FEB 2011
FILED DHC

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
10 DHC 12

THE NORTH CAROLINA STATE BAR, Plaintiff	)	
v.	)	ORDER OF DISCIPLINE
CABELL J. REGAN, Attorney, Defendant	)	

THIS MATTER was heard on January 21, 2011 by a Hearing Panel of the Disciplinary Hearing Commission composed of M. H. Hood Ellis, Chair, J. Michael Booe and Karen B. Ray pursuant to 27 N.C.A.C. 1B §.0114 of the Rules and Regulations of the North Carolina State Bar. Defendant, Cabell J. Regan appeared pro se. Plaintiff was represented by Deputy Counsel Margaret Cloutier.

Based upon the stipulations of the parties and the evidence presented, the Hearing Panel hereby finds, by clear, cogent and convincing evidence, the following

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar (hereinafter "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, Cabell J. Regan (hereinafter "Regan" or "Defendant"), was admitted to the North Carolina State Bar on August 19, 1979 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 the times relevant herein, Defendant actively engaged in the practice of law in the State of North Carolina and maintained a law office in Lumberton, Robeson County, and then in Pittsboro, Chatham County, North Carolina.

4. Between July 2004 and February 2008 Defendant maintained a client trust account with First Citizens Bank, account number ending in the digits 0954 (hereinafter the "First Citizens trust account").

5. Between June 2007 and July 2008 Defendant maintained a client trust account with Sun Trust Bank, account ending in the digits 3528 (hereinafter the "Sun Trust trust account").

6. Between July 2008 and May 2009 Defendant maintained a client trust account with Capital Bank, account ending in the digits 0114 (hereinafter the "Capital Bank trust account"). The Capital Bank trust account remained active until an Order of Preliminary Injunction was entered on May 14, 2009.

7. Defendant used the First Citizens trust account, the Sun Trust trust account and the Capital Bank trust account as general trust accounts in which Defendant deposited and disbursed client funds.

8. Defendant did not, in writing, direct First Citizens Bank and Sun Trust Bank to notify the North Carolina State Bar when items drawn on the respective accounts are presented for payment against insufficient funds.

9. From time to time between July 2004 and May 2009 Defendant represented various family members. In connection with the representation of the family members, Defendant deposited funds in excess of $161,000.00 into the First Citizens trust account and the SunTrust trust account. Defendant did not promptly remove funds to which he or a family member became entitled. By not promptly disbursing funds to which Defendant or his family members were entitled, the funds so remaining in the trust accounts were not fiduciary funds or funds owned by or for the benefit of clients.

10. From time to time between July 2004 and May 2009 Defendant deposited various funds, totaling in excess of $81,800.00, into the First Citizens trust account and the Sun Trust trust account. The funds so deposited belonged to or were for the benefit of Defendant, Defendant's family members or various businesses maintained by Defendant and were not fiduciary funds or funds owned by or for the benefit of clients.

11. Between February 9, 2005 to December 14, 2005, Defendant wrote multiple checks from the First Citizen's trust account made payable to cash.

12. On December 5, 2005 Defendant electronically transferred the sum of $500.00 from the First Citizens trust account into another First Citizens account ending in digits 0962 in the name of Defendant.

13. On December 5, 2007 Defendant electronically transferred the sums of $1.00, $1.00 from the Sun Trust trust account into another Sun Trust account ending in digits 3510 in the name of Defendant.

14. On December 5, 2007 Defendant electronically transferred the sum of $2,300.39 from the Sun Trust trust account into another Sun Trust account ending in digits 3510 in the name of Defendant.

15. The electronic transfers identified in the three immediately preceding paragraphs did not identify against which client or other balance the funds were drawn.

16. On September 7, 2006 Defendant electronically transferred the sum of $500.00 into the First Citizens trust account from another First Citizens account ending in digits 0866 in the name of Defendant.

17. On September 18, 2006 Defendant electronically transferred the sum of $100.00 into the First Citizens trust account from another First Citizens account ending in digits 0866 in the name of Defendant.

18. On May 23, 2008 Defendant electronically transferred the sum of $2,000.00 into the Sun Trust trust account from another Sun Trust account ending in digits 3510 in the name of Defendant.

19. The electronic transfers identified in the three immediately preceding paragraphs did not identify the name of the person to whom the funds belonged.

20. On February 16, 2006 check number 4224 written by Defendant on the First Citizens trust account in the amount of $990.00 payable to the benefit of Defendant's client T. Davis was paid by First Citizens Bank.

21. At the time check number 4224 was paid by First Citizens Bank on February 16, 2006, no funds were on deposit in the First Citizens trust account for the benefit of Davis.

22. On February 21, 2006 Defendant caused to be deposited into the First Citizens trust account funds in the amount of $990.00 that were not attributed as belonging to any person or entity.

23. On November 17, 2006 check number 4341 in the amount of $95.00 and on November 22, 2006 check number 4342 in the amount of $79.04 written

by Defendant on the First Citizens trust account payable to the benefit of Defendant's client M. Bray were paid by First Citizens Bank.

24. At the time check numbers 4341 and 4342 were paid by First Citizens Bank on November 17 and November 22, 2006, or at any time thereafter, no funds were on deposit in the First Citizens trust account for the benefit of Bray.

25. On December 12, 2005 check number 4159 written by Defendant on the First Citizens trust account in the amount of $225.00 payable to Defendant relating to Defendant's client A. Mills was paid by First Citizens Bank.

26. At the time check number 4159 was paid by First Citizens Bank on December 12, 2005, no funds were on deposit in the First Citizens trust account for the benefit of A. Mills.

27. On December 22, 2005 Defendant caused to be deposited into the First Citizens trust account funds in the amount of $225.00 for the benefit of Defendant's client A. Mills.

28. On October 11, 2005 check number 4139 written by Defendant on the First Citizens trust account in the amount of $110.00 payable to the Clerk of Court relating to Defendant's client J. Mills was paid by First Citizens Bank.

29. At the time check number 4139 was paid by First Citizens Bank on October 11, 2005, no funds were on deposit in the First Citizens trust account for the benefit of J. Mills.

30. On October 24, 2005 Defendant caused to be deposited into the First Citizens trust account funds in the amount of $110.00 for the benefit of Defendant's client J. Mills.

31. As of August 11, 2006 Defendant disbursed from the First Citizens trust account $1,465.89 in excess of the amount of funds deposited in that account for the benefit of Defendant's client Master Remodelers.

32. On November 7, 2006 Defendant caused to be deposited into the First Citizens trust account funds in the amount of $1,465.89 for the benefit of Defendant's client Master Remodelers.

33. As of December 5, 2006 Defendant disbursed from the First Citizens trust account $2,830.00 in excess of the amount of funds deposited in that account for the benefit of Defendant's client L. Hill.

34. By disbursing funds for clients from the First Citizens trust account without first depositing funds on behalf of those clients, or in excess of the funds deposited into the account for those clients, Defendant used entrusted funds held

in a fiduciary capacity for other clients for purposes that were not intended by those other clients.

35. On January 23, 2008 check number 1081 written by Defendant on the Sun Trust trust account in the amount of $11.00 payable to North Carolina Division of Motor Vehicles relating to Defendant's client D. Delgado was paid by Sun Trust Bank.

36. At the time check number 1081 was paid by Sun Trust Bank on January 23, 2008, no funds were on deposit in the Sun Trust trust account for the benefit of D. Delgado.

37. As of December 21, 2008 Defendant disbursed from the Sun Trust trust account $19,004.51 in excess of the amount of funds deposited in that account for the benefit of Defendant's client G. Granger.

38. On October 19, 2007 check number 1027 written by Defendant on the Sun Trust trust account in the amount of $144.00 payable to Clerk of Court relating to Defendant's client J. Hinkle was paid by Sun Trust Bank.

39. At the time check number 1027 was paid by Sun Trust Bank on October 19, 2007, no funds were on deposit in the Sun Trust trust account for the benefit of J. Hinkle.

40. On October 25, 2007 Defendant caused to be deposited into the Sun Trust trust account funds in the amount of $144.00 for the benefit of Defendant's client J. Hinkle.

41. By disbursing funds for clients from the Sun Trust trust account without first depositing funds on behalf of those clients, or in excess of the funds deposited into the account for those clients, Defendant used entrusted funds held in a fiduciary capacity for other clients for purposes that were not intended by those other clients.

42. Defendant did reconcile the trust accounts identified above but did not do so every quarter.

43. Defendant unlawfully and willfully failed to timely file state individual income tax returns for tax years 2002, 2003, 2004, 2005, and 2006 as required by N.C.G.S. 105-152 and 105-157.

44. On August 7, 2008, in Wake County District Court Defendant was found guilty of five counts of Willful Failure to File a North Carolina Income Tax Return, a misdemeanor under North Carolina General Statute 105-236(9).

Based upon the foregoing Findings of Fact and the stipulations of the parties, the Panel enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction over the Defendant, Cabell J. Regan, and the subject matter of this proceeding.

2. Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C.G.S. §84-28(b)(1) and (b)(2) as follows:

a. by failing, in writing, to direct First Citizens Bank and Sun Trust Bank to notify the North Carolina State Bar when items drawn on the accounts are presented for payment against insufficient funds, Defendant violated Rule 1.15-2(k);

b. by failing to promptly disburse funds to which Defendant or his family members were entitled in the First Citizens and SunTrust trust accounts, Defendant failed to maintain entrusted property separate from the property of the lawyer in violation of Rule 1.15-2(a);

c. by depositing into the First Citizens and Sun Trust trust accounts funds belonging to or for the benefit of Defendant, Defendant's family members and/or Defendant's businesses, Defendant failed to maintain entrusted property separate from the property of the lawyer in violation of Rule 1.15-2(a);

d. by writing checks against funds in the First Citizens trust account made payable to cash, Defendant violated Rule 1.15-2(i);

e. by making electronic transfers from the First Citizens and Sun Trust trust accounts to an account in Defendant's name that did not identify for whom the funds were transferred, Defendant violated Rule 1.15-2(h) and 1.15-3(b)(3);

f. by making electronic transfers into the First Citizens and Sun Trust trust accounts without identifying the name of the person to whom the funds belonged, Defendant violated Rule and 1.15-3(b)(1);

g. by disbursing money on behalf of clients without depositing funds on behalf of those clients or in excess of the amount of funds deposited for those clients in the First Citizens and Sun Trust trust accounts, Defendant used or pledged entrusted property of other clients for the benefit of someone other than

the legal or beneficial owner of that property in violation of Rule 1.15.-2(a), (j), and/or (m);

h. by failing to reconcile his trust accounts every quarter, Defendant failed to total and reconcile those accounts with the current bank balance each quarter in violation of Rule 1.15-3(c); and

i. by unlawfully and willfully failing to file state income taxes when those taxes were due, Defendant committed criminal acts that reflect adversely on his honesty, trustworthiness, or fitness in other respects in violation of Rule 8.4(b).

j. Defendant's conviction in state court of Willful Failure to File State Income Tax Returns constitutes misconduct and grounds for discipline in that such convictions are criminal offenses showing professional unfitness pursuant to N.C.G.S. §84-28 (b)(1) and 27 N.C.A.C. 1B §.0115.

Based upon the evidence presented at the hearing, the Hearing Panel also finds by clear, cogent and convincing evidence the following

ADDITIONAL FINDINGS REGARDING DISCIPLINE

1. There is no evidence that any specific client of Defendant suffered substantial harm by the mismanagement of Defendant's trust account. There is no evidence that any of Defendant's actions relating to his trust account described in the Findings of Fact above were intentional misappropriations but rather were the result of gross inattention to the status of the account in general. However, such mismanagement in the handling of client funds puts the 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.

2. Defendant's failure to file taxes on a timely basis and his subsequent criminal convictions have the potential to cause significant harm to the standing of the legal profession in the eyes of the public because it shows disdain for his obligations as a citizen and as an officer of the court to obey the law. Such erosion of public confidence in attorneys tends to sully the reputation of, and fosters disrespect for, the profession as a whole.

3. Defendant's conduct reflects a pattern of misconduct in that he failed to file his North Carolina State income tax returns in a timely manner over multiple years and that the trust account violations also occurred over a period of years.

4. Defendant has been disciplined by the State Bar on two occasions; an Admonition in November 1989 and a Reprimand in February 1998. The basis of

Defendant's prior discipline related to conduct dissimilar to Defendant's conduct in this instance.

5. In this proceeding before the Disciplinary Hearing Commission Defendant fully and freely disclosed the facts and circumstances surrounding the subject of this action and was cooperative in his participation.

6. Defendant has expressed remorse for his conduct.

7. Upon his conviction of Willful Failure to File State Income Tax Returns, Defendant was sentenced to serve 45 days in jail, all of which sentence was suspended. Defendant was placed on probation for 36 months upon payment of $1,241.50 fine and costs and timely filing and payment of taxes.

8. Defendant did not engage in the conduct described in the Findings of Fact above relating to his trust account with a dishonest or selfish motive.

9. During the time relevant to Defendant's conduct in this matter, Defendant and/or his close family members were experiencing seriously distressing or traumatic personal circumstances that negatively impacted Defendant's health and welfare.

10. Defendant has a reputation in the community for honesty, integrity and good character.

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

CONCLUSIONS REGARDING 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)(3) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are applicable in this matter:

(a) Defendant's prior disciplinary offenses;

(b) Remoteness of Defendant's prior disciplinary offenses;

(c) Absence of a dishonest or selfish motive relating to the trust account violations;

(d) Defendant engaged in multiple offenses;

(e) Defendant engaged in a pattern of misconduct;

(f) Defendant's full and free disclosure to the Hearing Panel and cooperative attitude toward the proceedings;

(g) Defendant's remorse;

(h) Imposition of other penalties or sanctions;

(i) Effect of personal or emotional problems on Defendant's conduct; and

(j) Defendant's good character and reputation in the community.

2. The Hearing Panel has also considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors warrant suspension of Defendant's license:

(a) Relating to his criminal conviction, Defendant's intent to commit acts where the harm or potential harm is foreseeable; and

(b) Defendant's actions potentially had a negative impact on the public's perception of the legal profession.

3. The Hearing Panel has also 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.

4. The Hearing Panel has considered issuing an admonition, reprimand and censure but concludes that such discipline would not be sufficient discipline because of the gravity of the potential harm to client funds. The Panel further concludes that such discipline would fail to acknowledge the seriousness of the offenses committed by Defendant and send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

5. For the nature and extent of Defendant's trust account violations and the protection of the public this Panel would consider an active suspension of Defendant's license to practice law if it were not for the enumerated factors in Defendant's favor, Defendant's recognition of the impropriety of his conduct and his commitment to refrain from such conduct in the future. Given those circumstances, the Hearing Panel finds and concludes that the public will be adequately protected by suspension of Defendant's license, stayed for a period of time with conditions imposed upon Defendant designed to ensure protection of

the public and Defendant's continued compliance with the Rules of Professional Conduct.

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

ORDER OF DISCIPLINE

1. The license of Defendant, Cabell J. Regan, is hereby suspended for three years from the date this Order of Discipline is served upon him. The entire period of suspension is stayed for two years contingent upon Defendant's compliance with the following conditions:

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

b. Defendant shall submit such reports by each January 15, April 15, July 15, and October 15 during the period of stay. Defendant shall provide to the certified public accountant the necessary information to satisfactorily prepare such quarterly reports by their due dates. Defendant will be solely responsible for all costs associated with the monitoring of his trust account(s);

c. Within sixty days of the effective date of this order, Defendant shall demonstrate, to the satisfaction of the Office of Counsel of the North Carolina State Bar, that Defendant has identified all clients 1) with funds remaining in his attorney trust accounts at First Citizens, SunTrust and Capital Bank or 2) who should have funds remaining in those trust accounts. Once those clients are identified to the satisfaction of the Office of Counsel, Defendant shall properly disburse the identified funds within thirty days after he identified to the State Bar the clients and funds. In the event the account does not contain sufficient funds for clients identified who should have funds in the account, Defendant shall reimburse to the account those amounts from his own funds in order to properly disburse funds on behalf of those clients. Upon disbursement of the identified funds, Defendant shall provide to the State Bar an accounting of such disbursements;

d. Defendant will complete an accounting course, either a continuing legal education course teaching trust accounting practices or other accounting course with an emphasis on trust accounts and/or fiduciary funds approved in advance by the Office of Counsel. Defendant will complete the course within six months of the service of this order upon him and will provide the Office of Counsel proof of completion within ten days of completion of the course;

e. Defendant shall file state and federal tax returns for all future tax years on a timely basis and shall timely pay all amounts owed to the taxing authorities. Defendant shall provide written proof of filing and payment to the Office of Counsel within ten days of filing each return or request for extension and within ten days of each payment;

f. Defendant will execute any written waivers and releases necessary to authorize the Office of Counsel to confer with the Internal Revenue Service or the North Carolina Department of Revenue for the purpose of determining if Defendant has cooperated and complied with all requirements of this Order. Defendant will not revoke the waivers and releases at any time during the period of stay;

g. Defendant shall provide to the Office of Counsel copies of all correspondence sent to or received by him from any taxing authority about his tax obligations within ten days of receipt;

h. Defendant shall not violate any state or federal laws or any provisions of the Rules of Professional Conduct during the period of the stayed suspension;

i. Defendant shall respond to all State Bar requests for information by the earlier of the deadline stated in the communication or within thirty days, as required by Rule 8.1(b) of the Rules of Professional Conduct;

j. Defendant shall timely comply with all State Bar membership and Continuing Legal Education requirements; and

k. Defendant shall keep the North Carolina State Bar membership department advised of his current home and business street (not P.O. Box) addresses and telephone numbers.

2. If Defendant fails to comply with any one or more of the provisions of Paragraph 1 above at any point during the period of time the suspension is stayed, the stay of the suspension of his law license may be lifted or revoked as provided in §.0114(x) of the North Carolina State Bar Discipline and Disability Rules.

3. If the stay granted herein is lifted or revoked or the suspension of Defendant's license is activated for any reason, the DHC may enter an order

providing for such conditions as it deems appropriate and/or necessary for reinstatement of Defendant's law license. Furthermore, before seeking reinstatement of his license to practice law, Defendant must show by clear, cogent and convincing evidence that he has complied with each of the following conditions:

a. Submitted his license and membership card to the Secretary of the North Carolina State Bar within thirty days after the date of the order suspending his law license;

b. Complied with all provisions of 27 N.C.A.C. 1B § .0124 of the State Bar Discipline and Disability Rules on a timely basis following the order suspending his law license;

c. Paid all due and owing membership fees, Client Security Fund assessments and costs assessed by the DHC or the State Bar and complied with all continuing legal education requirements imposed by the State Bar.

4. Defendant is taxed with the costs of this action as assessed by the Secretary, including the cost of the taking of Defendant's deposition, which shall be paid within thirty days of service of the notice of costs upon the Defendant.

Signed by Hearing Panel members J. Michael Booe and Karen B. Ray, who voted for the discipline imposed, this 22nd day of February, 2011.

J. Michael Booe
J. MICHAEL BOOE

Karen B. Ray
KAREN B. RAY

I dissent as to the level of discipline imposed.

M. H. Hood Ellis
M. H. HOOD ELLIS, CHAIR