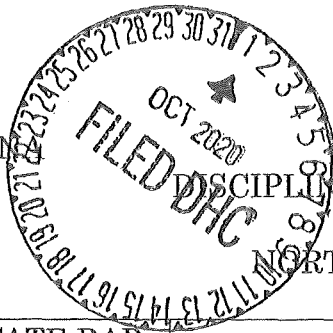


STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
19 DHC 18

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

CHARLES L. MORGAN, Jr., Attorney,

Defendant

ORDER OF DISCIPLINE

This matter was heard 4 September 2020 by a Hearing Panel of the Disciplinary Hearing Commission composed of Stephanie N. Davis, Chair, and members Margit Monaco Hicks, and Tyler B. Morris, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0115. Plaintiff, The North Carolina State Bar, was represented by Carmen Bannon. Defendant, Charles L. Morgan, Jr., was represented by F. Lane Williamson. Plaintiff and Defendant stipulated to the facts and Rule violations as alleged in the complaint. At the hearing, the parties offered additional evidence on the issue of what discipline is appropriate.

Based upon the pleadings in this matter and the consent of the parties, the Hearing Panel hereby enters the following:

FINDINGS OF FACT

1. 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 (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, Charles L. Morgan, Jr., was admitted to the North Carolina State Bar in 1981, 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 all or part of the relevant periods referred to herein, Defendant was engaged in the practice of law in the State of North Carolina and maintained a law office in Charlotte, Mecklenburg County, North Carolina.

4. Defendant was properly served with the summons and complaint and received due notice of the hearing in this manner.

5. In connection with his law practice, Morgan maintained an attorney trust account (Wells Fargo account number ending in -1049) and an operating account (Wells Fargo account number ending in -1117).

6. Morgan regularly deposited flat fees that were earned upon receipt into the trust account.

7. Morgan routinely maintained earned fees in his trust account, transferring money to his operating account as needed.

8. For a period of at least two years, Morgan failed to:

- (a) Perform monthly and quarterly reconciliations of his trust account;
- (b) Maintain client ledgers documenting all receipts and disbursements of entrusted funds for each client;
- (c) Identify in connection with trust account deposits the client on whose behalf the deposit was made; and
- (d) Identify in connection with transfers from his trust account to his operating account the client whose funds were being transferred.

9. On 15 March 2017, Morgan received \$250.00 of entrusted funds to pay court costs and fines for his client, Abhinav Kasu. Morgan deposited the \$250.00 into his trust account.

10. As of 20 March 2017, Morgan had not paid Kasu's costs and fines, and therefore the \$250.00 should have remained in his trust account. On that day, Morgan transferred \$200.00 from his trust account to his operating account, leaving a balance of only \$75.00 in his trust account.

11. By making the transfer described above, Morgan used Kasu's entrusted funds for personal benefit.

12. On 29 August 2017, Morgan received \$400.00 in trust to pay an expert witness fee on behalf of his client, John White. Morgan deposited the \$400.00 into his trust account on 30 August 2017.

13. As of 14 September 2017, Morgan had not paid the expert on behalf of White, and therefore the \$400.00 should have remained in his trust account. On that day, Morgan transferred \$350.00 from his trust account into his operating account, leaving a balance of only \$50.00 in his trust account.

14. By making the transfer described above, Morgan used White's entrusted funds for personal benefit.

15. On 6 March 2018, the Wake County Superior Court entered an order enjoining Morgan from handling entrusted funds ("the injunction"). The order provided that Morgan was "enjoined from receiving any funds from or on behalf of clients or other individuals in a fiduciary capacity."

16. On 9 March 2018, Morgan received a money order to be used to pay a court reporter's fee on behalf of a client. The money order constituted entrusted funds.

17. By taking possession of the money order, Morgan violated the injunction.

18. On 11 September 2018, Morgan received \$175.00 in cash to be used to pay a client's filing fee. The cash constituted entrusted funds.

19. Morgan did not deposit the \$175.00 into a trust account: He maintained the cash in his office for approximately a month, paying the client's filing fee on 10 October 2018.

20. By receiving and maintaining entrusted funds in the form of \$175.00 in cash, Morgan violated the injunction.

21. On 29 November 2018, the Wake County Superior Court conducted a hearing and found Morgan guilty of criminal contempt of court for willfully disobeying the injunction.

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

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Hearing Commission has jurisdiction over Defendant, Charles L. Morgan, Jr., 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. Gen. Stat. § 84-28(b)(2) in that he violated the Rules of Professional Conduct in effect at the time of his actions as follows:

- (a) By depositing and maintaining earned fees in his trust account, Defendant commingled entrusted funds and funds belonging to the lawyer in violation of Rule 1.15-2(a) & (f);
- (b) By failing to perform monthly and quarterly reconciliations of his trust account Defendant violated Rule 1.15-3(d);
- (c) By failing to maintain individual client ledgers Defendant violated Rule 1.15-3(b)(5);
- (d) By making deposits to his trust account without identifying the client for whom the money was deposited, Defendant violated Rule 1.15-2(a) and Rule 1.15-3(b)(1);
- (e) By transferring money from his trust account to his operating account without identifying the client whose funds were being transferred, Defendant violated Rule 1.15-3(b)(3) and disbursed attorney's fees to himself in a manner that did not indicate the client whose funds were being disbursed in violation of Rule 1.15-2(h);
- (f) By transferring funds that should have been held in trust for White into his operating account, Defendant failed to properly maintain White's entrusted funds in violation of Rule 1.15-2(a) and used entrusted funds for personal benefit in violation of Rule 1.15-2(k) & (n);
- (g) By transferring funds that should have been held in trust for Kasu into his operating account, Defendant failed to properly maintain Kasu's entrusted funds in violation of Rule 1.15-2(a) and used entrusted funds for personal benefit in violation of Rule 1.15-2(k) & (n);
- (h) By receiving entrusted funds in the form of cash and failing to promptly deposit those funds into a trust account, Defendant violated Rule 1.15-2(b); and
- (i) By receiving and maintaining entrusted funds in violation of the injunction, resulting in a finding that he was in contempt of court, Defendant knowingly disobeyed an obligation under the rules of the tribunal in violation of Rule 3.4(c) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

Based upon the foregoing Findings of Fact and Conclusions of Law and the evidence presented at the hearing in this matter, the Hearing Panel also enters the following:

ADDITIONAL FINDINGS REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1 – 21 above are reincorporated as if set forth herein.
2. Defendant has been licensed to practice law for 39 years.
3. Defendant has two prior reprimands for professional misconduct: A 1997 reprimand from the Grievance Committee for lack of diligence and communication, and a 2003 reprimand entered by the Rowan County Superior Court for misuse of subpoenas and violation of a court order.
4. Defendant's conduct in over-disbursing entrusted funds from his trust account caused significant potential harm to his clients whose entrusted funds were used for Defendant's benefit without their knowledge or consent.
5. There is no evidence, however, that Defendant intended to harm his clients or acted with dishonest or selfish motive. Defendant's inadvertent misappropriation of entrusted funds was a consequence of extremely inadequate trust account management.
6. Conducting quarterly reconciliations of the trust account is the lynchpin of proper maintenance and protection of entrusted funds. Had Defendant been conducting quarterly reconciliations, he would have maintained awareness of whose funds were in his trust account.
7. Defendant's failure to reconcile his trust account and failure to maintain proper trust account records was a pattern of misconduct that demonstrates Defendant's intent to commit acts where potential harm is foreseeable.
8. Improperly maintaining and disbursing client funds—even inadvertently—places entrusted funds at risk and has the potential to cause significant harm to the standing of the profession in the eyes of the public because it shows a lawyer's disregard for his fiduciary duties as an attorney.
9. Attorneys are officers of the court. As such, it is especially harmful to the integrity of the judicial process and when a lawyer violates a court's order. When lawyers disregard court orders, it erodes public respect for the rule of law.
10. Defendant has acknowledged wrongdoing and been fully cooperative in this disciplinary proceeding.
11. Defendant has a good reputation in the legal community and his community at large.

12. The Hearing Panel has considered all 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 upon the Findings of Fact, Conclusions of Law, Additional Findings Regarding Discipline, and the evidence presented at the hearing, the Hearing Panel makes the following

ADDITIONAL CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel carefully considered all the different forms of discipline available to it and has considered all the factors enumerated in 27 N.C. Admin. Code 1B .0116(f).

2. The Hearing Panel concludes that the following factors from Rule .0116(f)(1) warrant consideration of suspension of Defendant's license:

- (a) intent of the defendant to commit acts where the harm or potential harm is foreseeable; and
- (b) negative impact of the defendant's actions on the administration of justice.

3. The Hearing Panel considered all the factors requiring consideration of disbarment enumerated in Rule .0116(f)(2) and concludes that although Defendant inadvertently misappropriated client funds, he did not do so with dishonest intent and therefore disbarment is not necessary in this case.

4. The Hearing Panel concludes that the following factors enumerated in Rule .0116(f)(3) are applicable in this case:

- (a) prior disciplinary offenses;
- (b) remoteness of prior offenses;
- (c) absence of dishonest or selfish motive;
- (d) multiple offenses;
- (e) cooperative attitude toward the proceedings;
- (f) character or reputation; and
- (g) considerable experience in the practice of law.

5. The Hearing Panel has considered admonition, reprimand and censure as potential discipline but finds that any sanction less than suspension would fail to acknowledge the seriousness of the offenses committed by Defendant.

6. In light of the significant potential harm to Defendant's clients, the profession, and the administration of justice resulting from Defendant's conduct, the Hearing Panel concludes that no discipline short of suspension of Defendant's license will adequately acknowledge the seriousness of the offenses Defendant committed and send the proper message to attorneys and the public regarding the conduct expected of members of the Bar of this State.

7. Defendant should be taxed with the administrative fees and costs of this action.

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

ORDER OF DISCIPLINE

1. Defendant, Charles L. Morgan, Jr., is hereby suspended from the practice of law for three years. The effective date of this Order is 60 days from service of this Order upon Defendant.

2. Defendant is taxed with the administrative fees and costs of this proceeding. Defendant shall pay the administrative fees and costs of this proceeding as assessed by the Secretary of the North Carolina State Bar within 30 days of service upon him of the statement of costs by the Secretary.

3. After serving six months of active suspension, Defendant may seek a stay of the remaining period of suspension by filing a motion for stay pursuant to 27 N.C.A.C. 1B.0118(c) with the Clerk of the DHC and establishing by clear, cogent, and convincing evidence that he complied with each of the following conditions during the period of active suspension:

- (a) Defendant properly wound down his law practice within 60 days after service of this Order by satisfying the obligations of a suspended lawyer set forth in 27 N.C. Admin. Code 1B.0128 within that 60 day period;
- (b) Defendant submitted his law license and membership card to the Secretary of the State Bar no later than 30 days following the effective date of this Order;

- (c) Defendant paid the administrative fees and costs of this proceeding as assessed by the Secretary within 30 days of service of the statement of costs.
- (d) Within 15 days of the effective date of this Order, Defendant provided the Office of Counsel and the Membership Department of the State Bar with an address and telephone number at which clients seeking their files can communicate with Defendant and obtain such files. Defendant must keep this information current, providing updated information to the State Bar within 15 days of any change;
- (e) Defendant promptly returned client files in his possession, custody, or control to clients upon request, within 5 days of receipt of such request. Defendant will be deemed to have received any such request 3 days after the date such request is sent to Defendant if the request is sent to the address Defendant provided the State Bar pursuant to the preceding paragraph;
- (f) Defendant completed 6 hours of accredited Continuing Legal Education (CLE) on the topic of trust account management and provided the State Bar's Office of Counsel documentation verifying the trust accounting CLEs he attended.
- (g) Within 30 days of the effective date of this Order, Defendant established written procedures for complying with all provisions of Rule 1.15-2 and Rule 1.15-3 of the Rules of Professional Conduct. If non-attorney assistants and/or a CPA will be used to assist with these tasks, Defendant shall include written procedures for his personal review and supervision. No later than 30 days from the effective date of this order, Defendant shall submit these procedures to the Office of Counsel. Defendant shall make any adjustments required by the Office of Counsel to ensure compliance with the Rules of Professional Conduct;
- (h) Defendant provided to the Office of Counsel a written report of the three-way reconciliation of all of his attorney trust accounts for the last quarter in which there was activity in the account, using the State Bar's Reconciliation Report form from the State Bar's website and the reconciliation methods described in the State Bar Lawyer's Trust Account Handbook on the State Bar's website, and including with the report the following documents: (1) list of clients whose funds are held in the trust account that includes the amount held for each client; (2) subsidiary ledger for any personal funds of Defendant in the account; (3) general ledger; (4) bank statement; (5) canceled checks; (6) deposit slips; (7) deposited items; and (8) bank statement for any account into which funds were directly transferred from the trust account;

- (i) Defendant provided any other trust account related documentation or records requested by the Office of Counsel within 10 days of the request;
- (j) Defendant complied with Rule 1.15-2(r) and Chapter 116B of the General Statutes regarding any and all abandoned or unidentified funds in any trust account of Defendant's within 30 days of being statutorily permitted to escheat funds to the State;
- (k) Defendant kept the Membership Department of the State Bar informed of his current physical address (not a Post Office box), telephone number, and e-mail address throughout the period of his suspension;
- (l) 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;
- (m) 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 his suspension;
- (n) Defendant came into compliance with any outstanding continuing education or membership obligations prior to filing his motion for stay;
- (o) Defendant did not violate any of the Rules of Professional Conduct in effect during the period of active suspension;
- (p) 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 active suspension; and
- (q) If Defendant failed to fully comply with 27 N.C. Admin. Code 1B.0128, Defendant reimbursed the State Bar for any and all expenses incurred by the State Bar in winding down Defendant's practice. Such expenses may include, but are not limited to, storage facility fees, rent payments, moving expenses, charges for secure disposal of client files, postage or other mailing expenses and compensation paid to any appointed trustee and/or the trustee's assistant for time and travel associated with the trusteeship. The State Bar shall send an invoice of wind-down expenses to Defendant at Defendant's last known address of record with the State Bar. Defendant shall not be eligible for any stay of suspension or reinstatement from suspension until he has reimbursed the State Bar for any wind-down expenses incurred.

4. If a motion for stay filed by Defendant is granted, the stay of the suspension of Defendant's law license will continue in effect only as long as Defendant complies with the following conditions:

- a. Defendant shall provide monthly to the State Bar's Office of Counsel a written report of the three-way reconciliation of all attorney trust accounts to which he has access, using the State Bar's Reconciliation Report form from the State Bar's website and the reconciliation methods described in the State Bar Lawyer's Trust Account Handbook on the State Bar's website, and including with each such report, for the account and period covered by the report, the following documents: (1) list of clients whose funds are held in the trust account that includes the amount of each client's funds; (2) subsidiary ledger for any personal funds of Defendant in the account; (3) general ledger; (4) bank statement; (5) canceled checks; (6) deposit slips; (7) deposited items; and (8) bank statement for any account into which funds are directly transferred from the trust account. This documentation is due 15 days after the end of each month (e.g. documentation for January due February 15th, etc.);
- b. If the monthly three-way reconciliation report reveals any deviation from Defendant's obligations under Rules 1.15-2 or 1.15-3, Defendant shall take remedial action within 10 days of the date of the three-way reconciliation report and shall provide documentation showing the remedial action to the State Bar within 2 days of the date of such action;
- c. By the deadline stated in the request, Defendant shall comply with any requests from the Office of Counsel to provide any information, documentation, or records regarding his trust account(s) 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;
- d. Defendant shall provide to the Office of Counsel the quarterly review report and supporting documents required under Rule 1.15-3(i), using the Quarterly Review Report form from the State Bar's website, no later than 15 days after the end of the quarter, on the following dates as they occur during the stayed suspension: January 15, for the fourth quarter of the prior year; April 15, for the first quarter of the calendar year; July 15 for the second quarter of the calendar year; and October 15, for the third quarter of the calendar year;
- e. Defendant shall comply with Rule 1.15-2(r) and Chapter 116B of the General Statutes regarding any and all abandoned or unidentified funds in any trust account of Defendant's within 30 days of being statutorily permitted to escheat funds to the State;

- f. Defendant shall keep the State Bar's Membership Department advised of his current business address, which address must be a street address, not a post office box or drawer, and shall notify the State Bar of any change of address within 10 days of such change;
- g. Defendant shall respond to all communications from the State Bar, including communications from the Attorney Client Assistance Program, within 30 days of receipt of such communication or by the deadline stated in the communication, whichever is sooner;
- h. Defendant shall participate in good faith in the State Bar's fee dispute resolution process for any petition of which he receives notice after the effective date of this Order; and
- i. Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or any state or local government, other than minor traffic violations.

5. 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 the suspension of Defendant's law license may be lifted as provided in 27 N.C. Admin. Code 1B.0118.

6. 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 provided there are no motions or proceedings pending alleging lack of compliance with the conditions of the stay of the suspension. Pursuant to 27 N.C. Admin. Code 1B.0118, 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 two-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.

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 pursuant to 27 N.C. Admin. Code 1B.0129 demonstrating compliance by clear, cogent, and convincing evidence with the requirements therein as well as the following requirements:

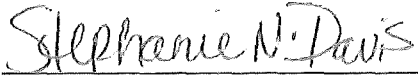
- a. Defendant properly wound down his law practice and complied with the terms of 27 N.C. Admin. Code 1B.0128;

- b. Defendant submitted his law license and membership card to the Secretary of the State Bar no later than 30 days following the effective date of the order lifting the stay;
- c. Defendant promptly returned client files in his possession, custody, or control to clients upon request, within 5 days of receipt of such request. Defendant will be deemed to have received any such request 3 days after the date such request is sent to Defendant if the request is sent to the most recent address Defendant provided to the State Bar;
- d. Defendant disbursed to the proper recipients all identified client funds in any trust account he maintained upon the termination of his representation by the activation of his suspension;
- e. Defendant complied with Rule 1.15-2(r) and Chapter 116B of the General Statutes regarding any and all abandoned or unidentified funds in any trust account of Defendant's within 30 days of being statutorily permitted to escheat funds to the State;
- f. Defendant kept the Membership Department of the State Bar informed of his current information for his physical address (not a Post Office box), telephone number, and e-mail address throughout the period of his suspension;
- g. 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;
- h. 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 his suspension;
- i. Defendant came into compliance with any outstanding continuing education or membership obligations prior to filing his petition for reinstatement;
- j. Defendant did not violate any of the Rules of Professional Conduct in effect during the period of the suspension;
- k. 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;

- l. Defendant paid all DHC costs and fees assessed by the Secretary prior to filing his petition for reinstatement; and
- m. If Defendant failed to fully comply with 27 N.C. Admin. Code 1B.0128, Defendant reimbursed the State Bar for any and all expenses incurred by the State Bar in winding down Defendant's practice. Such expenses may include, but are not limited to, storage facility fees, rent payments, moving expenses, charges for secure disposal of client files, postage or other mailing expenses and compensation paid to any appointed trustee and/or the trustee's assistant for time and travel associated with the trusteeship. The State Bar shall send an invoice of wind-down expenses to Defendant at Defendant's last known address of record with the State Bar. Defendant shall not be eligible for any stay of suspension or reinstatement from suspension until he has reimbursed the State Bar for any wind-down expenses incurred.

6. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code 1B.0118 until all conditions of the stay of the suspension are satisfied.

Signed by the Chair with the consent of the other Hearing Panel members, this the 15 day of October, 2020.


Stephanie N. Davis, Chair
Disciplinary Hearing Panel