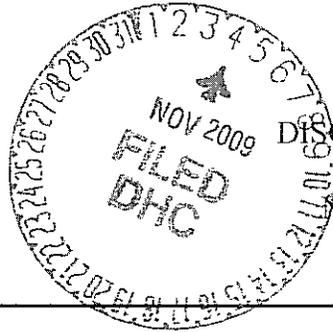


NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
09 DHC 16

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
v.)
RICHARD THOMAS HAYES, V, Attorney,)
Defendant)

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

This matter came before a hearing committee of the Disciplinary Hearing Commission composed of Theodore C. Edwards, II, Chair, Ronald R. Davis, and Michael J. Houser; with A. Root Edmonson representing the North Carolina State Bar and the Defendant appearing *pro se*. Based upon the consent of the parties evidenced by the signatures affixed hereto, the hearing committee finds that the following facts have been established by clear, cogent and convincing evidence:

FINDINGS OF FACT

1. The plaintiff, the North Carolina 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. The defendant, Richard Thomas Hayes, V (“Hayes”), was admitted to the North Carolina State Bar on August 24, 1996 and is, and was at all times referred to herein, an Attorney at Law licensed to practice in North Carolina, 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 some of the time relevant to this complaint, Hayes actively engaged in the private practice of law in the State of North Carolina and maintained a law office in the city of Raleigh, Wake County, North Carolina. By order of September 9, 2005 served on Hayes on September 13, 2005, Hayes was placed on administrative suspension for failing to comply with his 2004 continuing legal education requirements.

4. During the times relevant to this complaint, Hayes maintained an attorney trust account at Crescent State Bank, account number ending in 4064 (“trust account”).

5. On March 21, 2005, a counsel for Chicago Title Insurance Company filed a grievance against Hayes alleging failure to complete title work and failure to pay title policy premiums. The grievance was assigned file number 05G0328.

6. On March 30, 2005, a Letter of Notice was sent to Hayes and he was directed to file a written response within 15 days of receipt of it.

7. Hayes eventually responded to the Letter of Notice on May 16, 2005, upon requesting additional time to fully respond to the allegations. Hayes provided a list of the files completed and stated that all but four files had been resolved. However, Hayes did not furnish any documentation that the premiums were paid.

8. In July 2005 and several times thereafter, Hayes was asked to provide proof to the State Bar that the relevant title insurance premiums had been paid.

9. Hayes failed to respond to those requests.

10. On December 23, 2004, Hayes closed a loan for a client whose last name is Wiggins ("Wiggins").

11. From the closing proceeds, Hayes should have disbursed \$86,470.22 to Option One Mortgage to pay off Wiggins' prior note and deed of trust.

12. On June 3, 2005, Wiggins filed a grievance against Hayes, designated as file number 05G0641, that alleged that Hayes had failed to pay Option One Mortgage.

13. On June 10, 2005, a Letter of Notice and a Subpoena for Cause Audit were sent to Hayes by State Bar investigator Edward R. White, Jr. ("White") in file number 05G0641. White asked Hayes to produce bank records, client ledgers, closing statements, disbursement journals and quarterly trust account reconciliations for the previous year along with the Wiggins file.

14. Hayes responded to the Letter of Notice and demonstrated that the payoff was timely sent to Option One Mortgage, but was rejected by the lender because of a previously undisclosed escrow deficit.

15. Upon learning of the grievance, Hayes again tried to pay off the mortgage and eventually Option One Mortgage agreed to accept the amount Hayes originally sent after the closing.

16. After Hayes reported the resolution of the matter with Option One Mortgage, White asked Hayes to furnish a copy of his canceled check paying the mortgage.

17. Hayes failed to provide White with a copy of the canceled check.

18. Early in the investigation of 05G0328 and 05G0641, White asked Hayes to furnish his client trust account reconciliations for the quarters ending September 30 and December 31, 2004 and March 31, 2005. Hayes provided reconciliations he had done of his bank account balance, but had not reconciled individual client balances from properly maintained client ledgers to the balance in the trust account.

19. White explained to Hayes how he could perform an appropriate reconciliation of his clients' ledgers to his trust account balance using the software system Hayes had on his office computer.

20. On July 26 and August 30, 2005, White asked Hayes to also provide a client trust account reconciliation for the quarter ending June 30, 2005.

21. On August 2, 2005, Hayes closed a refinance loan for a client whose last name was Aponte and Aponte's wife. From the closing proceeds, Hayes should have disbursed \$4,609.94 to the mortgage broker, East Coast Mortgage Group.

22. Hayes failed to make the disbursement to East Coast Mortgage Group.

23. On September 7, 2005, Tom Matusak ("Matusak") of East Coast Mortgage Group filed a grievance against Hayes that was designated as file number 05G0964 for Hayes' failure to pay the mortgage broker.

24. On September 16, 2005, a Letter of Notice and Subpoena for Cause Audit were served on Hayes in 05G0964.

25. On September 30, 2005, Hayes wrote to the Bar and promised to have a substantive response to the 05G0964 grievance, and all other information previously requested by White, to the State Bar by October 10, 2005.

26. Hayes failed to provide any further response.

27. On January 9, 2006, Hayes was subpoenaed to appear at the January 19, 2006 Grievance Committee meeting to provide information concerning 05G0328, 05G0641 and 05G0964.

28. On January 19, 2006, Hayes appeared and provided a statement and additional documents, but did not produce a copy of the canceled checks to Option One Mortgage and East Coast Mortgage. Hayes still had not reconciled ledgers for his clients to the balance in his trust account.

29. On January 23, 2006, Hayes provided further information relating to the grievances. Hayes produced canceled checks showing his disbursements to Option One Mortgage and to East Coast Mortgage. However, Hayes had still not reconciled his clients' ledgers to the balance in his trust account.

30. Hayes' trust account continues to have a significant balance of clients' funds that Hayes has failed to disburse to the intended recipients as directed by his clients.

31. Hayes has failed to properly reconcile his clients' ledger balances to the balance in his trust account. The trust account balance can not be disbursed appropriately until Hayes completes a proper reconciliation.

32. On May 7, 2004, a client whose last name is Fritz ("Fritz") purchased a mobile home situated on real property in Moncks Corner, South Carolina.

33. Hayes had Charles Feeley, a South Carolina lawyer associated with Hayes' firm, close the Fritz transaction.

34. Hayes' office was supposed to pay the \$185.00 title insurance premium from the closing proceeds to Investors Title, but failed to do so.

35. On December 29, 2004, the tax collector in Moncks Corner, SC advised Fritz that the mobile home she had purchased had been sold at auction on February 2, 2004 for delinquent taxes. Neither Hayes nor Feeley discovered the seller's delinquent taxes prior to the closing and the taxes were not deducted from the seller's proceeds. Fritz was given until February 3, 2005 to pay the delinquent taxes, and any rent owed to the bidder, to reclaim title to her mobile home.

36. Fritz had to pay \$2,117.29 to the tax collector in Moncks Corner, SC and \$744.00 to the bidder to retain title to the mobile home.

37. Fritz contacted Hayes to get him to remedy the tax situation.

38. In January 2005, Hayes contacted the seller, Washington Mutual Bank ("WaMu"), to get WaMu to pay the taxes that should have been deducted from the seller proceeds.

39. On March 16, 2005, WaMu's attorney, Jed Sonstroem, sent Hayes a check for \$3,300 for the delinquent taxes.

40. Hayes delivered the check to his staff and directed that the funds be sent to Fritz, but failed to follow up to make sure that this was done.

41. Fritz contacted the Office of the Disciplinary Counsel in South Carolina about the matter. Feeley's response to Fritz's complaint indicated that Fritz would need to get the file from Hayes to adequately respond to Fritz's allegations. Hayes was asked to produce the file.

42. On February 10, 2006 and June 15, 2006, grievances were opened against Hayes on behalf of Fritz and the SC Office of Disciplinary Counsel under file numbers 06G0157 and 06G0652.

43. Upon being notified of the grievances, Hayes again tried to get Sonstroem to resolve the tax issue. Sonstroem settled the tax issue directly with Fritz. However, Hayes failed to deliver the Fritz closing file to the NC or SC Office of Disciplinary Counsel as requested.

44. Hayes still has not disbursed the \$185 that is in his trust account that should have been paid to Investors Title or returned to Fritz.

45. On April 23, 2004, Hayes closed a refinance loan for a client whose last name was Ealy ("Ealy"). From the closing proceeds, Hayes should have disbursed \$431.38 to Key Title LLC for a title insurance policy.

46. Hayes failed to pay the \$431.38 to the title insurance company.

47. On November 18, 2005, Hayes closed a real estate purchase for a client whose last name was Shelton ("Shelton") and Shelton's wife. From the closing proceeds, Hayes should have disbursed \$425.00 to Axis Title Company for a title insurance policy.

48. Hayes failed to pay the \$425.00 to the title insurance company.

49. On July 30, 2006, upon learning that Hayes had never obtained a title insurance policy for his transaction, Shelton filed a petition for fee dispute resolution with the State Bar for the \$204 portion of the title insurance policy premium that had been charged to him and the \$25 courier fee.

50. Hayes was served by certified mail with Shelton's fee dispute petition and notified of his duty to respond within fifteen days on July 5, 2006 and again on August 24, 2006, but failed to participate in good faith in the fee dispute process.

51. On October 25, 2006, a grievance was opened on Shelton's behalf against Hayes under file number 06G1128.

52. On November 16, 2006, Hayes was served with a Letter of Notice and Substance of Grievance by certified mail and advised of his obligation to respond to the grievance within fifteen days.

53. Hayes failed to respond to the grievance prior to May 22, 2007.

54. On June 25, 2005, Hayes closed a refinance loan for a client whose last name is McGruder ("McGruder") and McGruder's wife. From the closing proceeds, Hayes should have disbursed funds to a number of McGruder's creditors to pay off unsecured obligations.

55. Hayes failed to disburse all of the funds he retained to pay off McGruder's debts.

56. Hayes still has not disbursed \$14,054.00 of McGruder's funds.

57. Hayes failed to timely file state and federal personal income tax returns for the years 2003 through 2005.

58. Hayes was the person responsible for filing and paying withholding tax for R.T. Hayes and Associates. From October 2005 through the end of that year, Hayes failed to timely file and pay withholding tax to the NC Department of Revenue.

59. Hayes was charged with eight counts of failure to file and pay NC income and withholding tax in Wake County District Court.

60. On July 27, 2006, Hayes pled guilty to and was convicted of one count of failure to pay NC income tax.

BASED UPON the foregoing Findings of Fact, the hearing committee makes the following:

CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee of the Disciplinary Hearing Commission and the hearing committee has jurisdiction over Hayes and the subject matter.

2. Hayes' conduct, as set out above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(a) & (b)(2) in that Hayes violated the Revised Rules of Professional Conduct in effect at the time as follows:

- a. by failing to disburse funds promptly from his trust account as directed by his various clients listed above, Hayes failed to promptly pay or deliver entrusted property to third persons as directed by his clients in violation of Rule 1.15-2(m);
- b. by failing to respond promptly to the State Bar's requests for information relevant to its investigation of the grievances designated as 05G0328, 05G0641, 05G0964, 06G0157, 06G0652 and the SC Office of Disciplinary Counsel's investigation of the grievance Fritz filed there, and 06G1128, Hayes failed to respond to a lawful demands for information from a disciplinary authority in violation of Rule 8.1(b);
- c. by failing to reconcile his individual client balances shown on properly maintained ledgers for each of his clients against his trust account balance on at least a quarterly basis, Hayes failed to, at least quarterly, total and reconcile the individual client balances shown on the ledger of a general trust account with the current bank balance for the trust account as a whole in violation of Rule 1.15-3(c);

- d. by failing to provide a response to Shelton's fee dispute petition, Hayes failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f)(2);
- e. by failing to file and pay NC and federal income and withholding taxes, Hayes knowingly committed criminal acts that reflected adversely on his trustworthiness or fitness as a lawyer in violation of Rule 8.4 (b) and engaged in conduct that involved dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4 (c).

BASED UPON the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, and the consent of the parties, the hearing committee hereby makes the following:

FINDINGS AND CONCLUSIONS REGARDING DISCIPLINE

1. Hayes' misconduct is aggravated by the following factors:
 - (a) Hayes demonstrated a pattern of misconduct as set out in the Findings of Fact above.
 - (b) Likewise, Hayes engaged in multiple offenses.
 - (c) Having been licensed in 1996, Hayes had substantial experience in the practice of law when his misconduct began in mid-2005.
 - (d) Hayes failed to rectify the consequences of his misconduct by failing to reconcile his trust account even after a number of requests to do so beginning in mid-2005.
2. Hayes' misconduct is mitigated by the following factors:
 - (a) Hayes had no prior disciplinary record prior to the commencement of this action.
 - (b) Hayes' misconduct was not characterized by a selfish motive.
 - (c) At the time his misconduct began, Hayes was experiencing personal or emotional problems due to circumstances in his personal life.
3. The aggravating factors outweigh the mitigating factors.
4. Hayes' failure to reconcile his trust account to determine the proper recipients of the money remaining in the account caused actual harm to the clients whose funds did not get disbursed promptly. The only way to protect his clients and the public from the harm caused by Hayes' failure to reconcile his trust account and disburse his clients' funds is for Hayes' license to be suspended until a proper reconciliation is completed.

BASED UPON foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the FINDINGS AND CONCLUSIONS REGARDING DISCIPLINE, the hearing committee hereby enters the following:

ORDER OF DISCIPLINE

1. The license of the defendant, Richard Thomas Hayes, V, is hereby suspended for a period of five years effective from the date of Hayes' administrative suspension, September 9, 2005.

2. The remaining term of Hayes' five-year suspension may be stayed following his filing a petition for reinstatement, pursuant to the procedures set out in 27 NCAC 1B, § .0125(b), demonstrating that he has satisfied the following conditions:

- (a) Hayes shall, at his own expense and to the satisfaction of the Office of Counsel, reconcile his trust account to determine the amount that is in the account for each client and determine, to the best of his ability, the proper recipients of the balances held for each client.
- (b) Upon approval by the Office of Counsel, Hayes shall distribute to the proper recipients the amounts in his trust account that can be distributed without his license first having been restored. If a title opinion or other legal work is necessary to distribute trust funds held for any client, Hayes must identify the client and be prepared to perform the legal work necessary to get the client's matter concluded expeditiously upon a stay being entered.
- (c) Hayes shall undergo an initial assessment with the Lawyer Assistance Program ("LAP"). If the initial LAP assessment requires a medical assessment, then Hayes shall undergo the recommended medical assessment. If, after the initial and medical assessments are completed, the LAP program recommends that Hayes enter into a rehabilitation contract to address any underlying problem, Hayes must demonstrate that he has done so.
- (d) Hayes shall not violate any state or federal laws during the period of the stayed suspension;
- (e) Hayes shall not violate any provisions of the Rules of Professional Conduct during the period of his stayed suspension;
- (f) Hayes shall respond to all communications from the North Carolina State Bar within 30 days of receipt or by the deadline stated in the communication, whichever is sooner; and

(g) Hayes shall pay all Membership dues and Client Security Fund assessments and comply with all Continuing Legal Education (CLE) requirements on a timely basis.

3. If the stay of the suspension is allowed, Hayes must perform the legal work necessary for the remaining funds to be disbursed from his trust account within 120 days.

4. If the stay is allowed and Hayes fails to perform the necessary legal work so that the remaining funds in his trust account are disbursed within the time required, the stay will automatically be lifted without further hearing.

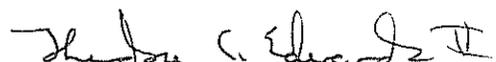
5. If the stay is allowed, during the term of the stayed suspension Hayes shall permit the State Bar to conduct audits of all accounts over which he has signatory authority and into which client or fiduciary funds have been deposited. Hayes must provide the State Bar with all documents requested by the State Bar within ten (10) business days and will be solely responsible for the expense of complying with the audit request.

6. If Hayes does not apply for a stay of his suspension, Hayes must comply with the provisions of sub-paragraphs 2 (a), (b) and (c) and have another attorney, at Hayes' expense, complete the legal work necessary for the remaining funds in his trust account to be disbursed as reasonable conditions precedent to reinstatement.

7. Hayes is taxed with the costs of this action as assessed by the Secretary and shall pay those costs within 90 days of service of notice of those costs.

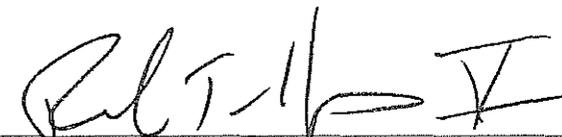
Signed with the knowledge and consent of the other members of the hearing committee

this the 29th day of October 2009.


Theodore C. Edwards, II, Chair
Hearing Committee

Consented to by:


A. Root Edmonson
Deputy Counsel
North Carolina State Bar


Richard Thomas Hayes, V
Defendant