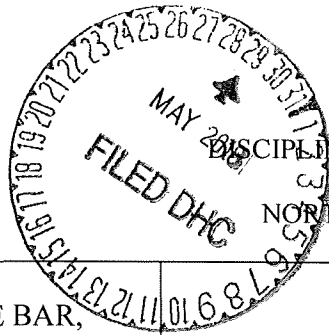


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
17 DHC 25

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

JERRY B. CLAYTON, ROBERT W.  
MYRICK, ROBERT D. McCLANAHAN,  
RONALD G. COULTER, AND GLADYS  
NICOLE CLAYTON, Attorneys,

Defendants

CONSENT ORDER  
OF DISCIPLINE  
AS TO DEFENDANT  
GLADYS NICOLE CLAYTON<sup>1</sup>

THIS MATTER came on for consideration before a Hearing Panel of the Disciplinary Hearing Commission composed of Donald C. Prentiss, Chair, and members Fred W. DeVore, III and Michael S. Edwards. Jennifer A. Porter represented Plaintiff, the North Carolina State Bar. Dudley A. Witt represented Defendant Gladys Nicole Clayton.

Defendant Gladys Nicole Clayton ("N. Clayton") stipulates and agrees to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Defendant N. Clayton 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 N. Clayton 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 stipulations of fact by Plaintiff and Defendant N. Clayton, and with the consent of Defendant N. Clayton, 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).

<sup>1</sup> This order does not apply to Defendants Jerry B. Clayton, Robert W. Myrick, Robert D. McClanahan, and Ronald C. Coulter.

2. Defendant N. Clayton was admitted to the North Carolina State Bar in 2005, 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 operating under the name of Clayton, Myrick, McClanahan, & Coulter, P.L.L.C. (hereinafter "the firm") in Durham, Durham County, North Carolina.

4. On March 17, 2015, the firm's trust account was audited subject to a subpoena for random audit served on N. Clayton.

5. The following violations of Rule 1.15-3 were found during the random audit:

- a. The firm did not have any quarterly reconciliations for the firm's trust account for the preceding year.
- b. The firm had only three monthly reconciliations for the firm's trust account for the preceding year.
- c. The firm had not identified the client for which cash deposits were made into the trust account.
- d. The firm occasionally failed to indicate on trust account checks the client from whose funds in the trust account the trust account check was drawn.

6. Pursuant to 27 N.C. Admin. Code § 1B.0128(b), on May 11, 2015 the State Bar sent N. Clayton a letter seeking to confirm N. Clayton had taken appropriate corrective action to come into compliance with the Rules of Professional Conduct.

7. The State Bar requested N. Clayton confirm compliance with Rule 1.15 of the Rules of Professional Conduct by providing a trust account reconciliation.

8. Despite repeated requests from the State Bar on seven occasions between May 2015 through June 2016 pursuant to the random audit, N. Clayton did not provide the requested trust account reconciliation. It appears that a firm employee at the time may have intercepted one or more of the State Bar's communications to N. Clayton, but during this time N. Clayton remained aware of the requests she had received and that she had not provided the requested reconciliation.

9. On June 20, 2016, the State Bar served N. Clayton with a letter of notice by certified mail. The letter of notice notified N. Clayton that a grievance file had been opened and instructed N. Clayton to include with her response certain documents, including monthly and quarterly trust account reconciliations meeting the respective descriptions in Rule 1.15-3(d), trust account records, and client ledgers for the period of January 2014 to May 2016.

10. N. Clayton did not provide the requested reconciliations with her response to the letter of notice.

11. N. Clayton was the attorney with the firm who worked with the firm's staff on the management and reconciliation of the trust account.

12. On November 10, 2016, a State Bar deputy counsel and a State Bar investigator met with N. Clayton regarding the reconciling of the firm's trust account. After the meeting, the State Bar sent N. Clayton a letter confirming that by December 2, 2016 she would provide the State Bar with a quarterly reconciliation for the third quarter of 2016 using the three-way reconciliation form provided to her, with the associated documents listed on the form and the additional items listed in the letter.

13. N. Clayton did not provide the requested reconciliations despite this request and two subsequent requests in January and February 2017 for three-way reconciliations for the third and fourth quarters of 2016.

14. On March 10, 2017, the State Bar served subpoenas on J. Clayton, R. Myrick, R. McClanahan, and R. Coulter requiring the production by 10:00 a.m. on March 27, 2017 of documents including the quarterly reconciliations required by Rule 1.15-3(d)(1) for the third and fourth quarters of 2016 with itemized supporting documentation.

15. In response, N. Clayton prepared documentation consisting of three-way reconciliation forms and supporting documents and arranged for the documentation to be delivered to the State Bar.

16. The supporting documents attached to the three-way reconciliation forms included printed reports from the firm's trust account software and trust account records printed from the bank's website.

17. The date on which certain of those software reports and website records were printed was covered with white-out tape on documents attached to each month's reconciliation form.

18. The covered date was March 27, 2017 on records containing white-out tape attached to the July, August, September, October, and December 2016 reconciliations, with the exception of one of the reports attached to the December 2016 reconciliation which had a covered date of January 26, 2017.

19. The covered date was March 26, 2017 on bank records printed from the bank's website included with the November 2016 reconciliation.

20. There were handwritten reconciliation notations on certain of the documents with covered March 2017 print dates, including those attached to the reconciliations for August 2016, September 2016, October 2016, November 2016, and December 2016.

21. The State Bar served all Defendants by certified mail with requests that each respond to the concern that they had attempted to mislead the State Bar regarding when the

reconciliations produced on March 27, 2017 had been conducted by covering the print dates with white-out tape, and to the concern that the firm was still not timely reconciling its trust account since it appeared that these reconciliations for July through December 2016 had not been done until March 26 and 27, 2017.

22. R. Coulter responded by letter dated April 13, 2017, in which he stated:

- a. Although he utilized the firm's trust account, in his role he was not involved in the management or reconciliation of the trust account. He stated the firm's bookkeeper worked with N. Clayton to manage all banking accounts of the firm, including the trust account.
- b. He believed the firm had recently been successfully audited by the State Bar.
- c. He understood that the firm's trust account had been reconciled monthly for years within ten days of month's end by the office bookkeeper with oversight by N. Clayton.
- d. N. Clayton told him that as she printed out previously obtained forms for submission to the State Bar, the computer she used automatically printed the date of printing on the documents. She could have reprinted the forms on another computer with no date added, but saw no problem with removing the dates that would have incorrectly indicated when the statements were prepared.

23. N. Clayton responded in a letter dated April 28, 2017, in which she stated:

- a. Since she met with the State Bar deputy counsel the preceding year [on November 10, 2016], the firm began doing the three-way reconciliations monthly between the 5<sup>th</sup> and 10<sup>th</sup> day of each month.
- b. She reviewed the documents to be delivered to the State Bar late on the night of March 26, 2017. She noticed that on many of the documents there were a lot of scribbles and notes from where the reconciliation had been done and she reprinted the documents. She did so because she wanted to provide the State Bar with copies of documents that didn't have so much "chicken scratch" on them. When she printed off clean copies, one of the computers she used printed the date of printing on the documents.
- c. The printed date alarmed her because she did not want the State Bar to think the reports were being printed just for compliance with the subpoena.
- d. She wasn't sure what to do, but decided to white-out the date on the documents she had reprinted.
- e. R. Coulter pointed out to her that she had not filled in the date on the top page of when the reconciliations were performed. She told him they were prepared between the 5<sup>th</sup> and 10<sup>th</sup> of each month.

24. On April 28, 2017, the State Bar sent N. Clayton a letter asking her to explain why she had failed to provide the three-way reconciliations repeatedly requested of her on November 10, 2016, January 4, 2017, and February 7, 2017 prior to the issuance of the subpoenas, if the reconciliations had been done monthly as she claimed. The State Bar also asked for the original documents with “scribbles and notes” that she claimed to have replaced with clean documents on which she whited-out the print dates. N. Clayton’s response was due May 19, 2017.

25. On May 26, 2017, Defendants sent the State Bar a letter, signed by each Defendant. In this letter, the Defendants stated the following:

- a. The firm is performing three-way reconciliations monthly, between the 5<sup>th</sup> and 10<sup>th</sup> of each month.
- b. In preparation for submission of the documents on March 27, 2017, N. Clayton reviewed the documents and realized many of the documents contained scribbles and notes from where the reconciliation had been done. Therefore, she reprinted the documents on March 27, 2017.
- c. When she reprinted the documents on March 27, 2017, the date of printing was automatically printed on the documents, which would give the false impression that the reconciliations were performed on March 27, 2017.
- d. The above explanation addresses the second concern raised by the State Bar in the Defendants’ grievances, in that the State Bar alleged that they attempted to mislead the State Bar concerning when the reconciliations were conducted by applying, or directing another to apply, white-out tape to dates showing the supporting trust account reports and bank documents were printed on March 26 and March 27, 2017.
- e. While the documents were printed on March 26 and March 27, 2017, the actual reconciliations provided to the State Bar were conducted between the 5<sup>th</sup> and 10<sup>th</sup> of each month.
- f. The firm had elected to utilize the multi-lawyer firm procedures of Rule 1.15-4 and anticipated providing the attendant documentation to the State Bar within the following two weeks.
- g. Regarding the State Bar’s request for the pages with “scribbles” that were purportedly replaced with the reprinted pages, the shredding company was retrieving the documents and the firm would provide them to the State Bar the following week.

26. N. Clayton was the source of the information for the statements made in the May 26, 2017 letter.

27. The letter did not address why the reconciliations had not been previously provided by N. Clayton if the reconciliations were in existence at the time of the requests.

28. The firm did not provide anything further to the State Bar, providing neither the Rule 1.15-4 documentation nor the purportedly replaced pages.

29. The statement made by Defendants in the May 26, 2017 letter that the reconciliations provided to the State Bar had been conducted between the 5<sup>th</sup> and 10<sup>th</sup> of each month during the pertinent time period was false. N. Clayton had admitted she had not even started using the three-way reconciliation form until after November 2016, and the supporting documents dated March 2017 containing her reconciliation notes indicate the reconciliations provided to the State Bar were done in March 2017.

30. The statement made by Defendants in the May 26, 2017 letter that the pages with whited-out dates provided to the State Bar were reprinted pages to replace previously existing pages containing reconciliation notes was false. The pages with the whited-out dates primarily consisted of pages with handwritten reconciliation notes and were not clean copies.

31. Defendant N. Clayton knew at the time she made the statements described in paragraphs 29 and 30 above that they were material to the issues under investigation by the State Bar.

32. Defendant N. Clayton knew at the time she made the statements described in paragraphs 29 and 30 above that they were false.

33. N. Clayton purposefully covered print dates on documents provided to the State Bar with the reconciliations.

34. N. Clayton covered the print date on documents provided to the State Bar with the reconciliations because she knew that the timeliness of the reconciliations was material in the State Bar's investigation.

35. N. Clayton covered the print date on documents provided to the State Bar with the reconciliations because she was concerned that the dates would allow the conclusion to be drawn that the reconciliations had not been conducted until the print dates on the documents.

Based upon the consent of Plaintiff and Defendant N. Clayton and the foregoing stipulated Findings of Fact, the Hearing Panel enters the following:

#### CONCLUSIONS OF LAW

1. All the parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant N. Clayton and the subject matter.

2. Defendant N. Clayton engaged in conduct constituting grounds for discipline as follows:

A. Pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant N. Clayton violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- (1) By failing to always identify the client for whom cash deposits were made into the trust account, N. Clayton failed to maintain required trust account records in violation of Rule 1.15-3(b)(1);
- (2) By failing to always identify on trust account checks the client from whose funds in the trust account the trust account check was drawn, N. Clayton failed to maintain required trust account records in violation of Rule 1.15-3(b)(2);
- (3) By failing to reconcile the balance of the firm's trust account as shown in the firm's records with the bank statement balance for the trust account each month and/or maintain the records of such reconciliations, N. Clayton failed to conduct the required monthly reconciliations in violation of Rule 1.15-3(d)(2) and/or failed to maintain required reconciliation records in violation of Rule 1.15-3(d)(3);
- (4) By failing to reconcile the total of individual client balances with the bank statement balance at least quarterly, and by failing to reconcile the balance from a general ledger for the firm's trust account with the total of client balances and with the bank statement balance at least quarterly after September 30, 2016, N. Clayton failed to conduct the required quarterly reconciliations in violation of Rule 1.15-3(d)(1);
- (5) By failing to provide the reconciliation and supporting documents requested by the State Bar pursuant to 27 N.C. Admin. Code § 1B.0128(b) in relation to the violation of the Rules of Professional Conduct discovered in the random audit of the firm's trust account, N. Clayton failed to produce in a random audit records required by Rule 1.15 upon request in violation of Rule 1.15-3(h);
- (6) By failing to provide a full response to certain inquiries of the State Bar and by failing to provide any response to other inquiries of the State Bar, N. Clayton knowingly failed to respond to a lawful demand for information from a disciplinary authority in connection with a disciplinary matter in violation of Rule 8.1(b);
- (7) By applying white-out tape to hide the print date of documents provided to the State Bar with the three-way reconciliations for July through December 2016, N. Clayton knowingly made false statements of material fact in violation of Rule 8.1(a) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);
- (8) By misrepresenting to the State Bar that the pages with whited-out dates provided to the State Bar were reprinted pages to replace previously existing pages with reconciliation notes with clean copies, N. Clayton knowingly made a false statement of material fact in violation of Rule 8.1(a) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c); and

(9) By misrepresenting to the State Bar that the reconciliations provided to the State Bar on March 27, 2017 had been done on a contemporaneous monthly basis between the 5<sup>th</sup> and 10<sup>th</sup> day of each month, N. Clayton knowingly made a false statement of material fact in violation of Rule 8.1(a) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c).

- B. Pursuant to N.C. Gen. Stat. § 84-28(b)(3) in that N. Clayton failed to answer formal inquiries of the North Carolina State Bar in a disciplinary matter and in that N. Clayton made knowing misrepresentations of facts or circumstances surrounding any complaint, allegation or charge of misconduct to the State Bar.

Based on the foregoing Findings of Fact, the Conclusions of Law, the stipulations of fact by Plaintiff and Defendant N. Clayton, and with the consent of Plaintiff and Defendant N. Clayton, the Hearing Panel hereby finds by clear, cogent and convincing evidence the following additional:

#### FINDINGS OF FACT REGARDING DISCIPLINE

1. The legal profession is entrusted with the privilege of self-regulation. The Bar's system of self-regulation relies upon attorneys to participate in the process and to provide full and fair disclosures of the pertinent facts.

2. By covering the print dates on reconciliation documents she provided to the State Bar and by making misrepresentations in the April and May 2017 letters regarding when the three-way reconciliation forms had been completed, N. Clayton created the risk that the State Bar would be misled regarding the nature and timing of reconciliations of the firm's trust account, and posing potential harm to the State Bar's system of self-regulation, the profession, and the administration of justice in this disciplinary matter.

3. The State Bar was not actually misled by N. Clayton's actions or misrepresentations.

4. Maintaining a trust account in accordance with the Rules of Professional Conduct, including performing the required reconciliations, is essential to the protection of entrusted funds. N. Clayton failed to perform the reconciliations despite the deficiencies found in the random audit and the State Bar's repeated attempts to obtain a reconciliation from her. This pattern of misconduct and disregard for the trust accounting rules placed entrusted funds at risk and had the foreseeable potential to cause significant client harm to the clients.

5. This disregard for the rules also had the potential to cause significant harm to the standing of the profession in the eyes of the public because it demonstrates disregard for her 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 the foundation for public trust in the entire legal system.



6. There is no evidence of actual harm to any client or any client's funds resulting from the failure to maintain and reconcile the trust account in compliance with the Rules of Professional Conduct as set forth in this order.

7. When the firm's bookkeeper of over 20 years became ill and then passed away, N. Clayton took the initiative to begin monitoring the trust accounting for the firm. At no time did any of the other partners or attorneys with the firm take the initiative to handle the trust accounting matters, and at no time did any partner seek to assist N. Clayton with assuring the firm's compliance with Rule 1.15 of the Rules of Professional Conduct.

8. N. Clayton has been practicing law for 13 years.

9. The firm was recognized as "Law Firm of the Month" in the North Carolina Triangle Edition of Attorney at Law magazine. N. Clayton was prominently featured in the article.

10. N. Clayton has no prior discipline.

11. In April 2015, less than a month after the random audit, N. Clayton's five-year-old daughter was the victim of kidnapping and indecent liberties by a seventeen-year-old male who lived in the same neighborhood. Criminal charges were prosecuted against the perpetrator. From the spring of 2015 through the summer of 2017, N. Clayton cooperated with the Durham County District Attorney's Office. N. Clayton attended multiple meetings with the Assistant District Attorney, gathered documents, reviewed discovery, engaged in settlement discussions, and attended monthly court appearances. In addition, during this time period N. Clayton spent significant time taking her daughter and son to multiple medical appointments to assist in their recovery. In the spring of 2017, N. Clayton spent significant time working with N.C. Savan and the Durham County District Attorney's Office in preparation for release of the perpetrator from prison, to make sure all orders would be in place upon his release for the protection of N. Clayton's daughter and family. The investigative and prosecutorial process imposed significant strain upon N. Clayton and her family, as did ongoing harassment from the perpetrator's family in the neighborhood. This resulted in significant physical and mental health issues for N. Clayton. The criminal case was resolved in the summer of 2016 and the harassment ceased with entry of a restraining order in April 2017. These circumstances were present throughout the time period of the conduct at issue in this matter.

12. Beginning in the spring of 2015, N. Clayton sought and received mental health care. She received treatment for at least 18 months, and continues to seek treatment on a less frequent basis for anxiety and depression as a result of the issues related to her daughter and to N. Clayton's Multiple Sclerosis. Additionally, during the spring of 2017, N. Clayton's pre-existing medical conditions involving Multiple Sclerosis and migraines were exacerbated due to the stress from the events related to her daughter, requiring additional medical treatment and prescription medications.

13. The physical and mental health issues described above affected N. Clayton's judgment and ability to practice law during the time period of the conduct at issue in this matter.

Based on the foregoing Findings of Fact, Conclusions of Law, and Additional Findings Regarding Discipline, and with the consent of Plaintiff and N. Clayton, the Hearing Panel enters the following:

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f)(1), (2) and (3) and all of the different forms of discipline available to it.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f)(1) and concludes that the following factors are present:

- a. Intent of the defendant to commit acts where the harm or potential harm is foreseeable;
- b. Potential negative impact of defendant's actions on client's or public's perception of profession;
- c. Potential negative impact of the defendant's actions on the administration of justice; and
- d. Acts of dishonesty, misrepresentation, deceit, or fabrication without timely remedial efforts.

3. The Hearing Panel concludes that although the factor of acts of dishonesty, misrepresentation, deceit, or fabrication is present under 27 N.C. Admin. Code 1B.0116(f)(2)(A), it does not warrant disbarment in this case in light of the unique circumstances present in this case.

4. The Hearing Panel concludes that the following factors enumerated in 27 N.C. Admin. Code 1B.0116(f)(3) are present:

- a. No history of prior disciplinary offenses;
- b. Dishonest or selfish motive;
- c. Pattern of misconduct;
- d. Multiple offenses;
- e. Effect of personal and emotional problems on the conduct in question;
- f. Effect of physical and mental health impairments on the conduct in question;
- g. Cooperative attitude toward the proceedings;

- h. Evidence of good reputation;
- i. Significant degree of experience in the practice of law.

5. Defendant N. Clayton's conduct, if continued or tolerated by the Bar, poses significant potential harm to future clients, the profession, and the administration of justice.

6. N. Clayton's conduct in attempting to hide material information from the State Bar on documents submitted to the State Bar and in making misrepresentations to the State Bar involved dishonesty and an intent to deceive which has the potential to cause serious harm to the public, the profession, and the administration of justice.

7. The Hearing Panel has considered lesser sanctions and finds that discipline short of suspension would not sufficiently protect the public for the following reasons:

- a. N. Clayton engaged in conduct involving dishonesty and an intent to deceive;
- b. N. Clayton's conduct caused potential significant harm to his profession and the administration of justice;
- c. Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses N. Clayton committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar of this State.

8. The Hearing Panel finds that the only sanction in this case that can adequately protect the public is an active suspension of Defendant N. Clayton's license for a period of time.

Based on the foregoing Findings of Fact, Conclusions of Law, and additional Findings of Fact and Conclusions of Law Regarding Discipline, and with the consent of Defendant N. Clayton, the Hearing Panel hereby enters the following:

#### ORDER OF DISCIPLINE

- 1. Defendant Gladys Nicole Clayton is hereby suspended for four years.
- 2. Defendant N. Clayton is taxed with the administrative fees and costs of this action, including the cost of N. Clayton's deposition. The Secretary of the North Carolina State Bar shall assess the fees and costs. N. Clayton shall pay the fees and costs within 90 days of service upon her of the statement of fees and costs by the Secretary.
- 3. N. Clayton 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. After serving no less than six months of the suspension, N. Clayton may apply for a stay of the remaining period of suspension imposed by this Order by filing a motion in the cause with the DHC pursuant to 27 N.C. Admin. Code 1B.0118(c) and demonstrating by clear, cogent, and convincing evidence that she has complied with all requirements of 27 N.C. Admin. Code 1B.0129(b) and that she has satisfied the following requirements:

- a. N. Clayton has kept the North Carolina State Bar Membership Department advised of her current business and home addresses and notified the State Bar of any change in address within ten days of such change.
- b. N. Clayton has accepted any and all certified mail sent to her by the State Bar.
- c. N. Clayton has timely and fully 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, during the period of suspension.
- d. N. Clayton has participated timely and in good faith in the State Bar's fee dispute resolution process for any petition which was pending during the period of suspension.
- e. That at the time of her motion for stay, N. Clayton 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 her, including all judicial district dues, fees and assessments.
- f. That at the time of her motion for stay, there is no deficit in N. Clayton'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.
- g. Within the 60 days immediately preceding the filing of her motion for stay, N. Clayton completed a continuing legal education course on reconciling trust accounts in addition to the minimum amount of required continuing legal education hours otherwise required.
- h. N. Clayton has demonstrated in writing in materials submitted with her motion for stay that she has an accurate understanding of each and every term/phrase on the three-way reconciliation form, including but not limited to "client ledger," "general ledger/checkbook register," "outstanding deposits," and "outstanding disbursements."
- i. N. Clayton has demonstrated in writing in the form of a sample three-way reconciliation with supporting documents submitted with her motion for stay that she can properly and accurately perform a three-way reconciliation of a trust account.

5. If any portion of the suspension imposed in this Order is stayed, such stay will remain in effect only for as long as Defendant complies with the following conditions:

- a. N. Clayton keeps the North Carolina State Bar Membership Department advised of her current business and home addresses and notified the State Bar of any change in address within ten days of such change.
- b. N. Clayton accepts any and all certified mail sent to her by the State Bar.
- c. N. Clayton timely and fully responds 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.
- d. N. Clayton participates timely and in good faith in the State Bar's fee dispute resolution process.
- e. N. Clayton 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 her, including all judicial district dues, fees and assessments.
- f. N. Clayton is current in her completion of mandatory Continuing Legal Education (CLE) hours, in reporting such hours, or in payment of any fees associated with attendance at CLE programs;
- g. Within the 60 days immediately preceding the expiration of the stay of suspension, N. Clayton completes a continuing legal education course on reconciling trust accounts in addition to the minimum amount of required continuing legal education hours otherwise required.
- h. Each month, N. Clayton provides the Office of Counsel with an accurate three-way reconciliation of any trust account she utilizes on the State Bar's reconciliation form with the supporting documentation listed on the form. If there is no receipt or disbursement of funds on behalf of any of N. Clayton's clients, whether by N. Clayton personally or by firm personnel, N. Clayton shall provide an affidavit to this effect in lieu of the three-way reconciliation. If N. Clayton is practicing in a multi-lawyer law firm in which another attorney has been appointed and is serving as the firm's Trust Account Oversight Officer (TAOO) under Rule 1.15-4 of the Rules of Professional Conduct, she shall provide an affidavit to that effect along with the written designation of the TAOO required under Rule 1.15-4 in lieu of the three-way reconciliation. The documentation required by this paragraph per month is due on the fifteenth day of the following month (e.g. the reconciliation for the month of January, or the applicable affidavit for the month of January, is due February 15).

- i. N. Clayton does not violate any of the Rules of Professional Conduct in effect during the period of the stay.
- j. N. Clayton does not violate any laws of the State of North Carolina or of the United States during the period of the stay.

6. If there is no stay of any period of the suspension imposed in this Order, or if after any period of stayed suspension the DHC lifts the stay and activates any portion of the suspension, in order to be reinstated to active status N. Clayton must comply with all requirements of 27 N.C. Admin. Code 1B.0129(b) and must also show by clear, cogent, and convincing evidence that she has satisfied the following requirements:

- a. N. Clayton has kept the North Carolina State Bar Membership Department advised of her current business and home addresses and notified the State Bar of any change in address within ten days of such change.
- b. N. Clayton has accepted any and all certified mail sent to her by the State Bar.
- c. N. Clayton has timely and fully 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, during the period of suspension.
- d. N. Clayton has participated timely and in good faith in the State Bar's fee dispute resolution process for any petition which was pending during the period of suspension.
- e. That at the time of her petition for reinstatement, N. Clayton 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 her, including all judicial district dues, fees and assessments.
- f. That at the time of her petition for reinstatement, there is no deficit in N. Clayton'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.
- g. Within the 60 days immediately preceding the filing of her petition for reinstatement, N. Clayton completed a continuing legal education course on reconciling trust accounts in addition to the minimum amount of required continuing legal education hours otherwise required.
- h. N. Clayton has demonstrated in writing in materials submitted with her petition for reinstatement that she has an accurate understanding of each and every term/phrase on the three-way reconciliation form, including but

not limited to "client ledger," "general ledger/checkbook register," "outstanding deposits," and "outstanding disbursements."

- i. N. Clayton has demonstrated in writing in the form of a sample three-way reconciliation with supporting documents submitted with her petition for reinstatement that she can properly and accurately perform a three-way reconciliation of a trust account.


Signed by the Chair with the consent of the other Hearing Panel members, this the 21 day of May, 2018.

  
Donald C. Prentiss, Chair  
Disciplinary Hearing Panel

CONSENTED TO BY:

  
Jennifer A. Porter  
Counsel for Plaintiff

  
Gladys Nicole Clayton  
Defendant

  
Dudley A. Witt  
Counsel for Defendant Gladys Nicole Clayton