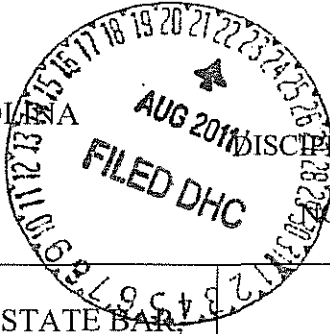


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE

DISCIPLINARY HEARING COMMISSION

OF THE

NORTH CAROLINA STATE BAR

11 DHC 11

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

ROBERT E. HENSLEY, JR., Attorney,

Defendant

FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
ORDER OF DISCIPLINE

THIS MATTER was considered by a hearing panel of the Disciplinary Hearing Commission composed of Fred M. Morelock, Chair, Theodore C. Edwards, II and Karen B. Ray pursuant to 27 N.C.A.C. 1B § .0114 of the Rules and Regulations of the North Carolina State Bar. Plaintiff, the North Carolina State Bar, was represented by Brian P.D. Oten. Defendant, Robert E. Hensley, Jr., represented himself. Defendant waives a formal hearing in this matter and both parties stipulate and consent to the entry of this Order and to the discipline imposed. Defendant waives any right to appeal this consent Order or to challenge in any way the sufficiency of the findings.

Based upon the consent of the parties, the hearing panel hereby makes, by clear, cogent and convincing evidence, the following

#### FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("Plaintiff" or "State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the rules and regulations of the North Carolina State Bar promulgated thereunder.

2. Defendant, Robert E. Hensley, Jr. ("Defendant" or "Hensley"), was admitted to the North Carolina State Bar on March 18, 2000, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the rules, regulations and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During part of the relevant periods referred to herein, Hensley was engaged in the practice of law in the State of North Carolina and maintained a law office in Maggie Valley, Haywood County, North Carolina.

4. In or about September 2006, Arlene Frye ("Frye") and Bonnie Forrest ("Forrest") retained Hensley in a civil matter. Frye and Forrest paid Hensley for the representation.

5. In or around November 2006, Hensley filed a complaint on Frye's and Forrest's behalf.

6. In or around April 2007, Hensley filed an answer to a counterclaim filed against Frye and Forrest.

7. In or around July 2007, Hensley attended mediation in Frye's and Forrest's civil matter, which resulted in an impasse between the parties.

8. After July 2007, Hensley took no meaningful action in pursuing Frye's and Forrest's case.

9. Between September 2006 and September 2009, Frye made numerous requests for her records from Hensley and asked Hensley to file two separate injunctions in her case.

10. Hensley refused to respond to or comply with Frye's requests.

11. Over the course of the representation, Forrest made numerous inquiries to Hensley about the status of the case.

12. Hensley did not respond to Forrest's inquiries.

13. Without Frye's or Forrest's knowledge or consent, Hensley repeatedly continued their case and made little progress in the matter.

14. Hensley did not inform Frye or Forrest about any action Hensley took in their case.

15. In or around 2008, Forrest retained Hensley to represent her on driving while intoxicated ("DWI") charges. Forrest paid Hensley for the representation on DWI charges.

16. After the final DWI hearing, Forrest made numerous inquiries to Hensley for assistance in understanding and meeting the requirements imposed on her from the DWI conviction.

17. Hensley did not respond to Forrest's inquiries concerning her post-conviction requirements.

18. Throughout the course of the representation, Hensley did not respond to Frye's and Forrest's requests for information and did not maintain adequate communication with his clients.

19. In 2009, Frye and Forrest contacted another attorney to take over the representation of the civil matter from Hensley. Forrest attempted to contact Hensley to obtain their client file and terminate Hensley's representation, but Hensley did not respond to Forrest's communications.

20. In or around September 2009, Hensley closed his office and changed his telephone number, leaving Frye and Forrest with no ability to contact him.

21. Hensley did not resolve Frye's and Forrest's civil matter.

22. Hensley never refunded any portion of Frye's and Forrest's paid legal fee.

23. On or about 3 September 2009, Frye filed a grievance with the State Bar against Hensley, grievance file no. 09G1044.

24. On or about 8 October 2009 the State Bar sent a Letter of Notice to Hensley by certified mail regarding grievance file no. 09G1044. Hensley accepted this Letter of Notice on 22 October 2009 and was required to respond to the Letter of Notice within fifteen days of receiving the letter.

25. Hensley did not respond to the State Bar's Letter of Notice in grievance file no. 09G1044.

26. On or about 31 December 2009, the State Bar sent a follow up letter to Hensley regarding the Letter of Notice for grievance file no. 09G1044 requesting a response by 15 January 2010.

27. Hensley did not respond to the State Bar's 31 December 2009 follow-up letter within the time period provided.

28. On or about 28 October 2009, Forrest filed a grievance with the State Bar against Hensley, grievance file no. 09G1240.

29. On or about 1 December 2009, the State Bar sent a Letter of Notice to Hensley by certified mail regarding grievance file no. 09G1240. Hensley accepted this Letter of Notice on 12 December 2009 and was required to respond to the Letter of Notice within fifteen days of receiving the letter.

30. Hensley did not respond to the State Bar's Letter of Notice in grievance file no. 09G1240.

31. In or about October 2007, Ivey Suggs ("Suggs") retained Hensley to represent him in a civil matter. Suggs paid Hensley for the representation.

32. Approximately two years after he retained Hensley, Suggs requested a status update on the case from Hensley.

33. Hensley falsely represented that the case had not progressed because the courts were far behind on their court calendars.

34. Suggs was informed by the Haywood County Clerk of Court that the court had been attempting to contact Hensley regarding Suggs' case but that Hensley would not respond to the Clerk's inquiries.

35. After speaking with the Haywood County Clerk of Court, Suggs made repeated attempts to communicate with Hensley. Hensley did not respond to Suggs' communications.

36. In or around February 2009, the court granted the opposing party's motion for summary judgment in Suggs' case, thereby resolving the matter adversely to Suggs. Hensley did not file a written response to the opposing party's motion for summary judgment, but appeared at the hearing on summary judgment and orally opposed the motion.

37. Hensley did not inform Suggs of the court's February 2009 ruling on summary judgment.

38. Suggs eventually located Hensley in person and confronted him about the lack of progress in the case.

39. Hensley admitted that, due to his error, Suggs' case had been dismissed.

40. Hensley assured Suggs that he would appeal Suggs' case, and that if he lost the appeal he would help Suggs with a malpractice lawsuit.

41. Hensley filed a notice of appeal in Suggs' case, but did not follow through on Suggs' appeal and the appeal was ultimately dismissed.

42. Hensley did not inform Suggs that the appeal was dismissed.

43. Hensley has not responded to Suggs' repeated requests for his client file.

44. On or about 3 June 2010, Suggs filed a grievance with the State Bar against Hensley, grievance file no. 10G0530.

45. On or about 14 June 2010, the State Bar sent a Letter of Notice to Hensley by certified mail regarding grievance file no. 10G0530. Hensley accepted this Letter of Notice on 21 June 2010 and was required to respond to the Letter of Notice within fifteen days of receiving the letter.

46. Hensley did not respond to the Letter of Notice in grievance file no. 10G0530.

47. On or about 13 August 2010, the State Bar sent a follow up letter to Hensley regarding the Letter of Notice for grievance file no. 10G0530 requesting a response by 25 August 2010.

48. Hensley did not respond to the State Bar's 13 August 2010 follow-up letter within the time period provided.

49. In or about October 2007, Kathryn Kelly ("Kelly") retained Hensley in a real estate matter. Kelly paid Hensley for the representation.

50. After November 2008, Hensley did not respond to Kelly's repeated requests for information concerning the status of her matter.

51. Hensley never resolved Kelly's real estate matter for which he was retained.

52. Hensley did not respond to Kelly's repeated requests for her client file.

53. Kelly has been unable to retain new counsel because she cannot obtain the original documents from Hensley necessary to continue her pursuit of the matter.

54. In or about February 2009, Ms. Kelly filed a fee dispute petition with the State Bar, file no. 09FD0120.

55. The State Bar sent Hensley a Notice of Mandatory Fee Dispute Resolution in file no. 09FD0120 by confirmed facsimile on 31 March 2009. Hensley was required to respond within fifteen days of receiving the Notice.

56. Hensley did not respond to the State Bar's Notice in file no. 09FD0120 as required.

57. On or about 16 April 2009, the State Bar opened a grievance file against Hensley based upon the content of Kelly's fee dispute and Hensley's failure to participate in the fee dispute process, grievance file no. 09G0465.

58. On or about 27 May 2009, the State Bar sent a Letter of Notice to Hensley by certified mail regarding grievance file no. 09G0465. Hensley accepted this Letter of Notice on 28 May 2009 and was required to respond to the Letter of Notice within fifteen days of receiving the letter.

59. Hensley did not respond to the Letter of Notice in grievance file no. 09G0465 within fifteen days of receipt as required.

60. In or around July 2007, Maryse Renault ("Renault") retained Hensley to represent her concerning a property dispute with her ex-husband. Renault paid Hensley for the representation.

61. Hensley subsequently informed Renault that he had sent a letter to her ex-husband's last known address in Vero Beach, Florida and had placed a legal notice in the local Vero Beach newspaper.

62. Several months later, Renault contacted the newspaper and discovered Hensley did not pay for the notice to run in the newspaper, as a result of which the notice was not published.

63. Renault paid the balance herself to have the notice published.

64. When there was no response to the legal notice, Hensley informed Renault that the matter would be quickly resolved.

65. Between 2008 and mid 2009, Renault repeatedly attempted to contact Hensley. Hensley did not respond to Renault's communications.

66. In or around mid 2009, Renault located Hensley in person and confronted him about his failure to respond to her communications and inquired about the status of her case.

67. Hensley indicated that he would provide Renault with her client file within a week.

68. Hensley did not provide Renault with her client file as promised.

69. Hensley never resolved Renault's matter for which he was retained.

70. Hensley never refunded any portion of Renault's paid legal fee.

71. Renault retained new counsel and contacted the Vero Beach newspaper to obtain an affidavit stating the legal notice was placed in the newspaper. The newspaper told Renault that only Hensley could obtain the affidavit since he submitted the original notice.

72. Hensley did not respond to Renault's numerous attempts to contact him.

73. In or about December 2009, Renault filed a fee dispute petition with the State Bar, file no. 09FD0702.

74. The State Bar sent a Notice of Mandatory Fee Dispute Resolution in file no. 09FD0702. Hensley accepted this Notice of Mandatory Fee Dispute Resolution on 24 March 2010 and was required to respond within fifteen days of receiving the Notice.

75. Hensley did not respond to the State Bar's Notice in file no. 09FD0702 as required.

76. On or about 10 June 2010, Renault filed a grievance with the State Bar against Hensley, grievance file no. 10G0567.

77. On or about 28 September 2010, the State Bar sent a Letter of Notice to Hensley by certified mail regarding grievance file no. 10G0567. Hensley accepted this Letter of Notice on 2 October 2010 and was required to respond to the Letter of Notice within fifteen days of receiving the letter.

78. Hensley did not respond to the Letter of Notice within the fifteen day period as required.

79. On or about 1 November 2010, the State Bar sent a follow up letter to Hensley regarding the Letter of Notice for grievance file no. 10G0567 requesting a response by 12 November 2010.

80. Hensley did not respond to the State Bar's 1 November 2010 follow-up letter within the time period provided.

81. In or around October 2007, Hensley acted as closing attorney for Mountain Energy Gas, LLC ("Mountain Energy"), in a transaction involving property located at 135 Grouse Point Road , Maggie Valley, North Carolina.

82. Hensley originally submitted payment on behalf of Mountain Energy for title insurance to Stewart Title, the title insurance company selected for the transaction. Hensley later requested Stewart Title refund the payment directly to him due to an error in the amount paid.

83. In or around October 2008, Stewart Title issued a refund check to Hensley with the expectation that Hensley would submit a correct payment for Mountain Energy's title insurance.

84. Hensley never provided the corrected payment to Stewart Title.

85. Hensley never delivered the refund from Stewart Title to the borrower, Mountain Energy, never deposited the refunded payment into his trust account, and never negotiated the refund check from Stewart Title.

86. Hensley never submitted a final title opinion to Stewart Title.

87. Mountain Energy, the lender involved in the transaction, and Stewart Title attempted to contact Hensley about the refunded title insurance premium as well as his failure to submit a final title opinion. Neither could locate Hensley.

88. On or about 31 August 2009, the State Bar opened a grievance against Hensley based upon his conduct concerning the Mountain Energy closing, grievance file no. 09G1027.

89. On or about 8 October 2009, the State Bar sent a Letter of Notice to Hensley by certified mail regarding grievance file no. 09G1027. Hensley accepted this Letter of Notice on 22 October 2009 and was required to respond to the Letter of Notice within fifteen days of receiving the letter.

90. Hensley did not respond to the Letter of Notice in grievance file no. 09G1027.

91. On or about 31 December 2009, the State Bar sent a follow up letter to Hensley regarding the Letter of Notice for grievance file no. 09G1027 requesting a response by 15 January 2010.

92. Hensley did not respond to the State Bar's 31 December 2009 follow-up letter within the time period provided.

93. From at least 1 January 2006, Hensley maintained an attorney trust account at United Community Bank bearing account number ending in 8990 into which Hensley deposited entrusted client funds (hereinafter "the 8990 account").

94. Hensley did not identify the client(s) associated with multiple deposits into and withdrawals from the 8990 account.

95. Hensley's records for the 8990 account indicate that Hensley failed to disburse at least four payments to title insurance companies for title insurance policies in four separate real estate transactions in addition to the Mountain Energy closing describe above in the Fifth Claim for Relief. Hensley still retains those amounts in his trust account.

96. From at least 1 February 2006, Hensley maintained an attorney trust account at United Community Bank bearing account number ending in 0111 into which Hensley deposited entrusted client funds (hereinafter "the 0111 account").

97. Hensley failed to identify the client(s) associated with at least one deposit into and multiple withdrawals from the 0111 account.

98. In or around September 2009, Hensley closed his office, abandoned his practice, and moved to Florida.

99. Hensley did not inform his clients of his move, did not provide his clients with his contact information, and did not return his clients' files prior to moving to Florida.

100. At the time Hensley abandoned his practice, both the 8990 and 0111 accounts contained positive balances.

101. Between 2006 and 2010, Hensley failed to promptly disburse multiple clients' entrusted funds held in his 8990 and 0111 accounts.

Based upon the foregoing Findings of Fact, the panel enters the following



## CONCLUSIONS OF LAW

1. All parties are properly before the hearing panel and the panel has jurisdiction over Defendant, Robert E. Hensley, Jr., and the subject matter of this proceeding.

2. Hensley'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) and 84-28(b)(3) as follows:

- a) By continuing Frye's and Forrest's case on multiple occasions without Frye's and Forrest's knowledge or consent, and by failing to inform Frye or Forrest about the numerous continuances in their case, Hensley failed make reasonable efforts to expedite litigation consistent with the interests of his clients in violation of Rule 3.2 and failed to consult with his clients as to the means by which the clients' objective was to be accomplished in violation of Rule 1.4(a)(2);
- b) By failing to pursue Frye's and Forrest's case after July 2007, Hensley failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;
- c) By failing to adequately respond to Frye's and Forrest's communications, Hensley failed to keep his client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3) and failed to comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- d) By collecting a fee and failing to perform the work for which he was retained, Hensley collected a clearly excessive fee in violation of Rule 1.5(a);
- e) By failing to refund any unearned portion of Frye's and Forrest's paid fee, by failing to surrender Frye's and Forrest's client file upon termination of representation, and by failing to provide Frye and Forrest reasonable notice that he was closing his practice, Hensley failed to take steps to the extent reasonably practicable to protect his clients' interests in violation of Rule 1.16(d);
- f) By failing to respond to the State Bar's Letters of Notice in file numbers 09G1044 and 09G1240, Hensley failed to respond to lawful demands for information from a disciplinary authority in violation of Rule 8.1(b);
- g) By failing to meaningfully pursue Suggs' legal matter, Hensley failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;
- h) By failing to inform Suggs of the court's ruling on the opposing party's motion for summary judgment or the appeal's dismissal, and by failing to

respond to Suggs' requests for information and otherwise keep Suggs informed about the status of the matter, Hensley failed to keep his client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3) and failed to comply with reasonable requests for information in violation of Rule 1.4(a)(4);

- i) By collecting a fee from Suggs and failing to perform the work for which he was retained, Hensley collected a clearly excessive fee in violation of Rule 1.5(a);
- j) By failing to refund any unearned portion of Suggs' paid fee and by failing to surrender Suggs' client file upon termination of representation, Hensley failed to take steps to the extent reasonably practicable to protect his clients' interests in violation of Rule 1.16(d);
- k) By providing Suggs with a false explanation for the delay in Suggs' case, Hensley engaged in conduct involving dishonesty, deceit, and misrepresentation in violation of Rule 8.4(c);
- l) By failing to respond to the State Bar's Letter of Notice in file number 10G0530, Hensley failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b);
- m) By failing to pursue Kelly's legal matter, Hensley failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;
- n) By failing to respond to Kelly's requests for information, Hensley failed to comply with reasonable requests for information in violation of Rule 1.4(a)(4) and failed to keep his client reasonably informed in violation of Rule 1.4(a)(3);
- o) By failing to return Kelly's client file upon termination of representation, Hensley failed to take steps to the extent reasonably practicable to protect his clients' interests in violation of Rule 1.16(d);
- p) By failing to respond to the State Bar's Notice of Mandatory Fee Dispute Resolution in file no. 09FD0120, Hensley failed to participate in good faith in the State Bar's fee dispute process in violation of Rule 1.5(f);
- q) By failing to timely respond to the State Bar's Letter of Notice in file number 09G0465, Hensley failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b);
- r) By failing to pursue Renault's legal matter, Hensley failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;

- s) By failing to respond to Renault's requests for information, Hensley failed to comply with reasonable requests for information in violation of Rule 1.4(a)(4) and failed to keep his client reasonably informed in violation of Rule 1.4(a)(3);
- t) By collecting a fee from Renault and failing to perform the work for which he was retained, Hensley collected a clearly excessive fee in violation of Rule 1.5(a);
- u) By failing to surrender Renault's client file and by failing to refund any unearned portion of the collected fee upon termination of the representation, Hensley failed to take steps to the extent reasonably practicable to protect his clients' interests in violation of Rule 1.16(d);
- v) By failing to respond to the State Bar's Notice of Mandatory Fee Dispute Resolution in file no. 09FD0702, Hensley failed to participate in good faith in the State Bar's fee dispute process in violation of Rule 1.5(f);
- w) By failing to respond to the State Bar's Letter of Notice in file number 10G0567, Hensley failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b);
- x) By failing to submit a final title opinion in the matter, Hensley failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;
- y) By failing to respond to his clients' requests for information, Hensley failed to comply with reasonable requests for information in violation of Rule 1.4(a)(4) and failed to keep his client reasonably informed in violation of Rule 1.4(a)(3);
- z) By failing to deposit the refunded payment in his trust account, by failing to deliver the refunded payment directly to the borrower, and by failing to submit a final payment to Stewart Title for title insurance as instructed, Hensley failed to promptly deposit and maintain entrusted funds belonging to a client in violation of Rules 1.15-2(a) & (b), and failed to promptly deliver entrusted property to a third party as directed by his client in violation of Rule 1.15-2(m);
- aa) By failing to respond to the State Bar's Letter of Notice in file number 09G1027, Hensley failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b);
- bb) By failing to identify the clients associated with numerous deposits into and withdrawals from his 8990 and 0111 trust accounts, Hensley failed to properly deposit and maintain entrusted funds in his attorney trust account in violation of Rules 1.15-2(a), 1.15-3(b)(1) & 1.15-3(b)(2);

- cc) By failing to disburse entrusted funds to title insurance companies as directed by his clients on at least four occasions in addition to the Mountain Energy closing, Hensley failed to promptly pay third persons as directed by the clients entrusted property belonging to the client in violation of Rule 1.15-2(m);
- dd) By unnecessarily retaining entrusted funds in his 8990 and 0111 accounts for lengthy periods of time, Hensley failed to promptly pay or deliver to his clients or to third persons as directed by the clients any entrusted property belonging to the client in violation of Rule 1.15-2(m); and
- ee) By failing to provide his clients with reasonable notice that he was closing his practice, Hensley failed to take steps to the extent reasonably practicable to protect his clients' interests in violation of Rule 1.16(d).

Based upon the consent of the parties, the hearing panel also finds by clear, cogent, and convincing evidence the following

#### ADDITIONAL FINDINGS REGARDING DISCIPLINE

1. Defendant has substantial experience in the practice of law.
2. Defendant's conduct caused significant harm to his clients, who were vulnerable because they were unfamiliar with the legal process and relied upon Defendant to protect their legal rights. Specifically, Defendant's conduct significantly delayed, impaired, or eliminated his clients' abilities to pursue their respective legal claims, as well as caused the loss of paid legal fees without satisfactorily progressing on or completing the matters for which he was retained. Defendant's neglect and eventual abandonment of his clients and law practice also demonstrates his intent to act in a way that resulted in foreseeable significant harm to his clients and reflects on Defendant's lack of honesty, trustworthiness, and integrity.
3. Defendant's conduct not only harmed his clients' ability to resolve their legal matters but also demonstrated an ongoing pattern of neglectful conduct and an elevation of Defendant's interests above those of his clients in that Defendant abandoned his law practice without notifying his clients or taking any steps to ensure his clients' matters would be properly handled and their rights protected.
4. After abandoning his law practice and leaving the State, Defendant did not provide his clients with any contact information and made no efforts to communicate with his clients to ensure their rights and pending matters were properly preserved for subsequent counsel, including returning their client files or refunding any unearned paid legal fees. Defendant's inaction concerning his clients after abandoning his practice demonstrates Defendant's indifference to making restitution for his clients.
5. Defendant's failure to respond to multiple inquiries from the State Bar demonstrates a refusal to participate in the self-regulation process. Such conduct interferes with the State Bar's ability to regulate its members and undermines the profession's privilege to remain self-regulating.

6. Defendant's habitual neglect of his clients' matters has the potential to cause significant harm to the standing of the legal profession in the eyes of the public because it shows his disregard for his duties as an attorney. Such erosion of public confidence in attorneys tends to sully the reputation of, and fosters disrespect for, the profession as a whole. Confidence in the legal profession is a building block for public trust in the entire legal system.

7. Defendant's conduct caused significant harm to the public and to the administration of justice by unnecessarily delaying resolution of his clients' pending cases and subjecting the cases to procedural resolution, rather than substantive or merit-based resolution. Justice is achieved when all matters subjected to litigation are resolved on their merits and not as a result of procedural problems such as those created by Defendant.

8. Between 2008 and 2010, Defendant experienced a number of personal tragedies resulting from health complications for himself and his family members. These numerous incidents distracted Defendant from his law practice and weighed heavily on Defendant's emotional and mental state to the detriment of his clients and his law practice.

Based upon the Findings of Fact, Conclusions of Law, and Additional Findings Regarding Discipline, the hearing panel also 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)(3) of the Rules and Regulations of the North Carolina State Bar and finds the following factors are applicable in this matter:

- a. Defendant's indifference to making restitution;
- b. Defendant's pattern of misconduct;
- c. Defendant engaged in multiple offenses;
- d. The effect of Defendant's personal problems on the conduct in question;
- e. The vulnerability of the victims; and
- f. Defendant's substantial experience in the practice of law.

2. The hearing panel has also 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 finds the following factors warrant suspension of Defendant's license:

- a. Defendant's intent to commit acts where the harm or potential harm was foreseeable;

- b. Circumstances reflecting Defendant's lack of honesty, trustworthiness, or integrity;
- c. Elevation of Defendant's own interests above that of his clients;
- d. Defendant's actions had a potential negative impact on his clients' and the public's perception of the legal profession;
- e. Defendant's conduct had a negative impact on the administration of justice;
- f. Defendant's conduct impaired each client's ability to achieve the goals of the representation; and
- g. Defendant's multiple instances of failure to participate in the legal profession's self-regulation process.

3. Any sanction less than suspension would fail to acknowledge the seriousness of the offenses committed by Defendant, would not adequately protect the public, and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar.

4. Due to the extensive client neglect described in the present action and due to Defendant's continued refusal to participate in the self-regulating process of the North Carolina State Bar, the hearing panel finds and concludes that the public will only be adequately protected by imposing a period of active suspension of Defendant's law license.

5. Defendant should be allowed the opportunity to apply for a stay of a portion of the suspension imposed by this Order upon compliance with certain conditions designed to ensure protection of the public and to ensure Defendant's compliance with the Rules of Professional Conduct.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Findings Regarding Discipline, the hearing panel enters the following

#### ORDER OF DISCIPLINE

1. The license of Defendant, Robert E. Hensley, Jr., is hereby suspended for four years.

2. Eighteen (18) months from the date of this Order, Defendant may apply for a stay of the remaining period of suspension imposed by this Order upon filing a petition with the Secretary of the North Carolina State Bar demonstrating by clear, cogent, and convincing evidence that, in addition to complying with the general provisions for reinstatement listed in 27 N.C.A.C. 1B § .0125 of the North Carolina State Bar Discipline & Disability Rules, Defendant has complied with the following conditions:

a. Paid the costs and administrative fees of this action as described in paragraph 6 below;

b. Completed twelve (12) hours of continuing legal education in the area of trust account management approved in advance by the Office of Counsel of the North Carolina State Bar;

c. Within one (1) year of the effective date of this Order, Defendant shall, at his sole expense, completed an audit and reconciliation of his trust accounts and any other accounts in which Defendant has deposited client funds under the supervision and certification of a licensed certified public accountant (CPA), approved in advance by the Office of Counsel. Such audit and reconciliation shall demonstrate that all client funds have been fully accounted for and properly disbursed to their rightful owners, and that there are no funds in the account belonging to Defendant unless permitted under Rule 1.15 of the Rules of Professional Conduct. Defendant shall escheat all abandoned funds existing in Defendant's trust accounts to the State pursuant to Rule 1.15-2(q) and N.C. Gen. Stat. § 116B-53. Defendant will authorize the CPA to speak with the Office of Counsel about Defendant's trust accounts and will provide the Office of Counsel with an audit report prepared by the CPA, including the trust account records and the CPA's work papers, that certifies Defendant's trust accounts are in compliance with the Rules of Professional Conduct without qualification or reservation;

d. Within one (1) year of the effective date of this Order, was evaluated at his own expense by a licensed and qualified psychiatrist, psychologist, or similar mental health professional approved by the Office of Counsel of the State Bar for the purpose of determining whether Defendant has any current mental or psychological impairment that would affect Defendant's ability to practice law and comply with the Rules of Professional Conduct or cause harm to the public by continuing to practice law. Defendant shall also sign an authorization form within one (1) year of the effective date of this Order consenting to the release of medical records and information from the evaluating mental health professional to the Office of Counsel of the State Bar and will not revoke that release. Defendant will ensure that the evaluating mental health professional, at Defendant's own expense, provides a written report of such evaluation and recommended treatment, if any, to the Office of Counsel within thirty (30) days of the evaluation taking place;

e. Complied with all treatment, if any, prescribed by the evaluating mental health professional described in paragraph 2(d) above. If any such treatment is prescribed, prior to his first appointment with any treating mental health professional Defendant shall sign an authorization form consenting to the release of medical records and information from the treating mental health professional to the Office of Counsel and will not revoke that release. At least thirty (30) days prior to applying for reinstatement, Defendant shall ensure the treating mental health professional provides the Office of Counsel with a

written report concerning Defendant's progress and compliance with the treatment plan. Defendant shall also comply with any and all requests from the Office of Counsel seeking updates on the status of his ongoing treatment, if any, as recommended by the mental health professional within fifteen (15) days of receipt of such requests. All expenses of such treatment and reports shall be borne by Defendant;

f. That he is not then suffering from any mental, psychological or physical disability that would impair his ability to practice law or that would impair his ability to comply with all of the Rules of Professional Conduct, as certified by Defendant's evaluating mental health professional described in paragraph 2(d) above and Defendant's treating physician;

g. Arranged for an active member of the North Carolina State Bar in good standing who practices law in Defendant's judicial district and who has been approved by the Office of Counsel of the North Carolina State Bar to serve as his law practice monitor. The selected monitor must agree to so serve and agree to meet with Defendant monthly to review Defendant's cases. The monitor will supervise all client matters and will ensure Defendant handles all client matters in a timely fashion, that Defendant responds promptly to his clients, and that Defendant meets with clients as scheduled when clients make appointments. The monitor will submit written quarterly reports of this supervision to the Office of Counsel of the State Bar, such reports due on the following dates as they occur during the stay of this suspension: January 15, April 15, July 15, and October 15. This monitoring will occur for the duration of any stay of this suspension. Defendant will pay the cost, if any, charged by the monitor for this supervision. Defendant must have made the arrangements for this monitoring attorney and supplied the Office of Counsel with a letter from the monitoring attorney confirming his agreement to perform the duties listed above;

h. Provided the North Carolina State Bar with a physical and/or mailing address which shall not be a post office box address and kept this address of record with the North Carolina State Bar current. Defendant shall accept all certified mail from the North Carolina State Bar and respond to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication;

i. Participated fully and timely in the fee dispute program when notified of any petitions for resolution of disputed fees;

j. Did not violate the laws of any state or of the United States; and

k. Did not violate any provision of the Rules of Professional Conduct.



3. If Defendant successfully seeks a stay of the suspension of his law license pursuant to this Order, any stay will continue in force only as long as Defendant complies with the following conditions:

a. Defendant shall continue to comply with all treatment, if any, prescribed by the evaluating and/or treating mental health professional(s) described in paragraphs 2(d) & (e) above. Defendant shall ensure the treating mental health professional provides the Office of Counsel with semi-annual written reports concerning Defendant's condition and compliance with the treatment plan. Such reports shall be received by the Office of Counsel every January 1 and July 1 for the duration of any stay of this suspension. Defendant shall also comply with any and all requests from the Office of Counsel seeking updates on the status of his ongoing treatment, if any is recommended by the mental health professional, within fifteen (15) days of receipt of such requests. All expenses of such treatment and reports shall be borne by Defendant;

b. Defendant shall meet once a month with his 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 handling all client matters in a timely fashion, is responding promptly to his clients, and is meeting with clients as scheduled when clients make appointments. Defendant shall also ensure the monitoring attorney sends a written report each quarter to the Office of Counsel as described above in paragraph 2(g). All costs, if any, associated with the practice monitor's supervision of Defendant shall be borne by Defendant;

c. Defendant shall cooperate with the Office of Counsel and make appropriate arrangements for an alternate monitoring attorney if needed during any stay of this suspension;

d. Defendant shall keep his address of record current with the State Bar and respond to all letters of notice and requests for information from the State Bar by the deadline stated in the communication. Defendant's address of record shall not be a post office box;

e. Defendant shall timely comply with his State Bar membership and continuing legal education requirements and pay all fees and costs assessed by the applicable deadline;

f. Defendant shall participate fully and timely in the fee dispute program when notified of any petitions for resolution of disputed fees;

g. Defendant shall not violate the laws of any state or of the United States; and

h. Defendant shall not violate any provision of the Rules of Professional Conduct.

4. If Defendant fails to comply with any one or more of the conditions stated in Paragraphs 2 or 3 above, then the stay of the suspension of his law license may be lifted as provided in 27 N.C.A.C. 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules. If the stay granted herein is lifted or the suspension of Defendant's license is activated for any reason, before a subsequent stay of the suspension can be entered Defendant must show by clear, cogent, and convincing evidence that he has complied with each of the conditions referenced in Paragraph 2.

5. If Defendant does not seek a stay of the active portion of the suspension of his law license or if some part of the suspension is stayed and thereafter the stay is revoked, Defendant must provide in his application for reinstatement clear, cogent, and convincing evidence of the following:

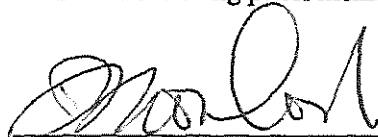
a. Compliance with the general provisions for reinstatement listed in 27 N.C.A.C. 1B § .0125 of the North Carolina State Bar Discipline & Disability Rules; and

b. Compliance with the conditions set out in Paragraphs 2 (a) – (f) above.

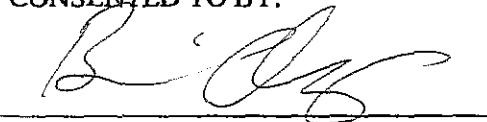
6. All costs and administrative fees of this action are taxed to Defendant. Defendant must pay the costs of this action within 30 days of service upon him of the statement of costs by the Secretary.


7. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C.A.C. 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout any period of stayed suspension.

Signed by the Chair with the consent of the other hearing panel members, this the 22 day of August, 2011.

  
Fred M. Morelock, Chair  
Disciplinary Hearing Panel

CONSENTED TO BY:

  
Brian P.D. Oten  
Deputy Counsel  
North Carolina State Bar  
Counsel for Plaintiff

  
Robert E. Hensley, Jr.  
Defendant