

STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
11 DHC 24

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

WILLIAM A. ANTHONY, III and
EDGAR F. BOGLE, Attorneys,

Defendants

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 Sharon B. Alexander, Chair, and members M. H. Hood Ellis and Patti Head, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff was represented by Jennifer A. Porter. Defendants, William A. Anthony, III ("Anthony") and Edgar F. Bogle ("Bogle"), were represented by Jim R. Funderburk. Both Plaintiff and Defendants stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Anthony and Bogle have freely and voluntarily stipulated to the foregoing findings of fact and consent to the conclusions of law and entry of the order of discipline. Anthony and Bogle freely and voluntarily waive any and all right to appeal the entry of this consent order of discipline.

Based upon the pleadings in this matter, the parties' stipulations of fact, and with the consent of the parties, the Hearing Panel hereby enters 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, William A. Anthony, III ("Anthony"), was admitted to the North Carolina State Bar in 1996 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, Edgar F. Bogle ("Bogle"), was admitted to the North Carolina State Bar in 1995 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.

4. Defendants were properly served with process and the matter came before the Hearing Panel with due notice to all parties.

5. During all or part of the relevant periods referred to herein, Anthony and Bogle were engaged in the practice of law in the State of North Carolina and maintained a law office in Gastonia, Gaston County, North Carolina.

6. At various times since at least 2003, Anthony and Bogle failed to conduct quarterly reconciliations of their firm's trust account, failed to maintain ledgers for each client for whom funds were received in the trust account, failed to identify the client and/or the source of funds for deposits, and failed to provide written accountings to clients with funds in the trust account for more than twelve months.

7. On occasion in 2009, Anthony and Bogle would allow clients to pay advance fees to their trust account with a credit card. The credit card company charged a processing fee per transaction which was automatically withdrawn from their trust account. Anthony and Bogle failed to continually maintain sufficient firm funds in the trust account from which such transaction fees could be paid. The transaction fees at times inadvertently used entrusted funds in the trust account. The charges were subsequently promptly reimbursed to the trust account from office funds.

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 Defendants and the subject matter of this proceeding.

2. Defendants' conduct, as set out in the stipulated Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:

(a) By failing to conduct quarterly reconciliations of their firm's trust account, failing to maintain ledgers for each client for whom funds were received in the trust account, failing to identify the client and/or the source of funds for deposits, and failing to provide written accountings to clients with funds in the trust account for more than twelve months, Defendants failed to follow appropriate trust account recordkeeping procedures in violation of Rule 1.15-3(b)(1), (d)(1), and (e); and

(b) By failing to maintain sufficient firm funds in the trust account to cover processing charges withdrawn from the trust account, Defendants failed to

properly maintain entrusted funds in violation of Rule 1.15-2(a) and allowed entrusted funds to be disbursed in a manner not authorized by or for the benefit of the client in violation of Rule 1.15-2(m).

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

Findings Of Fact Regarding Discipline

1. Defendants' trust account was the subject of random audits in 2001, 2005, and 2009. Despite having been notified of deficiencies in their management of their trust account after the 2001 and 2005 audits, the deficiencies listed in paragraph 6 of the Findings of Fact above were found during the 2009 audit.

2. Defendants have expressed remorse for their failure to properly maintain their trust account and have described changes designed to ensure future compliance. Defendants similarly expressed remorse and intended changes after the audits in 2001 and 2005 but were unable to, or otherwise failed to, sustain corrective action.

3. Defendants have reimbursed the trust account for the credit card transaction charges withdrawn from the trust account.

4. Defendants have good reputations in their community.

5. Neither Defendant has any prior discipline.

6. There is no evidence of any dishonest or selfish motive on the part of either Defendant.

7. There is no evidence that any specific client of Defendants suffered harm from Defendants inadvertently allowing entrusted funds to be withdrawn for bank or credit card processing fees or from the other violations of the trust account rules.

8. Allowing client funds to be improperly 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.

9. 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 Defendants' license:

- a) Intent of Defendants to commit acts where the harm or potential harm is foreseeable, to wit: failing to take corrective action and failing to properly manage their trust account with the foreseeable harm of inadvertent misuse of client funds; and
- b) Defendants' actions potentially had a negative impact on the public's perception of the legal profession

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(2) of the Rules and Regulations of the North Carolina State Bar and concludes no factors are present in this instance that would warrant disbarment.

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

- a) Absence of prior disciplinary offenses;
- b) Absence of a dishonest or selfish motive;
- c) Timely good faith efforts to make restitution or to rectify consequences of the misconduct;
- d) Multiple offenses;
- e) A pattern of misconduct;
- f) Full and free disclosure to the Hearing Panel and cooperative attitude toward the proceedings;
- g) Remorse; and
- h) Vulnerability of Defendants' clients.

4. Defendants' conduct, if continued 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 Defendants 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 Defendants comply with necessary conditions to avoid significant harm or the potential for significant harm to clients. Although Defendants are remorseful and committed to taking corrective action and properly maintaining their trust account, in the past they have not followed through on similar good intentions. Accordingly, for the protection of their clients and the public, it is necessary to monitor their 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 Defendants' law licenses would not be appropriate.

Based upon the foregoing findings of fact and conclusions of law and the findings of fact and conclusion regarding discipline, and based upon the consent of the parties, the Hearing Panel enters the following:

Order Of Discipline

1. Defendants, William A. Anthony, III and Edgar F. Bogle, are hereby suspended from the practice of law for two years.

2. Defendants are each taxed with the costs of this action as assessed by the Secretary. Defendants shall each be served with a statement of costs stating the costs assessed against each Defendant. Each Defendant shall pay the costs within thirty days of service of the statement of costs upon him.

3. The two-year suspension is stayed for a period of three years for each Defendant as long as said Defendant complies, and continue to comply during the period of the stay, with the following conditions:

a. During the period of stayed suspension Defendants will retain the services of a Certified Public Accountant (CPA) to review the status of any accounts into which client or fiduciary funds have been deposited. Defendants will deliver to the Office of Counsel a report prepared and signed by the Certified Public Accountant certifying that Defendants have reconciled each account with the bank balance, that they have maintained client ledgers identifying all funds in each account, and that Defendants are otherwise in compliance with all requirements of Rule 1.15-3 of the Rules of Professional Conduct;

b. Defendants are to submit such reports by each January 15, April 15, July 15, and October 15 during the period of stay, and shall provide the certified public accountant the necessary information to satisfactorily prepare such quarterly reports;

c. If the CPA finds any accounting irregularities or deviance from the Rules of Professional Conduct requiring remedial action, Defendants shall take such remedial action and provide proof of such to the Office of Counsel of the State Bar and to the CPA within thirty (30) days of the date of the CPA's report;

d. If any of the CPA's reports note any irregularities or deficiencies requiring remedial action, the CPA shall provide a final report regarding whether Defendant's remedial actions were sufficient and whether Defendant's trust account or accounts has/have been brought into compliance with the Rules of Professional Conduct. This final report shall be provided to the Office of Counsel with a copy to Defendant within thirty (30) days of Defendant's provision of proof of remedial action;

e. Defendants will be solely responsible for all costs associated with the monitoring of their trust account(s). Defendants will be jointly and severally liable for the cost of the CPA's services for shared accounts (e.g. firm trust accounts). To the extent that Defendants open and/or maintain individual accounts to which the CPA monitoring conditions in this order apply, Defendants will be individually liable for the cost of the CPA services for their respective accounts. Under no circumstances will the State Bar be liable for the cost of the CPA's services rendered to satisfy the requirements of this order;

f. Defendants shall comply with any requests from the Office of Counsel to provide any information regarding their 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 Defendants keep a trust account, by the deadline stated in the request;

g. Within six months of the effective date of this order, Defendants shall each complete an accounting course or continuing legal education course focused on trust account practices and methods and compliance with the requirements of the Rules of Professional Conduct. This course must be approved in advance by the Office of Counsel of the State Bar. Defendants must provide the Office of Counsel with proof of completion within ten days of completion of the course;

h. Defendants shall keep the North Carolina State Bar Membership Department advised of their 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;

i. Defendants 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;

j. Defendants 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;

k. Defendants will timely comply with the State Bar continuing legal education requirements and will pay all fees and costs assessed by the applicable deadline;

l. Defendants will pay all membership, Client Security Fund, and any other related dues, fees, and/or costs by the applicable deadline;

m. Defendants will not violate any of the Rules of Professional Conduct in effect during the period of the stay;

n. Defendants will not violate any laws of the State of North Carolina or of the United States during the period of the stay; and

o. Defendants paid the costs of this proceeding as assessed by the Secretary within thirty days after the statement of costs was served upon them.

4. If during the stay of the suspension either Defendant fails to comply with any one or more of the conditions stated above, then the stay of the suspension of his law license may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

5. If the stay of the suspension is lifted and the suspension is activated for any reason for either Defendant, said 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 did not violate any of the Rules of Professional Conduct in effect during the period of the suspension;

g. Defendant did not violate any laws of the State of North Carolina or of the United States during the period of the suspension; and

h. Defendant paid all costs of this proceeding as assessed by the Secretary by the date of the filing of his petition for reinstatement.

6. All provisions of this order apply to each Defendant in his individual capacity. All provisions apply to each Defendant regardless of whether Defendants continue to practice law together or whether they practice law separately. If Defendants cease to practice law together, each Defendant will notify the Office of Counsel within 30 days of having left the law firm or of dissolution of the law firm as applicable.

7. 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 throughout the period of the stayed suspension.

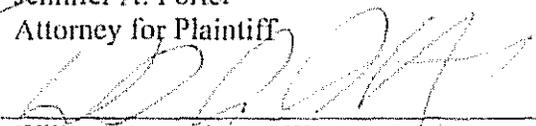
Signed by the Chair with the consent of the other hearing panel members, this the 08 day of November 2011.


Sharon B. Alexander, Chair
Disciplinary Hearing Panel

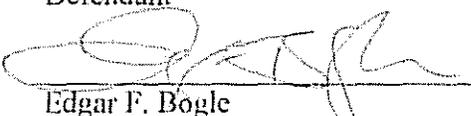
Agreed and consented to by:


Jennifer A. Porter
Attorney for Plaintiff

October 5, 2011
Date


William A. Anthony, III
Defendant

10-21-11
Date


Edgar F. Bogle
Defendant

10-21-11
Date


Jim R. Funderburk
Attorney for Defendants

10/24/11
Date