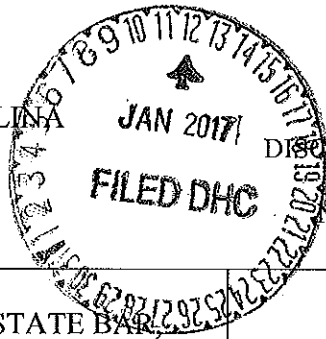


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
16 DHC 32

THE NORTH CAROLINA STATE BAR,  
Plaintiff

v.

ANDREW C. JACKSON, JR., Attorney,  
Defendant

**CONSENT ORDER OF DISCIPLINE**

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Fred M. Morelock, Chair, and members William O. King and Jane B. Weathers, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff was represented by Brian P.D. Oten. Defendant, Andrew C. Jackson, Jr., was represented by Alan M. Schneider. Defendant waives a formal hearing in this matter. The parties stipulate and agree to the findings of fact and conclusions of law recited in this order, and consent to the discipline imposed by this order. By consenting to the entry of this order, Defendant knowingly, freely, and voluntarily waives his right to appeal this consent order or to challenge in any way the sufficiency of the findings and conclusions herein.

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 (hereafter "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 promulgated thereunder.

2. Defendant, Andrew C. Jackson, Jr. (hereafter "Defendant" or "Jackson"), was admitted to the North Carolina State Bar on 27 August 2010 and is an attorney at law licensed to practice in North Carolina, subject to the rules, regulations and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During the relevant period referred to herein, Jackson was actively engaged in the practice of law in West Jefferson, Ashe County, North Carolina.

4. Jackson was properly served with the summons and complaint in this matter.

5. Jackson maintained a trust account in connection with his law practice at First Citizens Bank, account number ending in 9327 ("trust account").

6. Jackson used his trust account as a general trust account.
7. In or around December 2011, Jackson employed nonlawyer assistant Pamela Roark ("Roark") as a paralegal and office manager.
8. Jackson had managerial and direct supervisory authority over Roark during her employment with his firm.
9. While employed with Jackson's firm, Roark's job duties included bookkeeping and monitoring the firm's handling of entrusted funds deposited in the trust account.
10. Jackson also gave Roark access to the trust account checkbook and online access to the trust account.
11. Jackson failed to review his trust account's bank statements, failed to reconcile his account, and otherwise failed to monitor his trust account.
12. Jackson also failed to review Roark's handling and monitoring of entrusted funds deposited in the trust account.
13. In June 2012, Jackson discovered that Roark had misappropriated money from the trust account.
14. Upon discovering the theft, Jackson failed to undertake a full review of the trust account.
15. Jackson failed to report the theft of funds from the trust account to the State Bar.
16. Jackson did not terminate Roark's employment after discovering the theft in June 2012.
17. Instead, after discovering the theft by Roark, Jackson continued to employ Roark at the firm and continued to delegate the firm's handling and monitoring of entrusted funds to Roark.
18. Jackson again failed to review his trust account's bank statements, failed to reconcile his account, and otherwise failed to monitor his trust account.
19. Jackson again failed to review Roark's handling and monitoring of entrusted funds deposited in the trust account.
20. In August 2013, Jackson discovered additional theft by Roark of entrusted funds from the trust account.
21. Jackson terminated Roark's employment with the firm in August 2013.
22. Jackson failed to promptly report the second theft of funds from the trust account to the State Bar.

23. On 6 August 2014, the State Bar conducted a random procedural audit of Jackson's trust account.

24. The audit revealed numerous failures by Jackson to properly monitor and maintain required records for his trust account. Specifically, the audit revealed that Jackson engaged in the following conduct:

- (a) Jackson failed to conduct the required monthly and quarterly reconciliations;
- (b) Jackson failed to always identify the source of funds on deposit slips;
- (c) On occasion, Jackson advanced funds to clients using funds belonging to other clients, resulting in negative client balances within the trust account and funds being used for the benefit of someone other than the beneficiary owner of the funds;
- (d) Jackson failed to provide a copy of an amended directive to the bank; and
- (e) Jackson failed to obtain legible and appropriately sized copies of check images (front and back).

25. On 17 October 2014, after completing the random audit process, Jackson reported to the State Bar that Roark had misappropriated money from his trust account. Jackson also reported the theft to law enforcement.

26. Jackson's failure to review Roark's work and failure to reconcile and review his trust account as required by the Rules of Professional Conduct enabled Roark's theft.

27. In total, Roark misappropriated approximately \$79,000 in entrusted funds from Jackson's trust account.

Based upon the foregoing Findings of Fact and with the consent of the parties, the Hearing Panel makes the following

### **Conclusions of Law**

1. All parties are properly before the Hearing Panel and the DHC has jurisdiction over Defendant, Andrew C. Jackson, Jr., and over 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) in that Defendant violated the Rules of Professional Conduct as follows:

- (a) By failing to review his nonlawyer assistant's handling and record-keeping of entrusted funds, thereby enabling the nonlawyer assistant to engage in continued theft of entrusted funds over a period of approximately 18 months, Jackson failed to supervise his nonlawyer assistant to the extent

necessary to ensure that her conduct was compatible with Jackson's professional obligations in violation of Rule 5.3(b);

- (b) By failing to report Roark's initial theft to the State Bar and by failing to report Roark's additional theft to the State Bar upon discovery in August 2013 for over one year, Jackson failed to immediately report his discovery of misappropriation to the State Bar in violation of Rule 1.15-2(o) (presently codified as Rule 1.15-2(p));
- (c) By failing to reconcile his trust accounts on a monthly and quarterly basis, Jackson failed to conduct the requisite reconciliations of his trust accounts in violation of Rules 1.15-3(d)(1) and (2);
- (d) By failing to identify the client on all deposit slips and electronic wire transfers, Jackson violated Rule 1.15-3(b)(1);
- (e) By advancing funds for a client from funds belonging to another client who was not the beneficiary of those funds, Jackson used or pledged entrusted property for the personal benefit of a person other than the legal or beneficial owner of that property in violation of Rule 1.15-2(a) and Rule 1.15-2(j) (presently codified as Rule 1.15-2(k));
- (f) By not providing the bank with a copy of the amended directive concerning his trust account, Jackson failed to file with the bank a written directive requiring the bank to report to the executive director of the North Carolina State Bar when an instrument drawn on the account is presented for payment against insufficient funds in violation of Rule 1.15-2(k) (presently codified as Rule 1.15-2(l)); and
- (g) By failing to obtain appropriate digital images of canceled checks drawn on the trust account, Defendant failed to maintain minimum records for trust accounts in violation of Rule 1.15-3(b)(2)(A).

Based 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. Roark was the sole source of criminal conduct in this case. There is no evidence indicating that Jackson participated in Roark's ongoing misappropriation or that he was aware of Roark's misappropriation at the time it occurred, and there is no evidence that Jackson received any benefit from Roark's misappropriation. There is no evidence that Jackson acted with a selfish or dishonest motive in neglecting his trust account or in failing to adequately supervise Roark.

2. Although Roark committed criminal acts in misappropriating funds from Jackson's trust account independent of Jackson, Jackson's excessive delegation coupled with his failure to

supervise and failure to conduct the required quarterly reconciliations created the circumstances that enabled Roark to embezzle entrusted funds. Conducting quarterly reconciliations of the trust account is the lynchpin of proper maintenance and protection of entrusted funds. Jackson repeatedly failed to monitor the activity in his trust account and otherwise failed to make reasonable efforts to ensure that the client funds entrusted to his care remained protected. Jackson also failed to make reasonable efforts to ensure that his non-lawyer assistant's conduct was compatible with his professional obligations in the handling of entrusted funds in the trust account, and Jackson displayed poor judgment by retaining Roark and continuing to delegate his trust account responsibilities to Roark after discovering Roark's embezzlement in June 2012. Jackson's conduct demonstrates a pattern of misconduct and demonstrates his intent to commit acts where the potential harm was foreseeable.

3. Jackson's conduct placed entrusted funds at risk and has the potential to cause significant harm to the standing of the profession in the eyes of the public because it shows his disregard for his duties as an attorney. Such erosion of public confidence in attorneys tends to sully the reputation of, and fosters disrespect for, the profession as a whole. Confidence in the legal profession is a building block for public trust in the entire legal system.

4. Jackson's lack of experience at the time of his misconduct significantly contributed to his misconduct and poor judgment in responding to Roark's actions. Jackson, who was licensed in 2010, hired Roark in 2011 after opening his law practice. Jackson hired Roark, at least in part, due to her prior employment with a reputable law firm. Upon discovering Roark's conduct in June 2012, Roark pled for another opportunity; in light of her plea as well as her prior employment, Jackson naively afforded Roark the benefit of the doubt and allowed her to remain with his office. Jackson is genuinely remorseful for his own misconduct and his unfortunate judgment, acknowledges the seriousness of his misconduct, and accepts responsibility for his misconduct.

5. Jackson fully cooperated with the State Bar throughout the disciplinary process and took steps to rectify the consequences of his misconduct. Following his discovery of Roark's theft in August 2013, Jackson took the following action:

- (a) Jackson retained an accountant to properly reconcile his trust account and fully investigate the extent of Roark's embezzlement;
- (b) Jackson fully reimbursed his trust account in the amount misappropriated by Roark; and
- (c) Jackson terminated Roark and reported her embezzlement to law enforcement, resulting in Roark's conviction of multiple felonies in March 2016.

6. Jackson has no prior disciplinary record concerning his license to practice law.

7. 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 upon the Findings of Fact, Conclusions of Law, and Additional Findings Regarding Discipline, and with the consent of the parties, the Hearing Panel also enters the following

### **Conclusions Regarding Discipline**

1. The Hearing Panel considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0114(w) of the Discipline and Disability Rules of the North Carolina State Bar.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0114(w)(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 the defendant to commit acts where the harm or potential harm is foreseeable;
- (b) Defendant's actions had a potential negative impact on his clients' and the public's perception of the legal profession.

3. The hearing panel concludes that none of the factors enumerated in 27 N.C. Admin. Code 1B § .0114(w)(2) of the Rules and Regulations of the North Carolina State Bar are present in this case.

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

- (a) Defendant's lack of prior disciplinary offenses;
- (b) Absence of a dishonest or selfish motive;
- (c) Timely good faith efforts to make restitution or to rectify the consequences of the misconduct;
- (d) Defendant engaged in a pattern of misconduct; and
- (e) Defendant engaged in multiple offenses.

5. Defendant's failure to properly safeguard entrusted client funds and properly supervise his non-lawyer assistant caused significant harm to his clients whose funds were used for a purpose other than that which was intended by the clients.

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

7. 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

acknowledge the seriousness of the offenses committed by Defendant and send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

8. The Hearing Panel concludes that Defendant's conduct warrants and can only be addressed through imposition of a suspension on Defendant's law license. The Hearing Panel further concludes that such suspension should be stayed upon Defendant's compliance with conditions outlined below that will ensure the public is protected from future transgressions by Defendant as well as ensure Defendant's continued adherence to the Rules of Professional Conduct.

9. Under other circumstances, the misconduct in this case would warrant more serious discipline. However, the unique circumstances surrounding this case justify lesser discipline than would otherwise be appropriate. The factors that particularly warrant lesser discipline include: Defendant's complete cooperation during the disciplinary process; Defendant's efforts to rectify the consequences of his misconduct; Defendant's lack of experience at the time of the misconduct; Defendant's acceptance of personal responsibility for his actions; Defendant's acknowledgment of the wrongfulness and seriousness of his misconduct; and Defendant's remorse.

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, Andrew C. Jackson, Jr., is hereby suspended from the practice of law for three years, effective 30 days from service of this order upon Defendant.

2. Defendant is taxed with the costs and administrative fees of this action. Defendant shall pay the costs and administrative fees of this proceeding as assessed by the Secretary within 30 days of service of the statement of costs and administrative fees upon him.

3. The three year suspension is stayed for a period of four years as long as Defendant complies, and continues to comply during the period of the stay, with the following conditions:

(a) Defendant shall continue to employ an accountant approved in advance by the Office of Counsel to assist Defendant in monitoring and reconciling his trust account(s) as required by the Rules of Professional Conduct.

(b) Defendant shall provide the State Bar with reports of all quarterly reconciliations as required by Rule 1.15-3 for all trust accounts and fiduciary accounts to which Defendant has access and/or in which Defendant deposits entrusted funds as follows:

i. In addition to the three-way reconciliation reports, for the months covered by the submitted report, Defendant shall provide: (i) client ledgers for each client whose funds are held in the trust account

during the stay, (ii) any ledger for any personal funds maintained in the trust account(s) for bank or credit card fees, (iii) general ledger(s) for each trust account to which Defendant has access, and (iv) the bank statements, cancelled checks, deposit slips, and deposit items associated with the reports;

ii. The 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);

iii. Defendant shall certify with each quarterly report that he has personally reviewed the reconciliation report(s) and all relevant ledgers, bank statements, cancelled checks, deposit slips, and deposit items associated with the report(s);

iv. If any of the quarterly reports referenced above note any irregularities or deficiencies, Defendant shall promptly take all remedial action necessary to bring the trust account(s) into compliance with the Rules of Professional Conduct and shall provide proof of the remedial action and compliance to the Office of Counsel of the State Bar within 30 days of the date of the report;

v. All reconciliations and reports referred to herein will be completed and submitted at Defendant's sole expense; and

vi. Failure of the Defendant to timely submit any report required by this Order shall be grounds to lift the stay and activate the suspension.

(c) Defendant shall certify annually on or before June 30 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;

(d) Defendant shall successfully complete two hours of continuing legal education (CLE) in the area of trust account management within the first year after the effective date of this order, one hour of which must be a trust account CLE taught by Trust Account Compliance Counsel for the North Carolina State Bar. Defendant shall also successfully complete two hours of CLE in the area of trust account management within the fourth year of this suspension, one hour of which must be a trust account CLE taught by Trust Account Compliance Counsel for the North Carolina State Bar. Defendant



shall provide written proof of successful completion of these CLE courses to the State Bar within ten days of completing the course;

- (e) Defendant shall have sole signatory authority on all general trust accounts, dedicated trust accounts, and fiduciary accounts maintained by Defendant and shall not allow the use of signature stamps, or electronic signature in lieu of his hand affixed signature;
- (f) Defendant shall pay all Membership dues and Client Security Fund assessments and comply with all Continuing Legal Education requirements on a timely basis;
- (g) Defendant shall keep his physical address of record (not a Post Office box) with the North Carolina State Bar current, accept all certified mail from the North Carolina State Bar, and respond to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication;
- (h) Defendant shall not violate any of the Rules of Professional Conduct in effect during the period of the stay;
- (i) Defendant shall not violate any laws of the State of North Carolina or of the United States during the period of the stay excluding minor traffic infractions; and
- (j) Defendant shall timely comply with paragraph 2 above in paying all costs and fees of this action as assessed by the Secretary within thirty (30) days after service of the statement of costs on him.

4. If during the stay of the suspension Defendant fails to comply with any one or more of the conditions stated above, then the stay of the suspension of his law license may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

5. If the stay of the suspension is lifted and the suspension is activated for any reason, Defendant may apply for reinstatement after serving the activated suspension by filing a petition pursuant to Rule .0125 of the North Carolina State Bar Discipline and Disability Rules (27 N.C. Admin. Code 1B § .0125) demonstrating compliance with the requirements therein as well as the following requirements by clear, cogent, and convincing evidence:

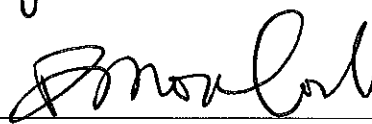
- (a) Defendant properly wound down his law practice and complied with the terms of 27 N.C. Admin. Code 1B § .0124 of the State Bar Discipline & Disability Rules;
- (b) Defendant successfully completed the CLE hours as set forth in paragraph 3(d) above;
- (c) Defendant kept the Membership Department of the State Bar informed of his current information for his physical address (not a Post Office box),

telephone number, and e-mail address throughout the period of his suspension;

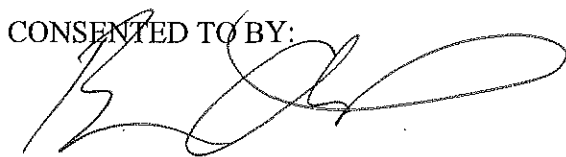
- (d) Defendant accepted all certified mail from the State Bar sent to the address on record with the Membership Department of the North Carolina State Bar throughout the period of the suspension;
- (e) Defendant responded to all letters of notice and requests for information from the North Carolina State Bar by the deadline stated therein with full and complete responses and all requested documentation throughout the period of his suspension;
- (f) Defendant has come into compliance with any outstanding CLE or membership obligations at the time of the filing of his petition for reinstatement;
- (g) Defendant did not violate any of the Rules of Professional Conduct in effect during the period of the suspension;
- (h) Defendant did not violate any laws of the State of North Carolina or of the United States during the period of the suspension; and
- (i) Defendant paid all costs and fees of this proceeding as assessed by the Secretary by the date of the filing of his petition for reinstatement.

6. Unless Defendant's obligations under this Order are modified by further order of the DHC, Defendant's obligations under this Order end four years from the effective date of the Order 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 § .0114(x) 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 three year 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.

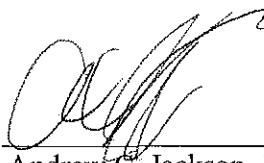
Signed by the Disciplinary Hearing Panel Chair with the consent of the other hearing panel members, this the 12<sup>th</sup> day of January, 2016. 2017

  
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Fred M. Morelock, Chair  
Disciplinary Hearing Panel

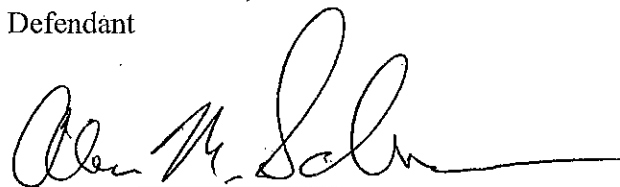
CONSENTED TO BY:



Brian Oten, Deputy Counsel  
Attorney for the Plaintiff



Andrew C. Jackson, Jr.  
Defendant



Alan M. Schneider  
Attorney for the Defendant