

STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
15 DHC 30

THE NORTH CAROLINA STATE BAR

Plaintiff

v.

ROBERT P. TUCKER, II, 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 Barbara W. Weyher, Chair, and members Irvin W. Hankins, III and Percy L. Taylor, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff was represented by Jennifer A. Porter. Defendant, Robert P. Tucker, II ("Tucker"), was represented by James Gary Rowe. 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. Tucker 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, Robert P. Tucker, II ("Tucker"), was admitted to the North Carolina State Bar in 1988, 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 Asheville, Buncombe County, North Carolina.

5. During the course of Defendant's law practice, including but not limited to the period of 2004 - 2013, Defendant maintained attorney trust accounts.

6. Defendant used the software ProTrust to track receipts and disbursements in his trust accounts.

7. Defendant did not, however, total all positive balances for clients and compare that total with his adjusted bank statement balance for his trust accounts on a quarterly basis.

8. On occasion, Defendant disbursed funds from his trust account for clients in excess of the amount he had deposited into his trust account for those clients, including but not limited to for the following clients: MC; DC; AB; CM/AM; Genesis Construction Company; Salus Properties, LLC; WK/CK; GS; PK; TC/DC; NC; KL/JL; Phoenix Housing Group, Inc.; AB; ED; AB/MB; SC; MD; JF; NJ; MM/LM; VH/DH; DH; AP; JR; CR/LR; CS; GF; AW/SW; JF; T.W. McMahan, LLC; MA; RA/BH; SC; KE/NE; JZI Banks; KS; RF; KH/TN; GP/AP; HM; SW/AP; TR; TR/TR; WB/MB; JB; KB; JC/MC; MF; WK/PK; Sustainable Development, LLC; DG/SG; CB; JC/GR; NM; TS; JS; JC/AC; HB; LF; BJ; RL; BS/AS; RT; LW; 5300 LLC; JC/TC; DM; JD; EH; DH; RH; MP; MF; JS; GR/BR; TS/SB; RS; JR; RJ; GK; MWP; DSD; HW/AW; ACM; CMH-J; MM/VM; FD; CD; CRH Properties; TM; AH; CMH-ER; and VB/SB.

9. On occasion, Defendant was the closing attorney for real estate transactions, where he was representing the buyer and where an entity of which he was a member had an interest in the transaction. Defendant did not always obtain informed consent confirmed in writing to such potential conflict of interest. One such occurrence was in the 2005 transaction involving buyer client TB who was purchasing property encumbered by two deeds of trust, the subordinate one held by an entity of which Defendant was a member.

10. Defendant has held funds for clients in his trust account for over a year, typically resulting from outstanding checks which have not cleared. Defendant has not provided such clients with annual accountings of their funds in his trust account.

11. Numerous checks have remained outstanding for several years, with no timely action by Defendant to follow up as necessary to complete the client transactions and the disbursement of funds. In certain instances, the outstanding checks were for title insurance premiums.

12. In 2004, DD retained Defendant to close construction loans for which DD would provide the funding.

13. DD instructed Defendant that DD would provide money to fund construction loans and that DD was to receive a deed of trust securing each loan.

14. DD was privately funding construction loans for individuals who would not initially be able to qualify for a traditional loan. The concept was that once the property was acquired, the construction loan from DD would be used to begin construction on the property. Eventually the property would be improved and the borrower would be able to obtain a traditional loan, at which time DD's loan would be paid off.

15. DD informed Defendant that CRE Mortgage would provide instructions to Defendant on how the construction loans would be disbursed.

16. Debbie Tomlinson was the person with CRE Mortgage who interacted with DD and with Defendant regarding DD's construction loans, and from whom Defendant was instructed to receive directions regarding disbursements for such loans.

17. At various times from 2004 through 2006, DD wired funds to Defendant for construction loans.

18. Debbie Tomlinson gave Defendant instructions on how to disburse the funds that DD wired. In several instances, the disbursement instructions that Debbie Tomlinson gave were inconsistent with DD's stated intention to provide construction loans.

19. In several instances, the disbursements made by Defendant of DD's funds, upon instruction from Ms. Tomlinson, were not associated with any closing and were not for construction.

20. In several instances, Defendant failed to record a deed of trust for the funds received from DD but yet still disbursed DD's funds from Defendant's trust account.

21. In these instances, Defendant failed to handle DD's funds in accordance with DD's stated intent of funding construction loans or in accordance with Defendant's stated condition of receiving a deed of trust for all funds.

22. Defendant made these disbursements of DD's funds without first communicating with DD regarding the inconsistency between the disbursement and the initial instructions from DD, but relied upon Ms. Tomlinson's instructions regarding the disbursements.

23. On or about October 29, 2004, Defendant was the closing attorney for a construction loan from National City Mortgage Company, a subsidiary of National City Bank of Indiana, to Vasily Babak and his wife (hereinafter "the Babak transaction").

24. Defendant represented the borrowers and the lender in the Babak transaction.

25. The construction loan was for \$92,000.00, to be disbursed subsequently in draws. No money was disbursed from the lender at the time of the closing.

26. At the time of closing, the lender instructed Defendant to collect \$18,184.00 from the Babaks for restricted escrow.

27. The lender's instructions stated that no subordinate financing was allowed.

28. Defendant prepared a HUD-1A Settlement Statement for the closing.

29. Defendant provided the HUD-1A Settlement Statement to the lender.

30. The HUD-1A Settlement Statement stated \$23,510.38 had been received from the borrower.

31. Defendant did not collect \$23,510.38 funds from the Babaks, however.

32. At the time of closing, the Babaks signed a promissory note for \$23,510.38, promising to repay this amount to DD. This loan from DD, as an unsecured loan, was subordinate to the one from National City.

33. Defendant recorded a deed of trust for National City, securing its loan with the Babaks' land. No deed of trust was filed securing DD's loan.

34. Defendant did not seek or obtain clarification from National City concerning its instruction to collect funds from the borrower or its instruction regarding subordinate financing.

35. The HUD-1A Settlement Statement that Defendant created and submitted to National City in the Babak transaction indicated funds had been received from the borrower.

36. Defendant did not otherwise communicate with or notify National City that the funds he was instructed to collect from the Babaks did not come from the Babaks but instead came from another source.

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 disbursing more funds for clients than he had deposited into his trust account for the client, Defendant failed to properly maintain and disburse entrusted funds in violation of Rule 1.15-2(a) and (m);
- b) By failing on a quarterly basis to total all funds he should have been maintaining in his trust account for individual clients and compare such total with his bank statement balance, Defendant failed to conduct the required quarterly reconciliations in violation of Rule 1.15-3(d)(1);
- c) By failing to obtain informed consent confirmed in writing from clients in transactions involving a potential conflict of interest between the client and an entity in which Defendant was a member, Defendant improperly engaged in representation involving potential conflict of interest in violation of Rule 1.7(a)(2);
- d) By failing to take timely action to resolve incomplete disbursements from his trust account, Defendant failed to represent clients with reasonable diligence and promptness in violation of Rule 1.3 and failed to ensure proper disbursement of entrusted funds in violation of Rule 1.15-2(m);
- e) By failing to send accountings to clients for whom he held funds in his trust account for over a year, Defendant failed to render required accountings to clients in violation of Rule 1.15-3(e);
- f) By failing to consult with DD prior to disbursing DD's funds when instructions received for disbursements from another were inconsistent with DD's stated goal of funding construction loans and his stated condition of a recorded deed of trust for the funds he provided, Defendant failed to consult with a client as to the means by which the objective of the representation was to be pursued in violation of Rule 1.2(a) and Rule 1.4(a)(2), failed to keep a client reasonably informed about the status of the matters in violation of Rule 1.4(a)(3), failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in violation of Rule 1.4(b), failed to act with reasonable diligence in representing a client in violation of Rule 1.3, and failed to maintain and properly disburse DD's funds in violation of Rule 1.15-2(a) and (m);
- g) By providing a HUD-1A Settlement Statement to the lender in the Babak transaction that failed to accurately show the source of the funds received in the transaction, Defendant failed to communicate to his client all

information necessary for the client to make informed decisions regarding the representation in violation of Rule 1.4(b); and

- h) By failing to consult with the lender concerning its instructions for the closing of the loan to the Babaks, Defendant failed to act with reasonable diligence in the representation of his clients in violation of Rule 1.3.

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

Findings of Fact Regarding Discipline

1. The evidence does not clearly establish that Defendant engaged in the conduct described in the Findings of Fact with a dishonest or selfish motive.
2. Defendant utilized the services of an accounting professional to assist him with quarterly reconciliations. He trusted she was performing the reconciliations in compliance with the requirements of the Rules of Professional Conduct. Defendant did not review those requirements and compare her reconciliations against those requirements.
3. When periodic reviews of his trust account showed overdisbursements had occurred as referenced above, Defendant reimbursed the trust account.
4. The evidence does not clearly establish that the overdisbursements that occurred were intentional or for Defendant's benefit.
5. Allowing client funds to be improperly maintained or disbursed, even if inadvertently, 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.
6. Tucker's failure to diligently pursue completion of outstanding disbursements posed the risk of potential significant harm to the clients, since the purpose for those intended disbursements had not been fulfilled.
7. Tucker's failure to keep clients informed through annual accountings of the funds he was holding for them in his trust account denied clients of necessary information regarding the status and disbursement of their entrusted funds and posed a risk of potential significant harm to the clients who were unaware of outstanding checks which had not been negotiated and thus the purpose for such intended disbursements had not been fulfilled.
8. The owners and the lenders in the residential real estate transactions closed by Tucker were vulnerable clients in that it was solely through Tucker that the final opinion of title and the title insurance premium could be provided to the title insurance company, any requirements of the title insurance company resolved, and the title policy obtained.

9. The title insurance companies are third parties affected by Tucker's failure to ensure that all requirements were met for the issuance of title insurance policies in those transactions for which he had issued a check for the title insurance premium but the check remained outstanding and unnegotiated. There is no evidence that any actual harm or loss occurred as a result of any outstanding premium.

10. At the time Defendant represented DD, he believed he was fully and completely satisfying his obligations to DD by following the instructions of Ms. Tomlinson. Defendant now acknowledges that certain of Ms. Tomlinson's instructions could be perceived as inconsistent with the underlying goals DD had for the representation and that he should have first communicated with DD directly before following such instructions.

11. Defendant's failure to ensure National City was aware of a second loan obtained by the Babaks, potentially affected the Babaks' ability to satisfy their obligations to National City posed a risk of potential significant harm to National City. There was no actual harm to National City, however; the Babaks fulfilled their financial obligations to National City.

12. At the time Defendant closed the construction loan from National City to the Babaks, he thought the lender's instruction against subordinate financing was limited to recorded secondary liens. Defendant now accepts the position that the term subordinate financing can encompass a secondary loan even if there is no associated recorded deed of trust. Defendant now accepts the position that the lender would be interested not only in a secondary lien against the property securing its loan but also in a second loan impacting the borrower's financial obligations. Defendant accepts the position he should have communicated with the lender to clarify its instructions.

13. Defendant has no prior discipline.

14. 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 action to ensure prompt disbursement and proper maintenance of and accounting for entrusted funds;
- b. Defendant's actions potentially had a negative impact on the public's perception of the legal profession;
- c. Impairment of client DD's ability to achieve the goals of the representation by not communicating with DD upon receipt of inconsistent instructions from Ms. Tomlinson; and
- d. Effect of Defendant's conduct on third parties.

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;
- g. Vulnerability of victims; and
- h. Substantial experience in the practice of law.

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 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, Robert P. Tucker, II, 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 is in the Handbook but is also available from the Office of Counsel upon request.~~ 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 15th day of the following month – for example, the three-way reconciliation for the month of January is due on February 15. The first reconciliation is due January 15, 2016;
- 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. The first CPA audit is due January 30, 2016;

- 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 all funds in any trust account being maintained by him at that time. This identification shall contain the names and addresses of all clients whose funds are in the trust account, 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 the trust account, 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. In addition, within the first year of the stayed period of suspension Defendant shall complete one session of continuing legal education that includes information on Ponzi schemes, money laundering, and/or other financial fraud and the measures attorneys can take to protect their trust accounts and clients from potential fraud or misuse. This course does not necessarily need to be recognized for CLE credit in North Carolina but must be approved in advance by the Office of Counsel of the State Bar for satisfaction of this requirement. Defendant shall provide written proof of successful completion of the CLE course to the State Bar within ten days of completing the courses. This course is in addition to the continuing legal education requirements set out in 27 N.C. Admin. Code, Chapter 1, Subchapter D § .1518;
- j. 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;
- k. 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;
- l. 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;
- m. Defendant will timely comply with the State Bar continuing legal education requirements and will pay all fees and costs assessed by the applicable deadline;

- n. Defendant will pay all membership, Client Security Fund assessments of members pursuant to 27 N.C. Admin. Code 1D § .1412, and any other related dues, fees, and/or costs by the applicable deadline;
- o. Defendant will not violate any of the Rules of Professional Conduct in effect during the period of the stay;
- p. Defendant will not violate any laws of the State of North Carolina, other than minor traffic violations, or of the United States during the period of the stay; and
- q. 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. If at any point during the stay of the suspension, Defendant disburses all funds in his attorney trust account(s), closes all attorney trust accounts, and no longer receives, maintains, or otherwise handles entrusted or fiduciary funds in the course of his law practice, Defendant shall provide the Office of Counsel of the State Bar with an affidavit of this information and attach supporting documentation, including but not limited to documentation showing disbursement of all funds and the closing of any and all trust accounts. Thereafter, on a monthly basis, Defendant shall submit to the Office of Counsel an affidavit certifying that he did not handle any entrusted or fiduciary funds in that month; this affidavit shall be executed on the last day of each month and provided to the Office of Counsel by the 5th day of the following month (e.g. the affidavit for January would be executed January 31st and due to the Office of Counsel by February 5th). Upon receipt of the affidavits described in this paragraph, and for as long as Defendant does not handle entrusted or fiduciary funds and submits these affidavits to the Office of Counsel, the requirements of paragraphs 1a to 1c above shall be tolled. If Defendant subsequently resumes handling entrusted or fiduciary funds, then his obligation to comply with the requirements of paragraph 1a to 1c will also resume.

4. 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.

5. 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.

6. 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:

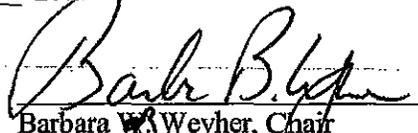
- a. Defendant properly wound down his law practice and complied with the terms of 27 N.C. Admin. Code, Chapter 1, Subchapter B, § .0124 of the State Bar Discipline & Disability Rules;
- b. Defendant kept the Membership Department of the State Bar informed of his current information for his physical 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, available in the Handbook but also from the Office of Counsel upon request, 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 completed the continuing legal education courses described in paragraphs 1(h) and (i) above within the 12 months immediately preceding the filing of his petition for reinstatement;
- h. Defendant did not violate any of the Rules of Professional Conduct in effect during the period of the suspension;
- i. Defendant did not violate any laws of the State of North Carolina, other than minor traffic violations, or of the United States during the period of the suspension; and
- j. 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 3rd day of March 2015.

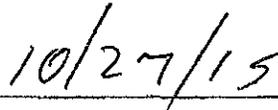

Barbara W. Weyher, Chair
Disciplinary Hearing Panel

Agreed and consented to by:

Jennifer A. Porter
Attorney for Plaintiff

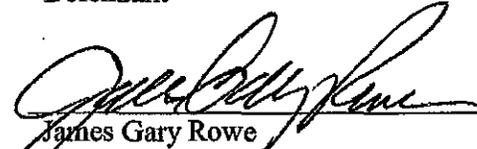
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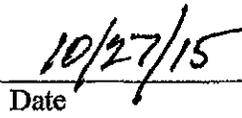




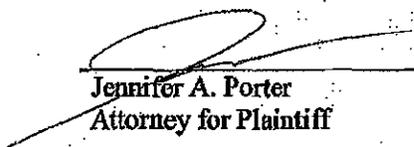
Robert P. Tucker, II
Defendant

Date


James Gary Rowe
Attorney for Defendant

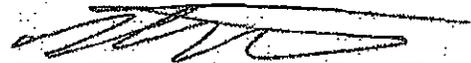

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Agreed and consented to by:


Jennifer A. Porter
Attorney for Plaintiff

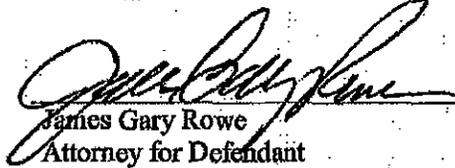
Date

10/27/15


Robert P. Tucker, II
Defendant

Date

10/27/15


James Gary Rowe
Attorney for Defendant

Date

10/27/15