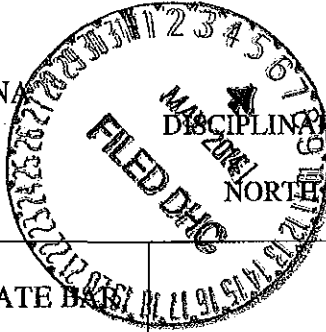


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
13 DHC 21

THE NORTH CAROLINA STATE BAR
Plaintiff

v.

KIA NARISSA SCOTT, Attorney,
Defendant

ORDER OF DISCIPLINE

This matter was heard on 27 and 28 March 2014, before a hearing panel of the Disciplinary Hearing Commission composed of Steven D. Michael, Chair, Irvin W. Hankins, III and Christopher R. Bruffey. Leanor Bailey Hodge represented Plaintiff, the North Carolina State Bar. Defendant, Kia Narissa Scott, was represented by David B. Freedman and Winslow Taylor.

FINDINGS OF FACT

FACTS ESTABLISHED BY THE SUMMARY JUDGMENT ORDER

Based upon Defendant's admissions in the complaint an Order Granting Partial Summary Judgment was entered on 21 February 2014. Therefore, the following undisputed facts were established by the Order Granting Partial Summary Judgment:

1. Plaintiff, the North Carolina State Bar (hereafter "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, Kia Narissa Scott (hereafter "Defendant" or "Scott"), was admitted to the North Carolina State Bar on 24 August 2007 and is an Attorney at Law 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 the relevant period referred to herein, Scott was actively engaged in the practice of law and maintained a law office in Concord, Cabarrus County, North Carolina.

Trust accounts – failure to reconcile

4. Scott maintained two attorney trust accounts, Wachovia Bank trust account ending in no. 6620 (hereinafter “Wachovia trust account”) and Fifth Third Bank trust account ending in no. 5268 (hereinafter “Fifth Third trust account”).

5. Scott failed to maintain proper client ledgers which accurately tracked the deposit and disbursement of client funds in the Wachovia trust account and Fifth Third trust account.

6. Scott failed to perform quarterly or monthly reconciliations of the Wachovia trust account and Fifth Third trust account as required by the Rules of Professional Conduct.

Alteration of official court records

7. On or about 19 October 2012 at approximately 11:35 a.m., Scott appeared in Cabarrus County Administrative Traffic Court on behalf of ten clients.

8. ADA Jennifer Hancock was the assistant district attorney assigned to run administrative traffic court on 19 October 2012. By the time Scott arrived at administrative traffic court, the Cabarrus County’s District Attorney’s Office had already completed their plea negotiations with defense attorneys. Therefore, ADA Hancock was not available to talk with Scott about Scott’s clients’ cases when Scott arrived.

9. ADA Hancock informed Scott that though ADA Hancock was unable to talk with Scott, Scott could go to the Cabarrus County District Attorney’s Office to attempt to negotiate plea agreements for her clients with another assistant district attorney.

10. After talking with ADA Hancock, Scott left the courtroom with the official court files (“shucks”) for the following clients:

- a. J. Manning;
- b. V. Smith;
- c. R. Price;
- d. Y. Culbreth;
- e. K. Doe;
- f. T. Taylor;
- g. A. Childs;

- h. E. Brown;
- i. D. Japp; and
- j. L. Robinson.

11. When Scott left the courtroom, the only handwritten notations on the shucks were: (i) the date, (ii) the court case number, and (iii) another number that identified the page of the court docket on which the case could be found.

12. Approximately ten to twelve minutes later, Scott returned to the courtroom. When Scott returned to the courtroom, the shucks for her clients' cases had additional handwritten notations of "IE" or "IE/VD" on them. Scott told ADA Hancock that ADA Megan Baumgardner had reviewed Scott's clients' cases and had approved the dispositions as written on the shucks.

13. In Cabarrus County, it is the prosecutor's office's duty to handwrite any agreed upon dispositions on the shucks.

14. The prosecutor's office did not make the additional handwritten notations on the shucks for Scott's clients' cases. Scott made these additional handwritten notations.

15. Scott had also handwritten "VD" on the North Carolina Uniform Citation – Court Copy for her clients, V. Smith and J. Manning.

16. Only the prosecutor's office is authorized to note voluntary dismissals by handwriting "VD" on the official court copy of the citation.

17. Scott's handwritten notations on the shucks, on the official court copies of the citations for V. Smith and J. Manning, and her statements to ADA Hancock gave the false impression that the Cabarrus County District Attorney's Office had agreed to resolve Scott's clients' cases by voluntary dismissal or plea to the lesser offense of improper equipment.

18. Scott presented these altered shucks and altered official court copies of citations to the court as if they represented dispositions that had been agreed upon by Scott and the Cabarrus County District Attorney's Office. Scott falsely represented to the court that all parties agreed that the cases should be resolved according to the handwritten notations on the shucks.

19. Scott did not engage in any plea negotiations with anyone from the Cabarrus County District Attorney's Office on behalf of the clients listed in paragraph 10 above.

20. The Cabarrus County District Attorney's Office did not agree that these cases should have been dismissed, or to accept pleas to the lesser offense of improper equipment.

21. On or about 16 July 2013, Scott pled guilty to and was convicted of one count of misdemeanor common law obstruction of justice.

FINDINGS OF FACT MADE AT HEARING

Based upon the stipulations of the parties and the evidence presented at the hearing, the Hearing Panel hereby makes by clear, cogent and convincing evidence the following findings of fact:

22. ADA Baumgardner did not see Scott on 19 October 2012, nor did she speak with Scott.

23. Scott would have been unable to obtain voluntary dismissals for Manning and Smith had she actually attempted to negotiate these pleas with members of the District Attorney's Office for Prosecutorial District 19A.

24. When each case was called before the magistrate and the fraudulent plea was announced, Scott answered "responsible" on behalf of each client, thus further perpetuating the appearance that the fraudulent pleas were legitimate.

Misappropriation of entrusted funds – Wachovia accounts

25. Scott maintained the Wachovia trust account for use primarily in her representation of clients in traffic court matters.

26. Scott also maintained an operating account at Wachovia Bank, account ending in no. 6662 (hereinafter "Wachovia operating account").

27. Scott deposited into the Wachovia operating account all legal fees and court costs paid by credit card for traffic court matters.

28. Scott made deposits into the Wachovia operating account of legal fees and court costs paid by credit card for the following clients on the dates and in the amounts listed below:

- a. D. Parker - \$316.00 on or about 7 January 2011;
- b. N. Willis - \$296.00 on or about 6 January 2011;
- c. R. Hunt - \$300.00 on or about 26 January 2011;
- d. F. Rygiel - \$345.00 on or about 7 February 2011;
- e. A. Soucek - \$445.00 on or about 3 February 2011;

- f. L. Policastro - \$250.00 on or about 12 July 2011;
- g. W. Murray - \$312.00 on or about 25 August 2011; and,
- h. M. Habachi - \$362.00 on or about 8 September 2011.

29. Scott disbursed payment for court costs for the above listed clients from the Wachovia trust account on the following dates:

- a. D. Parker - \$166.00 on or about 16 May 2011;
- b. N. Willis - \$166.00 on or about 25 January 2011;
- c. R. Hunt - \$166.00 on or about 28 February 2011;
- d. F. Rygiel - \$166.00 on or about 25 May 2011;
- e. A. Soucek - \$261.00 on or about 17 May 2011;
- f. L. Policastro - \$166.00 on or about 16 August 2011;
- g. W. Murray - \$195.00 on or about 9 September 2011; and
- h. M. Habachi - \$195.00 on or about 26 September 2011.

30. Scott failed to deposit the funds paid by the clients listed in paragraph 28 above into the Wachovia trust account.

31. Instead, Scott made periodic transfers of funds in random amounts from the Wachovia operating account into the Wachovia trust account.

32. For each of the clients listed in paragraph 28 above, Scott used other clients' funds to pay their court costs and fines.

33. Scott did not transfer any funds from the Wachovia operating account to the Wachovia trust account for L. Policastro between 12 July 2011 when Policastro's funds were deposited into the Wachovia operating account and 16 August 2011 when she disbursed \$166.00 from the Wachovia trust account for L. Policastro.

34. On 18 July 2011 the balance in the Wachovia operating account fell to \$97.38 after a \$34.34 payment to Harris Teeter and a \$71.82 payment to Wilco. Thus, the balance in the Wachovia operating account was below the amount Scott was required to maintain for Policastro.

35. Scott used Policastro's funds for purposes other than that for which the funds were entrusted to her, to include using the funds for her personal and/or business expenditures. Scott misappropriated Policastro's funds.

36. Scott did not transfer any funds from the Wachovia operating account to the Wachovia trust account between 25 August 2011 when W. Murray's funds were deposited into the Wachovia operating account and 9 September 2011 when Scott disbursed \$195.00 for W. Murray from the Wachovia trust account.

37. On 6 September 2011, the balance in the Wachovia operating account fell to \$67.41 after a \$260.00 payment to the Ritz Carlton. Thus, the balance in the Wachovia operating account was below the amount Scott was required to maintain for Murray.

38. On 6 September 2011, the beginning balance in Scott's Wachovia trust account was \$372.00, and the balance in her Fifth Third operating account was negative \$3,482.08 (-\$3,482.08).

39. The balance in Scott's Fifth Third trust account on 6 September 2011 was \$77,858.60, \$7,541.68 below the amount Scott was required to maintain in the Fifth Third trust account for her clients.

40. Scott used Murray's funds for purposes other than that for which the funds were entrusted to her, to include using the funds for her personal and/or business expenditures. Scott misappropriated Murray's funds.

41. Scott did not transfer any funds from the Wachovia operating account to the Wachovia trust account between 8 September 2011 when M. Habachi's funds were deposited into the Wachovia operating account and 26 September 2011 when Scott disbursed \$195.00 for M. Habachi from the Wachovia trust account.

42. On 8 September 2011, the balance in the Wachovia operating account fell to \$114.41 after Scott deposited Wachovia operating account check no. 1224 for \$1,500.00 into her Fifth Third operating account. Thus, the balance in the Wachovia operating account was below the amount Scott was required to maintain for Habachi.

43. Scott used Habachi's funds for purposes other than that for which the funds were entrusted to her, to include using the funds for her personal and/or business expenditures. Scott misappropriated Habachi's funds.

44. C. Washington delivered to Scott \$293.00 in cash to pay for court costs, fines and Scott's legal fees in a traffic court matter.

45. Scott deposited \$168.00 of Washington's cash payment into the Wachovia trust account on or about 22 February 2011.

46. Scott paid court costs and fines for Washington on or about 6 April 2011.

47. On several occasions after Scott deposited Washington's funds into the Wachovia trust account, and before Scott paid Washington's court costs and fines, the

balance in the Wachovia trust account fell below the amount Scott was required to hold in trust for Washington.

48. Scott used Washington's entrusted funds for purposes other than that for which the funds were entrusted to her.

49. On or about 9 May 2011, J. Deidrich paid Scott \$291.00 for court costs, fines and Scott's attorney fee in a traffic court matter.

50. Scott deposited Diedrich's payment into her Wachovia Bank trust account.

51. Scott paid court costs and fines for Diedrich on or about 23 June 2011.

52. On several occasions after Scott deposited Diedrich's funds in the Wachovia Bank trust account and before she paid his court costs and fines, the balance in Scott's trust account fell below the amount Scott was required to hold in trust for Diedrich.

53. Scott used Diedrich's entrusted funds for purposes other than that for which the funds were entrusted to her.

Misappropriation of entrusted funds – Fifth Third accounts

54. Scott maintained the Fifth Third trust account primarily for handling clients' settlement proceeds from personal injury matters.

55. Scott also maintained an operating account at Fifth Third Bank account ending in no. 5243 (referred to herein as "Fifth Third operating account").

56. Scott maintained the Fifth Third operating account primarily for paying her law firm operating expenses, though Scott also paid for many personal expenses from this account.

57. Scott was behind in her monthly payments to several vendors for her law firm to include:

- a. Vision Office Systems in February and March 2011
- b. Pitney Bowes in March 2011
- c. Martindale Hubbell in March 2011
- d. LexisNexis in June 2011

58. On 20 July 2011, Scott's Fifth Third operating account was garnished pursuant to a federal tax levy imposed due to her failure to pay taxes Scott withheld from her employee's pay.

59. Scott represented D. Anderson in a personal injury matter.
60. D. Anderson was awarded \$6,125.00 in settlement of his personal injury claims.
61. Anderson's settlement proceeds were paid by two checks: (i) a \$1,000.00 check from Nationwide Insurance dated 4 November 2011, and (ii) a \$5,125.00 check from Allstate dated 2 December 2011.
62. Scott deposited these funds into the Fifth Third trust account on or about 8 December 2011.
63. Scott made the following disbursements from the Fifth Third trust account on the Anderson client account:
- a. Transfer to Scott's Fifth Third operating account - \$2,000.00 on or about 30 November 2011;
 - b. Better Wellness Chiropractor - \$1,475.00 on or about 8 December 2011;
 - c. D. Anderson - \$1,215.44 on or about 12 December 2011;
 - d. Charlotte Radiology - \$98.00 on or about 15 December 2011;
 - e. CMC Northeast - \$1,365.12 on or about 23 December 2011; and
 - f. Cabarrus Emergency Medicine - \$253.00 on or about 5 January 2011.
64. Scott's legal fee, including reimbursement for cost advances, for the D. Anderson representation was \$1,718.44. She was not entitled to a payment of \$2,000.00.
65. When Scott purported to transfer \$2,000.00 to herself on the D. Anderson account on or about 30 November 2011, Anderson did not have any funds in the Fifth Third trust account. One of the checks for Anderson's settlement proceeds was not issued until after November 30th.
66. The \$2,000.00 Scott transferred to her operating account on or about 30 November 2011 were her other client's entrusted funds. Scott used these funds for her personal benefit and not for the purposes for which the funds were entrusted to her.
67. The balance in Scott's Fifth Third operating account on 29 November 2011, just before Scott's \$2,000.00 transfer, was negative \$2,096.21 (-\$2,096.21). Scott transferred these funds to help cure the deficit in her Fifth Third operating account.
68. Anderson did not have any funds remaining in the Fifth Third trust account on 5 January 2011 when Scott disbursed funds to Cabarrus Emergency

Medicine on Anderson's behalf. Scott used other clients' entrusted funds to make this disbursement.

69. Scott misappropriated \$2,000.00 in entrusted client funds.

70. Scott represented S. Edmonds in a personal injury matter.

71. Edmonds' settlement proceeds were paid by an \$8,300.00 check from Risk Management Services, Inc. dated 15 December 2011.

72. On or about 13 December 2011 Scott transferred \$2,500.00 from the Fifth Third trust account to her Fifth Third operating account on the Edmonds client account. Scott made this transfer before the settlement check for Edmonds had been issued by Risk Management Services, Inc.

73. Edmonds did not have any funds in the Fifth Third trust account when Scott transferred \$2,500.00 on the Edmonds account. Scott did not deposit Edmonds' settlement proceeds into the Fifth Third trust account until on or about 23 December 2011.

74. The balance in Scott's Fifth Third operating account on 13 December 2011, the date Scott made the \$2,500.00 transfer, was negative \$1,685.75 (-\$1,685.75). Scott transferred these funds to help cure the deficit in her Fifth Third operating account.

75. Scott misappropriated \$2,500.00 in entrusted client funds.

76. Scott deposited into the Fifth Third trust account settlement proceeds in the amount of \$11,000 for N. Foster on or about 20 July 2011.

77. Scott made the following disbursements from the Fifth Third trust account on Foster's behalf:

a. N. Foster - \$6,000.00 on or about 20 July 2011;

b. Scott Law Firm - \$3,500.00 on or about 20 July 2011; and

c. CorVet Corp - \$1,300.00 on or about 20 December 2011.

78. Between 20 July 2011 and 20 December 2011 Scott was required to maintain \$1,500.00 in the Fifth Third trust account for Foster.

79. Scott failed to maintain Foster's funds in trust. On the following dates the balance in the Fifth Third trust account fell below \$1,500.00:

a. On or about 27 October 2011 – negative balance of \$833.05;

b. On or about 31 October 2011 – negative balance of \$882.30; and

c. On or about 1 November 2011 – negative balance of \$948.30.

80. Scott used Foster's entrusted funds for purposes other than that for which Foster entrusted the funds to Scott.

81. Scott deposited into her Fifth Third trust account settlement proceeds for D. Burgess in the amount of \$11,581.30 on or about 29 September 2011.

82. Scott made the following disbursements from the Fifth Third trust account on Burgess's behalf:

a. D. Burgess - \$3,090.87 on or about 29 September 2011;

b. Scott Law Firm - \$3,360.43 on or about 30 September 2011; and

c. Better Wellness Chiropractor - \$1,130.00 on or about 4 October 2011.

83. Scott was also required to disburse \$4,000.00 to CMC Northeast on Burgess's behalf. Although CMC Northeast presented a \$4,000.00 check drawn on the Fifth Third trust account to the bank, it was returned for non-sufficient funds.

84. As of 31 July 2012, Scott had not disbursed Burgess's \$4,000.00 to CMC Northeast and Burgess's account at CMC Northeast remained unpaid.

85. After making the disbursements for Burgess listed in paragraph 82 above and failing to make payment to CMC Northeast, Scott was required to maintain \$4,000.00 in the Fifth Third trust account for Burgess.

86. Scott failed to maintain Burgess's funds in trust. The balance in the Fifth Third trust account was below \$4,000.00 from 14 October 2011 through 1 November 2011.

87. Although the balance in the Fifth Third trust account exceeded \$4,000.00 after 1 November 2011, the increase in the account balance was due to Scott's deposit of another client's entrusted funds.

88. Scott used Burgess's entrusted funds for purposes other than that for which Burgess entrusted the funds to Scott.

89. Scott failed to pay Burgess's CMC Northeast medical lien until 10 September 2012 after Burgess's funds had already been used for other purposes.

90. Scott deposited into the Fifth Third trust account settlement proceeds in the amount of \$7,236.90 for M. Webb on or about 15 July 2011.

91. Scott made the following disbursements from the Fifth Third trust account on Webb's behalf:

- a. Better Wellness Chiropractor - \$1,215.00 on or about 15 July 2011;
- b. M. Webb – \$2,595.54 on or about 15 July 2011; and
- c. Scott Law Firm - \$2,345.63 on or about 18 July 2011.

92. Scott was required to maintain \$1,080.73 in the Fifth Third trust account for Webb.

93. Scott failed to maintain Webb's funds in trust. On 27 October 2011, the Fifth Third trust account had a negative \$833.05 (-\$833.05) balance.

94. Scott used Webb's entrusted funds for purposes other than that for which Webb entrusted the funds to Scott.

95. Scott deposited into the Fifth Third trust account settlement proceeds in the amount of \$5,500.00 for J. Sanchez on or about 10 November 2011.

96. Scott made the following disbursements from the Fifth Third trust account on Sanchez's behalf:

- a. Scott Law Firm - \$1,300.00 on or about 10 November 2011;
- b. J. Sanchez - \$1,772.00 on or about 10 November 2011; and
- c. Kannapolis Spine Wellness - \$2,428.00 on or about 23 December 2011.

97. Between 10 November 2011 and 23 December 2011, Scott was required to maintain \$2,428.00 in the Fifth Third trust account for Sanchez.

98. Scott failed to maintain Sanchez's funds in trust. On the following dates the balance in the Fifth Third trust account fell below \$2,428.00:

- a. On or about 21 November 2011 - \$1,456.56; and
- b. On or about 20 December 2011 - \$2,251.26.

99. Scott used Sanchez's entrusted funds for purposes other than that for which Sanchez entrusted the funds to Scott.

100. Scott deposited into the Fifth Third trust account settlement proceeds in the amount of \$8,000.00 for C. Porter on or about 21 January 2011.

101. Scott made the following disbursements from the Fifth Third trust account on Porter's behalf:

- a. Scott Law Firm - \$2,676.66 on or about 21 January 2011;

- b. C. Porter - \$3,524.67 on or about 24 January 2011; and
 - c. Cook Chiropractor - \$1,430.00 on or about 1 February 2011.
102. Scott was required to maintain \$368.67 in the Fifth Third trust account for Porter.
103. Scott failed to maintain Porter's funds in trust. On 27 October 2011, the Fifth Third trust account had a negative \$833.05 (-\$833.05) balance.
104. Scott used Porter's entrusted funds for purposes other than that for which Porter entrusted the funds to Scott.
105. Scott deposited into the Fifth Third trust account real property sales proceeds in the amount of \$17,500.00 on behalf of the G. Coleman Estate on or about 26 August 2011.
106. Scott made the following disbursements on behalf of the Coleman Estate:
- a. Transfer to Scott's Fifth Third operating account - \$6,000.00 on or about 26 August 2011;
 - b. Transfer to Scott's Fifth Third operating account - \$213.31 on or about 31 August 2011;
 - c. Cash withdrawal - \$95.81 on or about 1 September 2011;
 - d. D. Cannon - \$4,000.00 on or about 9 September 2011; and
 - e. M. Lipscomb - \$6,000.00 on or about 9 September 2011.
107. Scott was required to maintain \$1,190.88 in the Fifth Third trust account for the Coleman Estate.
108. Scott failed to maintain the Coleman Estate's funds in trust. On 27 October 2011, the Fifth Third trust account had a negative \$833.05 (-\$833.05) balance.
109. Scott used the Coleman Estate's entrusted funds for purposes other than that for which these funds were entrusted to Scott.
110. Scott deposited into the Fifth Third trust account settlement proceeds in the amount of \$50,000 for D. Kennedy on or about 2 September 2011.
111. Scott made the following disbursements from the Fifth Third trust account on Kennedy's behalf:
- a. Transfer to Scott's Fifth Third operating account - \$16,666.66 on or about 7 September 2011;

- b. D. Kennedy - \$8,000.00 on or about 29 September 2011;
- c. MDS Med Payment - \$14,500.00 on or about 11 October 2011; and
- d. Recovery Services - \$12,500.00 on or about 12 October 2011.

112. Scott disbursed from the Fifth Third trust account on Kennedy's behalf \$1,666.66 more than she received in trust for Kennedy.

113. Scott used other client's entrusted client funds to make this \$1,666.66 excess disbursement.

114. Scott disbursed funds to herself from the Kennedy settlement three weeks before making any other disbursements in the Kennedy matter.

115. The balance in Scott's Fifth Third operating account on 7 September 2011 just before Scott transferred funds on the Kennedy client account was negative \$1,902.08 (-\$1,902.08).

116. On or about 6 April 2011, Scott disbursed from the Fifth Third trust account \$750.00 to J. Wagner as a refund of attorney's fees Wagner paid to Scott.

117. Wagner did not have any funds in trust; Scott did not deposit any funds into the Fifth Third trust account on Wagner's behalf.

118. Scott used other client's entrusted funds to pay Wagner's refund. Scott misappropriated these funds.

119. On or about 19 May 2011, Scott disbursed from the Fifth Third trust account \$787.50 to pay a mediation fee on behalf of M. Matthews.

120. The only deposit made into the Fifth Third trust account for Matthews was a \$262.50 deposit made on or about 12 June 2011.

121. Scott used other clients' entrusted funds to pay Matthews's mediation fee.

122. On or about 1 September 2011, Scott made a cash withdrawal from the Fifth Third trust account in the amount of \$2,500.00.

123. J. Jones retained Scott in 2010 to represent him in criminal matters that were instituted after Jones was charged with embezzling \$20,461.00. Scott's representation of Jones included representing Jones in his effort to retain his ministerial license.

124. Scott charged Jones a flat \$4,000.00 fee for her representation of him in his effort to retain his ministerial license.

125. Scott charged Jones a \$15,000.00 fee for her representation of Jones in defense of the criminal embezzlement charges against him.

126. On 16 March 2010, A. Anthony, Scott's office manager, collected \$9,461.00 from Jones to be held in trust for payment of restitution on Jones' behalf.

127. Scott deposited these funds into her Fifth Third trust account.

128. On 27 April 2010, Anthony collected an additional \$6,000.00 from Jones to be held in trust for payment of restitution on Jones' behalf.

129. Scott deposited Jones's \$6,000.00 payment into her Fifth Third trust account.

130. Scott made the following disbursements from the Fifth Third trust account on the Jones client account:

- a. Transfer to Scott's Fifth Third operating account - \$1,000.00 on or about 16 June 2010;
- b. Transfer to Scott's Fifth Third operating account - \$7,000.00 on or about 7 September 2010;
- c. Transfer to Scott's Fifth Third operating account - \$13,365.00 on or about 11 October 2011; and
- d. Clerk of Court - \$1,000.00 on or about 18 November 2011.

131. As of 3 November 2010, Scott was required to maintain \$15,461.00 in trust for Jones. However, Scott only held \$7,461.00 on this date.

132. Scott failed to maintain Jones's funds in trust and instead disbursed these funds to herself.

133. As of 11 October 2011, Scott had collected \$24,365.00 from Jones in payment of a \$19,000.00 legal fee.

134. Scott misappropriated Jones's entrusted funds.

135. Scott failed to maintain trust account ledgers for her personal injury clients.

CONCLUSIONS OF LAW

CONCLUSIONS OF LAW ESTABLISHED BY SUMMARY JUDGMENT ORDER

The following undisputed conclusions of law are established by the 21 February 2014 Order Granting Partial Summary Judgment:

1. The Hearing Panel has jurisdiction over Defendant and over the subject matter of this proceeding.

2. Defendant's conduct, as set out above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:

- a. By failing to maintain client ledgers, Scott failed to maintain minimum records for accounts at banks in violation of Rule 1.15-3(b); and
- b. By failing to reconcile her Wachovia trust account and Fifth Third trust account, Scott failed to perform monthly and quarterly reconciliations of her general trust accounts in violation of Rule 1.15-3(d).

3. Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(1) in that she pled guilty to and was convicted of one count of misdemeanor common law obstruction of justice, a criminal offense showing professional unfitness.

CONCLUSIONS OF LAW MADE AT HEARING

Based upon the record, the Foregoing Findings of Fact (Facts Established by Summary Judgment and Findings of Fact Made at Hearing), the Hearing Panel makes the following conclusions of law:

4. Defendant's conduct, as set out above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:

- a. By depositing her clients' funds entrusted to her for payment of court costs and fines into her Wachovia operating account, Scott failed to deposit entrusted property into a general trust account in violation of Rule 1.15-2(b);
- b. By using her clients' entrusted funds to pay court costs and fines of other clients, Scott used entrusted property for the benefit of one other than the legal or beneficial owner in violation Rule 1.15-2(j);
- c. By using her clients' entrusted funds for her personal and/or business expenditures, Scott used entrusted property for her personal benefit in violation of Rule 1.15-2(j), committed a criminal act (embezzlement) that reflects adversely on her honesty, trustworthiness and fitness as a lawyer in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);
- d. By disbursing funds from the Fifth Third trust account to herself on behalf of D. Anderson and S. Edmonds, clients who did not have any

funds in the Fifth Third trust account at the time of the disbursements, Scott used entrusted property for the personal benefit of one other than the legal or beneficial owner without authorization to do so in violation of Rule 1.15-2(j), committed a criminal act (embezzlement) that reflects adversely on her honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);

- e. By disbursing from the Fifth Third trust account more funds for clients D. Kennedy and M. Matthews than that which she held in that account on said clients' behalf, Scott used entrusted property for the personal benefit of one other than the legal or beneficial owner without authorization to do so in violation of Rule 1.15-2(j);
- f. By failing to maintain her clients' entrusted funds in the Fifth Third trust account, Scott used entrusted property for the personal benefit of one other than the legal or beneficial owner without authorization to do so in violation of Rule 1.15-2(j);
- g. By disbursing funds from the Fifth Third trust account to refund an attorney fee paid by Wagner when Wagner did not have any funds in the Fifth Third trust account, Scott used entrusted property for her personal benefit in violation of Rule 1.15-2(j), committed a criminal act (embezzlement) that reflects adversely on her honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);
- h. By making a counter withdrawal from her Fifth Third trust account, Scott drew an item on a trust account made payable to cash or bearer in violation of Rule 1.15-2(i);
- i. By disbursing to herself funds she was required to maintain in trust for Jones, Scott used entrusted property for her personal benefit in violation of Rule 1.15-2(j), committed a criminal act (embezzlement) that reflects adversely on her honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);
- j. By writing "VD" on the official court copy of the citations for V. Smith and J. Manning, Scott committed a criminal act (altering court documents in violation of N.C. Gen. Stat. § 14-221.2) that reflects adversely on her honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b), and engaged in conduct

involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d); and

- k. By representing to the court that the handwritten notations on her clients' checks represented dispositions agreed upon by the parties, Scott made a false statement of material fact to the tribunal in violation of Rule 3.3(a), engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

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

ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE

1. Scott has no prior discipline.
2. Scott had been practicing law for approximately four years when she embezzled client's entrusted funds and had been practicing for approximately five years when she altered the official court copies of her clients' traffic citations.
3. Scott was seen by a therapist on 19 October 2012 in connection with stress Scott was under due to personal and family problems.
4. From 27 February 1999 through 3 June 1999, Scott sold Sears merchandise to her friends for less than the retail price, misused her employee discount card, took Sears merchandise, and on one occasion, took money from Sears and gave it to her boyfriend. As a result, Scott was charged with several counts of felony larceny by employee and pled guilty to 3 counts of misdemeanor larceny.
5. The District Attorney's Office for Prosecutorial District 19A spent approximately three – four weeks investigating the issue of whether any member of the office agreed to the dispositions obtained in Scott's clients' traffic cases.
6. The District Attorney's Office has been unable to determine whether Scott engaged in similar misconduct in any other traffic cases.
7. After Scott's crime was discovered, defense attorneys in Cabarrus County were no longer trusted to properly handle the official court copies of traffic citations. The prosecutor's office began to take extra steps to protect the integrity of the official court copies of traffic citations.

8. The extra protective measures instituted by the prosecutor's office have resulted in a more burdensome process for prosecutors and defense attorneys in Cabarrus County.

9. After Scott pled guilty to obstruction of justice, the Honorable W. Erwin Spainhour, Senior Resident Superior Court Judge for Cabarrus County, reassigned to other lawyers all felony cases in which Scott was appointed to represent the defendant.

10. Judge Spainhour sent a request to district court judges in Cabarrus County asking them to reassign any criminal cases in which Scott was appointed to represent the defendant. Three of the four district court judges reassigned to other lawyers those misdemeanor criminal cases in which Scott was appointed to represent the defendant.

11. The allegations of Scott's misconduct were well known in Cabarrus County.

12. Reports of Scott's misconduct and criminal guilty plea were reported in the news, to include: 15 February 2014 Charlotte Observer Article: *Concord Attorney Faces Claims*; 18 September 2013 Concord & Kannapolis Independent Tribune Article: *Concord Attorney Faces Disciplinary Action*; 20 October 2013 Concord & Kannapolis Independent Tribune Article: *Concord Lawyer Denies Intentional Wrongdoing*; 17 February 2014 Charlotte Observer Article: *Concord Attorney Faces Disciplinary Hearing*.

13. Scott has established a reputation among some attorneys in Cabarrus County, other than those in the district attorney's office, as a hardworking and prepared attorney.

Based on the foregoing Findings of Fact, Conclusions of Law and Additional Findings of Fact Regarding Discipline, the Hearing Panel enters the following:

CONCLUSIONS OF LAW REGARDING DISCIPLINE

1. The Hearing Panel has considered all of the factors contained in 27 N.C.A.C. 1B § .0114(w)(1), the Rules and Regulations of the State Bar, and concludes that the following factors that warrant suspension or disbarment are present:

- a. intent of the defendant to cause the resulting harm or potential harm;
- b. circumstances reflecting the defendant's lack of honesty, trustworthiness, or integrity;
- c. elevation of the defendant's own interest above that of the client;
- d. negative impact of the defendant's actions on clients' or public's perception of the profession;
- e. negative impact of the defendant's actions on the administration of justice;

- f. impairment of client's ability to achieve the goals of the representation; specifically, Mr. Burgess's medical lien which was not paid; and
- g. acts of dishonesty, misrepresentation, deceit or fabrication.

2. The Hearing Panel has considered all of the factors contained in 27 N.C.A.C. 1B § .0114(w)(2), the Rules and Regulations of the State Bar, and concludes that the following factors that warrant disbarment are present:

- a. acts of dishonesty, misrepresentation, deceit or fabrication;
- b. misappropriation or conversion of assets of any kind to which the defendant or recipient is not entitled, whether from a client or any other source; and
- c. commission of a felony.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(3), the Rules and Regulations of the State Bar, and concludes that the following are applicable in this matter:

- a. absence of prior disciplinary offenses;
- b. dishonest or selfish motive;
- c. pattern of misconduct;
- d. multiple offenses;
- e. effect of any personal and emotional problems on the conduct in question;
- f. full and free disclosure to the hearing panel or a cooperative attitude toward the proceedings;
- g. acknowledgement of the wrongful nature of the conduct;
- h. remorse;
- i. character and reputation as an attorney in Cabarrus County;
- j. lack of experience in the practice of law; and

- k. imposition of other penalties or sanctions, to wit, interim suspension, and the defendant's criminal conviction for misdemeanor obstruction of justice and the sentence that was imposed.
4. By misappropriating entrusted client funds, Defendant has caused harm to the standing of the legal profession in that her conduct undermines the trust and confidence that the public has in lawyers and the legal system.
5. Defendant caused significant harm to her client, D. Burgess by misappropriating his entrusted funds from the Fifth Third trust account and failing to timely pay \$4,000.00 to CMC Northeast on Burgess's behalf.
6. Defendant caused potential significant harm to her clients by misappropriating their entrusted funds from the Wachovia trust account.
7. Defendant caused potential significant harm to her clients by misappropriating their entrusted funds from the Fifth Third trust account.
8. Defendant caused significant harm to the profession by reinforcing the negative stereotype that lawyers are selfish and out for personal gain.
9. Defendant caused potential significant harm to the profession in the eyes of the public in that Defendant engaged in conduct that diminishes the public's expectation that attorneys conduct themselves professionally, adhere to the Rules of Professional Conduct, and respect the laws that they've sworn to uphold.
10. Attorneys have a duty to communicate honestly with the court and each other. When attorneys fail to do so, they engender distrust among fellow lawyers and from the public, thereby harming the profession as a whole.
11. Defendant caused significant harm to the administration of justice by falsely claiming that her handwritten notations on the official court copies of traffic citations and shucks were pleas she negotiated with the prosecutor's office.
12. Defendant caused significant harm to the administration of justice in that members of the District Attorney's Office for Prosecutorial 19A were taken away from the normal duties so that Defendant's criminal conduct could be investigated.
13. Defendant caused significant harm to the administration of justice in that after her criminal conduct came to light, new attorneys had to be appointed to represent those clients that Defendant had previously been appointed to represent in criminal matters.
14. Defendant's criminal conviction has caused harm to the standing of the legal profession in that her conduct undermines the trust and confidence that the public has in lawyers and the legal system.


15. The Hearing Panel has considered all lesser sanctions including: suspension, censure, reprimand and admonition, and finds that discipline less than disbarment would not adequately protect the public from Defendant's future misconduct for the following reasons:

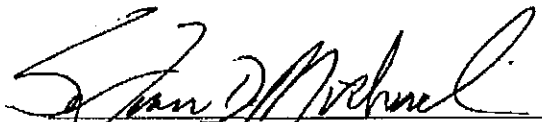
- a. Defendant committed a criminal act on multiple occasions, specifically embezzlement, that reflects adversely on her honesty, trustworthiness or fitness as a lawyer in other respects;
- b. Before being licensed as a lawyer, Defendant committed criminal acts while serving in the trusted capacity of an employee with access to her employer's funds and despite being criminally sanctioned for these acts has again engaged in criminal conduct;
- c. Defendant's acts of dishonesty is conduct that is beneath the minimum standard required as an officer of the court, particularly in regard to her conduct of presenting false negotiated plea agreements to the court;
- d. Defendant has demonstrated a willingness to place her personal interests above the interests of her clients;
- e. Defendant has demonstrated a failure to respect court process and the law which poses a threat of significant potential harm to the public;
- f. Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses Defendant committed and would send the wrong message to lawyers and the public regarding the conduct expected of members of the Bar of this State;
- g. The protection of the public and the legal profession requires that Defendant not be permitted to return to the practice of law until she demonstrates the following by clear, cogent and convincing evidence: (i) that she has reformed, (ii) that she possesses the moral qualifications required for admission to practice law in North Carolina taking into account the misconduct that is the subject of this order, (iii) that she understands the current Rules of Professional Conduct, including but not limited to those Rules relating to "Safekeeping Property" as set forth in Rule 1.15 et seq.; and (iv) that reinstatement will not be detrimental to the public or the integrity and standing of the legal profession. Disbarment is the only discipline that will require Defendant to make such a showing before returning to the practice of law.

Based upon the foregoing Findings of Fact, Conclusions of Law, Additional Findings of Fact Regarding Discipline and Conclusions of Law Regarding Discipline, the Hearing Panel hereby enters the following:

ORDER OF DISCIPLINE

1. Defendant, Kia Narissa Scott, is hereby DISBARRED from the practice of law.
2. If Defendant has not already done so in accordance with the requirements of the 9 September 2013 Order of Interim Suspension, Defendant shall immediately surrender her law license and membership card to the Secretary of the North Carolina State Bar.
3. Defendant shall pay within thirty days of service of the statement of costs upon her by the Secretary of the State Bar the administrative fees and costs of this proceeding.
4. Defendant shall provide the following to the State Bar within thirty days of the effective date of this Order:
 - a. Current contact information for all clients who have or should have funds in the trust accounts. Defendant shall cooperate with the State Bar to account for and disburse all client funds as appropriate; and
 - b. An address and telephone number at which clients seeking return of their files can communicate with Defendant and obtain such files.
5. Defendant shall return client files to clients within five days of receipt of a request for return of the client file. Defendant will be deemed to have received any such request three days after the date the request is sent to Defendant if the request is sent to the address Defendant provided to the State Bar pursuant to this Order.
6. Defendant shall comply with all provisions of 27 N.C.A.C. 1B § .0124 of the North Carolina State Bar Discipline & Disability Rules.

 Signed by the Chair with the consent of the other Hearing Panel members, this the day of ~~April~~ ^{May}, 2014.


Steven D. Michael, Chair
Disciplinary Hearing Panel