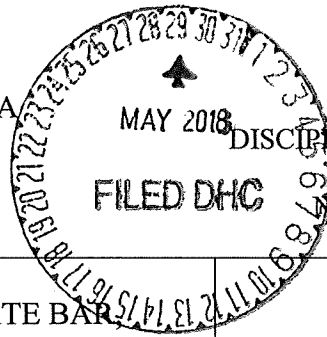


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
18 DHC 10

THE NORTH CAROLINA STATE BAR

Plaintiff

v.

CINDY HUNTSBERRY, Attorney,

Defendant

CONSENT ORDER

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission ("DHC") composed of Donald C. Prentiss, Chair, and members Stephanie N. Davis and Michael S. Edwards, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0115(i). Plaintiff was represented by Mary D. Winstead. Defendant, Cindy Huntsberry, was represented by Michael J. Reece. 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 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, Cindy C. Huntsberry, was admitted to the North Carolina State Bar in August, 1979 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 Smithfield, Johnston County, North Carolina.
4. During the times mentioned herein, Defendant maintained an attorney trust account ending in #4835 at First Citizens Bank.

5. The State Bar conducted a random procedural audit of Defendant's trust account on September 15, 2015 and found violations of the trust account record-keeping rules including the following:

- (a) Failure to conduct monthly and quarterly reconciliations;
- (b) Failure to identify clients on trust account checks;
- (c) Failure to maintain ledger of attorney funds to service trust account;
- (d) Failure to escheat unidentified/abandoned funds; and
- (e) Commingling of attorney and client funds.

6. The State Bar had conducted a random procedural audit of Defendant's trust account on February 21, 2003 and identified the following violations of the trust account record-keeping rules:

- (a) Failure to conduct quarterly reconciliations;
- (b) Failure to identify clients on deposit slips;
- (c) Failure to provide written accountings to clients at completion of disbursement or at least annually if funds held more than 12 months;
- (d) Failure to maintain ledger of attorney funds to service trust account;
- (e) Failure to provide the NSF directive to the bank; and
- (f) Commingling of attorney and client funds.

7. The State Bar opened a grievance file after the September 2015 audit and sent Defendant a Letter of Notice.

8. Defendant was required to respond to the Letter of Notice within fifteen days of receipt.

9. The Letter of Notice was delivered to Defendant on January 25, 2016.

10. Defendant requested an extension of time in which to respond to the Letter of Notice and was granted until February 26, 2016.

11. Defendant did not respond to the Letter of Notice on or before February 26, 2016.

12. As a result of Defendant's failure to respond to the Letter of Notice, the Chair of the Grievance Committee issued a subpoena for Defendant to appear at the State Bar on May 27, 2016.

13. On May 27, 2016, Defendant produced bank and other records that had been subpoenaed and met with Deputy Counsel and a State Bar Investigator.

14. At the May 27, 2016 meeting, Defendant acknowledged that she had not been operating her trust account in accordance with the Rules of Professional Conduct and specifically acknowledged that she had not been performing the required trust account reconciliations.

15. The State Bar conducted an investigative audit of Defendant's trust account for the time period January 1, 2012 through April 30, 2016.

16. The investigative audit revealed several instances in which Defendant had deposited personal funds into the trust account as follows:

(a) On July 10, 2014, Defendant deposited \$45,000.00 from a personal annuity which she disbursed for a personal expenditure on July 15, 2014.

(b) On December 8, 2014, Defendant deposited \$492.45 of her deceased husband's retirement funds and disbursed that amount to herself on December 19, 2014.

(c) On March 6, 2015, Defendant deposited \$11,975.91 of her deceased husband's retirement funds and did not remove those funds from the trust account until she disbursed the funds to herself three days after the September 2015 audit.

17. The investigative audit also revealed the following irregularities:

(a) A check in the amount of \$11,551.88 drawn on Defendant's trust account in 2004 and made payable to Rex Healthcare on behalf of former client Belinda Ellis had not been negotiated.

(b) Several clients had negative balances caused by Defendant disbursing more for those clients than she had in trust for those clients, which included Defendant's issuance of duplicate disbursements for fees to herself on two occasions.

(c) Defendant routinely deposited into her trust account checks from the United States Treasury which were made payable to her for earned fees in social security disability cases.

18. Defendant did not follow up until 2016 to determine the reason the check referred to in paragraph 17(a) had not been negotiated.

19. Defendant did not provide Belinda Ellis with annual accountings of the funds held in trust on her behalf since 2004.

20. Defendant has been unable to identify the beneficial owner(s) of \$700.00 in her trust account.

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 reconcile the bank statement balance with the balance shown on Defendant's records monthly and failing to quarterly total the individual client ledger balances and reconcile those and the general ledger balances with the adjusted bank statement balances for her trust account, Defendant failed to perform monthly and quarterly reconciliations of the trust account in violation of Rule 1.15-3(d);
- (b) By failing to identify on trust account checks the client balances from which the funds were drawn, Defendant failed to indicate on items drawn on the trust account the client balances from which the items were drawn in violation of Rule 1.15-3(b)(2);
- (c) By failing to maintain a ledger of attorney funds to service the trust account, Defendant violated Rule 1.15-2(f)(1);
- (d) By failing to escheat unidentified/abandoned funds, Defendant failed to escheat unclaimed property in accord with N.C. Gen. Stat. §116-B53 in violation of Rule 1.15-2(q)<sup>i</sup>;
- (e) By depositing personal funds in her trust account, Defendant deposited and maintained funds belonging to Defendant in a trust account in violation of Rule 1.15-2(f), and by commingling personal funds with entrusted funds, Defendant failed to hold and maintain entrusted property separate from the property of Defendant in violation of Rule 1.15-2(a);
- (f) By failing to render to client Belinda Ellis an annual accounting of the funds remaining in Defendant's trust account on behalf of Ms. Ellis, Defendant failed to render annually to the client a written accounting of funds held for more than one year in violation of Rule 1.15-3(e);
- (g) By failing to promptly follow up on the check to Rex Healthcare that was not negotiated, Defendant failed to act with reasonable diligence and promptness in representing her client in violation of Rule 1.3, and failed to make due inquiry of her personnel, records, and other sources of information to determine the identity and location of the owner and/or promptly transfer the property to the entity or person to whom it belonged in violation of Rule 1.15-2(q)<sup>ii</sup>;
- (h) By disbursing from the trust account more funds for clients than she held in the account on behalf of those clients, Defendant failed to properly maintain entrusted funds in violation of Rule 1.15-2(a), allowed one other than the beneficial owner to benefit from entrusted funds in violation of Rule 1.15-2(j)<sup>iii</sup>, and failed to properly pay or deliver entrusted funds in violation of Rule 1.15-2(m)<sup>iv</sup>; and

- (i) Pursuant to N.C. Gen. Stat. § 84-28(b)(3) in that Defendant knowingly failed to answer the formal inquiry of the North Carolina State Bar in a disciplinary matter.

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

**Additional Findings of Fact Regarding Discipline**

1. The findings of fact in paragraphs 1 – 20 above are reincorporated as if set forth herein.
2. Maintaining a trust account in accordance with the Rules of Professional Conduct, including performing the required quarterly reconciliations, is essential to the protection of entrusted funds. Defendant failed to perform the reconciliations despite having her trust account audited previously. 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.
3. This reckless 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 Defendant's 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.
4. Once Defendant's attorney reconciled the trust account and discovered negative balances for several clients, Defendant immediately replenished the trust account. The overdisbursements appear to have been the result of trust account mismanagement and not dishonest conduct on the part of Defendant.
5. Defendant also reissued the check to Rex Healthcare and identified funds that needed to be escheated.
6. 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 disclosure of the pertinent facts. Failure by an attorney to timely participate in the Bar's self-regulation process poses potential harm to the profession.
7. In 1990, the Grievance Committee issued a Reprimand to Defendant for failure to file fee petitions and obtain approval before taking fees in eight Social Security cases, and depositing such fees in her personal account rather than the trust account.
8. In 1991, the Grievance Committee issued a Censure to Defendant for failing to timely file fee a petition in a Social Security case after being advised by the judge to do so, collecting her fee prior to approval, and providing a dishonest or careless response to the State Bar.
9. In 1995, the Disciplinary Hearing Commission ordered a 1 year suspension of Defendant's law license, stayed for 2 years for failure to hold fees in trust until approved thereby collecting an excessive/illegal fee, failure to adequately supervise staff and falsely claiming clients' fees were being held in trust, and failure to promptly respond to inquiry of disciplinary authority.

10. In 2006, the Grievance Committee issued a Reprimand to Defendant for failure to file client's appeal and failure to keep client informed.

11. Defendant has more than thirty-five years experience in the practice of law.

12. 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) 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) negative impact of defendant's actions on clients' or public's perception of profession; and
- (c) 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) and concludes no factors are present in this case 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) and concludes the following factors are applicable in this matter:

- (a) prior disciplinary offenses;
- (b) remoteness of prior offenses;
- (c) a pattern of misconduct;
- (d) multiple offenses; and
- (e) degree of experience in the practice of law

4. Defendant should be taxed with the administrative fees and costs of this action.

Based upon the foregoing Findings of Fact and Conclusions of Law and the Additional Findings of Fact and Conclusions 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 five years effective thirty days after service of this Order upon Defendant.

2. Defendant shall surrender her 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 her membership card, she 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 her 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 her if the request is sent to the address Defendant provided to the State Bar pursuant to this Order.

6. Within thirty days of the effective date of this Order, Defendant shall disburse the remaining funds in her trust account to the rightful owners pursuant to the Rules of Professional Conduct and initiate the escheatment process for any funds require to be escheated and provide documentation to the Office of Counsel showing that the disbursements and escheatments have been made.

7. Within thirty days after the effective date of this Order, Defendant shall make arrangements through the Lawyer Assistance Program (LAP) to undergo a mental health evaluation. Defendant shall comply with the evaluator's recommendations for counseling and treatment.

8. 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 her of the statement of administrative fees and costs.

9. After no less than one year of active suspension, Defendant may apply 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 8 above, she has complied with the following conditions:

- (a) Defendant has kept the North Carolina State Bar Membership Department advised of her 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 her petition 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 her, including all judicial district dues, fees and assessments;
- (d) That at the time of her petition 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 during the active suspension that preceded the petition 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;
- (f) Defendant has provided an affidavit to the State Bar verifying that she has complied with paragraph 6 above and that all funds required to be escheated have escheated;
- (g) Defendant has not violated the Rules of Professional Conduct or the laws of the United States or of any state or local government during her suspension;
- (h) Defendant properly wound down her law practice and complied with the requirements of 27 N.C. Admin. Code 1B .0128;
- (i) 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; and
- (j) Defendant has provided an affidavit stating that she has complied with all treatment recommendations of LAP.

10. If Defendant successfully petitions for a stay of all or any portion of her suspension, the applicable suspension of her law license shall be stayed as long as she complies and continues to comply with the following conditions:

- (a) Defendant is 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) That there is no deficit in Defendant's completion of mandatory CLE hours, in reporting of such hours, or in payment of any fees associated with attendance at CLE programs;



- (c) Within the first year of the stayed suspension, Defendant shall complete three hours of CLE in the area of trust accounting approved in advance by the Office of Counsel of the State Bar. At least one hour shall be the Trust Accounting Rules course taught by the Trust Account Compliance Counsel (TACC) for the North Carolina State Bar unless Defendant has already taken all courses taught by TACC. Defendant shall provide written proof of successful completion of the CLE courses to the State Bar within ten days of completing the courses. These three hours are in addition to the CLE requirements set out in 27 N.C. Admin. Code ID .1518;
- (d) During the stayed suspension, Defendant shall personally perform the three-way reconciliations of all bank accounts into which are deposited any funds which Defendant is required to hold in trust for the benefit of any client or third party using the reconciliation method described in the State Bar Lawyer's Trust Account Handbook using the reconciliation form provided therein. Defendant shall provide (i) the three-way reconciliation report, (ii) client ledgers for all clients with funds in the trust account(s) during that quarter, (iii) ledger for any personal funds maintained in the trust account(s) for bank or credit card fees, (iv) trust account general ledger, (v) multiple balance ledger report (report listing balance of funds maintained in trust for each client during reporting period), (vi) the bank statements, (vii) cancelled checks, and (viii) deposit slips and copies of deposited items for each quarter.
- (e) The three way reconciliation reports are due no later than thirty days after the end of each quarter (each January 30, April 30, July 30, and October 30 during the period of stay);
- (f) 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 her law firm are administered, to the best of her knowledge, in compliance with the requirements of Rule 1.15 (including all subparts) or that she is exempt from this provision because Defendant does not maintain any trust or fiduciary accounts for North Carolina client funds;
- (g) Defendant shall arrange for an active member of the North Carolina State Bar to serve as her 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 her to active status. The monitor will supervise all client matters and will ensure that Defendant timely handles all client matters and promptly responds to her clients. Defendant shall meet once a month with her 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.

- (h) Defendant shall cooperate with the Office of Counsel and make appropriate arrangements for an alternate monitoring attorney if needed during this stay.
- (i) Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or of any state or local government during her stay;
- (j) Defendant shall keep the State Bar Membership Department advised of her current business address. Defendant shall notify the State Bar of any change of address within ten days of such change. Her current business address must be a street address, not a post office box or drawer;
- (k) 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
- (l) 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.

11. If Defendant fails to comply with any one or more of the conditions of the stay of suspension provided in paragraphs 10 (a) – (l) above, the stay of suspension may be lifted in accordance with 27 N.C. Admin. Code 1B .0118(a).

12. If Defendant successfully petitions for a stay of her 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 § .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.

13. If Defendant does not seek a stay of the suspension of her law license or if some part of the suspension is stayed and thereafter revoked, Defendant must comply with the conditions set out in paragraphs 2 through 8 above and the provisions of 27 N.C. Admin. Code 1B .0129 before seeking reinstatement of her license to practice law, and must provide in the petition for reinstatement clear, cogent and convincing evidence showing compliance therewith.

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

This the 21 day of May 2018.

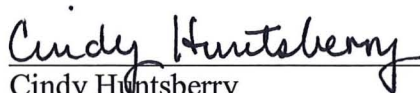


Donald C. Prentiss, Chair  
Disciplinary Hearing Panel

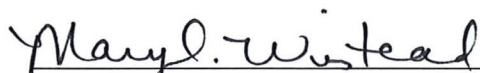
Agreed and consented to by:



Michael J. Reece  
Attorney for Defendant



Cindy Huntsberry  
Defendant



Mary D. Winstead  
Attorney for Plaintiff

<sup>i</sup> Now codified as Rule 1.15-2(r)

<sup>ii</sup> Now codified as Rule 1.15-2(r)

<sup>iii</sup> Now codified as Rule 1.15-2(k)

<sup>iv</sup> Now codified as Rule 1.15-2(n)