

STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
16 DHC 13

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

SANDRA C. KULLMANN, Attorney,

Defendant

CONSENT ORDER
OF DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of William O. King, Chair, and members Beverly T. Beal and Bradley Lail pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff, the North Carolina State Bar, was represented by Jennifer A. Porter. Defendant Sandra C. Kullmann appeared *pro se*. Both Plaintiff and Defendant stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Defendant freely and voluntarily stipulates to the foregoing findings of fact and consents to the conclusions of law and entry of the order of discipline. Defendant freely and voluntarily waives 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 finds by clear, cogent, and convincing evidence 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, Sandra C. Kullmann ("Kullmann"), was admitted to the North Carolina State Bar in 1993, 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 was properly served with process and the matter came before the Hearing Panel with due notice to all parties.

4. During the relevant period referred to herein, Kullmann was engaged in the practice of law in Charlotte, Mecklenburg County, North Carolina. Kullmann's status changed to inactive status on January 23, 2015.

5. From on or about January 2013 through June 2015, Kullmann maintained an attorney trust account at SunTrust Bank, with an account number ending in the digits 9598.

6. During at least some of this time, Kullmann's trust account contained entrusted client funds, including funds to be used for bankruptcy filing fees.

7. During this time, Kullmann improperly kept earned fees in her trust account and made deposits of personal funds into the trust account.

8. During this time, Kullmann improperly disbursed funds for personal expenditures and purposes from the trust account.

9. Kullmann's disbursements from the trust account for personal purposes included using a debit card to make personal purchases with funds from the trust account.

10. Kullmann disbursed funds to herself from the trust account by trust account checks that did not indicate on the check the client from whose balance in the trust account the checks were drawn.

11. Kullmann did not maintain ledgers for the clients for whom she had deposited funds into her trust account that showed all receipts and disbursements in the trust account for the client and the current balance of funds in the trust account for the client.

12. Kullmann did not maintain a ledger for the personal funds she had in the trust account.

13. Kullmann did not reconcile the balance of her trust account as shown in her records with the current bank statement balance for the trust account each month.

14. Kullmann did not total the individual client balances for clients for whom she had funds in her trust account and reconcile that total with the current bank statement balance for the trust account as a whole at least quarterly.

15. Kullmann's commingling of personal and client funds in her trust account and her failure to maintain the requisite ledgers and conduct the requisite reconciliations created the foreseeable risk that she would inadvertently disburse client funds for a personal purpose, which occurred on at least the following occasions:

- (a) From July 23, 2013 through November 22, 2013, Kullmann was required to maintain \$306.00 for client T. Nowlin's bankruptcy filing fee in her trust account.
- (b) On September 4, 2013, the balance of funds in Kullmann's trust account was \$271.47.

- (c) The expenditures from Kullmann's trust account on September 3, 2013 and September 4, 2013 which resulted in the \$271.47 balance were personal debit card purchases.
- (d) On September 5, 2013, \$3,000.00 in personal funds was deposited into Kullmann's trust account.

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 Defendant and the subject matter of this proceeding.
2. Defendant's 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 retaining earned fees in her trust account and by depositing personal funds in her trust account, Defendant failed to identify, hold, or maintain entrusted property separate from the property of Defendant in violation of Rule 1.15-2(a), and deposited personal funds into a trust account in violation of Rule 1.15-2(f);
 - (b) By maintaining personal funds in her trust account and making personal expenditures from her trust account while it contained client funds, Defendant failed to properly hold and maintain entrusted funds in violation of Rule 1.15-2(a);
 - (c) By disbursing funds to herself from the trust account by checks containing no client attribution, Defendant withdrew funds for attorney's fees from her trust account by an item that failed to indicate the client from whose balance in the trust account the item was drawn in violation of Rule 1.15-2(h);
 - (d) By making purchases from her trust account with a debit card, Defendant withdrew funds from her trust account with a debit card in violation of Rule 1.15-2(i);
 - (e) By failing to keep a record of the deposits and disbursements per client in her trust account, Defendant failed to maintain a ledger containing a record of receipts and disbursements for each person or entity from whom and for whom funds were received with the current balance of funds held in the trust account for each such person or entity in violation of Rule 1.15-3(b)(5);
 - (f) By failing to conduct the requisite reconciliations of her trust account, Defendant failed to total the individual client balances for clients for

whom she had funds in her trust account and reconcile that total with the current bank statement balance for the trust account as a whole at least quarterly in violation of Rule 1.15-3(d)(1) and failed to reconcile the balance of her trust account as shown in her records with the current bank statement balance for the trust account each month in violation of Rule 1.15-3(d)(2);

- (g) By making personal purchases from her trust account that disbursed funds she should have been maintaining for a client in her trust account, Defendant failed to properly hold, maintain, and disburse entrusted funds in violation of Rule 1.15-2(a) and Rule 1.15-2(m), and received a personal benefit from entrusted funds in violation of Rule 1.15-2(j).

Upon the consent of the parties, the Hearing Panel hereby finds by clear, cogent, and convincing evidence the following additional:

Findings of Fact Regarding Discipline

1. Maintaining client ledgers and conducting monthly and quarterly reconciliations of the trust account are integral to the proper maintenance and protection of entrusted funds.

2. During the period of time at issue, January 2013 to June 2015, Defendant closed her operating account and was using her trust account for all personal purposes, including for purposes of paying payroll and for personal purchases.

3. Although the evidence is insufficient to show Defendant knowingly expended T. Nowlin's funds for her personal purposes in September 2013, Defendant's encroachment upon T. Nowlin's funds was the foreseeable result of Defendant's commingling, her use of the trust account as a personal account, and her failure to track client funds and reconcile the trust account.

4. Defendant has no prior discipline.

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

6. Defendant has a medical condition. Due to this condition and anxiety from both her medical condition and the stress from managing her law practice, Defendant ceased accepting new clients in June 2013 and began winding down her law practice.

7. Defendant's trust account was closed in June 2015 and she is not currently managing a trust account.

8. Defendant acknowledges that using the trust account as she did was not correct and has expressed remorse for having used the trust account as she did.

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:

a. Intent of Defendant to commit acts where the harm or potential harm is foreseeable.

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:

- a. Absence of prior disciplinary offenses;
- b. Absence of a dishonest or selfish motive;
- c. A pattern of misconduct;
- d. Multiple offenses;
- e. Full and free disclosure to the Hearing Panel and cooperative attitude toward the proceedings;
- f. Remorse;
- g. Degree of experience in the practice of law, having been licensed for 23 years;
- h. Other factors: Although the Hearing Panel does not find that Defendant's medical condition and anxiety prevented her from complying with the Rules of Professional Conduct, it acknowledges the influence they may have had on the choices Defendant made concerning how to focus and expend her time and resources.

4. Defendant's failure to properly maintain, manage, and handle entrusted funds betrays a vital trust clients and the public place in attorneys and the legal profession.

5. Defendant's conduct, if continued or tolerated by the Bar, poses significant potential harm to future clients.

6. 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 Defendant and send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

7. This Hearing Panel has considered lesser alternatives and concludes that a stayed suspension is necessary to ensure Defendant complies with necessary conditions to avoid significant harm or the potential for significant harm to clients.

8. For these reasons, this Hearing Panel finds that an order imposing discipline short of a stayed suspension of Defendant's law license 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. Defendant, Sandra C. Kullmann, is hereby suspended from the practice of law for three years. The three-year suspension is stayed for a period of three years as long as Defendant complies, and continues to comply during the period of the stay, with the conditions listed in paragraph 4 below.

2. Defendant is taxed with the costs and administrative fees of this action as assessed by the Secretary. Defendant shall be served with a statement of costs and fees. Defendant shall pay the costs within thirty days of service of the statement of costs upon her.

3. Defendant is currently in inactive membership status pursuant to order of the Council of the North Carolina State Bar. Any order of the Council placing Defendant in inactive membership status for any reason, including the order currently in effect, shall toll the running of the suspension, the period of the stay of the suspension, and Defendant's obligation to comply with the terms of the stay of the suspension under this order of discipline. The tolling shall end upon Defendant's reinstatement to active status by the Council, at which time the running of the suspension, the stay of the suspension,

and Defendant's obligation to comply with the conditions of the stay of the suspension in this order will resume.

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

a. Each month Defendant shall provide the Office of Counsel of the State Bar with the three-way reconciliation described in the State Bar Lawyer's Trust Account Handbook, using the Trust Account Reconciliation sheet provided in the Handbook, for all trust accounts she maintains. Defendant shall provide the three-way reconciliation report, client ledgers for all clients with funds in the trust account(s) during that month, ledger for any personal funds maintained in the trust account(s) for bank or credit card fees, her trust account ledger, and the bank statements, cancelled checks, and deposit slips for each month. These documents are due on the 15th day of the following month – for example, the three-way reconciliation for the month of January is due on February 15;

b. Each quarter, Defendant shall have a CPA audit all trust accounts maintained by Defendant. This audit shall assess whether Defendant has in her trust account the client funds she should be maintaining for her clients at that time, as well as Defendant's compliance with Rule 1.15-2 and Rule 1.15-3. The CPA's audit shall include addressing the items on the CPA Report Template which will be provided by the State Bar to Defendant. The quarterly audit reports from the CPA are due no later than 30 days after the end of the quarter – for example, the CPA audit for the first quarter of the calendar year (January, February, and March) is due on April 30;

c. If either the monthly three-way reconciliation report or the CPA audit reveals any deviation from Defendant's obligations under Rule 1.15-2 or Rule 1.15-3, Defendant shall take remedial action within 10 days of the date of the three-way reconciliation report or the CPA audit and shall provide documentation showing the remedial action to the State Bar within 2 days of the date of the remedial action;

d. Defendant shall comply with any requests from the Office of Counsel to provide any information regarding her 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 Defendant maintains a trust account, by the deadline stated in the request;

e. Defendant is not handling entrusted funds or maintaining an attorney trust account at the time she signed this consent order. Within 30 days of the effective date of this order, Defendant shall provide the Office of Counsel of the State Bar with documentation showing the closing of any and all trust accounts. Thereafter, for as long as Defendant is not handling entrusted or fiduciary funds or maintaining an attorney trust account, on a monthly basis

Defendant shall submit to the Office of Counsel an affidavit certifying that she did not handle any entrusted or fiduciary funds in that month. This affidavit shall be executed on the last day of each month and provided to the Office of Counsel by the 5th day of the following month (e.g. the affidavit for January would be executed January 31st and due to the Office of Counsel by February 5th). Such affidavit shall be in lieu of the three-way reconciliation report required in paragraph 3a. For as long as Defendant is not handling any entrusted or fiduciary funds and is not maintaining an attorney trust account, the requirements of paragraphs 3a to 3d above shall be tolled;

f. Within the first year of the stayed period of suspension, Defendant shall complete four hours of continuing legal education in the area of trust account management approved by the Office of Counsel of the State Bar. At least one such session shall be taken before the end of the next calendar quarter (i.e., by March 30, June 30, etc.) following the entry of this order and at least one such session shall be the Trust Accounting Rules Continuing Legal Education Program taught by the Trust Account Compliance Counsel for The North Carolina State Bar. Defendant shall provide written proof of successful completion of the CLE courses to the State Bar within ten days of completing the courses. These four hours are in addition to the continuing legal education requirements set out in 27 N.C. Admin. Code ID § .1518;

g. Defendant shall keep the North Carolina State Bar Membership Department advised of her 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;

h. Defendant 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;

i. Defendant 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;

j. Defendant shall timely comply with the State Bar continuing legal education requirements and shall pay all fees and costs assessed by the applicable deadline;

k. Defendant shall pay all membership dues, Client Security Fund assessments, and any other related dues, fees, and/or costs by the applicable deadline;

l. Defendant shall not violate any of the Rules of Professional Conduct in effect during the period of the stay;

m. Defendant shall not violate any laws of the State of North Carolina or of the United States, other than minor traffic violations, during the period of the stay; and

n. Defendant paid the costs and fees of this proceeding as assessed by the Secretary within thirty days after the statement of costs and fees was served upon her.

5. Unless Defendant's obligations under this Order are modified by further order of the DHC, Defendant's obligations under this Order end three years from the effective date of the Order, unless tolled by any period of inactive status or if there are any motions or proceedings pending alleging lack of compliance with the conditions of the stay of the suspension. Pursuant to § .0114(x) of the North Carolina Discipline and Disability Rules, the DHC retains jurisdiction until all conditions of the stay of the suspension have been met. If a motion or proceeding alleging lack of compliance with the conditions for the stay of the suspension is pending when the period of the stay of the suspension would otherwise have terminated, the DHC retains the jurisdiction and ability to lift the stay of the suspension and activate the three year suspension in whole or in part if it finds that any of the conditions of the stay have not been met. The stay of the suspension and Defendant's obligation to comply with the conditions for the stay will continue until resolution of any such pending motion or proceeding.

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

7. If the stay of the suspension is lifted and the suspension is activated for any reason, Defendant may apply for reinstatement after serving the activated suspension by filing a petition, demonstrating compliance with the requirements § .0125 of the North Carolina State Bar Discipline and Disability Rules, any requirements in the order activating the suspension, and the following requirements by clear, cogent, and convincing evidence:

a. Defendant properly wound down her 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 her current information for her physical address (not a Post Office box), telephone number, and e-mail address throughout the period of her 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 her suspension;

e. Defendant has come into compliance with any outstanding continuing legal education or membership obligations at the time of the filing of her petition for reinstatement;

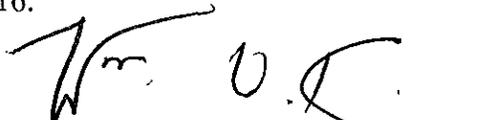
f. Defendant did not violate any of the Rules of Professional Conduct in effect during the period of the suspension;

g. Defendant did not violate any laws of the State of North Carolina or of the United States, other than minor traffic violations, during the period of the suspension; and

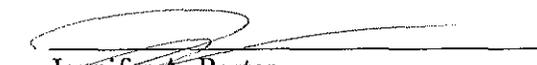
h. Defendant paid all administrative fees and costs of this proceeding as assessed by the Secretary by the date of the filing of her petition for reinstatement.

6. 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.

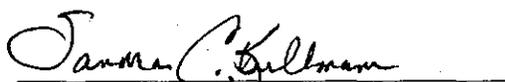
Signed by the Chair with the consent of the other hearing panel members, this the 28th day of April 2016.


William O. King, Chair
Disciplinary Hearing Panel

Agreed and consented to by:


Jennifer A. Porter
Attorney for Plaintiff

4/22/16
Date


Sandra C. Kullmann
Defendant

4/18/16
Date