

STATE OF NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
15 DHC 27

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

JEFFREY D. SMITH, Attorney,

Defendant

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

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Fred M. Morelock, Chair, and members Donald C. Prentiss and Christopher R. Bruffey, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff was represented by Jennifer A. Porter. Defendant, Jeffrey D. Smith ("Smith"), was represented by Eben Turner Rawls, III. Both Plaintiff and Defendant stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Smith consents to entry of this Order of Discipline and freely and voluntarily waives any and all right to appeal the entry of this order.

Based upon the pleadings in this matter, the parties' stipulations of fact, and with the consent of the parties, 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, 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. Defendant also maintained an attorney trust account at Wells Fargo, account number ending with 2127.

6. Defendant failed to conduct monthly and quarterly reconciliations of his attorney trust accounts, including from January 2012 through June 2014.

7. From January 2012 through June 2014, Defendant failed to timely disburse all funds held in his trust account for clients, including for title insurance premiums from real estate closings. Such instances include but are not limited to in closings for clients JB, MB, RC, CG, DG, JH, MI, JK, HM, ZM, NS, MP, TS, AS, and VM.

8. On occasion from January 2012 through June 2014, Defendant disbursed funds for clients either in excess of the amount of funds in the trust account for the client or when no funds were in the trust account for the client. Such instances include but are not limited to disbursements for clients TB, KC, HH, RL, ML, Nyuk, BT, Pike Renovations, LLC, and DP.

9. Defendant has disbursed funds on behalf of two clients, MI and TS, in real estate transactions in such a manner that he no longer has available in his trust account for these clients the full amount he should have for title insurance premiums as listed on their respective HUD-1 Settlement Statements.

10. On August 5, 2014, Defendant disbursed check # 16991 for \$750.00 from his trust account made payable to "cash" attributed to client ZM.

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, Defendant failed to reconcile his trust account as required in violation of Rule 1.15-3(d)(1) and (2);

- b. By disbursing funds for clients either in excess of the amount of funds in the trust account for the client or when no funds were in the trust account for the client, 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(j), and disbursed entrusted funds in a manner not authorized by or for the benefit of the client in violation of Rule 1.15-2(m);
- c. By disbursing funds such that the funds remaining in the trust account for the client are insufficient to complete the disbursements listed on the HUD-1 Settlement Statement, Defendant failed to properly maintain entrusted funds in violation of Rule 1.15-2(a); and
- d. By making a check payable to "cash" from his trust account, Defendant improperly drew an item on his trust account made payable to cash in violation of Rule 1.15-2(i).

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

#### **Findings Of Fact Regarding Discipline**

1. Had Defendant been conducting the requisite monthly and quarterly reconciliations, he would have discovered the inappropriate disbursement issues itemized above.
2. Defendant has had a history of checks being returned for insufficient funds in his trust accounts. Although there has been no evidence of misappropriation and Defendant has provided sufficient explanations for each instance, each of these situations should have highlighted to Defendant the need to reconcile his trust accounts and better track the funds in his trust accounts. Respondent failed to take appropriate corrective action, leading to the most recent insufficient funds notice that initiated the audit in this case.
3. Defendant has expressed remorse for his failure to properly maintain his trust account and has cooperated with the State Bar investigator's efforts to identify the funds in his BB&T trust account.
4. In the course of the audit, the State Bar identified apparent deficiencies in client balances in the trust account. Even while exploring whether some of the apparent deficiencies might be due to bookkeeping errors rather than actual over-disbursements or lack of funds, Defendant deposited personal funds into his trust account to make the restitution necessary to allow client funds to be disbursed from his trust account for the clients.
5. Defendant has no prior discipline.
6. There is no evidence of any dishonest or selfish motive on the part of Defendant.

7. Allowing client funds to be improperly maintained or disbursed, even if inadvertent, however, 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.

8. The Hearing Panel has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension, and disbarment, in considering the appropriate discipline to impose in this case.

Based on the Findings of Fact and Conclusions of Law above and the additional Findings of Fact Regarding Discipline, the Hearing Panel makes the following:

#### **Conclusions With Respect To Discipline**

1. The Hearing Panel has carefully considered all of the different forms of discipline available to it. In addition, the Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(1) of the Rules and Regulations of the North Carolina State Bar 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 maintenance of 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.A.C. 1B §.0114(w)(2) of the Rules and Regulations of the North Carolina State Bar 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.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. Absence of prior disciplinary offenses;
- b. Absence of a dishonest or selfish motive;
- c. Timely good faith efforts to make restitution;
- 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 stayed suspension is necessary to ensure Defendant complies with necessary conditions to avoid future significant harm or the potential for significant harm to clients. For the protection of his clients and the public, it is necessary to monitor his trust account management for a period of time in the form of a stayed suspension 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 stayed suspension of Defendant's law licenses 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. The two-year suspension is stayed for a period of three years as long as Defendant complies, and continues to comply during the period of the stay, with the following conditions:
- a. Each month Defendant shall provide the Office of Counsel of the State Bar with an accurate three-way reconciliation described in the State Bar Lawyer's Trust Account Handbook for all trust accounts maintained by him. Defendant shall use the form prepared by the State Bar's Trust Account Compliance Counsel, which will be provided to him by the Office of Counsel, for this purpose. Defendant shall provide the three-way reconciliation report, accurate 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 are due on the 15<sup>th</sup> day of the following month – for example, the three-way reconciliation for the month of January is due on February 15;

- b. Each quarter, Defendant shall have a CPA audit his trust accounts. Defendant will be responsible for any associated costs. This audit shall assess whether Defendant has in his trust account the client funds he should be maintaining for his clients at that time, as well as Defendant's compliance with Rule 1.15-2 and Rule 1.15-3 of the North Carolina State Bar Rules of Professional Conduct. The CPA's audit shall include addressing the items on the form which will be provided by the State Bar to Defendant. The quarterly audit reports from the CPA are due no later than 30 days after the end of the quarter – for example, the CPA audit for the first quarter of the calendar year (January, February, and March) is due on April 30;
- c. If either the monthly three-way reconciliation report or the CPA audit reveals any deviation from Defendant's obligations under Rule 1.15-2 or Rule 1.15-3, Defendant shall take remedial action within 10 days of the date of the three-way reconciliation report or the CPA audit and shall provide documentation showing the remedial action to the State Bar within 2 days of the date of the remedial action;
- d. Defendant shall comply with any requests from the Office of Counsel to provide any information regarding his trust accounts or to sign and provide any release or authorization to allow the Office of Counsel to obtain information directly from any bank in which Defendant maintains a trust account, by the deadline stated in the request;
- e. No later than three months after the effective date of this order, Defendant shall provide the Office of Counsel with a document in which he identifies the funds transferred to his BB&T trust account from his Wells Fargo trust account upon closure of the Wells Fargo account. This identification shall contain the names and addresses of all clients whose funds are included in these transferred funds, the amount of funds being held per client, the proper recipient(s) of the funds and the amount that should be disbursed per recipient, and the address for each such recipient. Defendant shall include with this identification complete, accurate, and legible client ledgers (all client ledgers produced under any provision of this Order shall accurately show all deposits and disbursements of funds for any and all clients with funds in this transferred amount, the dates of such deposits or disbursements, the check numbers associated with any disbursements, the amounts of all deposits and disbursements, and any remaining balance, along with the corresponding bank records showing the deposits and disbursements);

- f. No later than four months after the effective date of this order, Defendant shall remedy any deficiencies in his trust account, as established by his CPA or by the State Bar;
- g. No later than four months after the effective date of this order, Defendant shall disburse all funds in his trust account that may appropriately be disbursed and shall initiate escheatment for all funds that should appropriately be escheated. On the last day of the fourth month after the effective date of this order, Defendant shall provide the Office of Counsel with documentation showing all such actions, with corresponding client ledgers. For any funds for which no action was taken, Defendant shall identify, per client, the funds in his trust account, the proper recipient of such funds, and when and/or under what circumstances those funds will be disbursed or escheated, and provide the client ledger for such client;
- h. Within the first year of the stayed period of suspension, Defendant shall complete four hours of continuing legal education in the area of trust account management approved by the Office of Counsel of the State Bar. At least one such session shall be taken before the end of the next calendar quarter (i.e., by March 30, June 30, etc.) following the entry of this order and at least one such session shall be the Trust Accounting Rules Continuing Legal Education Program taught by the Trust Account Compliance Counsel for The North Carolina State Bar. Defendant shall provide written proof of successful completion of the CLE courses to the State Bar within ten days of completing the courses. These four hours are in addition to the continuing legal education requirements set out in 27 N.C. Admin. Code, Chapter 1, Subchapter D § .1518;
- i. 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 e-mail address and shall notify the Bar of any change in address within ten (10) days of such change;
- j. Defendant shall accept all certified mail from the State Bar sent to the address on record with the Membership Department of the North Carolina State Bar;
- k. 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;
- l. Defendant will timely comply with the State Bar continuing legal education requirements and will pay all fees and costs assessed by the applicable deadline;
- m. Defendant will pay all membership, Client Security Fund, and any other related dues, fees, and/or costs by the applicable deadline;

- n. Defendant will not violate any of the Rules of Professional Conduct in effect during the period of the stay;
  - o. Defendant will not violate any laws of the State of North Carolina or of the United States during the period of the stay; and
  - p. Defendant paid the costs and fees of this proceeding taxed to him, as set out below.
2. Defendant is taxed with the costs and administrative fees of this action as assessed by the Secretary. Defendant shall be served with a statement of costs and fees. Defendant shall pay the amount assessed within thirty days of service of the statement of costs and fees upon him.
3. Unless Defendant's obligations under this Order are modified by further order of the DHC, Defendant's obligations under this Order end three years from the effective date of the Order provided there are no motions or show cause proceedings pending alleging lack of compliance with the conditions of the stay of the suspension. Pursuant to § .0114(x) of the North Carolina Discipline and Disability Rules, the DHC retains jurisdiction until all conditions of the stay of the suspension have been met. If a motion or show cause proceeding alleging lack of compliance with the conditions for the stay of the suspension is pending when the period of the stay of the suspension would otherwise have terminated, the DHC retains the jurisdiction and ability to lift the stay of the suspension and activate the two year suspension in whole or in part if it finds that any of the conditions of the stay have not been met. The stay of the suspension and Defendant's obligation to comply with the conditions for the stay will continue until resolution of any such pending motion or show cause proceeding.
4. If during the stay of the suspension 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 and Disability Rules.
5. If the stay of the suspension is lifted and the suspension is activated for any reason, Defendant may apply for reinstatement after serving the activated suspension by filing a petition pursuant to § .0125 of the North Carolina State Bar Discipline and Disability Rules demonstrating compliance with the requirements therein as well as the following requirements by clear, cogent, and convincing evidence:
- a. Defendant properly wound down his law practice and complied with the terms of 27 N.C. Admin. Code, Chapter 1, Subchapter B, § .0124 of the State Bar Discipline & Disability Rules;
  - b. Defendant kept the Membership Department of the State Bar informed of his current information for his physical address (not a Post Office box),

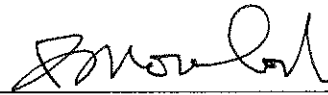


telephone number, and e-mail address throughout the period of his suspension;

- c. Defendant accepted all certified mail from the State Bar sent to the address on record with the Membership Department of the North Carolina State Bar throughout the period of the suspension;
- d. Defendant responded 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 throughout the period of his suspension;
- e. Defendant has come into compliance with any outstanding continuing education or membership obligations at the time of the filing of his petition for reinstatement;
- f. Defendant provided, with his petition, an accurate three-way reconciliation as described in the State Bar Lawyer's Trust Account Handbook for all trust accounts maintained by him at the time his suspension was activated. Defendant shall use the form prepared by the State Bar's Trust Account Compliance Counsel, which will be provided to him by the Office of Counsel, for this purpose. Defendant shall provide the three-way reconciliation report, accurate client ledgers for all clients with funds in the trust account(s), 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 corresponding to the reconciliation. The reconciliation will cover the 3 months immediately preceding the activation of the suspension and will accurately reflect the current status of funds and client funds in his trust account(s);
- g. Defendant did not violate any of the Rules of Professional Conduct in effect during the period of the suspension;
- h. Defendant did not violate any laws of the State of North Carolina or of the United States during the period of the suspension; and
- i. Defendant paid all costs and fees of this proceeding as assessed by the Secretary by the date of the filing of his petition for reinstatement.

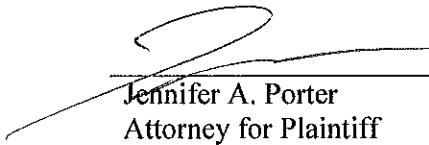
6. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules until all conditions of the stay of the suspension are satisfied.

Signed by the Chair with the consent of the other hearing panel members, this the  
18<sup>th</sup> day of September 2015.



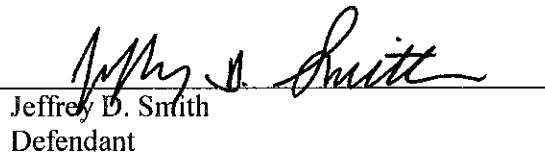
Fred M. Morelock, Chair  
Disciplinary Hearing Panel

Agreed and consented to by:



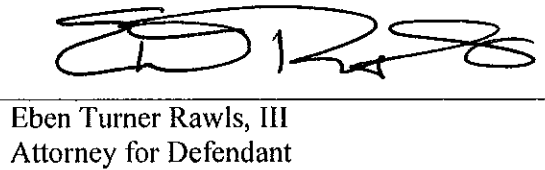
Jennifer A. Porter  
Attorney for Plaintiff

16 September 2015  
Date



Jeffrey D. Smith  
Defendant

Date



Eben Turner Rawls, III  
Attorney for Defendant

Date