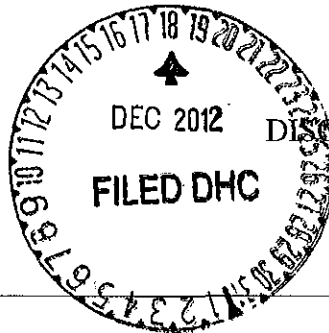


NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
11 DHC 9

THE NORTH CAROLINA STATE BAR, )  
Plaintiff, )  
 )  
v. )  
 )  
C. GARY TRIGGS, )  
Defendant. )  
 )

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND  
ORDER OF DISCIPLINE**

This matter was heard on July 26-27, 2012 and October 25, 2012 by a hearing panel of the Disciplinary Hearing Commission composed of Sharon B. Alexander, Chair; Fred M. Morelock; and, Percy L. Taylor. Barry S. McNeill, Deputy Counsel, represented the Plaintiff, the North Carolina State Bar. Defendant represented himself. Based upon the stipulated facts and the evidence introduced at the hearing, the panel hereby finds by clear, cogent and convincing evidence the following:

**FINDINGS OF FACT**

1. Plaintiff, the North Carolina State Bar ("plaintiff" or "State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar (Chapter 1 of Title 27 of the North Carolina Administrative Code).
2. Defendant, C. Gary Triggs ("defendant" or "Triggs"), was admitted to the North Carolina State Bar on August 19, 1973, 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 a portion of the relevant periods referred to herein, defendant was engaged in the private practice of law with a law office located in the town of Morganton, Burke County, North Carolina. Defendant's present law office is located in the town of Hildebran, Burke County, North Carolina.
4. Beginning in approximately 2000 and continuing to the present, defendant has been engaged in the private practice of law in the name of C. Gary Triggs, P.A.

**Dorothea A. Anderson**

5. Dorothea A. Anderson was injured in an automobile accident on August 12, 2005 and retained defendant to represent her in a personal injury action.

6. On December 13, 2006, the insurance claims supervisor wrote to defendant indicating that the adjuster had made numerous attempts to obtain an update on Ms. Anderson's injuries since July 2006, but had not "received the professional courtesy of a call, letter or otherwise from [defendant] or someone from [defendant's] office." Defendant made a handwritten notation on the letter asking his paralegal to provide him an update so he could respond.

7. On June 11, 2008, the insurance company claims representative requested documentation from defendant for Ms. Anderson's medical bills. The letter indicated that the representative had made "multiple requests for this documentation with no response." Another handwritten notation by defendant on the letter requested his paralegal to contact Ms. Anderson and "make sure we send the med[ical] reports. If we don't have then request them."

8. A July 2, 2008 letter from a mediator to defendant indicated that the mediator had unsuccessfully attempted to contact defendant on several occasions to let defendant know that the insurance company claims representative was interested in resolving Ms. Anderson's claim through mediation.

9. Defendant replied to the mediator on July 7, 2008 confirming Ms. Anderson's interest in mediation and suggesting several attorneys for mediation.

10. On July 29, 2008, the insurance company claims representative wrote to defendant restating her April 3, 2008 offer to settle Ms. Anderson's claim for \$6,070. A handwritten notation on the letter by defendant directed his paralegal to copy Ms. Anderson with the letter for her comment, and requested the paralegal to "please stay on top of this so we can get it settled for [Ms. Anderson]. Be sure to mark SOL [statute of limitations] date on system."

11. Defendant had a system established within his office by which files were assigned to a paralegal to ensure that the statute of limitations was marked and the files would be handled in a timely fashion.

12. A handwritten notation by defendant's legal assistant to defendant dated August 4, 2008 noted Ms. Anderson's medical bills and that the legal assistant had telephoned Ms. Anderson to leave a message asking if Ms. Anderson had any other bills. Another handwritten notation that same date by the legal assistant noted that Ms. Anderson had returned the telephone call and reported that she did not have any other medical bills. The handwritten notations did not mention discussion of the settlement offer by the insurance company.

13. Ms. Anderson denied being informed by defendant or defendant's employees of the insurance company's settlement offer or mediation overture. Defendant produced no documentation that he or his employees informed Ms. Anderson of the settlement offer or mediation interest by the insurance company. The panel finds Ms. Anderson's testimony to be credible.

14. Ms. Anderson's claim was never settled with the insurance company or mediated.

15. Defendant did not file Ms. Anderson's personal injury action within the three year statute of limitations (August 12, 2008 deadline).

16. Ms. Anderson testified that over the course of the four years after she retained defendant, she made numerous calls to defendant and his office to check on the status of the personal injury action, but defendant never returned her calls or responded to her messages. Other than the handwritten notations referenced in Paragraph 12 above, defendant produced no documentation that he or his employees responded to Ms. Anderson's status inquiries. The panel finds Ms. Anderson's testimony to be credible.

17. On March 10, 2011, Ms. Anderson requested that defendant provide her all of her file by March 17, 2011. Defendant did not comply with Ms. Anderson's request for her file until August 11, 2011, approximately five (5) months later.

**Gregory Allen Oates**

18. Defendant represented Gregory Allen Oates ("Greg Oates") in a domestic and parental rights action in Burke County District Court.

19. On June 18, 2010, defendant filed on behalf of Greg Oates a responsive pleading to a Summons and Petition to Terminate Parental Rights in Burke County District Court.

20. In support of the June 18, 2010 filing, defendant attached a verification which originally had been executed by Greg Oates's father ("William M. Oates") on July 8, 2008 in connection with a motion to intervene by Greg Oates's parents in the custody action between Greg Oates and his ex-wife.

21. The verification attached to defendant's June 18, 2010 filing was not executed by Greg Oates.

22. The signatory to the verification ("William M. Oates") did not appear before the notary public and sign the document on the date the verification was purportedly executed.

23. Defendant's paralegal, without the knowledge of defendant, altered the date on the verification from July 8, 2008 to June 18, 2010, altered the date on which the Notary Public purportedly notarized the signature from July 8, 2008 to June 18, 2010, and altered the date of the expiration of the Notary Public's certification from November 3, 2008 to November 3, 2013.

24. Following an investigation by the Notary Enforcement Section of the North Carolina Secretary of State, defendant's paralegal was found to have notarized a document without the personal appearance of the principal in violation of N.C. Gen. Stat. § 10B-60(c)(1), as well as having failed to administer an oath or affirmation in violation of N.C. Gen. Stat. § 10B-3(2)(14). As a result, the notary public commission of defendant's paralegal was suspended for four (4) months.

25. On July 27, 2010, the State Bar opened grievance file number 10G0722 and sent defendant a Letter of Notice requiring his response to allegations about the false notarization. Defendant received the Letter of Notice on or about August 11, 2010.

26. In his September 17, 2010 response to the Letter of Notice and hearing testimony, defendant stated that upon learning of the mistaken verification attached to the filed pleading, defendant telephoned his opposing counsel, Mr. Jonathan L. Jones of Morganton, North Carolina, "who had not noticed the problem and advised him of what had occurred."

27. Mr. Jones testified that during the telephone call referenced in Paragraph 28 above, defendant only mentioned that Greg Oates had changed his mind and had decided not to contest the termination of his parental rights. According to Mr. Jones' recollection, it was not until after defendant received the Letter of Notice from the State Bar that defendant informed Mr. Jones of the false notarization and of the fact that the signature on the verification did not belong to Greg Oates.

28. In his September 17, 2010 response to the Letter of Notice and testimony, defendant stated he did not believe at the time that it was inappropriate to utilize pre-signed verifications, without the person's personal appearance and oath before the notary public on the date so notarized, provided that the person reviewed the documents prior to filing.

#### **Nora Helen Sparks**

29. Nora Helen Sparks (formerly Helen Williams) ("Ms. Sparks") retained defendant to represent her in a domestic relations matter with her estranged husband (Larry Williams) ("Mr. Williams").

30. Ms. Sparks paid defendant \$3,500 on July 11, 2006, \$250 on October 25, 2006, and \$2,500 on September 4, 2008.

31. On April 2, 2007, defendant filed and served on Mr. Williams a Civil Summons and complaint seeking divorce, equitable distribution, injunctive relief, spousal support and alimony, and attorneys' fees in *Williams v. Williams*, No. 07-CVD-557 (Caldwell County District Court).

32. On May 8, 2007, the presiding judge granted Ms. Sparks exclusive temporary possession of her vehicle; prohibited Mr. Williams from having contact with Ms. Sparks except through legal counsel; enjoined Mr. Williams from selling or disposing of any marital property; and scheduled a hearing for May 16, 2007.

33. On May 23, 2007, the court continued the prior temporary order in effect with certain modification, including a requirement that specified funds be held in an escrow account pending further order.

34. On July 17, 2007, the court directed Ms. Sparks to file affidavits for equitable distribution and post-separation support by August 31, 2007, and Mr. Williams to file his affidavits by October 1, 2007.

35. On October 22, 2007, the court dismissed Ms. Sparks' action (No. 07-CVD-557) without prejudice because neither Ms. Sparks nor defendant appeared for the scheduled court

hearing and Ms. Sparks had not filed affidavits by the August 31, 2007 deadline established by the court.

36. On October 26, 2007, defendant filed a Motion for New Trial pursuant to N. C. R. Civ. P. 59, asserting that he had forwarded to the court a notice of his conflict with the hearing scheduled for Monday, October 22, 2007, and that Ms. Sparks' failure to file her affidavits by the August 31, 2007 deadline was "an inadvertence due to change of staff within the office of the Plaintiff amounting to excusable negligent [sic]." On November 29, 2007, Mr. Williams' attorney filed a motion to dismiss Ms. Sparks' Rule 59 motion and to disburse funds.

37. Defendant's Rule 59 motion and Mr. Williams' motion to disburse funds (matters pending in No. 07-CVD-557) were scheduled for hearing on December 10, 2007, but on December 19, 2007 the hearing was continued until January 7, 2008.

38. Defendant's law office sent a notice to Ms. Sparks on January 1, 2008 notifying her of the January 7, 2008 hearing.

39. Ms. Sparks appeared at the January 7, 2008 scheduled court hearing but defendant did not attend. As a result, the court ordered the escrowed funds disbursed to Mr. Williams and denied defendant's Rule 59 motion.

40. On April 20, 2009, Ms. Sparks notified defendant that she was terminating their attorney-client relationship and she asked defendant to refund her retainer and return her file.

41. Ms. Sparks testified that Defendant did not comply with her request for her file. Defendant produced no documentation that he or his employees responded to Ms. Sparks' request. The panel finds Ms. Sparks' testimony to be credible.

#### **Ronald F. Dodson**

42. Ronald F. Dodson, who resided in Ohio, retained defendant in October of 1998 to represent him on speeding and driving while impaired ("DWI") charges (Burke County case no. 98CR8967).

43. Mr. Dodson delivered to defendant an initial fee of \$500.

44. Mr. Dodson's case was scheduled for hearing on March 24, 1999.

45. Mr. Dodson testified that defendant did not notify him that his case was scheduled for hearing. Defendant produced no documentation that he or his employees notified Mr. Dodson. The panel finds Mr. Dodson's testimony to be credible.

46. When the case was called, defendant was not present.

47. On March 29, 1999 the court issued an order for Mr. Dodson's arrest.

48. Mr. Dodson assumed that defendant had resolved his speeding and DWI charges.

49. In 2009, Mr. Dodson learned for the first time that there was a "hold" on his Ohio driver's license from the State of North Carolina because of the order for arrest.

50. Beginning in September of 2009, Mr. Dodson telephoned defendant repeatedly to inquire about the status of the charges.

51. Mr. Dodson also wrote to defendant in February of 2010 inquiring about the status of the charges.

52. Mr. Dodson testified that defendant did not respond to his calls and did not timely respond to his February 2010 letter. Defendant produced no documentation that he or his employees responded to Mr. Dodson. The panel finds Mr. Dodson's testimony to be credible.

53. On July 22, 2010, Mr. Dodson filed a grievance against defendant with the State Bar, grievance file no. 10G0694.

54. Defendant did not respond to Mr. Dodson's February 2010 letter until August 18, 2010, after defendant received a Letter of Notice from the State Bar in grievance file no. 10G0694.

#### **Michael and Susie Schoenen**

55. Michael A. Schoenen and Susie D. Schoenen, residents of North Carolina, retained defendant to represent them in a personal injury action arising from an automobile accident which occurred in Tennessee on August 8, 2004.

56. Kevin Wynkoop of Maryland was the driver of the other vehicle.

57. Because Mr. Wynkoop's vehicle was uninsured, the Schoenens' claim was handled by the Maryland Automobile Insurance Fund ("MAIF") and MAIF's Claims Adjuster Daniel O'Neil.

58. Tennessee has a one-year statute of limitations for personal injury actions.

59. Defendant met with Mr. and Mrs. Schoenen on August 26, 2004 and advised them that he did not practice in Tennessee but that he had handled civil matters in federal court in Tennessee.

60. Defendant offered to contact the insurance company to seek a resolution.

61. Defendant also advised the Schoenens that local Tennessee counsel could be arranged if litigation became necessary or, alternatively, defendant could file an action in North Carolina and force removal or a jurisdiction challenge.

62. Defendant assured the Schoenens that he would obtain the accident report and witness statements.

63. On November 10, 2004, defendant notified Mr. O'Neil that the Schoenens had retained him and asked the adjuster to contact him to discuss resolution.

64. The Schoenens provided defendant documentation of Mrs. Schoenen's medical bills and records. On June 30, 2005, defendant forwarded the documentation to Mr. O'Neil at MAIF and copied Mrs. Schoenen.

65. Between July of 2005 and September of 2005, defendant telephoned Mr. O'Neil on several occasions about the possibility of settling the Schoenens' claim.

66. Defendant did not file or seek to have filed a complaint in Tennessee within the one-year Tennessee statute of limitations.

67. On September 8, 2005, Mr. O'Neil advised defendant that no settlement would be forthcoming given the expiration of the one-year Tennessee statute of limitations.

68. On September 19, 2005, defendant sent Mr. O'Neil a letter confirming their conversation and informing Mr. O'Neil that defendant would be filing an action immediately, including against MAIF for "bad faith dealing."

69. When the Schoenens did not receive any status updates from defendant in late 2005, in March of 2006 the Schoenens scheduled an appointment to meet with defendant.

70. Mrs. Schoenen testified that between March 2006 and February 2007, defendant represented to the Schoenens that he continued to negotiate with MAIF on settling their claim. The panel finds Mrs. Schoenen's testimony to be credible.

71. MAIF received no communications from defendant after the telephone communication between Mr. O'Neil and defendant on September 8, 2005 and defendant's letter of September 19, 2005 to Mr. O'Neil.

72. Defendant's representations to the Schoenens that he continued to negotiate with MAIF were false, and defendant knew the representations were false when he made them.

73. Mrs. Schoenen testified that defendant never notified or informed the Schoenens that he had failed to file a complaint on their behalf in Tennessee within the applicable one-year Tennessee statute of limitations. The panel finds Mrs. Schoenen's testimony to be credible.

74. During the summer of 2007, Mrs. Schoenen made numerous inquiries of defendant about the status of their complaint and expressed concern about the impending North Carolina three year statute of limitations.

75. Defendant cancelled several scheduled appointments with Mrs. Schoenen.

76. Defendant advised Mrs. Schoenen that the Schoenens should file an action in Burke County Superior Court against Mr. Wynkoop, the Maryland defendant driver, in the hope of forcing him to assert a statute of limitations defense.

77. Defendant did not file the Schoenens' complaint in Burke County Superior Court until October 18, 2007, outside the North Carolina three-year statute of limitation.

78. Mrs. Schoenen testified that defendant never notified or informed the Schoenens that he had failed to file a complaint on their behalf in Burke County Superior Court within the applicable three-year North Carolina statute of limitations. The panel finds Mrs. Schoenen's testimony to be credible.

79. Defendant did not provide the Schoenens a copy of the complaint and summons.

80. Mrs. Schoenen repeatedly attempted to schedule an appointment with defendant in January and February 2008.

81. After cancelling several of the appointments, defendant met with Mrs. Schoenen on March 12, 2008.

82. Defendant told Mrs. Schoenen that he would have to serve Mr. Wynkoop by publication.

83. On June 3, 2008, Mrs. Schoenen forwarded to defendant by facsimile Mr. Wynkoop's address information.

84. Defendant did not serve the complaint upon Mr. Wynkoop by publication or otherwise.

85. On August 3, 2008, the Schoenens filed a claim with their own insurance company, Farmers Insurance Exchange ("Farmers").

86. Mrs. Schoenen attempted to schedule an appointment with defendant on September 8, 2008 and inquired about the status of their claim.

87. Farmers sent to Mrs. Schoenen a copy of its October 6, 2008 letter to defendant stating that defendant had been unresponsive and stating that the company would not pay the claim because defendant initiated the civil action after expiration of North Carolina's three-year statute of limitations.

88. The Schoenens contacted defendant about their case by facsimile on March 9, 2009 and again on August 5, 2009. In the August 2009 facsimile, Mrs. Schoenen inquired about the status of their case, complained about receiving collection telephone calls, and mentioned that the Schoenens had contacted the North Carolina State Bar.

89. Defendant telephoned the Schoenens the next day (March 10, 2009) and "promised to get [their matter] settled."

90. Defendant took no further action and had no further communication with the Schoenens, although they attempted to contact him again in April of 2010.

91. In May of 2010, defendant encountered the Schoenens at a restaurant and once again promised to make an appointment the following day so they could "get a settlement."

92. Defendant cancelled several appointments with the Schoenens thereafter.



### **David and Pat Greer**

93. On October 10, 2003, David G. Greer and Pat C. Greer retained defendant to represent them and their son, Nation Hahn ("Greers"), in an action for personal injury sustained when Hahn was sprayed by another student, Trevor D. McGuire, with nitric acid.

94. On July 1, 2004, defendant filed the Greers' complaint in Caldwell County Superior Court against McGuire, his parents, and the Caldwell County Board of Education ("CCBE").

95. At mediation on June 8, 2005, the Greers and the McGuire defendants entered into a Memorandum of Mediated Settlement reflecting their agreement to dismiss their claims against one another in exchange for the McGuire defendants' payment of \$7,500 to the Greers within 15 days.

96. The Memorandum of Mediated Settlement reflected an impasse as to all issues between the Greers and CCBE.

97. On June 23, 2005, the attorney for the McGuire defendants forwarded to defendant the release forms for the Greers to sign and the notice of voluntary dismissal with prejudice, along with a check to the Greers in the amount of \$7,500.

98. On July 7, 2005, the Greers signed the release and the McGuire defendants and the Greers signed the voluntary dismissal with prejudice.

99. The voluntary dismissal with prejudice reflected dismissal of the Greers' claims against CCBE.

100. David Greer testified that defendant did not inform the Greers that the voluntary dismissal would dismiss their claims against the McGuire defendants, as well as CCBE. The panel finds Mr. Greer's testimony to be credible.

101. The voluntary dismissal with prejudice was filed on July 8, 2005.

102. David Greer testified that defendant never notified the Greers that their lawsuit against CCBE was dismissed or that defendant would need to seek to set aside the dismissal in order to pursue the lawsuit against CCBE. The panel finds Mr. Greer's testimony to be credible.

103. On August 9, 2005, defendant sent to opposing counsel a consent order which purported to set aside the dismissal of the Greers' claims against CCBE in order to place the claims back on the court calender.

104. The proposed consent order was never signed by CCBE or its counsel and was never filed.

105. David Greer testified that defendant never provided the Greers with a copy of the proposed consent order. The panel finds Mr. Greer's testimony to be credible.

106. On September 22, 2005, CCBE's attorney communicated to defendant an offer to settle the Greers' claims for \$7,500 and expressly stated that the offer would expire if not accepted by September 26, 2005.

107. David Greer testified that defendant did not recommend settlement with CCBE. The panel finds Mr. Greer's testimony to be credible.

108. David Greer testified that in response to CCBE's settlement offer of \$7,500, David Greer told defendant that the Greers were willing to settle with CCBE for \$9,500. The panel finds Mr. Greer's testimony to be credible.

109. Defendant communicated to CCBE's attorney the Greers' counteroffer to settle for \$9,500.

110. The counteroffer to settle for \$9,500 was communicated to the Greers.

111. David Greer testified that the Greers telephoned defendant's office monthly to inquire about the status of their lawsuit against the CCBE defendant. The panel finds Mr. Greer's testimony to be credible.

112. On the occasions when defendant responded to the Greers' telephone calls, he told them he would get a court date.

113. On June 5, 2008, defendant wrote to CCBE's attorney indicating that the Greers were still willing to settle for \$9,500.

114. On June 9, 2008, CCBE's attorney informed defendant that CCBE was willing to settle with the Greers for \$1,500.

115. David Greer testified that in response to the \$1,500 counteroffer from CCBE, he instructed defendant to schedule a court date. The panel finds Mr. Greer's testimony to be credible.

116. Defendant took no further action to obtain relief from the voluntary dismissal of the Greers' claims against CCBE and did not schedule a court date.

117. On December 22, 2009, defendant wrote to the CCBE's attorney indicating that the Greers were still willing to settle for \$7,500.

118. David Greer testified that the Greers received a copy of defendant's December 22, 2009 letter to the CCBE's attorney, and believed their claims against CCBE to still be viable. The panel finds Mr. Greer's testimony to be credible.

119. David Greer testified that the Greers did not learn about the July 8, 2005 voluntary dismissal of their claims against CCBE until 2011 when Plaintiff's counsel made them aware of what had happened. The panel finds Mr. Greer's testimony to be credible.

**David M. Page**

120. On November 17, 2005, Darrell M. Page ("Mr. Page") was convicted of two felonious assault charges and sentenced to terms of imprisonment.

121. On June 15, 2006, Mr. Page and Patricia Ann Hutto ("Ms. Hutto"), his girlfriend, paid defendant \$2,500 to prepare and file a post-conviction Motion for Appropriate Relief pursuant to N.C. Gen. Stat. § 15A-1415.

122. Ms. Hutto delivered the transcript of Mr. Page's trial to defendant.

123. On January 22, 2007, defendant sent a letter to Mr. Page stating that he had obtained all of Mr. Page's files and was "in the process of putting together a Motion for Appropriate Relief."

124. Mr. Page sent handwritten notes to defendant indicating that defendant had not updated him on the status of the Motion for Appropriate Relief and that defendant had not communicated with Ms. Hutto.

125. On November 21, 2007, defendant apologized to Mr. Page for not communicating with Mr. Page sooner and told Mr. Page he was "working on moving this matter along."

126. On September 17, 2008, Mr. Page wrote to defendant complaining that he had received no status report from defendant since defendant's one paragraph letter in November of 2007. Mr. Page pleaded with defendant to correspond with him.

127. On September 23, 2008, defendant apologized for not visiting Mr. Page as promised and told Mr. Page he had been working on Mr. Page's case. Defendant stated he would try to visit Mr. Page within the "next couple of weeks."

128. On November 18, 2008, Mr. Page wrote a card to defendant terminating their attorney-client relationship. Defendant replied by asking Mr. Page to reconsider and promised to visit Mr. Page before the Christmas holiday.

129. On June 26, 2009, Mr. Page wrote to defendant stating that defendant failed to visit him as promised. Mr. Page again informed defendant that he was terminating their attorney-client relationship and Mr. Page demanded return of the \$2,500 paid to defendant.

130. Defendant did not return the \$2,500 retainer fee, or any portion thereof.

**Bradley M. Brown**

131. Bradley M. Brown ("Mr. Brown") retained defendant in late June of 2009 to represent him in a medical malpractice action.

132. Defendant charged Brown a fee of \$3,500, which Brown paid to defendant in installments.

133. Brown and his companion, Deborah E. Knox ("Ms. Knox"), attempted to set up appointments with defendant and were told by Defendant's office staff that defendant would contact them by telephone.

134. Ms. Knox testified that defendant did not return their telephone calls seeking the appointments. The panel finds Ms. Knox's testimony to be credible.

135. Beginning in January of 2010, Mr. Brown and Ms. Knox left messages for defendant seeking an update on the status of the medical malpractice action.

136. Defendant provided Mr. Brown and Ms. Knox with his mobile telephone number in case they were unable to reach him at his office number but, according to Ms. Knox's testimony, defendant did not answer his mobile number when Mr. Brown and Ms. Knox called him. The panel finds Ms. Knox's testimony to be credible.

137. On July 21, 2010, Mr. Brown filed a fee dispute with Plaintiff's Attorney Client Assistance Program (file #10FD0423) alleging that defendant failed to perform any work on his case and requesting the return of the \$3,500 fee.

138. In response to Mr. Brown's fee dispute, defendant agreed to refund to Mr. Brown \$1,000 of the \$3,500 fee.

139. On August 26, 2010, Ms. Luella C. Crane, Director of Plaintiff's Fee Dispute Resolution Program, wrote to defendant and Mr. Brown documenting the agreed resolution and indicating that defendant "has advised that he will issue the agreed upon refund on or before September 26, 2010."

140. Defendant did not issue the refund to Mr. Brown on or before September 26, 2010 as he agreed to do.

141. On September 30, 2010, defendant informed Ms. Crane by facsimile that he would be mailing to Mr. Brown the \$1,000 refund on Tuesday, October 5, 2010 since he would be receiving a settlement that date.

142. Defendant did not issue the refund to Mr. Brown on October 5, 2010 as he agreed to do.

143. Mr. Brown passed away on October 19, 2010 and Ms. Knox became the executrix of Mr. Brown's estate.

144. Ms. Knox testified that she contacted defendant on November 9, 2010 about the agreed refund, but defendant did not issue the refund to Mr. Brown's estate. The panel finds Ms. Knox's testimony to be credible.

**Gloria Hughes Estes**

145. Defendant represented Gloria Hughes Estes ("Ms. Estes") at her murder trial.

146. A jury convicted Ms. Estes and the presiding judge sentenced her to life imprisonment without parole.

147. Ms. Estes's family retained defendant to represent Ms. Estes on appeal.

148. After filing a timely written notice of appeal, defendant ordered the trial transcript from the court reporter on or about February 14, 2008.

149. The court reporter completed the transcript and forwarded it to defendant on May 2, 2008.

150. Over the course of the next eighteen months, defendant failed to prepare and serve on the prosecutor a proposed record on appeal, failed to file any motions for extension of time to prepare and serve the record, and otherwise failed to perfect the appeal.

151. On January 13, 2010, the court dismissed Ms. Estes's appeal due to defendant's inaction.

152. On January 10, 2011, defendant filed a petition in the North Carolina Court of Appeals seeking a belated appeal for Ms. Estes, which the Court of Appeals granted.

Based upon the foregoing Findings of Fact, the Hearing Committee hereby enters the following:

### **CONCLUSIONS OF LAW**

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

2. Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. General Statute § 84-28(b)(2) in that he violated one or more of the Rules of Professional Conduct as follows:

- a) By failing to respond to the offers of settlement or mediation of Ms. Anderson's claim from the insurance company claims representative, or by failing to file Ms. Anderson's personal injury complaint within the applicable statute of limitations, defendant failed to act with reasonable diligence and promptness in representing his client in violation of Rule 1.3;
- b) By failing to timely respond to Ms. Anderson's inquiries or otherwise keep Ms. Anderson informed about the status of her case, defendant failed to keep his client reasonably informed about the status of her case in violation of Rule 1.4(a)(3) and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- c) By failing to inform Ms. Anderson about the mediation and settlement offers, defendant failed to explain to Ms. Anderson the matter to the extent reasonably

necessary to permit Ms. Anderson, his client, to make informed decisions regarding defendant's representation of her in violation of Rule 1.4(b);

- d) By failing to respond to or comply with Ms. Anderson's request for her file, defendant failed to provide Ms. Anderson with her file in violation of Rule 1.16(d);
- e) By ratifying his paralegal's conduct in modifying and notarizing the verification in the Greg Oates matter without the personal appearance of the person who purportedly signed the verification, defendant failed to supervise his nonlawyer assistant in violation of Rules 5.3(b) and 5.3(c)(1);
- f) By failing to attend the January 7, 2008 court hearing on behalf of Ms. Sparks, defendant failed to act with reasonable diligence and promptness in violation of Rule 1.3;
- g) By failing to surrender Ms. Sparks' file materials as requested, defendant violated Rule 1.16(d);
- h) By failing to respond to Mr. Dodson's telephone calls and letter, defendant failed to reasonably consult with his client about the means by which the client's objectives were to be accomplished in violation of Rule 1.4(a)(2), and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- i) By failing to meet with or respond to the Schoenens' communications, by failing to notify the Schoenens that he had failed to file a complaint for them in Tennessee within the applicable statute of limitation, and by failing to notify the Schoenens that he had failed to file a complaint for them in North Carolina within the applicable statute of limitation, defendant failed to keep his clients reasonably informed about the status of their case in violation of Rule 1.4(a)(3), failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4), and failed to explain the matter to the extent reasonably necessary to permit his clients to make informed decisions regarding their representation in violation of Rule 1.4(b);
- j) By falsely representing to the Schoenens that he was continuing to negotiate with the insurance company and insurance adjuster, and by leading the Schoenens to believe that their claim remained viable when he knew that it was barred by the applicable statutes of limitation, defendant engaged in conduct involving dishonesty, deceit, and misrepresentation in violation of Rule 8.4(c);
- k) By failing to take the necessary steps to set aside the dismissal of the Greers' claims against CCBE, defendant failed to act with reasonable diligence and promptness in representing his clients in violation of Rule 1.3;
- l) By failing to inform the Greers that their claims against CCBE had been dismissed and by failing to respond to the Greers' communications, defendant

failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4) and failed to explain the matter to the extent reasonably necessary to permit his clients to make informed decisions regarding their representation in violation of Rule 1.4(b);

- m) By misleading the Greers to believe their claims were still viable and that he was taking the appropriate action to pursue the claims, defendant engaged in conduct involving dishonesty, deceit, and misrepresentation in violation of Rule 8.4(c);
  - n) By failing to respond to Mr. Page's inquiries, defendant failed to keep his client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3) and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4);
  - o) By failing to respond to Mr. Brown's inquiries seeking a status report, defendant failed to keep his client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3) and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4); and
  - p) By failing to issue the \$1,000 check to Mr. Brown as twice promised in the fee dispute process, defendant failed to act with reasonable diligence and promptness in violation of Rule 1.3 and also failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f)(2).
3. As to Plaintiff's remaining claims, the panel determined the following:
- a) At the close of Plaintiff's evidence, the panel dismissed the claim in the Greg Oates matter alleging that defendant made a false statement of material fact to a tribunal in violation of Rule 3.3(a)(1), falsified evidence in violation of Rule 3.4(b), committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b), engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), and engaged in conduct that is prejudicial to the administration of justice in violation of Rule 8.4(d);
  - b) For lack of clear, cogent and convincing evidence, the panel dismissed the claim in the Greg Oates matter that by falsely stating in his response to the State Bar's letter of notice in 10G0722 that he telephoned his opposing counsel, Mr. Jones, and "advised him of what had occurred," defendant knowingly made a false statement of material fact in connection with a disciplinary matter in violation of Rule 8.1(a);
  - c) For lack of clear, cogent and convincing evidence, the panel dismissed the claim in the Nora Sparks matter that by failing to file Ms. Sparks' affidavits by the August 31, 2007 deadline, defendant failed to act with reasonable diligence and promptness in violation of Rule 1.3;
  - d) Due to defendant's invocation of the statute of limitations of 27 N.C. Admin. Code, Chapter 1, Subchapter B, Rule .0111(f)(4) of the Discipline and Disability

Rules of The North Carolina State Bar, which generally requires grievances to be initiated “within six years after the last act giving rise to the grievance,” the panel dismissed the claims in the Ronald Dodson matter that by failing to inform Mr. Dodson of his court date, defendant failed to reasonably consult with his client about the means by which the client's objectives were to be accomplished in violation of Rule 1.4(a)(2), and failed to keep his client reasonably informed about the status of the client's case in violation of Rule 1.4(a)(3);

- e) For lack of clear, cogent and convincing evidence, and because it appeared to the panel that the issue involved attorney negligence rather than misconduct, the panel dismissed the claim that by failing to make arrangements for a lawyer licensed to practice law in Tennessee to file a complaint on behalf of the Schoenens in Tennessee within the applicable statute of limitations, defendant failed to act with reasonable diligence and promptness in representing the Schoenens in violation of Rule 1.3;
- f) For lack of clear, cogent and convincing evidence, the panel dismissed the claim that by falsely informing the Schoenens that he would attempt to obtain service upon Mr. Wynkoop by publication, defendant engaged in conduct involving dishonesty, deceit, and misrepresentation in violation of Rule 8.4(c);
- g) For lack of clear, cogent and convincing evidence, the panel dismissed the claim that by failing to recognize the voluntary dismissal with prejudice as to the Greers' claims against CCBE, defendant failed to act with reasonable diligence and promptness in representing his clients in violation of Rule 1.3;
- h) For lack of clear, cogent and convincing evidence, the panel dismissed the claim that by concealing from the Greers the fact that their claims against CCBE had been dismissed, defendant engaged in conduct involving dishonesty, deceit, and misrepresentation in violation of Rule 8.4(c);
- i) For lack of clear, cogent and convincing evidence, the panel dismissed the claim that by failing to prepare and file the Motion for Appropriate Relief for Mr. Page, defendant failed to act with reasonable diligence and promptness in representing his client in violation of Rule 1.3;
- j) For lack of clear, cogent and convincing evidence, the panel dismissed the claim that by failing to prepare and file the Motion for Appropriate Relief and failing to refund the legal fee, defendant failed to refund an unearned fee in violation of Rule 1.16(d);
- k) For lack of clear, cogent and convincing evidence, the panel dismissed the claim that by concealing from Mr. Page the fact that he had not made progress on the Motion for Appropriate Relief and by falsely representing to Mr. Page that he was working on the Motion for Appropriate Relief, defendant engaged in conduct involving dishonesty, deceit, and misrepresentation in violation of Rule 8.4(c); and



- 1) For lack of clear, cogent and convincing evidence, the panel dismissed the claim that by failing to prepare and file the proposed record, or seek extensions of time for doing so, and by waiting for over one year from the dismissal of Ms. Estes' appeal to petition for a belated appeal on her behalf, defendant failed to act with reasonable diligence and promptness in perfecting Ms. Estes' appeal in violation of Rule 1.3.

Based upon the foregoing Findings of Fact and Conclusions of Law, and upon the evidence and arguments presented at the hearing concerning appropriate discipline, the Hearing Panel hereby finds the following:

### **FINDINGS OF FACT REGARDING DISCIPLINE**

1. On June 25, 2008, the Disciplinary Hearing Commission panel imposed a five year stayed suspension of defendant's law license (06DHC30) for failing to pay employee withholding taxes to the Internal Revenue Service in violation of Rules 8.4(b) and 8.4(c); failing to maintain funds in his trust account in violation of Rule 1.15-2(a); utilizing entrusted funds to his own benefit in violation of Rule 1.15-2(j); and, borrowing from a client in violation of Rule 1.8(a)(1)-(3).

2. In imposing the five-year stayed suspension in 2008, the chairperson of the panel cautioned Defendant that he was being given "one more shot."

3. The conditions of the stay of the suspension of defendant's law license in 2008 included, among others, that he not violate any provision of the Rules of Professional Conduct and that he participate in the State Bar's Fee Dispute Resolution procedure.

4. In March 1996, defendant received a Censure (95G0012IV) for borrowing from clients in violation of Rule 1.8(a)(1), and not repaying the clients timely in violation of Rule 5.4(a).

5. In August 2006, defendant received an Admonition (05G1293) for untimely responding to the State Bar's request for trust account records in violation of Rule 8.1.

6. In February 2009, defendant received a Censure (07G0151, 0626, 1050, 1143, & 1156) for failing to respond to a fee dispute in violation of 1.5(f); failing to withdraw as counsel as requested by a client in violation of Rule 1.16(d); failing to produce files to a client in violation of Rule 1.16(d); charging an excessive fee for telephone calls in violation of 1.5(a); and, in violation of Rule 1.4(a), failing to communicate to a client that a Motion for Summary Judgment had been allowed in the client's matter.

7. In May 2012, defendant received an Admonition (11G0977) for failing to notify an appellate client that the client's appeal had been dismissed in violation of Rule 1.4(a)(3).

8. Contrary to the conditions of the 2008 stayed suspension of defendant's law license, defendant received an Admonition in May 2011 (11G0977) for failing to notify an appellate client that the client's appeal had been dismissed in 2011. In 2010, defendant twice

agreed to refund client Bradley Brown in a fee dispute, and then twice failed to do so by defendant's own deadlines.

9. In violation of other conditions of the 2008 stayed suspension of his law license, defendant also failed: (1) to provide to the State Bar written reports by a certified public accountant for July 1, 2011, January 1, 2012, and July 1, 2012; (2) to provide his federal and state tax returns for the first, second, and third quarters of 2011; and, (3) to provide practice monitor reports for April 15, 2011 through October 15, 2012.

10. David Greer testified that defendant's representation of the Greers had caused him to have a negative impression of the legal profession in general, and of Defendant in particular.

11. Defendant's current employees testified that improved office procedures had been implemented beginning in late 2008 to improve responsiveness to clients and accountability.

12. Defendant introduced affidavits supporting his good character and reputation.

13. Plaintiff proffered the rebuttal testimony of Fred Moses concerning defendant's character and reputation, but the panel agreed to strike and not consider Mr. Moses' testimony given that he was not included on Plaintiff's stipulated list of potential witnesses.

#### **CONCLUSIONS OF LAW REGARDING DISCIPLINE**

1. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B§ .0114(w)(1), (2) and (3) of the Rules and Regulations of the North Carolina State Bar and finds the following factors are applicable in this matter:

##### **General Factors from 27 N.C.A.C. 1B§ .0114(w)(3)**

- a) Prior disciplinary offenses in this state;
- b) Remoteness in time of some of the prior disciplinary offenses;
- c) Indifference to making restitution;
- d) A pattern of misconduct;
- e) Multiple offenses;
- f) Full and free disclosure to the hearing panel and a cooperative attitude toward the proceeding;
- g) Character and reputation; and
- h) Significant experience in the practices of law.

**Suspension and Disbarment Factors from 27 N.C.A.C. 1B§ .0114(w)(1)**

- a) Intent of defendant to commit acts where the harm or potential for harm to his clients was foreseeable;
- b) Circumstances reflecting defendant's lack of honesty, trustworthiness, or integrity;
- c) Negative impact of defendant's actions on client's or public's perception of the legal profession;
- d) Impairment of his clients' ability to achieve the goals of their representation; and
- e) Acts of dishonesty, misrepresentation, and deceit.

**Disbarment Factor from 27 N.C.A.C. 1B§ .0114(w)(2)**

- a) Acts of dishonesty, misrepresentation, and deceit.

2. The Hearing Panel concludes that many of defendant's violations of the Rules of Professional Conduct as found herein occurred after defendant received the five-year stayed suspension in 2008.

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

4. An admonition, reprimand, censure, or suspension of defendant's license would not be sufficient discipline because of the gravity of the actual harm defendant's conduct caused to the public, the administration of justice and the legal profession, and the significant potential harm to the public, the administration of justice, and the legal profession if defendant were permitted to continue practicing law.

5. The Hearing Panel concludes that discipline short of disbarment would not adequately protect the public, the legal profession, or the administration of justice for the following reasons:

- a) The five-year stayed suspension ordered in 2008, as well as previous public discipline, has not deterred defendant from habitual, uncorrected neglect of clients. Habitual neglect of clients shows that the defendant is untrustworthy; particularly when defendant has failed to take adequate corrective measures after receiving prior discipline for similar conduct;
- b) Misconduct involving misrepresentation or deceit is among the most serious that any attorney can commit. The Hearing Panel has found that defendant engaged in acts of dishonesty, misrepresentation and deceit towards two of his clients, the Schoenens and Greers, in violation of Rule 8.4(c). Such

misconduct demonstrates that defendant is not trustworthy. The public should be able to assume that all attorneys are trustworthy; and

- c) Entry of an order imposing lesser discipline would fail to acknowledge the seriousness of the offenses committed by defendant, would fail to acknowledge his prior discipline, would be inconsistent with discipline issued in prior cases involving similar misconduct, and would send the wrong message to defendant, to other attorneys, and the public regarding the conduct expected of members of the State Bar.

6. The protection of the public and the legal profession requires that defendant not be permitted to resume the practice of law until he demonstrates the following:

- a) That he has reformed;
- b) That he understands his obligations to his clients, the public, the legal profession and the administration of justice; and
- c) That permitting him to practice law will not be detrimental to the public, or the integrity and standing of the legal profession and the administration of justice.

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

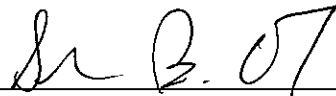
#### **ORDER OF DISCIPLINE**

1. Defendant, C. Gary Triggs, is hereby DISBARRED from the practice of law, effective 30 days from the date of service of this order upon him.

2. Defendant is taxed with the costs and administrative fees of this action, including the cost of the depositions taken in this matter as allowed by statute. The deposition costs were necessarily incurred for the prosecution of this proceeding. Defendant will receive a statement of costs from the Secretary of the State Bar and defendant shall pay these costs within 90 days of service of the notice of costs upon him.

Signed by the undersigned Chair with full knowledge and consent of the other members of the Hearing Committee.

This is the 14 day of December, 2012

  
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Sharon B. Alexander, Chair  
Disciplinary Hearing Committee