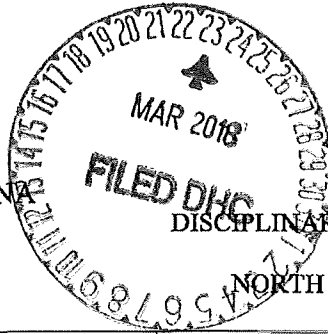


STATE OF NORTH CAROLINA

WAKE COUNTY.



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
15 DHC 275C

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

JEFFREY D. SMITH, Attorney,

Defendant

ORDER
ACTIVATING
SUSPENSION

THIS MATTER was heard on March 15, 2018 before a Hearing Panel of the Disciplinary Hearing Commission (DHC) composed of Fred M. Morelock, Chair, and members Donald C. Prentiss and Christopher R. Bruffey, upon order issued by the DHC to Defendant, Jeffrey D. Smith, to appear at a hearing regarding why the stay of the suspension previously imposed by the Order of Discipline entered in this case should not be lifted and the suspension activated. Jennifer A. Porter represented Plaintiff, the North Carolina State Bar. Defendant, Jeffrey D. Smith, appeared *pro se*.

At the hearing in this matter, Defendant, Jeffrey D. Smith ("Smith"), stipulated to the truth of the allegations contained in the State Bar's Motion for Order to Activate Suspension with respect to paragraphs 12, 15, 16, 19a, and 19b, which are included in the findings of fact in correspondingly numbered paragraphs below in this order.

Based upon the pleadings and the stipulated facts and with the consent of the parties, the Hearing Panel finds by the greater weight of the evidence the following

FINDINGS OF FACT

1. On September 18, 2015, an Order of Discipline (hereinafter "the September 2015 Order") was entered in this matter.

2. The September 2015 Order imposed a two year suspension stayed for three years. The stay of the suspension was conditioned upon compliance with the conditions stated in the September 2015 Order. The September 2015 Order went into effect on October 31, 2015, 30 days following service.

3. On August 7, 2017, the State Bar filed a Motion for Order to Show Cause, alleging Defendant had failed to comply with numerous conditions of the September 2015 Order. On August 9, 2017, the DHC issued an Order to Show Cause to Defendant.

4. On November 16, 2017, a hearing was held pursuant to the Order to Show Cause. Following the hearing, the DHC entered an order on November 30, 2017 finding Defendant had failed to comply with various conditions of the September 2015 Order (hereinafter "the November 2017 Order). The DHC extended the period of time during which Defendant's suspension would be stayed and imposed additional conditions.

5. Smith has subsequently failed to comply with the conditions of the September 2015 Order and the November 2017 Order.

6. On December 15, 2017, Smith e-mailed the State Bar. In the e-mail he stated he was providing the November 2017 reconciliation with the bank statements, checks, ledgers, register, and signature page. He indicated that the documents had been reviewed by Norm Reid, the person he had designated to assist him pursuant to the November 2017 Order.

7. Under the November 2017 Order, however, Smith's reconciliation for November 2017 was not due until December 31, 2017, to be provided with reconciliations for October 2015 through November 2017.

8. The content and organization of the documents Smith provided with his December 15, 2017 e-mail did not comply with the requirements of paragraph 2.b., p. 11. of the November 2017 Order, including as follows:

- a. Smith did not provide a client ledger for all clients listed as having funds in the trust account.
- b. Smith did not provide his office ledger, for his administrative funds in the trust account.
- c. The documents provided were not in the order specified in the November 30, 2017 Order.

9. On December 15, 2017, the State Bar responded to Smith's e-mail. The State Bar noted the above deficiencies. The State Bar expressly cautioned Smith that each set of reconciliation documents needed to contain client ledgers for all clients with funds in the trust account in the applicable month, and that it was not sufficient for him to have previously provided an applicable ledger. The State Bar strongly encouraged Smith and Mr. Reid to carefully review the November 2017 Order and to be very precise in future submissions. The e-mail notified Smith that this was the last e-mail the State Bar anticipated sending Smith noting deficiencies.

10. On December 19, 2017, Smith provided a revised set of reconciliation documents for November 2017. This set of documents complied with the content and organization requirements of paragraph 2.b. of the November 2017 Order.

11. On December 31, 2017, Smith provided sets of reconciliation documents for October 2015 through October 2017. On January 3, 2018, Smith re-sent sets of reconciliation documents for December 2015 through December 2016. In the January 2018 sets, Smith added deposit and wire documentation for December 2015 and January 2016, and wire documentation for March to November 2016 that had been omitted from the prior submission.

12. The documents Smith submitted on December 31, 2017 and January 3, 2018 failed to comply with the requirements of paragraph 2.b. of the November 2017 Order, as follows:

- a. Failed to include client ledgers for all clients who had funds in the trust account in the applicable month, showing all deposits and disbursements per client through the end of the applicable month.
- b. The majority of the client ledgers provided failed to comply with the requirements of the November 2017 Order that the entries be in chronological order and that deposits be shown with positive numbers and disbursements be shown with negative numbers. This created the inaccurate appearance of negative balances in both the running balances and certain ending balances.
- c. Certain client ledgers were inaccurate. Certain client ledgers contained dates that made it appear that funds were improperly disbursed prior to funds being deposited into the trust account for the applicable client. In some instances, the underlying bank records revealed the dates on the ledgers were inaccurate and there had been no improper early disbursement. In other instances, however, the underlying bank records revealed there had been improper disbursements, as discussed below in paragraph 13.
- d. Client balance lists failed to itemize the clients and amounts for clients who had funds transferred from the Wells Fargo trust account to the BB&T trust account, despite Smith having identified clients for most of the funds in June 2017. Smith failed to make the requisite entries in the software to 1) create client ledgers for each such client, and 2) move the amount per client from the lump sum transferred funds ledger to the individual client ledgers. Instead, the client balance lists provided with the reconciliations continued to list the lump sum transferred amount of \$36,861.08 attributed to a ledger titled "Wells Fargo Trust Acct Transfer."
- e. Failed to accurately total only positive client balances in calculating the client ledger balances for the October 2016 and June 2017 reconciliation reports, and failed to enter any client ledger balance on the August 2016 reconciliation report.

- f. Failed to provide deposit documentation with the applicable reconciliation documents for all deposits into the trust account in September and October 2017.

13. The reconciliation documents Smith submitted revealed improper handling of entrusted funds, in violation of Rule 1.15-2(a), (b), and (n) of the Rules of Professional Conduct, as follows:

- a. Disbursement of funds for client M. Helms prior to the deposit of funds for the client in the trust account on 3 occasions, in March, April, and May 2017.
- b. Disbursements to Smith of an old client balance for Mills and funds from voiding old outstanding checks for Perez. Smith was mistaken regarding the identification and his entitlement to the Mills' funds. For Perez, Smith inaccurately believed he could apply funds for costs for Perez to outstanding legal fees owed by Perez. Smith has refunded these funds to the trust account.

14. The November 2017 Order required Smith to provide the State Bar by January 15, 2018 with the information and documents itemized in paragraph 1.e. of the September 2015 Order for all funds identified on the spreadsheet Smith provided the State Bar on June 26, 2017 for the funds transferred from the Wells Fargo trust account to the BB&T trust account. If Smith lacked any of the required documentation for a specific identification of funds for a client, he was required to describe what was missing, what actions he is taking to recover the missing documentation, and provide any and all documentation he has that substantiates the identification of funds at issue.

15. On January 22, 2018, Smith e-mailed the State Bar a list purporting to identify a certain amount of the funds transferred from the Wells Fargo account to the BB&T account. The list did not contain all of the information required by paragraph 1.e. of the September 2015 Order. The list also only purported to identify \$19,267.41 of the \$36,861.08 of transferred funds, even though the spreadsheet Smith previously provided the State Bar in June 2017 purported to identify \$36,035.74 of the \$36,861.08 of transferred funds.

16. Additionally, although Smith provided typed client ledgers for the \$19,267.41 of funds on the list he provided in January 2018 and some supporting documentation, he did not always include all supporting documentation substantiating all items on the applicable client ledger as required under paragraph 1.e. of the September 2015 Order. For example, for T. Tonsmeire, outstanding check #15583, the bank statement Smith provided showed the deposit and outgoing wire but did not show the other disbursements listed on the ledger. For A. Craver, outstanding check #11963, the bank statement provided did not contain two of the checks listed on the ledger, only one of which Smith identified as outstanding.

17. As of the date of the hearing, Smith had not provided the State Bar with any further information or documents identifying the funds transferred from the Wells Fargo trust account.

18. The November 2017 Order required Smith to comply with paragraph 1.g. of the September 2015 Order by January 31, 2018. Paragraph 1.g. of the September 2015 Order required Smith to disburse all funds in the trust account that could appropriately be disbursed and to initiate escheatment for all funds that should appropriately be escheated. Paragraph 1.g. also required that, on the deadline date, Smith provide the State Bar with documentation showing all such disbursement and escheatment actions along with corresponding client ledgers. For any funds for which neither action was taken, Smith was required to provide certain information per client regarding the proper recipient of the funds, when the funds would be disbursed or escheated, and to provide client ledgers for those funds.

19. Smith has failed to comply with paragraph 1.g. of the September 2015 Order. Focusing on the funds that were in the trust account when the September 2015 Order was entered, the status is as follows:

- a. Of the 17 clients who were identified as having funds in the trust account on the October 2015 client balance list provided with the October 2015 reconciliation, 5 were still listed with the same balances on the December 2017 client balance list provided with the December 2017 reconciliation.
- b. The October 2015 Reconciliation Detail report lists 32 uncleared outstanding checks ranging from February 5, 2013 to July 24, 2014 totaling \$5,765.43. Of those 32 items, 26 still remained as uncleared outstanding checks on the December 2017 report.
- c. All of the funds transferred from the Wells Fargo trust account in March 2014 are still in the BB&T trust account, and cannot be disbursed pursuant to the November 2017 Order until Smith provides the State Bar with the required information and documentation. Smith's failure to provide the required information and documentation for the transferred funds is discussed in prior paragraphs herein.

20. Additionally, Smith did not provide the information and documentation required under paragraph 1.g. of the September 2015 Order on the January 31, 2018 deadline established in the November 2017 Order. As noted above, Smith disbursed the balances for 12 clients shown on the October 2015 client balance list between October 2015 and December 2017. Of the 12 clients whose funds from the October 2015 client balance list were disbursed, client ledgers showing that action were provided for only 4.

21. As of the date of the hearing, Smith had not provided the State Bar with the information and documentation required by paragraph 1.g. of the September 2015 Order.

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant and over the subject matter of this proceeding.
2. Defendant failed to comply with the above detailed conditions of the stay of his suspension.

ADDITIONAL FINDINGS AND CONCLUSIONS

1. Pursuant to 27 N.C. Admin. Code 1B.0118(a)(4), upon finding by the greater weight of the evidence that Defendant has violated conditions of the stay of the suspension, the Hearing Panel may activate the suspension, allow the stay to remain in effect, extend the term of the stay, and/or include modified or additional conditions for the suspension to remain stayed.
2. The conduct at issue in the September 2015 Order stemmed from Defendant's inattention to his trust account and his failure to fulfill his trust account obligations. The evidence shows that there continue to be deficiencies in Defendant's attention to his trust account and his compliance with his trust account obligations.
3. Likewise, Defendant's disbursement of funds for client M. Helms before having deposited funds into his trust account for M. Helms on three occasions in 2017 mirrors conduct for which Defendant was disciplined in the September 2015 Order, in which the DHC found that on at least 9 occasions Defendant disbursed funds for clients either in excess of the amount of funds in his trust account for the client or when no funds were in the trust account for the client.
4. Defendant's recent conduct demonstrates that he has failed to fully remedy prior practices that violated the Rules of Professional Conduct and poses the same risk of significant potential harm as was posed by his original conduct.
5. Defendant provided no documents to the State Bar in 2016. Defendant produced extensive documents to the State Bar throughout 2017 upon numerous promptings by the State Bar. At the time of the November 2017 hearing on the State Bar's first motion to show cause, Defendant had not come into compliance with all conditions of the September 2015 Order. Based on Defendant's extensive document production and his statements of understanding and arrangements to come into full compliance with the conditions of the stay of his suspension, the DHC did not activate the suspension of Defendant's law license in November 2017 but instead extended the period of stay and imposed additional conditions.
6. Despite being given this second chance to come into full compliance with the conditions of the stay of his suspension, however, Defendant has failed to do so.

THEREFORE, based upon the foregoing Findings of Fact, Conclusions of Law, and Additional Findings and Conclusions, the Hearing Panel enters the following

ORDER

1. The stay of Defendant's two year suspension is lifted and the two-year suspension is activated. Pursuant to 27 N.C. Admin. Code 1B.0128(c), this order and the two-year suspension imposed herein are effective 30 days after service of this order upon Defendant.

2. Defendant shall wind down his law practice and comply with all provisions of 27 N.C. Admin. Code 1B.0128.

3. 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 information or return of files can communicate with Defendant and obtain such files, and Defendant shall promptly return all files to his clients upon request.

4. Pursuant to 27 N.C. Admin. Code 1B.0118(a)(4), 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 fees and costs by the Secretary.

5. After the completion of one year of the activated suspension, Defendant may apply to the Disciplinary Hearing Commission to have the remaining one year of suspension stayed. To be eligible to have the remaining one year of suspension stayed, Defendant must attach documentation to his application for stay showing by clear, cogent, and convincing evidence the following:

- a. That he properly wound down his law practice and timely complied with all provisions of 27 N.C. Admin. Code 1B.0128.
- b. That he paid any costs and administrative fees of this proceeding as assessed by the Secretary within 30 days after service of the statement of costs upon him.
- c. That he has complied with the requirements of 27 N.C. Admin. Code 1B.0129(b) and the requirements for reinstatement in the September 2015 Order, contained in paragraph 5 and its subparagraphs on pages 8 and 9 of the September 2015 Order.
- d. That he has properly identified the clients for whom the funds he transferred from his Wells Fargo trust account to his BB&T trust account belong and the proper recipients and disbursed the funds. Defendant shall show this as follows:

(1) Defendant shall provide with his application for stay the spreadsheet previously provided to him by the Office of Counsel, with all funds identified that he can identify, and with all columns completed for each identified amount of funds. Defendant shall provide on this spreadsheet the names and addresses of all clients whose funds are included in these transferred funds, the amount of funds being held per client, the proper recipient(s) of the funds, the amount that should be disbursed per recipient, and the address for each such recipient. Defendant shall include with this identification complete, accurate, and legible client ledgers showing all deposits and disbursements for these clients in the Wells Fargo trust account and the balance that was transferred to the BB&T account. Deposits shall be shown as positive numbers and disbursements as negative numbers, and all entries shall be in chronological order per ledger. All client ledgers shall accurately show all deposits and disbursements of funds for any and all clients with funds in this transferred amount, the dates of such deposits or disbursements, the check numbers associated with any disbursements, the amounts of all deposits and disbursements, and any remaining balance, along with the corresponding bank records showing the deposits and disbursements.

(2) The State Bar shall have 30 days to review these documents and note any disapproval of proposed disbursements.

(3) After 30 days, Defendant shall disburse the transferred funds to the recipients identified on the spreadsheet or initiate any escheatment proceedings that may be appropriate, with the exception of any amounts for which the State Bar disapproved. Defendant shall promptly resolve any concerns raised by the State Bar and proceed with disbursement of those funds as approved by the State Bar.

(4) Within 45 days after filing his application, Defendant shall supplement his application for stay with documentation of the disbursement of the transferred funds or initiation of escheatment as applicable.

e. That he has cured all deficits in his compliance set out in this order, including by completing the following:

(1) Complying with the above paragraphs concerning the funds transferred from the Wells Fargo trust account.

(2) Providing corrected sets of reconciliations from October 2015 through October 2017, with each set containing the documents set out in the November 2017 Order organized in the order set out in the November 2017 Order, with all of the above-noted deficits cured, including: (1) fixing the client balance totals on the three-way reconciliation reports for August 2016, October 2016, and

June 2017; (2) adding any missing client ledgers or any other missing documents, (3) correcting client ledgers so all show deposits as positive numbers, disbursements as negative numbers, contain accurate dates for deposits and disbursements, and have the entries in proper chronological order, and (4) correcting the client balance lists so each list itemizes per client the funds in the BB&T trust account that were transferred from the Wells Fargo trust account for each client.

The missing client ledgers that need to be added include those identified in SC2 Exhibit 15 as well as the new ledgers that will be created in conjunction with correcting the client balance lists to show the amount in the BB&T trust account per client from the transfer from Wells Fargo trust account.

- (3) Identifying the client to whom belong the funds held for "Mills" or escheating the funds held for "Mills."
- (4) Obtaining permission from the client in the Hampton Homes/Perez matter to apply the \$91.00 in trust for costs against Defendant's outstanding fee, or refunding the funds to the client, or, if the client cannot be located, escheating as appropriate.
- (5) Disbursing the funds held for Roosevelt Broome and Larry Phillips as substantiated in the documents Defendant provided to the State Bar in March 2018 and providing the State Bar with client ledgers that include all deposits and disbursements in the BB&T trust account for each client, including these final disbursements.
- (6) Completing disbursements of all outstanding checks and providing the State Bar with client ledgers that include all deposits and disbursements in the BB&T trust account for each client, including these final disbursements.

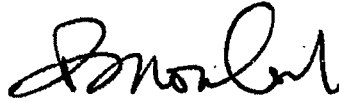
6. Any and all client ledgers produced by Defendant to the State Bar under any provision of this order for any purpose shall show deposits as positive numbers, disbursements as negative numbers, contain accurate dates for deposits and disbursements, and have the entries in proper chronological order.

7. If Defendant is granted a stay of any portion of the activated two-year suspension, the order granting the stay shall set out the length of stay and the applicable conditions of that stay.

8. If Defendant is not granted a stay of any portion of the two-year activated suspension, then before Defendant may be reinstated to active status he must satisfy the requirements of 27 N.C. Admin. Code 1B.0129(b), requirements contained in paragraph 5 of the "Order" section of this order, and the requirements for reinstatement in the

September 2015 Order, contained in paragraph 5 and its subparagraphs on pages 8 and 9 of the September 2015 Order.

23rd Signed by the Chair with the consent of the other Hearing Panel members, this the
day of March 2018.



Fred M. Morelock, Chair
Disciplinary Hearing Panel