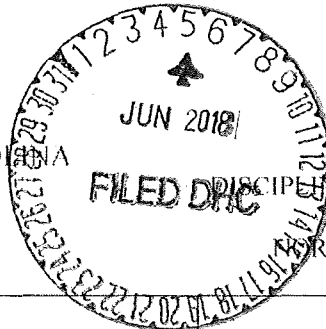


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
18 DHC 26

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

JEFFREY D. SMITH, Attorney,

Defendant

CONSENT
ORDER OF
DISCIPLINE

THIS MATTER was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of N. Hunter Wyche, Jr., Chair, and members Donald C. Prentiss and Bradley Lail. Jennifer A. Porter represented Plaintiff, the North Carolina State Bar. Defendant, Jeffrey D. Smith, appeared *pro se*. Defendant stipulates and agrees to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Defendant has freely and voluntarily stipulated to the foregoing findings of fact and consents to the conclusions of law and entry of the order of discipline. Defendant freely and voluntarily waives any and all right to appeal the entry of this consent order of discipline.

Based upon the pleadings and the stipulated facts and with the consent of the parties, the Hearing Panel 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, Jeffrey D. Smith ("Smith"), was admitted to the North Carolina State Bar in 1982 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. Defendant was properly served with process and the matter came before the Hearing Panel with due notice to all parties.

4. 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 Charlotte, Mecklenburg County, North Carolina.

5. Defendant maintained an attorney trust account at BB&T, account number ending with 3906 (hereinafter referenced as "the BB&T trust account").

6. Defendant had previously maintained an attorney trust account at Wells Fargo, account number ending with 2127, but in March 2014 he closed the Wells Fargo account and deposited the balance of \$36,861.08 into his BB&T account (hereinafter referenced as "the Wells Fargo funds").

7. Defendant failed to conduct monthly and quarterly reconciliations of the BB&T trust account, including from October 2015 through February 2017.

8. Defendant failed to sign the reconciliation reports he provided to the State Bar on February 14, 2017, March 16, 2017, May 16, 2017, and June 15, 2017.

9. Defendant failed to conduct and create and/or maintain reports of the required monthly and quarterly reviews for the fourth quarter of 2016 and the first quarter of 2017.

10. Defendant failed to identify the clients for whom he held entrusted funds in his trust account.

a. Defendant failed to identify the clients to whom belonged the Wells Fargo funds from March 2014 through May 2017.

b. From October 2015 through at least February 13, 2017, Defendant failed to identify the clients to whom belonged over \$8,000.00 of funds in the BB&T trust account, in addition to the Wells Fargo funds.

11. Defendant began efforts to identify the Wells Fargo funds but as of March 2018 had still not identified the funds to a degree sufficient to allow the funds to be properly disbursed.

12. From October 2015 through December 2017, Defendant failed to disburse funds identified for five clients held in the BB&T trust account since October 2015, and failed to complete disbursements for 26 outstanding checks dated from February 5, 2013 to July 24, 2014.

13. On three occasions, in March, April, and May 2017, Defendant failed to promptly deposit entrusted funds for M. Helms into the BB&T trust account.

14. In March, April, and May 2017, Defendant disbursed funds from the BB&T trust account for the benefit of M. Helms prior to the deposit of any funds for M. Helms, thereby misusing other entrusted funds in those disbursements.

15. Defendant improperly disbursed to himself an old client balance which he had identified as for client Mills. Upon the State Bar's inquiry, Defendant realized he had been mistaken regarding the identification of the funds and reimbursed the trust account.

16. Defendant improperly disbursed to himself funds in the BB&T trust account from two old outstanding checks for payment of costs for client Perez. Defendant applied the funds to outstanding attorney's fees Perez owed. Defendant did not have the client's permission to apply the funds intended to pay costs to any outstanding attorney's fees. Defendant did not realize such permission was necessary. Upon the State Bar's inquiry, Defendant reimbursed the trust account.

17. Defendant failed to promptly reimburse his trust account for a negative balance he identified in May 2017. Defendant reimbursed his trust account in August 2017 after State Bar inquiry.

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 conduct monthly and quarterly reconciliations of his attorney trust account from October 2015 through February 2017, and by failing to sign reconciliation reports for reconciliations completed in and after February 2017, Defendant failed to reconcile his trust account as required in violation of Rule 1.15-3(d);
- b. By failing to conduct and create and/or maintain reports of the required monthly and quarterly reviews for the fourth quarter of 2016 and the first quarter of 2017, Defendant failed to conduct required reviews in violation of Rule 1.15-3(i);
- c. By failing to promptly deposit entrusted funds for client M. Helms and by disbursing funds from the trust account for the benefit of M. Helms when there were no funds for M. Helms in the trust account, thereby misusing other clients' funds, Defendant failed to properly maintain entrusted funds in violation of Rule 1.15-2(a), failed to promptly deposit entrusted funds into a trust account in violation of Rule 1.15-2(b), used entrusted funds for the benefit of someone other than the beneficial owner of the funds in violation of Rule 1.15-2(k), and disbursed entrusted funds in a manner not authorized by or for the benefit of the client in violation of Rule 1.15-2(n);

- d. By improperly disbursing to himself funds held for Mills and Perez, Defendant failed to properly maintain entrusted funds in violation of Rule 1.15-2(a), used entrusted funds for the benefit of someone other than the beneficial owner of the funds in violation of Rule 1.15-2(k), and disbursed entrusted funds in a manner not authorized by or for the benefit of the client in violation of Rule 1.15-2(n);
- e. By failing to identify all clients for whom he maintains funds in the BB&T trust account, Defendant failed to properly identify entrusted funds in violation of Rule 1.15-2(a);
- f. By failing to promptly disburse funds in the BB&T trust account, including failing to complete disbursements of outstanding checks from several years prior, Defendant failed to timely disburse funds to which clients were entitled in violation of Rule 1.15-2(n) and failed to act with reasonable diligence in representation of the clients in violation of Rule 1.3; and
- g. By failing to promptly disburse funds upon discovery of a negative balance, showing he had previously improperly disbursed more for that client than he had in the BB&T trust account for that client and thereby having misused entrusted funds, Defendant failed to properly maintain entrusted funds in violation of Rule 1.15-2(a).

Upon the consent of the parties, the Hearing Panel also enters the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. By DHC Order of Discipline filed on September 18, 2015 in case 15 DHC 27, Defendant was found to have failed to reconcile his trust accounts for over two years, failed to timely disburse funds for clients for over two years, and disbursed funds for clients when he had no funds or insufficient funds for such clients in his trust account. Despite the discipline imposed against him in September 2015, Defendant did not cure this misconduct. From October 2015 through February 2017, Defendant failed to reconcile his trust account. As of December 2017 he had not completed disbursements for clients for whom he had held funds since at least October 2015. Additionally, Defendant failed to promptly deposit entrusted funds from October 2015 through December 2017. In at least three instances, he delivered the trust account checks disbursing the funds for the client prior to depositing the funds for the client, resulting in improper disbursements from the BB&T trust account on three occasions.

2. In the September 2015 Order of Discipline, the DHC suspended Defendant for two years and stayed the suspension for three years conditioned upon compliance with the requirements in the Order. In November 2017, the DHC found Defendant had failed to comply with the conditions of the September 2015 Order but gave Defendant another opportunity to comply by extending the stay with additional

conditions. In March 2018, the DHC found Defendant had failed to comply with the conditions in the September 2015 Order and the November 2017 Order and activated the suspension imposed in the September 2015 Order. Defendant may apply for a stay after serving one year of the activated suspension and showing compliance with the reinstatement requirements stated in the March 2018 Order.

3. The violations of the Rules of Professional Conduct found in this Order formed the basis for the activation of the suspension imposed in the September 18, 2015 Order, along with other deficiencies in Defendant's compliance with the conditions for the stay of the suspension. One such deficiency was Defendant's failure to fully and accurately identify the clients to whom belong the Wells Fargo funds with sufficient corroborating documentation to support disbursement of the funds.

4. Defendant did not begin efforts to reconcile the BB&T trust account until contacted by the State Bar in January 2017. During 2017, Defendant made substantial efforts to reconcile the BB&T trust account.

5. During 2017, Defendant began efforts to identify the Wells Fargo funds.

6. When notified by the State Bar of concerns regarding the Mills and Perez funds, Defendant promptly deposited those amounts back into the trust account along with other amounts also being examined.

7. There is no evidence of any dishonest or selfish motive on the part of Defendant.

8. Conducting reconciliations of the trust account is the lynchpin of proper maintenance and protection of entrusted funds.

9. Allowing client funds to be improperly maintained or disbursed, even if inadvertently, places entrusted funds at risk and erodes the confidence clients place in attorneys who handle their affairs. As a result, such conduct harms the profession as a whole.

10. 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.

11. The Hearing Panel has considered the suspension imposed in the September 18, 2015 Order of Discipline, the November 2017 order extending the stay of suspension, the activation of the suspension in March 2018, and the conditions for reinstatement in the September 2015 and March 2018 orders.

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 the following factors warrant suspension of Defendant's license:

- a. Intent of Defendant to commit acts where the harm or potential harm is foreseeable, to wit: failing to take corrective action to ensure proper, reconciling, maintenance, disbursement, and accounting for entrusted funds; and
- b. Defendant's actions potentially had a negative impact on the public's perception of the legal profession.

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 instance that would warrant disbarment.

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

- a. Prior disciplinary offenses;
- b. Absence of a dishonest or selfish motive;
- c. Timely good faith efforts to make restitution or to rectify consequences of misconduct in 2017;
- d. Multiple offenses;
- e. A pattern of misconduct;
- f. Full and free disclosure to the Hearing Panel and cooperative attitude toward the proceedings; and
- g. Remorse.

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

5. The Hearing Panel has considered issuing an admonition, reprimand or censure but concludes that such discipline would not be sufficient discipline because of

the gravity of the potential harm to the clients. The Panel further concludes that such discipline would fail to acknowledge the seriousness of the offenses committed by Defendant and send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

6. This Hearing Panel has considered lesser alternatives and concludes that a suspension is necessary for the protection of clients and the public. Conditions for reinstatement to active status and conditions during any stayed period of suspension are appropriate to ensure compliance with the Rules of Professional Conduct.

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

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

ORDER OF DISCIPLINE

1. Defendant, Jeffrey D. Smith, is hereby suspended from the practice of law for two years.

1. Defendant shall wind down his law practice and comply with all provisions of 27 N.C. Admin. Code 1B.0128.

2. Within 15 days of the effective date of this order, Defendant shall provide the State Bar with an address and telephone number at which clients seeking information or return of files can communicate with Defendant and obtain such files, and Defendant shall promptly return all files to his clients upon request.

3. Defendant is taxed with the administrative fees and costs of this proceeding. Defendant shall pay the administrative fees and costs of this proceeding, as assessed by the Secretary of the North Carolina State Bar. Defendant must include payment of the assessed fees and costs with any motion for stay of suspension or petition for reinstatement.

4. After the completion of one year of suspension from April 22, 2018, which is the effective date of the activated suspension in 15 DHC 27, Defendant may file a motion with the Disciplinary Hearing Commission pursuant to 27 N.C. Admin. Code 1B.0118(c) to have the remaining period of suspension imposed by this Order stayed. If a stay is granted, the remaining period of active suspension shall be stayed for three years, and the order granting the stay shall set out the applicable conditions of that stay.

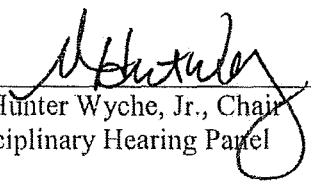
5. To be eligible to have the remaining period of suspension stayed after completing the year of suspension identified above, Defendant must comply with the requirements of 27 N.C. Admin. Code 1B.0118, and must show by clear, cogent, and convincing evidence the following:

- a. That he properly wound down his law practice and timely complied with all provisions of 27 N.C. Admin. Code 1B.0128.
- b. That he has paid, or included payment with his motion, any costs and administrative fees of this proceeding as assessed by the Secretary.
- c. That he has complied with the requirements of 27 N.C. Admin. Code 1B.0129(b).
- d. That he has complied with the requirements for reinstatement in the following orders entered in 15 DHC 27: the September 2015 Order (requirements contained in paragraph 5 and its subparagraphs on pages 8 and 9 of the September 2015 Order); and the March 2018 Order (requirements contained in paragraph 5 and its subparagraphs on pages 7 through 9 of the March 2018 Order).
- e. Any and all client ledgers produced by Defendant to the State Bar in support of his application for stay or for any purpose shall show deposits as positive numbers, disbursements as negative numbers, contain accurate dates for deposits and disbursements, and have the entries in proper chronological order with an accurate running balance.

6. If Defendant is not granted a stay of any portion of the two-year suspension, then before Defendant may be reinstated to active status he must prove compliance by clear, cogent, and convincing evidence with the requirements of the immediately-preceding paragraph 5.

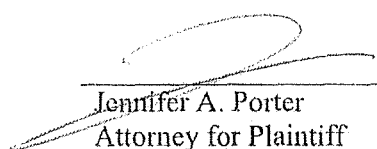
7. If Defendant is granted a stay of any portion of the two-year suspension but that stay is subsequently lifted and any portion of the remaining suspension activated, the period of suspension activated under this Order shall run consecutively to any period of suspension activated in 15 DHC 27.

Signed by the Chair with the consent of the other Hearing Panel members, this the 5 day of JUNE 2018.



N. Hunter Wyche, Jr., Chair
Disciplinary Hearing Panel


Agreed and consented to by:



Jennifer A. Porter
Attorney for Plaintiff

Date

5-29-18



Jeffrey D. Smith
Defendant

Date

5-15-18