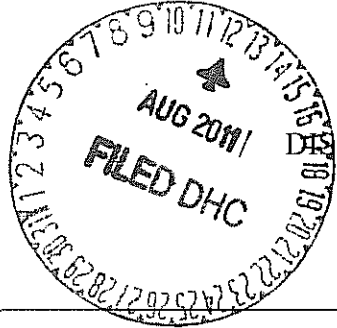


NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
11 DHC 4

THE NORTH CAROLINA STATE BAR,)
Plaintiff,)
v.)
WILLIAM W. NOEL, III,)
Defendant.)

ORDER OF DISCIPLINE

THIS MATTER was considered on July 29, 2011 by a Hearing Panel of the Disciplinary Hearing Commission composed of the Chair, Theodore C. Edwards, II, and members Robert F. Siler and Karen B. Ray. William N. Farrell represented Plaintiff, the North Carolina State Bar. Defendant did not appear in person or by counsel. A default order having been previously entered, this Hearing Panel addressed the discipline to be imposed. The default order found facts and violations of the Rules of Professional Conduct as follows:

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 North Carolina General Statutes, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. Defendant, William W. Noel, III (“Noel” or “Defendant”), was admitted to the North Carolina State Bar on August 23, 1991, 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. During the relevant periods referred to herein, Noel was engaged in the practice of law in the State of North Carolina and maintained a law office in Henderson, Vance County, North Carolina.

4. Noel opened a checking account, account number ending 9161, with Republic Savings Bank in 1992 as a general operating account for his law practice.

5. In 1995 First Citizens Bank bought Republic Savings Bank and provided Noel with a trust account, account number ending 9162.

6. The trust account number ending 9162 with First Citizens Bank was closed by Noel on August 15, 2006.

7. On or about October 23, 2008 Noel changed the designation of his operating account 9161 with First Citizens Bank to BOARD OF TTEES OF THE NORTH CAROLINA STATE BAR PLAN IOLTA LAW OFFICES OF WILLIAM W. NOEL, III, P.O. BOX 4 HENDERSON, NC 27536-0004. This account was not a trust account.

8. After the change in designation of account number ending 9161, Noel continued to use this account as his operating account, commingling his personal funds with client funds and continuing to make personal payments out of the account.

9. On May 22, 2009 a procedural audit of Noel's trust account(s) was conducted by auditor Bruno DeMolli of the North Carolina State Bar, pursuant to Title 27 of the North Carolina Administrative Code, Chapter 1, Subchapter B, Section .0128(b).

10. The procedural audit encompassed a review of the preceding twelve months activity in the trust account(s), including review of bank statements, cancelled checks, deposit slips, and the book keeping system for the account(s).

11. The audit revealed the following problems:

- (a) Noel deposited client funds which were to be used for court costs into his operating account;
- (b) Noel commingled his personal funds with client funds.
- (c) Noel did not maintain complete records of all entrusted property received from clients;
- (d) Noel did not maintain all bank receipts or deposit slips listing the source and date of receipt of all funds and the client names for trust account deposits;
- (e) Noel did not deposit clients funds received for court costs in to the trust account;
- (f) Noel did not maintain a complete and legible ledger containing a record for each person or entity, from whom or for whom funds to be held in trust had been received;
- (g) Noel did not deposit mixed funds, those belonging to him and a client, into the trust account intact;
- (h) Noel did not reconcile his trust account quarterly and did not balance his bank statements monthly with his records; and
- (i) Noel did not have a directive with his bank to report to the Executive Director of the State Bar when any check drawn on his trust account was presented against insufficient funds.

Based upon these facts found in the default order, the Hearing Panel concluded that Noel violated the Rules of Professional Conduct as follows:

CONCLUSIONS OF LAW

1. By depositing client funds that were to be used for court costs into his operating account, Defendant failed to identify, hold and maintain separate the entrusted property of clients in violation of Rule 1.15-2(a) &(b);
2. By failing to maintain bank receipts or deposit slips listing the source of all funds deposited and failing to name the client to whom the funds belonged, Noel failed to maintain records in violation of Rule 1.15-3(a)(1);
3. By failing to maintain complete records of all entrusted property received from a client, Noel failed to maintain records in violation of Rule 1.15-3(f);
4. By failing to deposit mixed funds into the trust account intact, Noel violated Rule 1.15-2(g);
5. By failing to maintain a complete and legible ledger containing a record of receipts and disbursements and showing client balances of funds held for clients, Noel failed to maintain a ledger in violation of Rule 1-15-3(a)(5);
6. By failing to reconcile his trust account quarterly, Noel failed to balance his individual client balances and reconcile them with the current bank balance for the trust account in violation of Rule 1-15-3(c); and
7. By failing to file a directive with his bank to report to the Executive Director of the North Carolina State Bar to report any trust checks drawn on the account which were presented against insufficient funds, Noel violated Rule 1-15-2(k).

Based on the Foregoing Findings of Fact, Conclusions of Law, and additional evidence and argument presented as to the appropriate discipline, the Hearing Panel hereby finds by clear, cogent and convincing evidence the following additional:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Defendant committed multiple violations of the Rules of Professional Conduct governing entrusted funds and the records and accountings required for same.
2. Defendant's failure to keep required trust account records as required by the Rules of Professional Conduct created the potential risk of significant harm to his clients and persons who entrusted funds to him.
3. Defendant's inability to account for all funds entrusted to him at all times impaired the ability of his clients or other persons to entrust him with their money and affairs. Once known to the public, such conduct harms the profession as a whole.
4. Defendant has received two letters of warning within the last three years.

Based on the foregoing Findings of Fact, Conclusions of Law, and Additional Findings of Fact Regarding Discipline, the Hearing Panel hereby enters the following:

CONCLUSIONS OF LAW REGARDING DISCIPLINE

1. The Hearing Panel has considered all of the factors contained in 27 N.C.A.C. 1B § .0114(w)(1) and (2) of the Rules and Regulations of the State Bar and concludes that the following factors that warrant suspension of Defendant's law license are present:
 - (a) intent of the defendant to commit acts where the harm or potential harm is foreseeable;
 - (b) the negative impact of the defendant's actions on client's or public's perception of the profession;

- (c) the negative impact of the defendant's actions on the administration of justice;
and
- (d) multiple instances of failure to participate in the legal profession's self-regulation process.

3. The Hearing Panel has considered all of the general factors enumerated in 27 N.C.A.C. 1B § .0114(w)(3) of the Rules and Regulations of the State Bar and concludes the following factors are present:

- (a) a pattern of misconduct;
- (b) degree of experience in the practice of law; and
- (c) issuance of two letters of warning within the three years immediately preceding the filing of the complaint.

4. The Hearing Panel has considered all other forms of discipline and concludes that any sanction less than suspension would fail to acknowledge the seriousness of the offenses committed by defendant, would not adequately protect the public, and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar.

5. Due to the significant potential harm resulting from defendant's conduct, the Hearing Panel finds and concludes that an active suspension of defendant's license for a definite period of time is the only discipline that will adequately protect the public from future misconduct by defendant.

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

ORDER OF DISCIPLINE

1. The law license of Defendant, William W. Noel, III, is hereby suspended for three years effective thirty days after service of this Order of Discipline on him.

2. Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than thirty days following service of this Order on him.

3. Defendant shall comply with the wind down provisions contained in 27 N.C.A.C. 1B § .0124 of the North Carolina State Bar Discipline and Disability Rules. Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within ten days after the effective date of this Order of Discipline certifying he has complied with the wind down provisions of Section .0124.

4. Within fifteen days of the effective date of this Order, Defendant will provide the State Bar with a street address and mailing address at which clients seeking return of their files and records in Defendant's possession or control may obtain such files and records and at which the State Bar may serve any notices or matters upon him.

5. After the completion of one year of active suspension of his license, Defendant may apply for a stay of the balance of the active suspension upon filing a petition with the Secretary of the North Carolina State Bar at least thirty days before any proposed effective date of the stay and demonstrating the following by clear, cogent and convincing evidence:

- (a) That Defendant has kept the North Carolina State Bar Membership Department advised of his current business and home addresses and notified the Bar of any change in address within ten days of such change;
- (b) That Defendant has accepted all certified mail sent to the address of record with the Membership Department of the North Carolina State Bar;

- (c) That Defendant has responded to all letters of notice and requests for information, including any pending or outstanding letters of notice or requests for information, from the North Carolina State Bar by the deadline stated therein with full and complete responses and all requested documentation;
- (d) That Defendant has responded to all communications from the Attorney Client Assistance Program, within thirty days of receipt or by the deadline stated in the communication, whichever is sooner;
- (e) That Defendant has participated in good faith in the State Bar's fee dispute resolution process for any petition received after the effective date of this Order;
- (f) That Defendant has paid all Client Security Fund claims in which clients were awarded reimbursement for Defendant's misconduct;
- (g) That Defendant is not suffering from any disability or addiction that would impair his ability to practice law;
- (h) That Defendant has properly wound down his law practice and complied with the requirements of 27 N.C.A.C. 1B § .0124, the North Carolina State Bar Discipline and Disability Rules;
- (i) That Defendant has paid the costs of this proceeding as assessed by the Secretary within one year after the statement of costs has been provided to him.

6. If Defendant successfully seeks a stay of the suspension of his law license, such stay will continue in force only as long as he complies with the following conditions:

- (a) Defendant shall keep the North Carolina State Bar Membership Department advised of his current business and home addresses;

- (b) Defendant shall respond to all communications from the North Carolina State Bar, including communications from the Attorney Client Assistance Program, within thirty days of receipt or by the deadline stated in the communication, whichever is sooner, and participate in good faith in the State Bar's fee dispute resolution process for any petition received during the stay;
- (c) Defendant is to have his trust account(s) audited on a quarterly basis by a certified public accountant (CPA). The CPA must examine the trust account(s) for compliance with the Rules of Professional Conduct. The CPA must report quarterly to the Office of Counsel of the State Bar any accounting irregularities and any deviance from the requirements of the Rules of Professional Conduct, with a copy of the report sent simultaneously to Defendant. The CPA's reports are due no later than 30 days after the end of each quarter (first quarter's report due April 30, second quarter's report due June 30, third quarter's report due October 30 and fourth quarter's report due January 30). Defendant shall ensure the CPA completes and submits the reports as required herein;
- (d) If any of the CPA's reports note any irregularities or deficiencies requiring remedial action, Defendant shall take such remedial action and provide proof of such to the Office of Counsel of the State Bar and to the CPA within thirty (30) days of the date of the CPA's report;
- (e) If any of the CPA's reports note any irregularities or deficiencies requiring remedial action, the CPA shall provide a final report regarding whether Defendant's remedial actions were sufficient and whether Defendant's trust account or accounts has/have been brought to compliance with the Rules of

Professional Conduct. This final report shall be provided to the Office of Counsel with a copy to Defendant within thirty (30) days of Defendant's provision of proof of remedial action;

- (f) All evaluations, reports, and services of the CPA will be at Defendant's expense;
- (g) Defendant shall arrange for an active member of the North Carolina State Bar who practices law in Vance County and who has been approved by the Office of Counsel to serve as his law practice monitor. Defendant shall submit the name of the proposed practice monitor to the Office of Counsel within fifteen (15) days of reinstatement. Defendant's failure to provide the name of a proposed practice monitor to the Office of Counsel will not excuse any failure to meet monthly with an approved practice monitor as required by this order. Nor will Defendant's failure to provide the name of a proposed practice monitor excuse an approved practice monitor's failure to provide written quarterly reports to the Office of Counsel. The selected practice monitor must indicate in writing his or her agreement to serve. The selected practice monitor must meet with Defendant monthly to review Defendant's cases. The first such meeting between Defendant and the practice monitor must be held within fifteen (15) days of the date that Defendant submits the name of the proposed practice monitor to the Office of Counsel. The practice monitor will submit to the Office of Counsel written quarterly reports summarizing his or her supervision of Defendant. These reports shall be provided to the Office of Counsel on January 30, April 30, July 30 and October 30. Monitoring of Defendant's law practice as provided herein shall continue for the duration of any stay of Defendant's suspension. Defendant shall

be solely responsible for any cost assessed by the practice monitor for his or her monitoring of Defendant's law practice. Defendant must supply the Office of Counsel with a letter from the practice monitor confirming his or her willingness to serve as practice monitor and to perform the duties outlined in this order. Defendant must provide this confirmation within ninety (30) days of reinstatement.

Defendant shall meet at least once monthly with his practice monitor, to whom he shall report the status of all current client matters. Defendant shall provide any information the practice monitor deems reasonably necessary to ensure that Defendant is handling all client matters in accord with the requirements of the Rules of Professional Conduct.

- (h) Defendant shall ensure that the practice monitor sends to the Office of Counsel a written report each quarter as described above;
- (i) Should the need arise to find a replacement practice monitor during the stay of Defendant's suspension, Defendant shall promptly provide to the Office of Counsel the name of a proposed alternative practice monitor. Defendant's failure to promptly provide the Office of Counsel the name of an alternative practice monitor will not excuse any failure to meet monthly with an approved practice monitor and will not excuse failure of an approved practice monitor to provide quarterly reports to the Office of Counsel;
- (j) Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or any state or local government during his suspension; and


(k) Defendant shall timely comply with all State Bar membership and continuing legal education requirements and shall pay all fees and costs assessed by the applicable deadline.

7. If Defendant fails to comply with any of the conditions of the stayed suspension provided in paragraph 6 above, the stay of the suspension may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

8. If Defendant does not seek a stay of the active portion of the suspension or if some part of the suspension is stayed and thereafter the stay is revoked, Defendant must comply with the condition set out in paragraphs 5(a) through (i) above before seeking reinstatement of his license to practice law.

9. Defendant is taxed with the costs of this action as assessed by the Secretary.

Signed by the Chair with the full knowledge and consent of the other members of the Hearing Panel, this the 12th day of August, 2011.


Theodore C. Edwards, II, Chair
Disciplinary Hearing Panel