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NORTH CAROLINA

WAKE COUNTY



BEFORE
 THE DISCIPLINARY HEARING COMMISSION
 OF
 THE NORTH CAROLINA STATE BAR

03 DHC 12

 The North Carolina State Bar,
 Plaintiff

v.

 Mohammed M. Shyllon, Attorney,
 Defendant

Consent Order of Discipline

This matter came before a Hearing Committee of the Disciplinary Hearing Commission composed of F. Lane Williamson, Chair, W. Steven Allen, and Marguerite P. Watts pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B Section .0114 (H) of the Rules and Regulations of the North Carolina State Bar. The defendant, Mohammed M. Shyllon, was represented by Irving Joyner. The plaintiff was represented by David Johnson. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Further, by entering into this consent order of discipline, Defendant freely, voluntarily, and with the advice of counsel consents to the order of discipline, waives a formal hearing in the above referenced matter, and waives all right to appeal this consent order or challenge in any way the sufficiency of the findings, the conclusions, or the discipline imposed. Based upon the consent of the parties the hearing committee hereby enters the following:

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, Mohammed M. Shyllon (hereinafter Defendant), was admitted to the North Carolina State Bar on 22 August 1976, and is, and was at all times referred to herein, except as otherwise set forth 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 all or most of the relevant periods referred to herein, Defendant was actively engaged in the private practice of law in the City of Raleigh, Wake County, North Carolina.

FIRST CLAIM FOR RELIEF

4. On or about 6 January 2000, the Defendant undertook to represent one Alisha Cooke in a personal injury claim against Adam Bielert and George Bielert that arose from an automobile accident on or about 4 January 2000. At the time, Alisha Cooke was a minor. Alisha Cooke's father, Theodore Cooke (hereafter "Cooke"), made the client decisions on behalf of his daughter as her guardian. A written contract for representation was executed between Cooke and the Defendant.

5. Under the contract between Cooke and the Defendant, the Defendant was entitled to a contingency fee of 33 1/3% of any settlement reached with the defendants or their insurer.

6. The contract between Cooke and the Defendant provided that Defendant would pay "any amounts owed, and agreed to be paid, to any medical service provider related to this claim" after payment of the attorney fee and any reimbursable expenses.

7. Alisha Cooke had obligations to at least five different medical care providers as a result of her injury. Those providers were owed the following amounts:

<i>Provider</i>	<i>Amount</i>
Rolesville Rescue Squad	\$217.00
Franklin Regional Medical Center	\$382.00
Metro American Radiology	\$49.00
Dhillon Orthopedic	\$1,281.00
Raleigh Rehabilitation	\$4,068.90
Total	\$5,997.90

8. On or about 20 January 2000, the Defendant signed a medical care lien acknowledgement in favor of Raleigh Rehabilitation for the amounts owed by Alisha Cooke. The acknowledgement signed by Defendant provided: "As the attorney of record for the above named patient, I hereby agree to observe the terms of this agreement, and to withhold from any award in this case such sums as are required for the adequate protection of Group."

9. On or about 12 May 2000, the Defendant signed a medical lien acknowledgement in favor of Dhillon Orthopaedic with respect to Alisha Cooke.

10. On or about 13 August 2000, Cooke executed a release of all claims of Alisha Cooke to settle the claim.

11. On or about 14 August 2000, the Defendant received a check or draft from the Royal & SunAlliance Insurance Company numbered 03017377 dated 4 August 2000 in the amount of \$11,750 (hereafter "Cooke settlement check") representing the full and final settlement of all claims of Alisha Cooke.

12. On or about 14 August 2000, the Defendant deposited the Cooke settlement check into his trust account maintained at Centura Bank, account number 0212113920 (hereafter "trust account").

13. At the time of settlement of the Cooke claim, neither Defendant nor Cooke had paid any of the amounts owed to the medical care providers as shown in paragraph 7 of this Complaint nor had any of the amounts been negotiated or compromised to lesser amounts.

14. On or about 25 August 2000, the Defendant issued check number 278 drawn on his trust account to one David Beasley in the amount of \$700.00 on behalf of Alisha Cooke. This check represented the repayment of a loan by Beasley to Cooke. This check was negotiated in due course and paid by the bank on 1 September 2000.

15. On or about 28 August 2000, the Defendant issued check number 280 drawn on his trust account payable to Theodore Cooke, Guardian of Alisha Cooke, in the amount of \$2,965.00. This check purports to represent the net proceeds from the settlement of Cooke's claim and recites on the memo line that it is "Full and final (RoyalIns.) 1/4/00." [sic] This check was negotiated in due course and paid by the bank on 29 August 2000. As a result of this payment and the payment to Beasley on behalf of Cooke, Cooke received or was credited with a total of \$3,665.00 from the proceeds of the settlement as of 29 August 2000.

16. On or about 28 August 2000, the Defendant issued check number 281 drawn on his trust account payable to the "Law Office of Mohammed M. Shyllon" in the amount of \$3,916.00. This check represented full payment of the Defendant's 33.3% contingent attorney fee for the settlement on the claim of Alisha Cooke and so recites on the memo line. This check was never negotiated or paid by the bank.

17. Contemporaneously with issuing the check to Cooke for the net settlement proceeds, Defendant provided Cooke with a disbursement statement showing that he was withholding from the settlement proceeds \$3,916.00 for payment of his attorney fee, \$700.00 for payment to David Beasley, and a total of \$4,169.00 to pay the medical care providers. The disbursement statement shows that Cooke was receiving \$2,965.00.

18. The settlement disbursement statement shows that only \$2,240.00 was being withheld for Raleigh Rehabilitation, rather than the \$4,068.90 owed at the time of settlement.

19. After issuing the checks to Beasley, Cooke, and his law office, the \$4,169.00 remaining in the Defendant's trust account on Cooke's behalf for payment to the medical care providers was insufficient to pay the medical care providers in full.

20. The Defendant did not issue any checks drawn on his trust account payable to any of the medical care providers contemporaneously with the checks drawn to Beasley, Cooke, and his law office.

21. The Defendant later wrote other checks drawn on his trust account payable to himself or his law office and designated as payment of his attorney fee with respect to Alisha Cooke that were paid by the bank as follows:

<i>Check Number</i>	<i>Amount</i>	<i>Date Paid</i>
1265	\$1,750.00	9/21/2000
1267	700.00	9/27/2000
1268	500.00	10/3/2000
Total	\$2,950.00	

22. On or about 12 June 2001, the Defendant was served with a letter of notice that a grievance had been filed against him at the North Carolina State Bar with respect to his failure to pay the medical care providers on behalf of Cooke from the proceeds of the settlement.

23. Between 14 August 2000 and 12 June 2001, Defendant had not paid any of the medical care providers from the settlement proceeds withheld from the Cooke settlement or compromised any of the amounts owed by Cooke. Defendant did provide medical insurance information to Raleigh Rehabilitation and requested that they file an insurance claim and advise of any balance due after insurance, but Defendant did not follow-up with Raleigh Rehabilitation to satisfy the balance of its claim from the settlement proceeds even after receiving at least one notice that the original balance was due on or about 23 April 2001.

24. On or about 19 June 2001, the Defendant delivered three trust account checks to Theodore Cooke payable to him as guardian to pay the charges of three of the medical care providers: Rolesville Rescue Squad, Franklin Regional Medical Center, and MetroAmerican Radiology in the amounts shown in paragraph 7 of this Complaint. He also issued and delivered a trust account check to Dhillon Orthopaedic in the amount of \$1,281.00 on 19 June 2001 in full payment of its charges arising from the Cooke claim and a trust account check to Raleigh

Rehabilitation in the amount of \$2,240.00 on 19 June 2001 as full payment for its charges in the Cooke claim.

25. During the period from 14 August 2000 through 19 June 2001, Defendant did not always maintain a sufficient balance in his trust account to cover the amount of the funds withheld from the Cooke settlement to pay the medical care providers. However, the evidence does not show that Defendant knowingly withdrew funds that caused his account to be short for his own personal use and benefit.

SECOND CLAIM FOR RELIEF

26. At some time during September or October 1996, Defendant agreed to represent one Mohammed Sowe (hereafter "Sowe") for personal injury claims arising out of an automobile accident on or about 13 September 1996. The driver of the other vehicle involved in the accident was one John R. Viviani who was driving a vehicle owned by Hertz Corporation at the time.

27. On or about 9 October 1996, Defendant signed an acknowledgement of a medical lien in favor of Raleigh Rehabilitation with respect to Sowe. The amount owed by Sowe to Raleigh Rehabilitation was \$612.00.

28. On or about 11 October 1996, Defendant received a notice of medical lien with respect to client Sowe from Wake Medical Center. According to the notice, the amount owed to Wake Medical Center at the time was \$2,866.61.

29. Sometime during the month of September 1998, Defendant settled Sowe's claim with the Hertz Corporation for \$6,500.00 and deposited the insurance company settlement check into his trust account. Defendant withheld a fee from this settlement in the amount of \$2,166. Defendant also withheld from the settlement proceeds \$700 as repayment of a "cash advance" or loan to Sowe from

Defendant's wife and \$500 as repayment of a "cash advance" or loan to Sowe from Defendant personally. Defendant did not issue any payments to any medical care providers, including Raleigh Rehabilitation and Wake Medical Center. The settlement statement shows that payments in the amount of \$1,200.00 for Wake Medical Center and \$288.00 for Wake Radiology Consultants were being paid to client rather than the medical care providers even though Defendant had received notice of a lien. The settlement statement also indicates that no amounts were being withheld or paid to Sowe for payment to Raleigh Rehabilitation even though both Defendant and Sowe had acknowledged the lien in favor of Raleigh Rehabilitation. The Defendant paid Sowe the net proceeds of \$1,646.

30. After the settlement, Defendant made no effort to pay or compromise any of the amounts owed to the medical care providers on behalf of Sowe.

31. Defendant did not withdraw all of the funds belonging to him, including part of his fee and the "cash advance" or loan repayment proceeds, from this settlement upon disbursement of the proceeds. Some or all of Defendant's funds withheld from the settlement of this claim remained in the account until July 2000.

32. Sowe is the Defendant's brother-in-law. Defendant believed the cash advances to be based not on financial assistance to a client, but as a loan to a family member that was to be repaid out of the settlement.

THIRD CLAIM FOR RELIEF

33. Over the period from 27 May 2000 through at least 26 May 2001, Defendant repeatedly commingled his earned fees with client funds in his trust account. Further, Defendant routinely withdrew funds from the account for partial payments of these commingled fees without verifying the amounts to which he was

entitled against a client ledger. As a result Defendant both left earned fees in the account with respect to some clients and withdrew funds for fees that exceeded the amount in the trust account with respect to other clients.

34. Additionally, over the period from 27 May 2000 through at least 26 May 2001, Defendant paid obligations of clients out of his trust account without first depositing funds on behalf of such clients in his trust account, including but not necessarily limited to, checks payable to the Immigration and Naturalization Service (INS) for processing immigration visas on behalf of clients totaling in excess of \$10,000. As a result, these advances were paid with funds belonging in part to Defendant and in part to other clients.

35. Over the period from 27 May 2000 through at least 26 May 2001, Defendant did not maintain adequate, minimum records of his trust account showing the amounts received and disbursed on behalf of each client, including client ledgers, and did not always identify client names and fund sources on trust account deposit slips and checks.

36. Over the period from 27 May 2000 through at least 26 May 2001, Defendant did not reconcile his trust account on at least a quarterly basis.

37. Over the period from 27 May 2000 through at least 26 May 2001, Defendant failed to maintain sufficient funds in his trust account at all times to cover all obligations of clients. There is no evidence that Defendant knowingly withdrew funds for his own use and benefit in excess of those amounts to which he was entitled. Rather, any shortfalls in the account during the period are attributable to client advances or payments before deposits were made on their behalf or as a result of grossly negligent record-keeping due to Defendant's failure to maintain the minimum required records and to reconcile client balances regularly.

Based upon the foregoing Findings of Fact, the hearing committee enters the following:

Conclusions of Law

38. All parties are properly before the hearing committee and the committee has jurisdiction over Mohammed M. Shyllon and the subject matter.

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

- (a) By failing to pay the medical care providers in the Cooke claim for a period of almost 10 months after settling the claim on or about 28 August 2000, even though such payments were shown on the settlement statement provided to his client and funds were withheld from the client's proceeds for such purpose, Defendant failed to pay entrusted client funds promptly as directed by the client in violation of Rule 1.15-2(m);
- (b) By failing to withdraw all funds from the Cooke settlement to which he was entitled (i.e., his full fee) contemporaneously with the execution of the settlement with his client, Defendant commingled his funds with his client's funds in his trust account in violation of Rule 1.15-2(a), (f), and (g) of the Revised Rules of Professional Conduct;
- (c) By failing to retain sufficient funds in his trust account at all times to cover the amounts withheld on behalf of Cooke in August 2000 before the final payouts were made in June 2001,

Defendant failed to maintain the identity of client funds in his trust account in violation of Rule 1.15-2(a); and

- (d) By not paying the medical care providers in the Cooke claim for almost 10 months after settlement and disbursement of the proceeds to the client, Defendant neglected a legal matter entrusted to him in violation of Rule 1.3 of the Revised Rules of Professional Conduct and failed to communicate adequately with the client to permit the client to make informed decisions in violation of Rule 1.4 of the Revised Rules of Professional Conduct.
- (e) By failing to pay the medical care providers with liens upon settlement of the Sowe claim, Defendant failed to promptly pay entrusted funds promptly as required in violation of Rule 1.15-2(h) of the Revised Rules of Professional Conduct in effect at the time of the conduct;
- (f) By lending his and his wife's money to Sowe, Defendant advanced financial assistance to a client in violation of Rule 1.8(e) and violated the Rules of Professional Conduct through the acts of another in violation of Rule 8.4(a); and
- (g) By failing to promptly withdraw the funds from the Sowe settlement to which he was entitled, Defendant commingled his funds with his client's funds in his trust account in violation of Rule 1.15-2(a), (f), and (g) of the Revised Rules of Professional Conduct.

- (h) By commonly and routinely not transferring or removing all funds from his trust account to which he was presently entitled, the Defendant kept funds belonging to him in his trust account in violation of Rule 1.15-2(a), (f), and (g) of the Revised Rules of Professional Conduct;
- (i) By not maintaining sufficient funds in his trust account to cover all client funds entrusted to him at all times, Defendant failed to preserve the identity of client funds in violation of Rule 1.15-2(a);
- (j) By advancing funds from his trust account to clients who had no funds in the account, Defendant failed to preserve the identity of client funds in his trust account in violation of Rule 1.15-2(a) and gave financial assistance to his clients in violation of 1.8(e) of the Revised Rules of Professional Conduct;
- (k) By not maintaining adequate minimum records of trust funds, Defendant violated Rule 1.15-3(a) of the Revised Rules of Professional Conduct; and
- (l) By not reconciling the trust account balances of client funds at least quarterly, Defendant violated Rule 1.15-3(c) of the Revised Rules of Professional Conduct.

Based upon the consent of the parties, the hearing committee also enters the following:

Additional Findings of Fact Regarding Discipline

- 40. The Defendant has no prior disciplinary record.

41. There is no evidence that the Defendant had any dishonest or selfish intent.

42. The Defendant had an honest belief that the rule prohibiting financial assistance to a client would not apply to a loan to a family member.

43. None of the Defendant's clients identified in this matter complained to the State Bar about the actions or conduct of Defendant. There have been no other client complaints to the State Bar concerning Defendant's handling of trust funds since the grievance in this matter was filed.

44. The Defendant has a reputation for good character in the community.

Based on the **Findings of Fact and Conclusions of Law** above and the additional **Findings of Fact Regarding Discipline**, the Hearing Committee makes the following:

Conclusions with Respect to Discipline

1. Defendant's misconduct is aggravated by the following factors:
 - (a) There is a pattern of failing to properly reconcile and disburse client funds on a timely basis; and
 - (b) there are multiple offenses involving multiple rule violations.
2. Defendant's misconduct is mitigated by the following factors:
 - (a) cooperative attitude toward these proceedings;
 - (b) good character and reputation;
 - (c) remorse; and

(d) the absence of any other known misconduct in the interim between the start of the investigation of this matter and the time of this order.

3. The mitigating factors outweigh the aggravating factors.

4. Defendant's conduct, particularly with respect to the commingling of Defendant's funds in the trust account and the failure to assure that the funds belonging to particular clients in Defendant's trust account are not use on behalf of other clients and remain intact, if repeated, poses significant potential harm to future clients and the reputation of the profession and, therefore, entry of an order of discipline with a significant suspension of Defendant's law license that is stayed only as long as Defendant complies with reasonable conditions is necessary to protect the public who may be his future clients.

Based upon **Findings of Fact and Conclusions of Law, the Findings of Fact Regarding Discipline, and the Conclusions with Respect to Discipline**, the hearing committee hereby enters the following:

Order of Discipline

1. The Defendant's license to practice law is suspended for one year.
2. The suspension is stayed for a period of three years upon compliance with the following terms and conditions during the period:
 - (a) By 30 April 2004, at his expense, Defendant will have a complete audit and reconciliation of his trust account under the supervision and certification of a licensed CPA showing that all client funds have been fully accounted for and that there are no funds in the account belonging to Defendant unless permitted

under Rule 1.15 of the Rules of Professional Conduct.

Defendant will provide an audit report, including the trust account records and the CPA's workpapers, prepared by the CPA that certifies that Defendant's trust account is in compliance with the Rules of Professional Conduct, without qualification or reservation, to the Office of Counsel of the North Carolina State Bar by 15 May 2004;

- (b) Defendant will have a licensed CPA conduct an audit of his receipt and disbursement of funds or property belonging to clients or received in a fiduciary capacity of any type on a quarterly basis at his own expense, including any trust account he may maintain, and direct the CPA to provide a copy of each audit report to the Office of Counsel of the North Carolina State Bar within thirty (30) days of the last day of each calendar quarter (i.e. reports are due no later than April 30, July 30, October 30, and January 30). The first such report will be provided by 30 July 2004 and cover the period from 1 April 2004 through 30 June 2004;
- (c) By 30 June 2004, Defendant will, at his own expense, complete a course in law office financial management of at least 8 hours of instruction, focusing primarily on trust account management and record-keeping, approved in advance by the Office of Counsel of the North Carolina State Bar;
- (d) During the period of the stay, Defendant will permit random audits of his trust, business, and personal bank accounts by the North Carolina State Bar. Such audits will be conducted at

Defendant's expense. The North Carolina State Bar will not exercise the right to randomly audit the Defendant's bank accounts more than twice each year. Such limitation on random audits will not preclude the North Carolina State Bar from conducting any audits for cause pursuant to the rules during the period of the stay;

- (e) Defendant will comply with all present and future orders of the Disciplinary Hearing Commission and the Courts;
- (f) During the stay period, Defendant will pay all mandatory Bar dues and assessments, including State Bar and District Bar dues and Client Security Fund assessments, and will fully comply with all requirements of the State Bar Continuing Legal Education Department, and any other mandatory State Bar program that may come into existence during his stayed suspension, all on a timely basis throughout the stayed suspension of his law license;
- (g) Defendant will keep his address of record with the North Carolina State Bar current, will accept all certified mail from the North Carolina State Bar, and will respond to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication;
- (h) Defendant will not violate any of the Revised Rules of Professional Conduct;

- (i) Defendant will not violate any local, state, or federal laws, excluding traffic offenses for which appearance may be waived; and
- (j) Defendant will pay all costs of this proceeding as assessed by the Secretary within 30 days after service of the bill of costs on him.

3. If the stay of the suspension is lifted and the suspension is activated for any reason, Defendant will comply with the following conditions precedent to reinstatement following the completion of the suspension:

- (a) Defendant will have submitted his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days from the effective date of the order activating his suspension;
- (b) Defendant will have complied with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the N.C. State Bar Discipline & Disability Rules on a timely basis;
- (c) Defendant will have fully cooperated with the North Carolina State Bar in the resolution of the determination of the proper recipient of all funds remaining in his trust account, including provision of adequate records or documentation to support any claim of his personal entitlement to any remaining funds;
- (d) Defendant will have completed a course in law office financial management of at least 8 hours of instruction, focusing primarily on trust account management and record-keeping,

approved in advance by the Office of Counsel of the North Carolina State Bar;

- (e) Defendant will have complied with all orders of the Disciplinary Hearing Commission and any courts;
- (f) Defendant will not have engaged in the practice of law or violated any of the Revised Rules of Professional Conduct in any capacity during the suspension;
- (g) Defendant will not have violated any local, state, or federal laws; and

(h) Defendant will have paid all costs of this proceeding as assessed by the Secretary.

Signed by the undersigned hearing committee chair with the consent of the other hearing committee members.

This the 28th day of February, 2004.

F. Lane Williamson
F. Lane Williamson, Chair
Disciplinary Hearing Committee

We consent with the terms of the above
Order of Discipline:

Mohamed M. Shyllon
Mohamed M. Shyllon, Defendant

Irving Joyner
Irving Joyner
Attorney for Defendant

David R. Johnson
David R. Johnson
Attorney for Plaintiff