SETTLEMENT AGREEMENT BETWEEN THE COMMITTEE FOR PROFESSIONAL COUNSELORS AND ERICA L. McDOWELL

Erica L. McDowell ("McDowell") and the Committee for Professional Counselors ("the Committee") enter into this Settlement Agreement for the purpose of resolving the question of whether McDowell's license as a Missouri licensed professional counselor will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo,[1] the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the Committee under § 621.110, RSMo (Cum. Supp. 2011), and stipulate and agree that a final disposition of this matter may be effectuated as described below.

McDowell acknowledges that she understands the various rights and privileges afforded her by law, including the right to a hearing of the charges against her; the right to appear and be represented by legal counsel; the right to have all charges against her proven upon the record by competent and substantial evidence; the right to cross-examine any witness appearing at the hearing against her; the right to a decision upon the record by a fair and

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[1] Statutory citations herein are to the Revised Statutes of Missouri 2000 unless otherwise noted.

impartial administrative hearing commissioner concerning the charges pending against her and, subsequently, the right to a disciplinary hearing before the Committee at which time she may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending an action against her license. Being aware of these rights provided her by operation of law, McDowell knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement. McDowell further agrees to abide by the terms of this Agreement, as they pertain to her.

McDowell acknowledges that she has received a copy of the investigative report, and other documents relied upon by the Committee in determining there was cause for discipline, along with citations to law and/or regulations the Committee believes were violated. For the purpose of settling their dispute, McDowell stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Committee that her Missouri license as a licensed professional counselor, license number 2008030705, is subject to disciplinary action by the Committee in accordance with provisions of Chapter 621, RSMo (Cum. Supp. 2011) and Chapter 337, RSMo.

The parties stipulate and agree that the disciplinary order agreed to by the Committee and McDowell in the Joint Agreed Disciplinary Order herein is based only on the agreement set out in the Joint Stipulation of Facts and Joint Conclusions of Law herein. McDowell understands that the Committee may take further disciplinary action against her based on facts or conduct not specifically mentioned in this document that are either now known to the Committee or may be discovered.

Joint Stipulations of Fact

1. The Committee for Professional Counselors ("the Committee") is an agency of the state of Missouri created and established pursuant to § 337.535, RSMo, for the purpose of executing and enforcing the provisions of Chapter 337, RSMo pertaining to the practice of ~~social work~~ counseling.

2. Respondent ("McDowell") is licensed by the Committee as a Missouri licensed professional counselor, license number 2008030705 ("License").

3. McDowell's License was issued on or about October 2, 2008.

4. McDowell's License was current and active at all relevant times herein.

5. As a licensed professional counselor, McDowell established relationships of professional trust and confidence with her clients.

6. McDowell was aware of the relationships of professional trust and confidence between herself and her clients.

7. From about April 2009 until about September 2010, McDowell worked for MHM Health Services as a professional counselor providing therapy services for inmates at the Missouri Sex Offender Program at Farmington Correctional Center in Farmington, Missouri.

8. From about August 2009 until about February 2010, McDowell provided therapy services to Q.T.,[2] an inmate at the program in Farmington.

9. McDowell subsequently set up her own company, called Realizing Your True Potential, in Kansas City, Missouri.

10. In about December 2010 McDowell encountered Q.T. on the street in Kansas City, Missouri.

11. McDowell hired Q.T. to assist with the promotional activities of Realizing Your True Potential.

12. Approximately one (1) month later, McDowell and Q.T. engaged in a sexual relationship that lasted approximately two (2) months.

[2] To protect his privacy, Q.T. is referenced herein by his initials.

Joint Conclusions of Law

13. Jurisdiction and venue are proper before the Administrative Hearing Commission pursuant to § 621.045, RSMo (Cum. Supp. 2011) and § 337.525.2, RSMo.

14. Administrative Regulation 20 C.S.R. 2095-3.010(1), of the Ethical Standards for Missouri licensed professional counselors, regarding Scope of Coverage, provides in pertinent part, "[t]he ethical standards for counselors (hereinafter standards) shall apply to a licensed professional counselor . . . violation of these standards constitutes unprofessional conduct and is sufficient reason for disciplinary action pursuant to section 337.525, RSMo."

15. Administrative Regulation 20 C.S.R. 2095-3.010(12), of the Ethical Standards for Missouri licensed professional counselors, provides in pertinent part:

> While providing psychotherapy or professional counseling or within the twenty-four (24) months following completion or termination of psychotherapy or professional counseling a counselor shall not engage in the following:
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> > (A) Sexual intercourse, defined as any genital contact with the client including, but not limited to, vaginal intercourse, sodomy, oral and/or anal copulation, or any penetration of the anal or vaginal opening by any body part or object;

. . . .

16. Section 337.525.2, RSMo, sets forth the grounds for discipline of a professional counselor license and states, in pertinent part:

> 2. The committee may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any license required by sections 337.500 to 337.540 or any person who has failed to renew or has surrendered his license for any one or any combination of the following causes:
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> . . .
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> (5) Incompetency, misconduct, fraud, misrepresentation or dishonesty in the performance of the functions or duties of a professional counselor;
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> (6) Violation of, or assisting or enabling any person to violate, any provision of sections 337.500 to 337.540, or of any lawful rule or regulation adopted pursuant to sections 337.500 to 337.540;
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> . . .
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> (13) Violation of any professional trust or confidence;
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> . . .
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> (15) Being guilty of unethical conduct as defined in the ethical standards for counselors adopted by the division and filed with the secretary of state.

17. McDowell's conduct, in engaging in a sexual relationship with a former client within the twenty-four (24) months following completion or termination of psychotherapy or professional counseling, constitutes unprofessional conduct, as prohibited by Administrative Regulation 20 C.S.R. 2095-3.010(1) of the Ethical Standards for Missouri licensed professional counselors, adopted by the Committee and filed with the Secretary of State.

18. McDowell's conduct, in engaging in a sexual relationship with a former client within the twenty-four (24) months following completion or termination of psychotherapy or professional counseling, constitutes the violation of ethical standards, as prohibited by Administrative Regulation 20 C.S.R. 2095-3.010(12)(A) of the Ethical Standards for Missouri licensed professional counselors, adopted by the Committee and filed with the Secretary of State.

19. As a result of McDowell's engaging in a sexual relationship with a former client within the twenty-four (24) months following completion or termination of psychotherapy or professional counseling cause exists to discipline McDowell's License for violations of Administrative Regulation 20 C.S.R. 2095-3.010(1) of the Ethical Standards for Missouri licensed professional counselors.

20. As a result of McDowell's engaging in a sexual relationship with a former client within the twenty-four (24) months following completion or termination of psychotherapy or professional counseling cause exists to discipline McDowell's License for violating Administrative Regulation 20 C.S.R. 2095-3.010(12)(A) of the Ethical Standards for Missouri licensed professional counselors.

21. McDowell's conduct, in engaging in a sexual relationship with a former client within the twenty-four (24) months following completion or termination of psychotherapy or professional counseling, constitutes incompetency, misconduct, fraud, misrepresentation, or dishonesty in the performance of the functions or duties of a professional counselor in violation of § 337.525.2(5), RSMo.

22. McDowell's conduct, in engaging in a sexual relationship with a former client within the twenty-four (24) months following completion or termination of psychotherapy or professional counseling, constitutes the violation of provisions of §§ 337.500 to .540, RSMo and/or the violation of any lawful rules or regulations adopted pursuant to §§ 337.500 to .540, RSMo, in violation of § 337.525.2(6), RSMo.

23. McDowell's conduct, in engaging in a sexual relationship with a former client within the twenty-four (24) months following completion or

termination of psychotherapy or professional counseling, constitutes the violation of any professional trust or confidence, in violation of § 337.525.2(13), RSMo.

24. McDowell's conduct, in engaging in a sexual relationship with a former client within the twenty-four (24) months following completion or termination of psychotherapy or professional counseling, constitutes unethical conduct as defined in the ethical standards for licensed professional counselors, adopted by the division and filed with the Secretary of State, in violation of § 337.525.2(15), RSMo.

25. As a result of McDowell's incompetency, misconduct, fraud, misrepresentation or dishonesty in the performance of the functions or duties of a professional counselor licensed pursuant to Chapter 337, RSMo, cause exists to discipline McDowell's License pursuant to § 337.525.2(5), RSMo.

26. As a result of McDowell's violations of provisions of §§ 337.500 to .540, RSMo and/or violations of any lawful rules or regulations adopted pursuant to §§ 337.500 to .540, RSMo, cause exists to discipline McDowell's License pursuant to § 337.525.2(6), RSMo.

27. As a result of McDowell's violation of any professional trust or confidence, cause exists to discipline McDowell's License pursuant to § 337.525.2(13), RSMo.

28. As a result of McDowell's unethical conduct as defined in the ethical standards for licensed professional counselors, adopted by the division and filed with the Secretary of State, cause exists to discipline McDowell's License pursuant to § 337.525.2(15), RSMo.

Joint Agreed Disciplinary Order

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the Disciplinary Order entered by the Committee in this matter under the authority of § 337.525.2, RSMo, and § 621.045.4, RSMo (Cum. Supp. 2011):

1. **McDowell's License is subject to suspension, followed by a period of probation.** McDowell's License as a professional counselor, License Number 2008030705, is hereby SUSPENDED for a period of TWO (2) YEARS, and shall immediately thereafter be placed on PROBATION for FIVE (5) YEARS. The periods of suspension and probation shall constitute the "Disciplinary Period." During the period of suspension, McDowell shall not be entitled to practice as a professional counselor pursuant to Chapter 337, RSMo, nor shall McDowell hold herself out in any fashion as being authorized to engage in the practice of professional counseling under Chapter 337, RSMo. During the period of probation, McDowell shall be allowed to

practice professional counseling under Chapter 337, RSMo, provided she adheres to all the terms of this Agreement.

2. **Terms and conditions of the disciplinary period.** The terms and conditions of the Disciplinary Period are as follows:

A. McDowell shall submit written reports to the Committee by no later than December 1, March 1, June 1, and September 1 during each year of the Disciplinary Period stating truthfully whether there has been compliance with all terms and conditions of this Agreement. The first written report shall be submitted on or before September 1, 2012. After the first two (2) years of the period of probation, McDowell may petition the Committee to submit a written report to the Committee every six months thereafter. The final written report shall be submitted to the Committee ninety (90) days prior to the end of the Disciplinary Period. Each written report shall be submitted no earlier than thirty (30) days prior to the respective due date. McDowell is responsible for assuring that the reports are submitted to and received by the Committee.

B. During the period of suspension, McDowell shall take and submit verification to the Committee of successful completion of a three (3) semester hour graduate course in professional ethics. This course

may not be counted toward meeting McDowell's continuing education requirements and may not be a distance education course. McDowell is responsible for the expense of this ethics course.

C. During the period of probation, McDowell's practice as a professional counselor shall be supervised by a licensed professional counselor or licensed psychologist approved by the Committee. McDowell shall submit a panel of three (3) potential supervisors to the Committee, who shall have the option to select or reject any of the potential supervisors. If McDowell fails to secure a supervisor within twenty (20) business days from the start of probation, McDowell shall cease practicing professional counseling until a supervisor is secured.

1) In the event the approved supervisor becomes unable or decides not to continue serving in their capacity as a supervisor or otherwise ceases to serve as a supervisor during the period of probation, then McDowell shall:

(a) within three (3) business days of being notified of the supervisor's inability or decision not to continue serving as the supervisor, or otherwise learning of the need to secure a supervisor, advise the Committee for

Professional Counselors in writing that she needs to secure a supervisor and the reasons for such change; and

(b) within twenty (20) business days of being notified of the supervisor's inability or decision not to continue serving as the supervisor, or otherwise learning of the need to secure a supervisor, secure a supervisor pursuant to and in accordance with the terms and conditions set forth in this Settlement Agreement. After twenty (20) business days, McDowell shall not practice if she has not secured a supervisor.

2) The supervisor shall be vested with administrative authority over all matters affecting the provision of professional counseling services provided by McDowell so that the ultimate responsibility for the welfare of every client is maintained by the supervisor.

3) McDowell's supervisor shall report to the Committee in writing on a quarterly basis with the reports due by December 1, March 1, June 1, and September 1 each year during the period of probation. It is McDowell's responsibility to ensure that these reports are provided in a timely manner.

4) McDowell shall be responsible for any payment associated with the supervision of her practice.

D. During the Disciplinary Period, McDowell shall not serve as a supervisor to other professionals licensed pursuant to Chapter 337, RSMo.

E. During the Disciplinary Period, McDowell shall keep the Committee apprised at all times in writing of her current work and home addresses and telephone numbers at each place of residence and employment. McDowell shall notify the Committee in writing of any change in address or telephone number within fifteen (15) days of a change in this information

F. During the Disciplinary Period, McDowell shall timely renew her license and timely pay all fees required for license renewal and comply with all other Committee requirements necessary to maintain her license in a current and active state, including completion of all continuing education requirements.

G. During the Disciplinary Period, McDowell shall comply with all provisions of §§ 337.500 - .540, RSMo, all rules and regulations promulgated thereunder, and all federal and state laws. "State" includes the state of Missouri and all other states and territories of the

United States. Any cause to discipline McDowell's License as a professional counselor under § 337.525.2, RSMo, that accrues during the Disciplinary Period shall also constitute a violation of this Agreement.

H. During the Disciplinary Period, McDowell shall accept and comply with reasonable unannounced visits from the Committee's duly authorized agents to monitor her compliance with the terms and conditions stated herein.

I. During the Disciplinary Period, McDowell shall appear before the Committee or its representative for a personal interview upon the Committee's written request.

J. If, at any time within the Disciplinary Period, McDowell removes herself from the state of Missouri, ceases to be currently licensed under the provisions of §§ 337.500 - .540, RSMo, or fails to keep the committee advised of all current places of residence and business, the time of absence, uncertified status or unknown whereabouts shall not be deemed or taken as any part of the Disciplinary Period.

3. Upon the expiration of the Disciplinary Period, McDowell's License shall be fully restored if all requirements of law have been satisfied;

provided, however, that in the event the Committee determines that McDowell has violated any term or condition of this Agreement, the Committee may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline McDowell's License.

4. No additional discipline shall be imposed by the Committee pursuant to the preceding Paragraph of this Agreement without notice and an opportunity for hearing before the Committee as a contested case in accordance with the provisions of Chapter 536, RSMo.

5. This Agreement does not bind the Committee or restrict the remedies available to it concerning any future violations by McDowell of §§ 337.500 - .540, RSMo, or the regulations promulgated thereunder, or of the terms and conditions of this Agreement.

6. This Agreement does not bind the Committee or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Agreement that are either now known to the Committee or may be discovered.

7. If any alleged violation of this Agreement occurred during the Disciplinary Period, the parties agree that the Committee may choose to conduct a hearing before it either during the Disciplinary Period, or as soon

thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. McDowell agrees and stipulates that the Committee has continuing jurisdiction to hold a hearing to determine if a violation of this Agreement has occurred.

8. Each party agrees to pay all of their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

9. The terms of this Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

10. The parties to this Agreement understand that the Committee will maintain this Agreement as an open record of the Committee as required by Chapters 337, 610, and 620, RSMo, as amended.

11. McDowell, together with her partners, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the Committee, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs,

expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo, as amended, or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this Agreement. The parties acknowledge that this Paragraph is severable from the remaining portions of this Agreement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this Agreement or any portion thereof void or unenforceable.

12. McDowell understands that she may, either at the time this Agreement is signed by all parties, or within fifteen (15) days, thereafter, submit this Agreement to the Administrative Hearing Commission for determination that the facts agreed-to by the parties to this Agreement constitute grounds for discipline of her license.

13. This Agreement will become effective thirty (30) days after it is signed by the Committee's Executive Director.

ONE (1) SIGNATURE PAGE FOLLOWS

LICENSEE

Erica L. McDowell, LPC

Erica L. McDowell, LPC
License Number 2008030705

Date: July 31, 2012

COMMITTEE

Loree Kessler
Executive Director
Committee for Professional Counselors

Date: 8/14/12