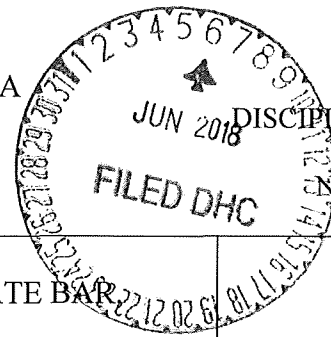


STATE OF NORTH CAROLINA

WAKE COUNTY

THE NORTH CAROLINA STATE BAR



BEFORE THE

DISCIPLINARY HEARING COMMISSION

OF THE

NORTH CAROLINA STATE BAR

17 DHC 1

Plaintiff

v.

SCOTT H. SHELTON, Attorney,

Defendant

CONSENT ORDER

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission ("DHC") composed of Fred M. Morelock, Chair, and members David W. Long and Bradley Lail, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0115(i). Plaintiff was represented by Mary D. Winstead. Defendant, Scott H. Shelton, was represented by Alan M. Schneider. Both Plaintiff and Defendant stipulate and agree to the findings of fact and conclusions of law recited in this Consent Order and to the discipline imposed. Defendant has freely and voluntarily stipulated to the foregoing findings of fact and consents to the conclusions of law and entry of the order of discipline. Defendant freely and voluntarily waives any and all right to appeal the entry of this Consent Order of Discipline.

Based upon the pleadings in this matter, the parties' stipulations of fact, and with the consent of the parties, the Hearing Panel hereby enters 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, Scott H. Shelton, was admitted to the North Carolina State Bar in August, 1993 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, Defendant was engaged in the practice of law in the State of North Carolina and maintained a law office in Hendersonville, Henderson County, North Carolina.

4. During the relevant period referred to herein, in connection with his law practice, Defendant maintained four general trust accounts – one at Mountain First Bank ending in numbers 6009, one at Macon Bank ending in numbers 9109, one at First Citizens Bank ending in numbers 3490, and one at RBC ending in numbers 4047 (“trust accounts”).

5. On December 14, 2011, the State Bar conducted a random procedural audit of Defendant’s trust accounts.

6. The random audit revealed numerous deficiencies in Defendant’s management of his trust accounts.

7. The State Bar subsequently conducted an investigative audit of Defendant’s Mountain First Bank trust account which is the trust account Defendant has primarily used since 2009.

8. The audits revealed numerous failures of Defendant to properly maintain and document his trust accounts as described in paragraphs 9 through 17 below.

9. Defendant failed to at least quarterly total the individual client balances shown on client ledgers and reconcile those to the bank statement balance for the trust account as a whole.

10. Defendant failed to always identify the source of funds on deposit slips.

11. Defendant failed to always identify the client on wires and/or electronic transfers.

12. Defendant failed to always provide written accountings to clients at least annually if funds were held in trust for more than 12 months.

13. Defendant failed to escheat unidentified/abandoned funds as required by N.C.G.S. § 116B-53.

14. Defendant failed to always record on checks from which client balances the checks were drawn.

15. Defendant failed to have legible business size checks containing an auxiliary On-Us field.

16. Defendant failed to provide the NSF directive to the banks where he maintained trust accounts.

17. Defendant sometimes disbursed more funds from the trust account for a particular client than were deposited in the trust account for that client, and in so doing, used entrusted funds for the benefit of persons other than the beneficial owners of the funds.

18. Defendant’s trust accounts had previously been audited by the State Bar on May 31, 2000 and that audit revealed several of the same violations of the trust accounting rules that were found in the 2011 audit including failure to perform quarterly reconciliations.

19. Despite being accorded several opportunities to do so, Defendant has failed to identify the beneficial owners of all of the funds in his trust accounts, including \$44,229.10 in RBC account ending in numbers 4047, \$13,274.49 in Macon Bank account ending in numbers 9109, and \$13,707.81 in First Citizens Bank account ending in numbers 3490.

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

### **Conclusions of Law**

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

2. Defendant's conduct, as set out in the stipulated Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:

- (a) By failing to total client ledger balances and compare them to the bank statement balance at least quarterly, Defendant failed to perform quarterly reconciliations of his attorney trust account in violation of Rule 1.15-3(d);
- (b) By failing to identify the client on all deposit slips and electronic wire transfers, Defendant violated Rule 1.15-3(b)(1);
- (c) By failing to provide written accountings to clients with funds in the trust account for more than twelve months, Defendant violated Rule 1.15-3(e);
- (d) By failing to escheat unidentified or abandoned funds, Defendant violated Rule 1.15-2(q);
- (e) By failing to identify the client on all checks drawn on the trust account, Defendant violated Rule 1.15-3(b)(2);
- (f) By failing to use legible business size checks containing an auxiliary On-Us field, Defendant violated Rule 1.15-3(a);
- (g) By failing to provide the requisite NSF notice to the bank at which he maintained his attorney trust account, Defendant failed to follow appropriate trust account recordkeeping procedures in violation of Rule 1.15-2(k); and
- (h) By disbursing more funds from the trust account for a particular client than were deposited in the trust account for that client, Defendant used entrusted property for the personal benefit of persons other than the legal or beneficial owners of that property in violation of Rule 1.15-2(j).

Upon the consent of the parties, the Hearing Panel also finds by clear, cogent, and convincing evidence the following:

### **Findings of Fact Regarding Discipline**

1. Defendant has prior discipline in the form of two Admonitions issued by the Grievance Committee in 2001 for violations of Rules 1.1(b), 1.3, 1.4(a) and 8.4(d) and a Censure issued in 2018 for violations of Rules 1.3, 1.4(a) and 8.4(c).
2. Defendant's failure to follow the trust accounting rules had the potential for significant harm to his clients.
3. While Defendant's conduct concerning the trust accounting rules demonstrates a disregard of the rules regarding the safeguarding of client funds, the evidence is insufficient to establish that he misappropriated entrusted funds.
4. Defendant consented to an injunction filed in Wake County Superior Court on November 8, 2016 preventing him from handling entrusted funds.
5. Defendant has cooperated with some, but not all, efforts of the State Bar and his accountant to reconcile his trust accounts.
6. Defendant's failure to reconcile his accounts and to cooperate with his accountant has caused the disbursement of funds to beneficial owners, which include clients and third parties, to be delayed and has harmed those individuals.
7. During part of the time Defendant was mismanaging his trust accounts, he was under the treatment of a psychiatrist for depression and anxiety for which he was prescribed medication.
8. The Hearing Panel has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension, and disbarment, in considering the appropriate discipline to impose in this case.

Based on the Findings of Fact and Conclusions of Law above and the additional Findings of Fact Regarding Discipline, the Hearing Panel makes the following:

### **Conclusions With Respect To Discipline**

1. The Hearing Panel has carefully considered all of the different forms of discipline available to it. In addition, the Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin .Code 1B §.0116(f)(1) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors warrant suspension of Defendant's license:

- (a) Intent of Defendant to commit acts where harm or foreseeable harm to clients is foreseeable;

- (b) Negative impact of Defendant's actions on clients' or public's perception of the profession;
- (c) Negative impact of Defendant's actions on the administration of justice;
- (d) Impairment of the client's ability to achieve the goals of the representation; and
- (e) Effect of Defendant's conduct on third parties;

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B .0116(f)(2) of the Rules and Regulations of the North Carolina State Bar and concludes no factors are present in this instance that would warrant disbarment.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B .0116(f)(3) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are applicable in this matter:

- (a) Prior disciplinary offenses;
- (b) Remoteness of prior disciplinary offenses;
- (c) A pattern of misconduct;
- (d) Defendant engaged in multiple offenses;
- (e) Effect of personal or emotional or physical or mental disability on the conduct in question; and
- (f) Degree of experience in the practice of law should have resulted in more responsible approach to the trust accounting rules.

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

5. The Hearing Panel has considered issuing an admonition, reprimand or censure but concludes that such discipline would not be sufficient discipline because of the gravity of the potential harm to the clients. The Panel further concludes that such discipline would fail to adequately protect the public and send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

6. This Hearing Panel has considered lesser alternatives and concludes that a stayed suspension is necessary to ensure Defendant complies with necessary conditions to avoid significant harm or the potential for significant harm to clients.

7. For these reasons, this Hearing Panel finds that an order imposing discipline short of a suspension of Defendant's law license would not be appropriate.

Based upon the foregoing findings of fact and conclusions of law and the findings of fact and conclusion regarding discipline, and based upon the consent of the parties, the Hearing Panel enters the following:

### **Order of Discipline**

1. Defendant's law license is hereby suspended for three years effective thirty days after service of this Order upon Defendant.
2. Defendant shall surrender his law license and permanent membership card to the Secretary of the North Carolina State Bar no later than thirty days following the effective date of this Order. If Defendant no longer has his membership card, he shall so state in the affidavit referred to in paragraph 3 below.
3. Defendant shall comply with the provisions of 27 N.C. Admin. Code 1B .0128 (a) and (b) and shall timely file the affidavit required by §.0128(d).
4. Within thirty 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.
5. Defendant shall promptly return client files in his possession, custody, or control to clients upon request, within five days of receipt of such request. Defendant will be deemed to have received any such request three days after the date the request is sent to him if the request is sent to the address Defendant provided to the State Bar pursuant to this Order.
6. Defendant shall fully cooperate with the efforts of Dawn Cash-Salau, accountant, to determine the beneficial owners of the funds in his First Citizens account ending in 7777 and First Citizens account ending in 3490.
7. Defendant shall fully cooperate with the efforts of Dawn Cash-Salau to reconcile Macon Bank account ending in 9109 and PNC account ending in 6811 (formerly RBC Centura account ending in 4047) and to determine the beneficial owners of the funds in those two trust accounts.
8. Defendant shall submit to the State Bar Office of Counsel ("Office of Counsel") the three way reconciliations of the accounts referred to in the preceding paragraph within sixty days of the effective date of this Order.
9. Defendant shall provide to the Office of Counsel a proposed disbursement summary that identifies clients with a balance in the trust account, lists the beneficial owners, including their addresses, of all funds held in: 1) First Citizens account ending in 7777; 2) First Citizens account ending in 3490; 3) Macon Bank account ending in 9109; and 4) PNC account ending in 6811.

10. Defendant shall prepare and submit to the Office of Counsel within seven days of the entry date of this Order a proposed disbursement order for the funds in First Citizens account ending in 7777.

11. Defendant shall prepare and submit to the Office of Counsel within sixty days of the effective date of this Order proposed disbursement orders for the funds in the remaining trust accounts listed in paragraph 9 above.

12. Within five days of the Office of Counsel requesting any documentation supporting the proposed disbursements, Defendant shall provide the documentation to the Office of Counsel.

13. Defendant shall reimburse the trust account(s) for any shortages determined by the accountant to be owed and provide proof of same to the Office of Counsel within sixty days of the effective date of this Order.

14. Defendant shall escheat any funds in any of the trust accounts that are required by law to be escheated and provide proof of same to the Office of Counsel within sixty y days of the effective date of this Order.

15. Defendant shall pay the administrative fees and costs of this proceeding as assessed by the Secretary of the State Bar within thirty days of service upon him of the statement of administrative fees and costs.

16. After no less than one year of active suspension, Defendant may move pursuant to Rule .0118(c) for a stay of the balance of the suspension by filing a motion in the cause demonstrating by clear, cogent, and convincing evidence that, in addition to complying with the provisions set forth in paragraphs 2 through 13 above, he has complied with the following conditions:

- (a) Defendant has kept the North Carolina State Bar Membership Department advised of his current business and home addresses and notified the Bar of any change in address within ten days of such change;
- (b) Defendant has responded to all communications from the State Bar, including communications from the Attorney Client Assistance Program, within thirty days of Defendant's receipt of the communication or by the deadline stated in the communication, whichever is sooner, and has participated in good faith in the State Bar's fee dispute resolution process for any petition which was pending during the period of suspension;
- (c) That at the time of his motion for stay, Defendant is current in payment of all Membership dues, fees, and costs, including all Client Security Fund assessments and other charges or surcharges the State Bar is authorized to collect from him, including all judicial district dues, fees and assessments;
- (d) That at the time of his motion for stay, there is no deficit in Defendant's completion of mandatory Continuing Legal Education (CLE) hours, in reporting

such hours or in payment of any fees associated with attendance at CLE programs;

- (e) That Defendant has been in treatment with a psychiatrist and a psychologist, if recommended by the psychiatrist, and has complied with all recommendations for counseling and treatment, including, but not limited to, taking as prescribed any prescribed medications;
- (f) Within 30 days of filing the motion for stay, Defendant has provided the Office of Counsel with an affidavit from his treating psychiatrist stating that Defendant has complied with all treatment recommendations during the suspension and that in the opinion of the psychiatrist, Defendant does not presently have any mental health condition, disorder, or disease that will prevent him from responding promptly to clients, conducting the required reconciliations of his trust account and timely meeting his professional obligations;
- (g) Within 30 days of filing the motion for stay, Defendant has provided a written release to the Office of Counsel, authorizing all mental health providers from whom he has received treatment during the suspension for any psychological, emotional, or behavioral condition to communicate with the Office of Counsel and to release to the Office of Counsel records relating to his compliance with his treatment recommendations;
- (h) That during the active suspension that preceded the motion for stay, Defendant completed two hours of CLE in the area of trust accounting at least one hour of which shall be a course taught by the Trust Account Compliance Counsel for the North Carolina State Bar;
- (i) Defendant has not violated the Rules of Professional Conduct or the laws of the United States or of any state or local government during his suspension;
- (j) Defendant properly wound down his law practice and complied with the requirements of 27 N.C. Admin. Code 1B .0128; and
- (k) Defendant has paid the costs and fees of this proceeding as reflected on the statement of costs served upon Defendant by the Secretary of the State Bar within thirty days of service of that statement upon Defendant.

17. If Defendant's motion for stay is granted as to all or any portion of his suspension, the applicable suspension of his law license shall be stayed as long as he complies and continues to comply with the following conditions:

- (a) Defendant remains current in payment of all Membership dues, fees, assessments and costs, including all Client Security Fund assessments and other charges or surcharges that the State Bar is authorized to collect from Defendant, including all judicial district dues, fees and assessments;



- (b) Defendant's timely completes his mandatory CLE hours, reports such hours, and pays any fees associated with attendance at CLE programs;
- (c) Defendant shall open a new attorney trust account and have an accountant approved in advance by the Office of Counsel audit the new trust account on a quarterly basis to ensure Defendant's compliance with the Rules of Professional Conduct;
- (d) The accountant must report quarterly to the Office of Counsel concerning the compliance of Defendant's trust account with the Rules of Professional Conduct, including but not limited to reporting any accounting irregularities and any deviance from the requirements of the Rules of Professional Conduct, with a copy of the report sent simultaneously to Defendant. The accountant's reports are due no later than 30 days after the end of each quarter (first quarter's report due April 30, second quarter's report due July 30, third quarter's report due October 30, and fourth quarter's report due January 30). It is Defendant's sole responsibility to ensure the accountant completes and submits the reports as required herein;
- (e) If any of the accountant reports referenced in paragraph (d) above note any irregularities or deficiencies in Defendant's handling of entrusted funds, the accountant shall prepare and submit to the Office of Counsel a subsequent report regarding whether Defendant's remedial actions were sufficient and whether Defendant's account(s) has been brought into compliance with the Rules of Professional Conduct. The accountant shall provide this report regarding remedial measures to the Office of Counsel within 30 days of Defendant's provision of proof of remedial action. It is Defendant's sole responsibility to ensure the accountant completes and submits the reports as required herein;
- (f) All accountant evaluations, reports, and services referred to herein will be completed and submitted at Defendant's sole expense;
- (g) On or before June 30 each year the stay is in effect, Defendant shall submit an affidavit certifying to the North Carolina State Bar that all general trust accounts, dedicated trust accounts, and fiduciary accounts maintained by Defendant or his law firm are administered, to the best of his knowledge, in compliance with the requirements of Rule 1.15 (including all subparts) or that he is exempt from this provision because Defendant does not maintain any trust or fiduciary accounts for North Carolina client funds;
- (h) Defendant shall remain in treatment with a psychiatrist and comply with all recommendations for counseling and treatment, including, but not limited to, taking as prescribed any prescribed medications;
- (i) Defendant shall ensure that all providers from whom he is receiving treatment for any psychological, emotional, or behavioral condition send a quarterly written report to the State Bar confirming that he is complying with all treatment recommendations and is not suffering from any physical or mental condition that

significantly impairs his professional judgment. The reports shall be due each January 30, April 30, July 30, and October 30 during the stayed suspension of Defendant's law license;

- (j) Defendant shall arrange for an active member of the North Carolina State Bar to serve as his law practice monitor. Defendant's practice monitor shall be an attorney in good standing who practices law in Defendant's judicial district and who has been approved in advance by the Office of Counsel. Defendant must make the arrangements for this monitoring attorney and supply the Office of Counsel with a letter from the monitoring attorney confirming his or her agreement to perform the duties listed above within thirty days of the effective date of any order returning him to active status. The monitor will supervise all client matters and will ensure that Defendant timely handles all client matters and promptly responds to his clients. Defendant shall meet once a month with his monitoring attorney, report the status of all current client matters to the monitor, cooperate with the monitoring attorney, and provide any information the monitoring attorney deems reasonably necessary to ensure that Defendant is properly and timely handling all client matters. The monitor will submit written quarterly reports of this supervision to the Office of Counsel and confirming that Defendant is following the recommendations of the practice monitor. The practice monitor reports are due in the Office of Counsel each January 30, April 30, July 30, and October 30 during the period of stay. Defendant bears the responsibility of ensuring the monitoring attorney sends a written report each quarter to the Office of Counsel as described above. This monitoring will occur for the duration of the stay. Defendant will pay the cost, if any, charged by the monitor for this supervision;
- (k) If Defendant's treatment provider, practice monitor, or accountant fails to submit any report required by this Order, it shall be grounds to lift the stay and activate the suspension;
- (l) Defendant shall cooperate with the Office of Counsel and make appropriate arrangements for an alternate monitoring attorney if needed during this stay;
- (m) Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or of any state or local government during his stay;
- (n) Defendant shall keep the State Bar Membership Department advised of his current business address. Defendant shall notify the State Bar of any change of address within ten days of such change. His current business address must be a street address, not a post office box or drawer;
- (o) Defendant shall respond to all communications from the State Bar, including communications from the Attorney Client Assistance Program, within thirty days of receipt of such communication or by the deadline stated in the communication, whichever is sooner; and

(p) Defendant shall participate in good faith in the State Bar's fee dispute resolution process for any petition which is pending during any stay of the suspension.

16. If Defendant fails to comply with any one or more of the conditions of the stay of suspension provided in paragraphs 15 (a) – (p) above, the stay of suspension may be lifted in accordance with 27 N.C. Admin. Code 1B .0118(a).

17. If Defendant successfully petitions for a stay of his suspension, Defendant's obligations governing the stay under this Order end after the applicable period of the stay provided there are no motions or show cause proceedings pending alleging lack of compliance with the conditions of the stay of the suspension. Pursuant to 27 N.C. Admin. Code 1B .0118(a) of the North Carolina Discipline and Disability Rules, the DHC retains jurisdiction until all conditions of the stay of the suspension have been met. If a motion or show cause proceeding alleging lack of compliance with the conditions for the stay of the suspension is pending when the period of the stay of the suspension would otherwise have terminated, the DHC retains the jurisdiction and ability to lift the stay of the suspension and activate the remaining portion of the suspension in whole or in part if it finds that any of the conditions of the stay have not been met. The stay of the suspension and Defendant's obligation to comply with the conditions for the stay will continue until resolution of any such pending motion or show cause proceeding.

18. If Defendant does not seek a stay of the suspension of his law license or if some part of the suspension is stayed and thereafter revoked, before Defendant can be reinstated or a subsequent stay of the suspension can be entered Defendant must comply with the conditions set out in paragraphs 2 through 13 above and the provisions of 27 N.C. Admin. Code 1B .0129 before seeking reinstatement of his license to practice law, and must provide in the petition for reinstatement clear, cogent and convincing evidence showing compliance therewith as well as the following conditions:

- (a) Within two months prior to filing any motion for reinstatement or stay, Defendant shall be evaluated, at his own expense, by a board certified psychiatrist or psychologist approved in advance by the Office of Counsel for the purpose of determining whether Defendant has any mental or psychological impairment, addiction, personality disorder, or other condition or illness;
- (b) Defendant shall obtain a written report from the evaluating clinician described in paragraph 4(a) setting forth: (i) the findings of the examination; (ii) the clinician's opinion as to whether Defendant has any physical or mental impairment, addiction, personality disorder, or other condition or illness that could adversely affect his ability to practice law; and (iii) the clinician's recommendations, if any, regarding ongoing treatment;
- (c) Prior to or at the time of filing his motion, Defendant shall provide a copy of the clinician's report described in paragraph 18(b) to the State Bar, and shall execute a written release authorizing the examining clinician to provide medical records to, and communicate with, the Office of Counsel of the North Carolina State Bar regarding the evaluation and report; and

- (d) Defendant shall have the burden of establishing by clear and convincing evidence that, at the time he seeks reinstatement or a stay of the suspension, he does not have any physical or mental impairment, addiction, personality disorder, or other condition or illness that significantly impairs his professional performance, judgment or competence.

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

This the 6<sup>th</sup> day of June 2018.



Fred M. Morelock, Chair  
Disciplinary Hearing Panel

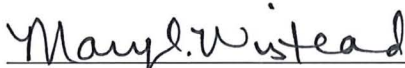
Agreed and consented to by:



Alan M. Schneider  
Attorney for Defendant



Scott H. Shelton  
Defendant



Mary D. Winstead  
Attorney for Plaintiff