

STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING  
COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
14 DHC 29 and 14 DHC 33

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

CLARKE K. WITTSTRUCK, Attorney,

Defendant

ORDER OF DISCIPLINE

This matter was heard on February 23, 2015 before a Hearing Panel of the Disciplinary Hearing Commission composed of Barbara B. Weyher, Chair, and members R. Lee Farmer and Pattie Head pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff was represented by G. Patrick Murphy. Defendant, Clarke K. Wittstruck ("Wittstruck" or "Defendant"), appeared pro se.

Based upon the pleadings, the parties' stipulations of fact, and the evidence presented at hearing, the Hearing Panel hereby finds by clear, cogent, and convincing evidence 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 was admitted to the North Carolina State Bar on August 23, 1986, 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 practice in Asheville, Buncombe County, North Carolina.
4. Defendant was properly served with process and the matter came before the Hearing Panel with due notice to all parties.

W.E. Moore

5. In November 2011, W. E. Moore ("Moore") hired and paid Defendant \$1,020.00 to represent Moore in Moore's effort to obtain a divorce.

6. On or about December 22, 2011, Defendant notified Moore that service of the Complaint was complete and Moore's spouse had 30 days to answer.

7. In late March 2012, Defendant told Moore that Defendant would send to Moore a copy of the response to the divorce Complaint filed by Moore's spouse. Defendant did not promptly send the response filed by the attorney for Moore's spouse to Moore.

8. When Defendant did not promptly send the response filed by Moore's spouse to Moore, Moore called and emailed Defendant requesting the documents and a status update on the case. Defendant did not return Moore's calls or emails. As of April 13, 2012, Defendant had not sent a copy of the response filed by Moore's spouse to Moore as Defendant had said he would do.

9. On June 19, 2012, Defendant told Moore that Defendant had to draft a qualified domestic relations order ("QDRO") which he would send to Moore to review the following Thursday. On July 18, 2012, Defendant sent the QDRO drafts and an alimony order to Moore which Moore approved that day and told Defendant to proceed.

10. On July 23, 2012, Defendant sent the drafts to opposing counsel and on August 13, 2012, in response to an email from Moore, Defendant told Moore that Defendant would contact opposing counsel that day and inquire about the status of the drafts.

11. On August 22, August 28, and September 6, 2012, Moore asked Defendant for status updates on his divorce case. On September 7, 2012, Defendant told Moore the matter should be complete by the end of the following week.

12. On September 21, September 28, and October 9, 2012, Moore sent Defendant emails asking Defendant for status updates on his case. Defendant did not respond to Moore's emails requesting information.

J.N. Ray

13. In February 2013, J.N. Ray ("Ray") hired Defendant to represent her in a traffic infraction case and paid Defendant \$305.00 to cover court costs, any fine and Defendant's fee.

14. Defendant did not deposit the funds Ray delivered to him to pay the court costs and fine into a trust account.

15. Defendant disposed of Ray's case on March 4, 2013 but did not pay the fine and costs imposed in the case as he had agreed to do and did not notify Ray of the disposition of her case.

16. After March 4, 2013, Ray tried to contact Defendant for information about the case but Defendant would not return her emails or telephone calls.

17. Defendant's failure to pay the costs in Ray's case resulted in a failure to comply ("FTC") being entered in Ray's case.

18. On April 1, 2013, Ray filed a Petition for Resolution of Disputed Fee with the North Carolina State Bar's Fee Dispute Resolution Program ("FDRP") based on Defendant's handling of her traffic case.

19. On April 4, 2013, Defendant signed the certified mail green card acknowledging receipt of the fee dispute petition. Defendant did not respond to the FDRP notice within 15 days of receipt of the letter and did not request an extension of time to respond.

20. On April 5, 2013, Defendant paid the costs in Ray's case but did not notify Ray of the disposition of her case.

T. Larson

21. On or about September 14, 2012, T. Larson ("Larson"), a resident of Ohio, paid Defendant \$75.00 to represent her in a traffic case in Polk County, North Carolina. Larson's citation set her initial court date for September 19, 2012.

22. Defendant told Larson he would continue the September 19, 2012 court date and let Larson know when the continuance was obtained. On September 24, 2012, Larson emailed Defendant seeking information on whether the continuance was obtained. Defendant did not respond to Larson's September 24, 2012 email requesting information about her case.

23. Defendant did not get Larson's September 19, 2012 court date continued and on September 19, 2012, an order for arrest ("OFA") for Larson's FTA in court was issued.

24. On October 24, 2012, the North Carolina Department of Motor Vehicles ("NCDMV") sent Larson a letter notifying her that her driving privileges in North Carolina would be suspended on December 23, 2012 for FTA on the traffic ticket Defendant was hired to handle.

25. On November 7, 2012, the Ohio Department of Public Safety sent Larson a letter notifying her that her driving privileges in the State of Ohio would be suspended on December 4, 2012 for failing to comply with the Polk County traffic ticket Defendant was hired to handle.

26. On November 14, 2012, Defendant obtained an order striking Larson's FTA.

27. On November 14, 2012, Defendant entered a guilty plea on Larson's behalf in Polk County District Court.

28. Defendant refunded \$50.00 of his fee to Larson.

R. Grawe

29. On or about August 2012, R. Grawe ("Grawe") hired Defendant to represent him in a Madison County traffic case and paid Defendant \$495.00 to cover court costs, any fine and Defendant's fee. Grawe's citation set his court appearance for August 23, 2012.

30. Defendant did not deposit the funds Grawe delivered to him to pay the court costs and fine into a trust account.

31. Defendant continued Grawe's traffic case to September 13, 2012 but did not dispose of Grawe's case on that date or obtain a further continuance of the case. Defendant did not notify Grawe that Defendant had failed to dispose of Grawe's case or get it continued from the September 13, 2012 term.

32. In May 2013, a FTA was entered in Grawe's traffic case. Defendant did not notify Grawe that a FTA was entered in Grawe's case.

33. On or about May 7, 2013, the NCDMV sent Grawe a letter notifying him that his driving privilege was scheduled for suspension effective July 6, 2013 for failure to appear in his Madison County traffic case.

34. Following receipt of the NCDMV notice, Grawe called the Madison County District Attorney's Office, got the FTA set aside, and negotiated an improper equipment disposition in his case. Grawe paid the fine and court cost assessed in the case directly to the Clerk of Court.

35. On June 13, 2013, Grawe filed a Petition for Resolution of Disputed Fee with the North Carolina State Bar's FDRP based on Defendant's handling of his traffic case.

36. On June 13, 2013, notice of the fee dispute was mailed to Defendant, he signed the certified mail green card acknowledging receipt of the notice, and the card was returned to the FDRP.

37. Defendant did not respond in writing to the FDRP's notice or request an extension of time to respond.

A. Fisher

38. In February 2013, A. Fisher ("Fisher") hired Defendant to represent her in a domestic case and paid Defendant \$3,200.00.

39. After he was paid, Defendant set Fisher's file aside and did not complete the work on Fisher's case.

40. Due to Defendant's neglect of her case, on or about May 16, 2013, Fisher instructed Defendant by email not to proceed with her case and to refund the money she had paid Defendant. That same day, Defendant sent Fisher an email advising her that on the following Monday, he would refund the money Fisher paid him.

41. Defendant did not refund Fisher's money as he said he would and did not return Fisher's follow-up emails, calls or texts.

42. On June 14, 2013, Fisher received a partial refund of \$1,200.02 from Defendant, and on June 15, 2013, Fisher received a partial refund of \$400.00.

43. On or about June 17, 2013, Fisher filed a Petition for Resolution of Disputed Fee with the North Carolina State Bar's FDRP.

44. On June 17, 2013, notice of the fee dispute was mailed to Defendant by certified mail and the green card acknowledging receipt of the notice was signed by Defendant and returned to the FDRP.

45. Defendant did not respond in writing to the FDRP's notice and did not request an extension of time to respond.

#### B. Bell

46. In March 2013, B. Bell ("Bell") hired Defendant to represent him in two traffic cases, one in Henderson County and one in Polk County. Bell paid Defendant \$150.00 for Defendant's fee.

47. The Henderson County case was scheduled for May 22, 2013. Defendant did not appear in court for Bell on May 22, 2013.

48. When Bell realized Defendant had not attended the May 22, 2013 court date, Bell called and emailed Defendant about the case but did not get a response from Defendant.

49. Bell went to court in the Henderson County case on May 24, 2013, and appearing *pro se*, obtained a disposition of the case.

50. On July 1, 2013, Bell filed a Petition for Resolution of Disputed Fee with the North Carolina State Bar's FDRP based on Defendant's handling of his traffic case.

51. Notice of the fee dispute was served on Defendant by certified mail on July 10, 2013.

52. Defendant did not timely respond to the FDRP's request for information related to Bell's petition and did not request an extension of time to respond.

53. On October 10, 2013, Defendant responded to a letter of notice ("LON") from the State Bar related to his conduct in Bell's Henderson County case. In his response to the State Bar, Defendant stated, in part, "On 5/24/13 I processed the case in Henderson and Mr. Bell paid the costs of court directly."

54. On May 15, 2014, the State Bar sent Defendant a letter asking him to explain the apparent inconsistency between his response and information in the court file related to the

disposition of Bell's Henderson County case. Defendant did not respond to the State Bar's letter of May 15, 2014.

55. Defendant's statement to the State Bar noted in paragraph 53 was not true.

J. Miller

56. On or about December 5, 2012, J. Miller ("Miller") hired Defendant to represent her in a Madison County traffic case and paid Defendant \$75.00 as Defendant's fee.

57. Miller and Defendant agreed Defendant would get the case continued from its initial court date of December 10, 2012 to allow Miller and Defendant to further discuss Miller's options. Defendant did not appear on Miller's behalf in court on December 10, 2012 and failed to get Miller's case continued.

58. After her December 10, 2012 court date, Miller left voice messages with and sent emails to Defendant seeking information about her case but Defendant did not respond to Miller's requests for information about her case.

59. As a result of Defendant's neglect of Miller's case, a FTA was entered against Miller.

60. On or about July 3, 2013, Miller, proceeding *pro se*, negotiated a disposition of her case with the district attorney.

61. On July 24, 2013, Miller filed a Petition for Resolution of Disputed Fee with the North Carolina State Bar's FDRP.

62. On July 30, 2013, Defendant signed the certified mail green card acknowledging receipt of the FDRP notice.

63. Defendant did not timely respond to the FDRP's request for information related to Miller's fee dispute and did not request an extension of time to respond.

64. Defendant later refunded \$75.00 to Miller.

W. Denkins

65. In April 2013, W. Denkins ("Denkins") hired Defendant to file for an uncontested divorce.

66. Defendant told Denkins it would take about 60 days to resolve the case.

67. In April 2013, Defendant prepared a Complaint for Denkins and mailed the Complaint to Denkins for Denkins' approval and signature.

68. On April 26, 2013, Denkins signed the Complaint that Defendant had sent to Denkins and, on or about that same date, Denkins returned the verified Complaint to Defendant

along with a check for \$360.00. The \$360.00 was the agreed upon amount to cover the costs and Defendant's fee to file the divorce case.

69. The \$360.00 check Denkins delivered to Defendant cleared Denkins' bank account on or about May 1, 2013.

70. Between May 1, 2013 and July 23, 2013, Denkins called and emailed Defendant seeking information about the status of the case. Defendant did not return Denkins' calls or emails.

71. On July 25, 2013, Denkins filed a Petition for Resolution of Disputed Fee with the North Carolina State Bar's FDRP.

72. On July 31, 2013, notice of the fee dispute was mailed to Defendant. The post office left Defendant two notices of the certified mail. Defendant did not claim the certified letter and it was returned to the State Bar.

73. On or about August 8, 2013, Defendant filed a divorce Complaint with the Clerk of Buncombe County in *Denkins v. Denkins*, 13Cvd 03379.

74. On August 29, 2013, notice of the fee dispute was faxed to Defendant and he acknowledged receipt of the fax.

75. Defendant did not respond to the FDRP's request for a written response to Denkins' FDRP petition and did not request additional time to provide a written response.

76. On October 21, 2013, Defendant was served with a LON by the State Bar in State Bar file 13G0940 making a formal inquiry into Defendant's conduct in representing Denkins in his divorce case.

77. Defendant did not respond to the State Bar's LON nor did he request an extension of time to submit a response within the time provided by 27 N.C.A.C., Chapter 1, Subchapter B, Rule .0112(c).

78. On December 6, 2013, Defendant sent a letter to the State Bar addressing his conduct in handling Denkins' divorce case.

79. In Defendant's December 6, 2013 letter, he made the following statement to the State Bar: "On August 8, 2013, Mr. Denkins returned the divorce complaint to me and paid me \$360.00 by personal check." Defendant's quoted statement is not true.

80. On May 19, 2014, the State Bar sent a letter to Defendant asking him to provide deposit information, including a copy of the deposit ticket, the bank statement showing the deposit, and a ledger for the \$360.00 check Denkins paid him for the divorce case.

81. On or about June 29, 2014, Defendant responded to the State Bar's letter referenced in paragraph 80 above with a letter which contained the following statement: "Mr.

Denkins paid me with a personal check of \$360 on 8/8/13.” Defendant’s quoted statement is not true.

82. Defendant did not provide the State Bar copies of the documents requested in its letter of May 19, 2014 related to the deposit of Denkins’ \$360.00 check.

83. Denkins’ \$360.00 check included the filing fee for the divorce case which Denkins entrusted to Defendant for that purpose.

84. Defendant did not deposit Denkins’ \$360.00 check into a trust account.

85. On or about October 22, 2013, Defendant refunded \$360.00 to Denkins, who hired another lawyer to complete his divorce case.

A. Ladhani

86. On or about January 28, 2013, A. Ladhani (“Ladhani”) hired Defendant to represent Ladhani in a traffic ticket and a misdemeanor charge. Ladhani paid Defendant a fee of \$275.00.

87. Defendant failed to appear in court on Ladhani’s behalf in the misdemeanor case on February 8, 2013 and did not arrange for the case to be continued.

88. On March 8, 2013, Ladhani was arrested for failure to appear.

89. After the February 8, 2013 court date but prior to Ladhani’s arrest for failure to appear, Ladhani sent Defendant emails seeking information about the status of his case but Defendant did not respond to Ladhani’s requests for information.

90. In one of Ladhani’s emails to Defendant referenced in paragraph 89 above, Ladhani specifically asked Defendant: “Could I possibly get an update. I just don’t want to find out there is a warrant for me on failure to appear.”

91. On May 8, 2014, Defendant was served with a LON by the State Bar in State Bar file 13G1124 making a formal inquiry into Defendant’s conduct in representing Ladhani in his traffic and misdemeanor cases.

92. Defendant did not respond to the State Bar’s LON nor did he request an extension of time to submit a response within the time provided by 27 N.C.A.C., Chapter 1, Subchapter B, Rule .0112(c).

M. Gardiner

93. In early 2013, M. Gardiner (“Gardiner”) hired Defendant to represent her in two traffic cases, a 2012 speeding ticket, and a 2013 ticket charging Gardiner with speeding and a seat restraint violation. Gardiner paid Defendant a fee of \$75 in each case.



94. Defendant told Gardiner he would get the 2012 case continued but he did not follow-up and let her know her new court date.

95. Defendant failed to get Gardiner's 2012 traffic case continued and a FTA was entered in her case on June 12, 2013.

96. As of mid-summer 2013, Gardiner had not heard from Defendant concerning the court date for her 2012 traffic case and tried to contact Defendant on several occasions.

97. Defendant did not respond to Gardiner's attempts to contact him so she hired another attorney to handle the 2012 traffic case.

98. On May 8, 2014, Defendant was served with a LON by the State Bar in State Bar file 13G0966 making a formal inquiry into Defendant's conduct in representing Gardiner in her 2012 traffic case.

99. Defendant did not respond to the State Bar's LON nor did he request an extension of time to submit a response within the time provided by 27 N.C.A.C., Chapter 1, Subchapter B, Rule .0112(c).

S. Pendergast

100. On or about April 26, 2013, S. Pendergast ("Pendergast") hired Defendant to represent her in a 2012 traffic case ("traffic case") and paid Defendant \$350.00 to cover Defendant's fee, the court costs and any fine.

101. Defendant continued Pendergast's traffic case but failed to advise her of the new court date.

102. On or about July 17, 2013, Pendergast's case was on the calendar in Henderson County District Court but Defendant failed to appear in court for Pendergast's traffic case and did not arrange for the case to be continued which resulted in a FTA being entered against Pendergast.

103. On or about August 14, 2013, the NCDMV sent Pendergast a letter notifying her that her driving privilege was scheduled for indefinite suspension effective October 13, 2013 for failure to appear in her Henderson County traffic case.

104. On or about September 16, 2013, Defendant obtained a consent order setting aside the FTA and re-calendaring Pendergast's traffic case for November 13, 2013.

105. On or about November 13, 2013, judgment was entered in Pendergast's traffic case imposing costs and fine totaling \$238.00. Although Defendant had been entrusted with funds to pay the costs and fine by Pendergast, Defendant failed to pay the \$238.00 imposed as costs and fine as he had agreed to do. Defendant did not notify Pendergast of the November 13, 2013 disposition of her case.

106. On or about December 6, 2013, a FTC with the judgment was entered in Pendergast's traffic case.

107. On or about December 9, 2013, NCDMV sent Pendergast a letter notifying her that her driving privilege was scheduled for indefinite suspension effective February 7, 2014 for failing to pay the fine in her traffic case.

108. On December 12 and 23, 2013, Pendergast paid the Henderson County Clerk \$238.00 and \$50.00, respectively, for the costs and fine, and a late fee.

109. The \$350.00 that Pendergast paid Defendant included entrusted funds to pay the costs and any fine. Defendant did not deposit the funds received from Pendergast into a trust account.

110. On May 19, 2014, Defendant was served with a LON by the State Bar in State Bar file 14G0443 making a formal inquiry into Defendant's conduct in representing Pendergast in her traffic case.

111. Defendant did not respond to the State Bar's LON nor did he request an extension of time to submit a response within the time provided by 27 N.C.A.C., Chapter 1, Subchapter B, Rule .0112(c).

A. Guevara

112. On or about August 28, 2013, A. Guevara ("Guevara") hired Defendant to represent Guevara in obtaining a divorce.

113. Guevara paid Defendant \$380 to cover the court costs and Defendant's fee for the divorce, and \$20 for a name change. Defendant did not deposit the money for the court costs into a trust account.

114. Defendant advised Guevara that it would take approximately 60 days for her to obtain a divorce.

115. On or about September 9, 2013, Defendant filed a Complaint in *Guevara v. Guevara*, 13CV3883 (Buncombe County).

116. In paragraph 1 of the Complaint, Defendant indicated the date of separation for the parties was November 8, 2013; a date after the Complaint was filed.

117. After the Complaint was filed, Guevara sent Defendant several emails seeking information about the status of her case which Defendant failed to answer.

118. On December 28, 2013, Guevara notified Defendant that he had the incorrect date of separation on the proposed judgment he sent her to review.

119. On January 16, 2014, Defendant emailed Guevara advising her that the divorce judgment was not processed by the court due to the date of separation error.

120. Defendant sent Guevara an Amended Complaint which she verified and returned to Defendant on or about January 20, 2014.

121. On March 5, 2014, Guevara sent Defendant an email indicating she had not heard anything from Defendant since she returned the Amended Complaint.

122. In response to Guevara's March 5, 2014 email, Defendant emailed Guevara advising her, "I just located your Amended Complaint. It will be filed tomorrow and paperwork sent to you via email tomorrow evening."

123. After notifying Guevara on March 9, 2014 that her Amended Complaint had been filed, Defendant failed to respond to subsequent email from Guevara seeking information about the status of the divorce case.

124. On May 9 and May 19, 2014, Guevara sent letters to Defendant by certified mail asking for a refund of the money she paid Defendant to represent her in the divorce case due to the delay in completing the case. Defendant signed the green cards acknowledging receipt of the two letters. Defendant did not timely respond to either of the two certified letters.

125. On July 19, 2014, Defendant was served with a LON by the State Bar in State Bar file 14G0601 making a formal inquiry into Defendant's conduct in representing Guevara in her divorce case.

126. Defendant did not respond to the State Bar's LON nor did he request an extension of time to submit a response within the time provided by 27 N.C.A.C., Chapter 1, Subchapter B, Rule .0112(c).

127. As of October 30, 2014, Defendant had not completed Guevara's divorce case.

#### D. Cummings

128. On July 1, 2013, D. Cummings ("Cummings") hired Defendant to represent her in a speeding case in Henderson County, North Carolina.

129. Cummings paid Defendant \$420 to cover the costs, any fine, and his fee for representing her in the case.

130. Defendant did not deposit the funds Cummings delivered to him to pay the court costs and fine into a trust account.

131. On July 11, 2013, Defendant sent Cummings an email notifying her that her new court date was September 18, 2013 and that the district attorney had agreed she could take a 4 hour driving course, which would enable her to obtain an improper equipment disposition.

132. On or about August 15, 2013, Cummings mailed the driving course completion certificate to Defendant. By an email dated August 19, 2013, Defendant acknowledged he received the certificate.

133. Defendant failed to dispose of Cummings' speeding case on September 18, 2013, or get the case continued.

134. On or about December 13, 2013, Defendant realized the case had not been continued so he had the case placed on a calendar. On December 23, 2013, Defendant emailed Cummings advising that her case was continued to March 5, 2014.

135. On May 14, 2014, Defendant entered a plea of responsible to improper equipment in Cummings' case and she was assessed a fine of \$40.00, an improper equipment fee of \$50.00, and \$180.00 in costs.

136. When Defendant entered a plea in the case on May 14, 2014, he did not pay the fine and costs as he had agreed to do, and did not notify Cummings of the disposition of the case.

137. On June 2, 2014, Cummings emailed Defendant asking for a status update and information about the case. As of June 30, 2014, Defendant had not responded to Cummings' email.

138. On June 6, 2014, the NCDMV sent Cummings a letter stating that her North Carolina driving privilege was scheduled for suspension on August 5, 2014 for "failure to pay fine" in the speeding case she had hired Defendant to handle.

139. Defendant did not pay the fine and costs in Cummings' case until July 18, 2014.

140. On July 19, 2014, Defendant was served with a LON by the State Bar in State Bar file 14G0633 making a formal inquiry into Defendant's conduct in representing Cummings in her speeding case.

141. Defendant did not respond to the State Bar's LON nor did he request an extension of time to submit a response within the time provided by 27 N.C.A.C., Chapter 1, Subchapter B, Rule .0112(c).

142. The parties agreed and stipulated that based upon the stipulated facts contained above, the Plaintiff established by clear, cogent and convincing evidence the violations of the Rules of Professional Conduct and statutory provisions listed in Exhibit F of the Stipulations On Prehearing Conference in 14 DHC 29 and the violations alleged in the Complaint in case 14DHC 33 and that the sole issue for determination by the panel at the hearing was what discipline, if any, is appropriate for those established violations.

Based upon the foregoing 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 Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:

- a. By telling Moore he would send documents filed by the opposing party to Moore and then failing to do so, and by telling Moore he would have a draft of a QDRO to Moore the following week and then failing to do so, Defendant failed to act with reasonable diligence and promptness in representing Moore in violation of Rule 1.3;
- b. By failing to return Moore's telephone calls and emails requesting status updates on his case, Defendant failed to keep Moore reasonably informed about the status of his case in violation of Rule 1.4(a)(3) and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- c. By failing to notify Ray of the disposition of her case after the March 4, 2013 court date and by failing to return Ray's telephone calls and emails requesting status updates on her case, Defendant failed to keep Ray reasonably informed about the status of her case in violation of Rule 1.4(a)(3), and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- d. By failing to deposit the funds received from Ray for court costs and any fine into a trust account, Defendant failed to promptly deposit entrusted funds in a trust account in violation of Rule 1.15-2(b);
- e. By failing to pay the court costs in Ray's case until April 5, 2013 resulting in a FTC being entered in Ray's case, Defendant failed to act with reasonable diligence and promptness in representing Ray in violation of Rule 1.3;
- f. By failing to respond to the notice of fee dispute in Ray's case within the time allowed by 27 N.C.A.C., Chapter 1, Subchapter D, Rule .0708(c), Defendant failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f)(2);
- g. By failing to respond to Larson's request for information about her request for a continuance of the September 19, 2012 court date, Defendant failed to keep Larson reasonably informed about the status of her case in violation of Rule 1.4(a)(3), and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- h. By failing to get Larson's September 19, 2012 court date continued, failing to respond to Larson's requests for information about the September 19, 2012 continuance, and waiting until November 14, 2012 to obtain an order striking the called and failed entered in Larson's case, Defendant failed to act with

reasonable diligence and promptness in representing Larson in violation of Rule 1.3;

- i. By failing to deposit the funds received from Grawe for court costs and fine into a trust account, Defendant failed to promptly deposit entrusted funds in a trust account in violation of Rule 1.15-2(b);
- j. By failing to dispose of Grawe's case at the September 13, 2013 term or obtain a continuance of the case, and neglecting the case thereafter, Defendant failed to act with reasonable diligence and promptness in representing Grawe in violation of Rule 1.3;
- k. By failing to notify Grawe that he had failed to dispose of the case or get it continued and failing to let Grawe know that a FTA was entered in the case, Defendant failed to keep Grawe reasonably informed about the status to his case in violation of Rule 1.4(a)(3);
- l. By failing to respond to the FDRP's notice of fee dispute in Grawe's case within the time allowed by 27 N.C.A.C., Chapter 1, Subchapter D, Rule .0708(c), Defendant failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f)(2);
- m. By accepting a fee and then failing to perform the work he was paid to perform in Fisher's case, Defendant failed to act with reasonable diligence and promptness in representing Fisher in violation of Rule 1.3;
- n. By failing to promptly refund the legal fee to Fisher as he said he would do and failing to respond to Fisher's emails, calls and texts regarding his failure to refund Fisher's money, Defendant failed to keep Fisher reasonably informed about the status of her refund in violation of Rule 1.4(a)(3), and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- o. By failing to respond to the FDRP's notice of fee dispute in Fisher's case within the time allowed by 27 N.C.A.C., Chapter 1, Subchapter D, Rule .0708(c), Defendant failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f)(2);
- p. By failing to attend court in Bell's Henderson County case on May 22, 2013, failing to obtain a continuance of the case, and neglecting the case thereafter, Defendant failed to act with reasonable diligence and promptness in representing Bell in violation of Rule 1.3;
- q. By failing to respond to Bell's telephone calls and emails after Bell realized Defendant failed to attend the May 22, 2013 court date in Bell's Henderson County case, Defendant failed to keep Bell reasonably informed about the status of his case in violation of Rule 1.4(a)(3), and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4);

- r. By failing to respond to the FDRP's notice of fee dispute in Bell's case within the time allowed by 27 N.C.A.C., Chapter 1, Subchapter D, Rule .0708(c), Defendant failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f)(2);
- s. By stating in his response to the State Bar's LON that he had processed Bell's Henderson County case, Defendant knowingly made a false statement of material fact in connection with a disciplinary matter in violation of Rule 8.1(b), and engaged in conduct involving misrepresentation in violation of Rule 8.4(c);
- t. By failing to respond to the State Bar's letter requesting an explanation of the discrepancy between Defendant's statement claiming he processed Bell's Henderson County case and information in the court file, Defendant 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);
- u. By failing to obtain a continuance of Miller's traffic case and neglecting the case thereafter, Defendant failed to act with reasonable diligence and promptness in representing Miller in violation of Rule 1.3;
- v. By failing to respond to Miller's telephone calls and emails seeking information about the status of her case, Defendant failed to keep Miller reasonably informed about the status of her case in violation of Rule 1.4(a)(3), and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- w. By failing to respond to the FDRP's notice of fee dispute in Miller's case within the time allowed by 27 N.C.A.C., Chapter 1, Subchapter D, Rule .0708(c), Defendant failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f)(2);
- x. By failing to prepare, file and serve the uncontested divorce pleadings in Denkins' case within a reasonable time after being paid on May 1, 2013, and as Defendant represented to Denkins he would do, Defendant failed to act with reasonable diligence and promptness in representing Denkins in violation of Rule 1.3;
- y. By failing to return Denkins' telephone calls and emails requesting information on the status of his case, Defendant failed to keep Denkins reasonably informed about the status of his case in violation of Rule 1.4(a)(3), and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- z. By failing to respond in writing to the FDRP's notice of fee dispute in Denkins' case, Defendant failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f)(2);

- aa. By failing to respond in writing to the LON served on Defendant in Denkins' case within the time allowed by 27 N.C.A.C., Chapter 1, Subchapter B, Rule .0112(c), Defendant violated Rule 8.1(b) and N.C. Gen. § 84-28(b)(3);
- bb. By stating in his December 6, 2013 response to the LON that Denkins returned the divorce Complaint to Defendant and paid Defendant \$360.00 by personal check on August 8, 2013, Defendant made a knowing misrepresentation of the facts and circumstances surrounding an allegation of misconduct in violation of N.C. Gen. § 84-28(b)(3), knowingly made a false statement of material fact in connection with a disciplinary matter in violation of Rule 8.1(a), and engaged in conduct involving misrepresentation in violation of Rule 8.4(c);
- cc. By failing to deposit Denkins' \$360 check which included entrusted funds belonging to Denkins into a trust account, Defendant failed to promptly deposit entrusted funds into a trust account in violation of Rule 1.15-2(b);
- dd. By failing to appear in court on Ladhani's behalf or otherwise get the misdemeanor case continued resulting in Ladhani's arrest for failure to appear, Defendant failed to act with reasonable diligence and promptness in representing Ladhani in violation of Rule 1.3;
- ee. By failing to respond to Ladhani's emails requesting information about the status of his case, Defendant failed to keep Ladhani reasonably informed about the status of his case in violation of Rule 1.4(a)(3), and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- ff. By failing to respond in writing to the LON served on Defendant in Ladhani's case within the time allowed by 27 N.C.A.C., Chapter 1, Subchapter B, Rule .0112(c), Defendant violated Rule 8.1(b) and N.C. Gen. § 84-28(b)(3);
- gg. By failing to appear in court on Gardiner's behalf or otherwise get the 2012 traffic case continued resulting in a FTA being entered against Gardiner, Defendant failed to act with reasonable diligence and promptness in representing Gardiner in violation of Rule 1.3;
- hh. By failing to respond to Gardiner's communications requesting information about the status of her case, Defendant failed to keep Gardiner reasonably informed about the status of her case in violation of Rule 1.4(a)(3), and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- ii. By failing to respond in writing to the LON served on Defendant in Gardiner's case within the time allowed by 27 N.C.A.C., Chapter 1, Subchapter B, Rule .0112(c), Defendant violated Rule 8.1(b) and N.C. Gen. § 84-28(b)(3),
- jj. By failing to obtain a continuance of the July 2013 court date of Pendergast's traffic case and failing to pay the costs and fine as he had agreed to do when judgment was entered in the case on November 13, 2013, Defendant failed to



act with reasonable diligence and promptness in representing Pendergast in violation of Rule 1.3;

- kk. By failing to notify Pendergast of the July 2013 court date in her traffic case, and failing to notify her of the result of the November 13, 2013 disposition, Defendant failed to keep Pendergast reasonably informed about the status of her traffic case in violation of Rule 1.4(a)(3);
- ll. By failing to respond in writing to the LON served on Defendant in Pendergast's case within the time allowed by 27 N.C.A.C., Chapter 1, Subchapter B, Rule .0112(c), Defendant violated Rule 8.1(b) and N.C. Gen. § 84-28(b)(3);
- mm. By failing to deposit the \$350.00 that Pendergast delivered to Defendant, which included entrusted funds, into a trust account, Defendant failed to deposit entrusted funds into a trust account in violation of Rule 1.15-2(b);
- nn. By filing Guevara's initial divorce Complaint with an incorrect date of separation and then, after discovering the error, failing to take any action in the case between January 20 and March 6, 2014, Defendant failed to act with reasonable diligence and promptness in representing Guevara in violation of Rule 1.3;
- oo. By failing to return email from Guevara requesting information about her divorce case, and by failing to promptly respond to Guevara's two letters sent by certified mail seeking a refund of the money she paid Defendant, Defendant failed to keep Guevara reasonably informed about the status of her case in violation of Rule 1.4(a)(3), and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- pp. By failing to respond in writing to the LON served on Defendant in Guevara's case within the time allowed by 27 N.C.A.C., Chapter 1, Subchapter B, Rule .0112(c), Defendant violated Rule 8.1(b) and N.C. Gen. § 84-28(b)(3);
- qq. By failing to deposit the funds received from Guevara for court costs into a trust account, Defendant failed to promptly deposit entrusted funds in a trust account in violation of Rule 1.15-2(b);
- rr. By failing to pay the costs and fine in Cummings' case when the plea was entered on May 14, 2014 resulting in a suspension notice being sent to Cummings, and failing to pay the fine and costs in the case until July 18, 2014, Defendant failed to act with reasonable diligence and promptness in representing Cummings in violation of Rule 1.3;
- ss. By failing to notify Cummings of the disposition of her case after the May 14, 2014 court date, and failing to respond to Cummings' email seeking information about the status of her case, Defendant failed to keep Cummings reasonably informed about the status of her case in violation of Rule 1.4(a)(3),

and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4);

- tt. By failing to respond in writing to the LON served on Defendant in Cummings' case within the time allowed by 27 N.C.A.C., Chapter 1, Subchapter B, Rule .0112(c), Defendant violated Rule 8.1(b) and N.C. Gen. § 84-28(b)(3); and
- uu. By failing to deposit the funds received from Cummings for court costs into a trust account, Defendant failed to promptly deposit entrusted funds in a trust account in violation of Rule 1.15-2(b).

Based upon the foregoing Findings of Fact and Conclusions of Law, and the evidence presented at hearing, the Hearing Panel hereby finds by clear, cogent, and convincing evidence the following:

#### ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE

1. Defendant's failure to properly maintain, manage and handle entrusted funds betrays a vital trust that clients and the public place in attorneys and the legal profession.
2. Defendant's conduct resulted in numerous violations of the Rules of Professional Conduct.
3. Defendant's conduct includes numerous instances of failing to timely respond in writing to notices from the FDRP and to timely respond to letters of notice sent to Defendant by the State Bar.
4. Defendant, who was licensed to practice law in North Carolina in 1986, has substantial experience in the practice of law.
5. Defendant's neglect of client cases caused failure to appear notices, DMV suspension letters, and failure to comply notices to be issued. Defendant's conduct exposed several clients to significant legal consequences. One client was actually arrested due to Defendant's failure to get his case continued. Client cases were not timely processed and clients' requests for information about their cases went ignored. The actual arrest of one client, and the prospect for arrest of other clients who had failure to appear notices entered, and the potential suspension of driving privileges due to Defendant's neglect, resulted in significant harm and potential significant harm to clients.
6. Defendant's neglect impacted the orderly process of cases through the courts and caused court officials to have to enter failure to appear notices, failure to comply notices, and resulted in one client actually being subject to the arrest process. Court official frequently had to recall orders for arrest that had been issued against Defendant's clients.

7. Clients who hired Defendant reasonably relied upon him to timely process their cases through the courts. In many instances, however, clients, some of whom lived out-of-state or significant distances from where their cases were pending, had to resolve their cases *pro se* or had to pay the monetary part of judgments where funds to cover costs and fines had been paid to Defendant.

8. Defendant's misconduct had a negative impact on his clients' perception of the legal profession. Client cases were not processed timely, phone calls and email messages were not returned, court dates were missed and when clients contacted the FDRP for assistance they were further frustrated by Defendant's habitual failure to participate in that process. FDRP petitions became grievance cases.

9. The multiple instances of failing to reasonably communicate with his clients, Defendant's failure to timely follow-up on commitments he made to clients, and misrepresentations contained in some of Defendant's responses to the State Bar demonstrate a lack of trustworthiness on the part of Defendant.

10. In or about 2012 through 2013, Defendant changed his business model to an internet based practice handling mostly traffic and uncontested domestic cases. Where Defendant previously had two employees to help manage his practice, in his new business model he ran the business without any support staff. During this transition, Defendant continued to accept a high volume of cases when it was obvious to him he did not have the software programs and systems in place which were necessary to handle the volume of cases he was accepting.

11. Defendant had open heart surgery in 2011, believes he has suffered at times from a compromised memory, and was attending to serious family issues during some or all of the period covered by this conduct.

12. Defendant enjoys a good reputation as an attorney in Buncombe County.

13. Defendant's prior discipline includes: 97G0029(IV)R - Admonition in 1997 for neglect in preparing a court order; 03G0284 - Admonition in 2003 for failure to deposit entrusted funds in a trust account and failure to respond to a letter of notice; 06G0672 and 06G0908 - Reprimand in 2006 for neglect, failure to keep his clients reasonably informed about their cases, and failure to respond to letters of notice; 13G0123 - Reprimand in 2013 for neglect, failure to communicate with client, and failure to participate in the FDRP; 13G0122 - Censure in 2013 for neglect, failure to communicate with client, failure to participate in FDRP, and failure to timely respond to a letter of notice.

14. Defendant's conduct in this proceeding and his prior discipline is remarkable for chronic neglect of client's cases and Defendant's repeated refusal to participate in the self-regulatory processes of the profession.

15. 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 enters the following:

CONCLUSIONS REGARDING 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.A.C. 1B § .0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are present:

- a. Intent of Defendant to commit acts where the harm or potential harm is foreseeable;
- b. Circumstances reflecting Defendant's lack of honesty and trustworthiness;
- c. Elevation of the Defendant's own interest above that of his client;
- d. Negative impact of Defendant's actions on client's or public's perception of the profession;
- e. Negative impact of the Defendant's actions on the administration of justice;
- f. Impairment of the client's ability to achieve the goals of the representation.
- g. Acts of misrepresentation; and
- h. Multiple instances of failure to participate in the legal profession's self-regulation process.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(2) of the Rules and Regulations of the North Carolina State Bar and concludes the following factor is present:

- a. Acts of dishonesty or misrepresentation.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 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. Prior disciplinary offenses in this State;
- b. Dishonest or selfish motive;
- c. Indifference to making restitution;

- d. A pattern of misconduct;
- e. Multiple offenses;
- f. Effect of personal or emotional problems on the conduct in question;
- g. Effect of physical or mental disability or impairment on the conduct in question;
- h. Defendant's cooperative attitude toward the proceedings;
- i. Bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules of the disciplinary agency;
- j. Defendant's good general character and reputation;
- k. Defendant's experience in the practice of law; and
- l. Vulnerability of victims.

4. The Hearing Panel has considered issuing an admonition, reprimand or censure but concludes that such discipline would not be sufficient discipline. The Panel concludes that such discipline would fail to acknowledge the seriousness of the violations committed by Defendant and send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar in this State.

5. The Hearing Panel considered disbarment but concludes that considering all the circumstances of this case disbarment is not necessary to protect the public or the profession in this matter.

6. The Hearing Panel has considered all alternatives and concludes that a suspension is necessary to adequately protect the public. The Hearing Panel finds that an order imposing discipline short of suspension would not be appropriate.

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

#### ORDER OF DISCIPLINE

1. Defendant's license to practice law in the State of North Carolina is hereby suspended for five (5) years effective 45 days from the date this order is served on Defendant.

2. Defendant shall submit his license and membership card to the Secretary of the State Bar within 10 days of the effective date of this order.

3. Defendant shall comply with the wind down provisions of 27 N.C.A.C. 1B § .0124 of the State Bar Discipline and Disability Rules.

4. Within 15 days of the effective date of this Order, Defendant shall provide the State Bar Office of Counsel with an address and telephone number at which clients seeking return of files can communicate with Defendant and obtain such files, and Defendant shall promptly provide client files to all clients who request return of their files.

5. Defendant is taxed with the costs and administrative fees of this action, including deposition costs, as assessed by the Secretary. Defendant shall pay the amount assessed within 30 days of service of the statement of costs and fees upon him.

6. Three years after the effective date of this Order, Defendant may seek a stay of the remaining period of suspension by filing a motion in the DHC seeking a stay and demonstrating by clear, cogent and convincing evidence that Defendant has met all requirements for reinstatement set out in 27 N.C.A.C 1B § .0125(b), and has complied with paragraphs 2-5 of this section of the Order of Discipline and with the following conditions:

- a. That Defendant obtained a mental health and neurological evaluation within 90 days of the effective date of this order by licensed and qualified practitioners ("practitioners") engaged by Defendant. The practitioners who perform these evaluations shall be approved in advance by the North Carolina State Bar Office of Counsel. Prior to the evaluations, Defendant shall sign an authorization consenting to the release of all medical records and information related to Defendant's evaluations to the Office of Counsel, and Defendant shall not revoke that release. Defendant shall simultaneously provide a copy of such signed authorization to the Office of Counsel and the practitioners. Defendant shall direct the evaluating practitioners to provide written reports of such evaluations and recommended treatment, if any, to the Office of Counsel within 30 days of the completion of the evaluation. Such evaluations shall contain an opinion as to whether Defendant is suffering from a mental, physical or neurological condition which significantly impairs his professional judgment, performance, or competence as an attorney. All expenses of such evaluations and reports shall be borne by Defendant;
- b. That Defendant has complied with all treatment recommendations of the evaluations described in paragraph (a) above. Defendant shall sign an authorization consenting to the release of any medical records and information related to Defendant's treatment to the Office of Counsel, and Defendant shall not revoke that release. Defendant shall simultaneously provide a copy of such signed authorization to the Office of Counsel and his treatment providers. Defendant shall direct his treatment providers to provide the Office of Counsel with written reports detailing Defendant's treatment plan. Defendant shall also direct his treatment providers to provide the Office of Counsel with quarterly written reports concerning Defendant's condition and compliance with the treatment plans. Such reports shall be received by the Office of Counsel each January 1, April 1, July 1 and October 1 for the time covered by this Order of Discipline. Defendant shall also comply with any

and all requests from the Office of Counsel seeking updates on the status of his ongoing treatment within 15 days of receipt of such requests. All expenses of such treatment and reports shall be borne by Defendant;

- c. That within 60 days prior to applying for any stay of this Order, the practitioners who conducted the evaluations described in paragraph (a) above certify, under oath, based on his or her independent and comprehensive evaluation of Defendant, that in his or her professional opinion Defendant does not currently have any mental, psychological, behavioral, neurological, cognitive, or emotional condition or disorder that impairs Defendant's ability to practice law, that impacts Defendant's ability or willingness to comply with the Rules of Professional Conduct, and/or that poses a risk of harm to the public if he engages in the practice of law;
- d. That Defendant completed 3 hours of continuing legal education in the area of law office management from a provider of CLE approved by the North Carolina State Bar Office of Counsel and that Defendant provided written proof of successful completion of the CLE to the State Bar within 10 days of completing the CLE;
- e. That Defendant arranged for a member of the North Carolina State Bar to serve as his law practice monitor. The selected monitor must be an active member of the North Carolina State Bar in good standing who practices law in the judicial district in which Defendant maintains his primary location of practice and who has been approved by the Office of Counsel of the North Carolina State Bar. The selected monitor must agree to so serve and agree to meet with Defendant at least monthly to review Defendant's cases. The monitor will supervise all client matters and will ensure Defendant is, among other duties, handling all client matters in a timely fashion, responding promptly to his clients, and maintaining his trust account records, if any, as required by the Rules of Professional Conduct. The monitor will submit written quarterly reports of this supervision to the Office of Counsel of the State Bar; such reports shall be due on the following dates as they occur during the stayed suspension: January 15, April 15, July 15, and October 15. This monitoring will continue for one year from the effective date of any stay of this suspension. Defendant will pay the cost, if any, charged by the monitor for this supervision. Defendant must make the arrangements for this monitoring attorney and supply the Office of Counsel of the State Bar with a letter from the monitoring attorney confirming her/his agreement to perform the duties listed above at least 30 days prior to moving for a stay of suspension under this Order;
- f. That Defendant kept the North Carolina State Bar Membership Department advised of his current physical home address;

- g. That Defendant responded to all letters of notice and requests for information from the North Carolina State Bar by the deadline stated in the communication;
- h. That Defendant paid all outstanding membership fees, Client Security Fund assessments and fees or costs assessed by the DHC or the North Carolina State Bar, and, at the time of his motion to 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; and
- i. That during the term of suspension Defendant did not violate the Rules of Professional Conduct or the laws of the United States or any state.

7. If Defendant complies with the above conditions and is granted a stay of his suspension, the stay will remain in effect only if Defendant complies, and continues to comply, with the following conditions:

- a. That Defendant is supervised by a law practice monitor under the terms and conditions described in paragraph 6(e) above.
- b. That if Defendant receives any entrusted funds, he shall immediately open an IOLTA trust account and shall maintain a trust account for the duration of the stayed suspension. Defendant shall provide the account name, number and location to the Office of Counsel within 10 days of opening the trust account;
- c. That each month during which Defendant maintains a trust account he shall provide the Office of Counsel of the North Carolina State Bar with the three-way reconciliation described in the State Bar Lawyer's Trust Account Handbook for all trust accounts maintained by him. Defendant shall provide the three-way reconciliation report, client ledgers for all clients with funds in the trust account(s) during that month, ledger for any personal funds maintained in the trust account(s) for bank or credit card fees, his trust account ledger, and the bank statements, cancelled checks, and deposit slips for each month. These documents shall be provided to the Office of Counsel by the 15<sup>th</sup> of the following month – for example, the three-way reconciliation for the month of January is due on February 15;
- d. That Defendant shall, at his own expense, retain a certified public accountant ("CPA") who shall review Defendant's trust account semi-annually and provide written reports to the State Bar confirming that Defendant's trust account is in compliance with all applicable provisions of the Rules of Professional Conduct. The report of the CPA shall be provided to the Office of Counsel no later than July 1 and January 1 throughout the period of the stayed suspension. Defendant shall cooperate with the CPA by producing all trust account records, bank account records, or any other financial record related to any client requested by the CPA to ensure the review is completed



in a timely fashion. It is Defendant's sole responsibility to ensure the CPA completes and submits the report as required herein;

- e. That if either the monthly three-way reconciliation or the CPA's report reveals any irregularities or deficiencies from Defendant's obligations under Rule 1.15-2 and Rule 1.15-3, Defendant shall take remedial action necessary to bring the trust account into compliance with the Rules of Professional Conduct within 10 days of the date of the three-way reconciliation report or the CPA report and shall provide proof of the remedial action and compliance to the Office of Counsel within 5 days of the date of the remedial action;
- f. That Defendant shall comply with any requests from the Office of Counsel of the North Carolina State Bar to provide any information regarding his handling of entrusted funds and shall sign and provide any release or authorization to allow the Office of Counsel to obtain information directly from any bank in which Defendant maintained or maintains entrusted funds, by the deadline stated in the request;
- g. That for each month Defendant practices without a trust account he shall submit an affidavit to the Office of Counsel stating that he did not handle entrusted funds during that month. Defendant's affidavit shall be filed with the Office of Counsel on or before the 10<sup>th</sup> of the following month;
- h. That Defendant shall keep the North Carolina State Bar Membership Department advised of his current physical business address (not a Post Office box), telephone number, and email address and shall notify the North Carolina State Bar of any changes in address within 10 days of such change;
- i. That Defendant shall accept all certified and regular mail from the North Carolina State Bar sent to the address on record with the Membership Department of the North Carolina State Bar;
- j. That Defendant shall respond 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;
- j. That Defendant will timely comply with the North Carolina State Bar CLE requirements and will pay all fees and costs assessed by the applicable deadline;
- k. That Defendant will pay all membership, Client Security Fund, and any other related dues, fees, and/or costs by the applicable deadline;
- l. That Defendant shall not violate any state or federal laws or any provisions of the Rules of Professional Conduct during the period of the stay; and

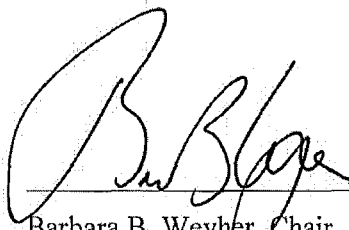
- m. That Defendant shall comply with such other and further requirements as may be imposed by any hearing panel that may grant a stay of Defendant's suspension.

8. If during the stay of the suspension authorized by this Order 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 & Disability Rules, and the DHC may enter an order imposing such conditions as it deems proper for the reinstatement of Defendant's license at the end of the suspension.

9. If Defendant does not obtain a stay of the suspension imposed by this Order, to be reinstated at the end of the 5 year term of suspension Defendant must demonstrate by clear, cogent and convincing evidence that Defendant has met all requirements for reinstatement set out in 27 N.C.A.C 1B § .0125, and has complied with the provisions of paragraph 6 including subparts 6 a. through d. and f. through i. of the Order of Discipline section of this Order.

10. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline & Disability Rules.

Signed by the Chair with the consent of the other Hearing Panel members, this the 21 day of April 2015.

  
Barbara B. Weyher, Chair  
Disciplinary Hearing Panel