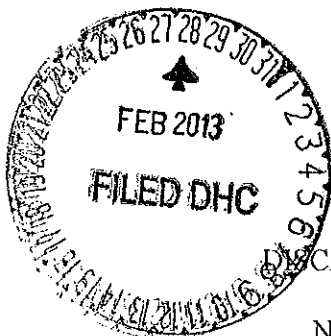


NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
SECRETARY AND THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
12 BSR 4 & 09 DHC 16

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IN THE MATTER OF	)	
THE REINSTATEMENT OF:	)	ORDER GRANTING
	)	REINSTATEMENT
	)	
RICHARD THOMAS HAYES, V, Attorney,	)	

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This matter came on to be heard on January 18, 2013 before a panel of the Disciplinary Hearing Commission composed of Walter E. Brock, Jr., Chair; William M. Claytor and Patti Head. After evidence was presented by the parties, the hearing was recessed until February 7, 2013 when the hearing was resumed by conference call. Based upon the evidence presented and the arguments of counsel, the panel finds the following to be supported by clear, cogent and convincing evidence:

FINDINGS OF FACT

1. In a consent order filed November 4, 2009, a hearing panel of the Disciplinary Hearing Commission suspended Richard Thomas Hayes, V ("Hayes") from the practice of law for five years effective from the date of his administrative suspension, September 9, 2005.
2. On September 10, 2012, Hayes filed a petition for reinstatement.

Requirements for Reinstatement contained in the Consent Order:

3. Pursuant to sub-paragraphs 2 (a), (b) and (c) of the consent order, to be eligible for reinstatement upon completion of the period of suspension, Hayes had to prove that he had complied with 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.

4. The State Bar objected to Hayes' reinstatement by the Secretary because, as Hayes admitted in his petition, he had not been able to reconcile his trust account and there was still a substantial sum of money in that account, plus he had not provided evidence that he had undertaken a LAP assessment.

5. There was no evidence in the disciplinary case, or since, that Hayes had misappropriated any funds entrusted to him.

6. Many of the records necessary for a formal reconciliation of Hayes' trust account were no longer available as of the date of the entry of the consent order of discipline.

7. The records that were available were not sufficient to fully reconcile the trust account.

8. Hayes has not reconciled his trust account, but he has reconciled it to the best of his ability.

9. Ownership of the \$67,021.85 remaining in Hayes' trust account cannot now be determined based upon available records.

10. The Office of Counsel acknowledges that there is no means available by which Hayes can now distribute the funds on deposit in his trust account.

11. The majority of the funds remaining in the trust account represent title insurance premiums for lenders' policies that were not issued. Those funds belong to the clients whose real estate transactions Hayes closed.

12. There has been no general notice given to Hayes' former clients that they can make a claim for funds that may have been in Hayes' trust account.

13. On December 3, 2012, Hayes had an assessment performed by a licensed psychologist recommended by the LAP program, G. Lane Wagaman, Ed. D. Dr. Wagaman concluded that Hayes had no impairment, but recommended that he may benefit from follow-up with a trained behavioral health professional to ensure continued stability.

14. Hayes has contacted the LAP program about getting the follow-up care recommended by Dr. Wagaman.

15. Hayes has not violated any state or federal laws during the period of his suspension.

16. Hayes had not violated any of the Rules of Professional Conduct during the period of his suspension.

17. Hayes has responded to communications with the State Bar within the time required.

18. Hayes timely paid all dues, Client Security Fund assessments and CLE fees owed and had no CLE deficit at the time of his suspension.

Requirements for Reinstatement pursuant to 27 NCAC 1B § .0125(b)(3):

19. Although Hayes failed to file an affidavit showing how he wound down his practice, Hayes was in substantial compliance with 27 NCAC 1B § .0124 because he had wound down his practice well before entry of the consent order of discipline and there was no evidence that he failed to properly wind down his practice.

20. There was no evidence that Hayes failed to comply with the consent order of discipline by engaging in the unauthorized practice of law.

21. Hayes completed 17.75 hours of CLE in satisfaction of the post-suspension requirements of 27 NCAC 1B § .0125(3)(I).

22. Hayes currently has a dues credit with the State Bar that can be applied to his 2013 dues which are not yet due.

BASED UPON the foregoing Findings of Fact, the panel enters the following:

CONCLUSIONS OF LAW

1. Hayes has complied with all of the conditions of the consent order of discipline.

2. Hayes has complied with all of the conditions of 27 NCAC 1B § .0125(3).

3. Having complied with all of the conditions of the consent order and the rules regarding reinstatement, Hayes should be reinstated to the practice of law in North Carolina upon certain conditions set out below.

THEREFORE it is hereby ORDERED:

1. Hayes is reinstated to the practice of law in North Carolina as of the date of this order, but subject to the following conditions:

(a) Hayes must transfer the \$67,021.85 currently in his trust account to the State Bar for those funds to be held for three (3) years or such other shorter period of time as may be required by law;

(b) Hayes must pay the expense incurred by the State Bar for the publication of a public notice in a form intended to give Hayes' former clients notice of the availability of the funds formerly held in Hayes' trust account and inform them how to make a claim for return of those funds;

(c) Hayes must pay the cost and expenses for any Trustee or Administrator necessary to receive and evaluate claims for the funds formerly held in Hayes' trust account;

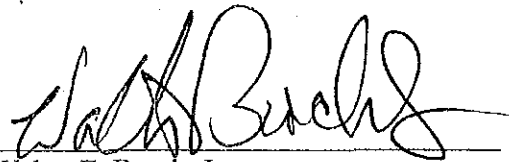
(d) By the 15<sup>th</sup> of January, April, July and October of each year, Hayes must submit quarterly reconciliations of any trust account he maintains to the Office of Counsel of the State Bar for three years from the date of this order;

(e) Of the 17.75 hours of post-suspension CLE that Hayes has taken, only 2.75 hours may be included to satisfy his 2013 CLE requirement; and

(f) Hayes must enter into a contract with LAP as deemed appropriate by the LAP Board's policies. Hayes must direct the LAP office to confirm when Hayes has satisfied this requirement.

2. Hayes is taxed with the costs of this proceeding.

Entered this is the 28<sup>th</sup> day of February 2013 with the full knowledge and consent of the other members of the panel.



Walter E. Brock, Jr.  
Hearing Panel Chair