

STATE OF NORTH CAROLINA

WAKE COUNTY

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

LLOYD T. KELSO, Attorney,

Defendant



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
21 DHC 21

CONSENT ORDER OF
DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Maya Madura Engle, Chair, and members Brian O. Beverly and Holly Audette, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0115(i). Plaintiff, The North Carolina State Bar, was represented by Carmen Bannon. Defendant, Lloyd T. Kelso, was represented by Douglas Bocker and Crystal Carlisle. Plaintiff and Defendant stipulate and agree to the findings of fact and conclusions of law in this Order and to the discipline imposed. Defendant freely and voluntarily stipulates to the findings of fact and consents to the conclusions of law and entry of the order of discipline. Defendant freely and voluntarily waives his right to appeal this Consent Order of Discipline.

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 ("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, Lloyd T. Kelso, was admitted to the North Carolina State Bar on 21 August 1977 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 all or part of the relevant periods referred to herein, Defendant was engaged in the practice of law in Gastonia, Gaston County, North Carolina.

4. Defendant was properly served with the summons and complaint in this matter.

5. In November 2019, H.S. hired Defendant to represent her in her domestic case, which included child support and custody.

6. H.S. paid Defendant a \$2,500 retainer.

7. Following a December 2019 hearing in H.S.'s case, H.S. invited Defendant to a restaurant where Defendant met H.S.

8. While at the restaurant, Defendant flirted with H.S. and kissed her.

9. Defendant subsequently engaged in frequent communications with H.S. that were flirtatious, romantic, or sexual in nature.

10. Defendant proposed that he and H.S. could go on romantic trips together and mused about whether they could love each other.

11. Defendant sent H.S. graphic messages, explicit propositions, one or more semi-nude photos of himself, and at least one photograph of his genitals.

12. Defendant recognized that his desire for a sexual and romantic relationship with H.S. created a potential conflict of interest, telling H.S. that "if she felt any type of conflict existed, she should have independent legal advice at no cost to her."

13. Kelso did not obtain H.S.'s informed consent, confirmed in writing, to the potential conflict of interest created by his personal interest in pursuing a sexual and romantic relationship with her.

14. During the representation, Defendant gave H.S. \$500 to buy household items, permitted H.S. to use his credit card, and wrote her a check for \$8,000.00.

15. Upon receipt of a report of the conduct described above, the State Bar opened grievance file no. 20G0573 and sent Defendant a Letter of Notice/Substance of Grievance notifying him of the grievance and requesting a response.

16. The Letter of Notice/Substance of Grievance in file no. 20G0573 also contained an allegation that Defendant lacked diligence in representing H.S.

17. To support his response to the Letter of Notice/Substance of Grievance, Defendant asked the opposing counsel in H.S.'s domestic case to execute an affidavit rebutting the allegation that Defendant did not adequately advocate for H.S.

18. In connection with his request for an affidavit, Defendant sent opposing counsel a copy of the Letter of Notice/Substance of Grievance containing all the allegations against Defendant, including the allegation that he provided financial assistance to H.S.

19. For opposing counsel to provide the requested affidavit, which was limited to rebutting the allegation that Defendant did not diligently represent H.S., it was not necessary for Defendant to reveal the other information about the representation contained in the Letter of Notice/Substance of Grievance.

20. Defendant's disclosure of this confidential information was potentially adverse to H.S.'s interests, although opposing counsel did not use the information to submit motions or other pleadings to the court in the domestic case.

21. Defendant represented V.S. in a personal injury claim arising out of a motorcycle accident.

22. Defendant's fee agreement with V.S. stated that if the client discharged Defendant after a settlement offer was communicated to the client, and the client thereafter recovered on the claim, the client would still pay Defendant the full contingent fee set forth in the contract based on the amount of the settlement offer.

23. Defendant's fee agreement with V.S. also provided that if the client discharged Defendant after a settlement offer was communicated to the client, "any attorneys fees or expenses that are owed to the firm shall constitute a lien against the Client's claim which client agrees shall be paid by the insurer and/or any subsequently hired attorney at the time the Client recovers on the claim."

24. V.S.'s case was settled for \$30,000.00 in April 2020.

25. V.S. came to Defendant's office and reviewed a settlement statement reflecting that he would receive \$10,000.00, Defendant would receive \$10,000.00 as his contingent fee, and the remaining \$10,000.00 would be held in trust to pay V.S.'s medical providers.

26. On the second page of the settlement statement, V.S. signed a certification acknowledging, among other things, that Defendant would hold \$10,000.00 for payment of V.S.'s medical bills and medical liens.

27. One of Defendant's employees notarized V.S.'s signature on the settlement statement certification.

28. After V.S. signed the settlement statement certification and his signature was notarized, Defendant altered the settlement statement to reflect the costs and expenses of litigation that were inadvertently omitted from the settlement statement as follows:

- (a) an additional \$1,466.80 would be paid to Defendant as reimbursement for costs and expenses of litigation; and
- (b) the amount held in trust for payment of V.S.'s medical bills and liens would be \$8,533.20.

29. Defendant did not obtain V.S.'s consent prior to making these alterations to the signed, notarized settlement statement.

30. Prior to August 2018, Defendant maintained an attorney trust account with South State Bank (formerly Park Sterling Bank), ending in -1862 ("old trust account").

31. When Defendant received payments from clients via credit card, he incurred merchant services fees for processing the credit card payments.

32. The merchant services fees were an operating cost of Defendant's law firm.

33. From approximately June 2017 through August 2018, merchant services fees for client payments made by credit card were debited from the old trust account rather than from his operating account.

34. In November 2017, Defendant made a corrective deposit of \$704.20 into the old trust account to replenish client funds that had been used to pay merchant services fees. Defendant did not thereafter check to ensure that merchant fees were no longer being debited from the old trust account.

35. From approximately June 2017 through August 2018, more than \$1,200.00 of entrusted client funds were withdrawn from the old trust account without client authorization to pay merchant services fees, which benefited Defendant's law firm.

36. On multiple occasions, Defendant disbursed more funds from the old trust account on behalf of a client than he had in trust for that client.

37. As of 29 June 2018, thirty-seven of Defendant's clients had negative balances in the old trust account due to over-disbursements. As a result of these over-disbursements, the balance in Defendant's old trust account on that date was

approximately \$17,300.00 less than the total amount of client funds he should have been holding in trust.

38. In July or August 2018, a recently terminated employee of Defendant's law firm stole \$3,000.00 from the old trust account by forging Defendant's signature on a trust account check.

39. When Defendant learned there was a missing check in the sequence of trust account checks, Defendant immediately contacted the bank to stop payment on the check, reported the matter to the police, and reported the theft of entrusted funds to the State Bar.

40. Upon discovery of the theft in August 2018, Defendant opened a new attorney trust account with South State Bank, ending in -9990 ("new trust account").

41. Defendant transferred his client's entrusted funds from the old trust account into the new trust account and closed the old trust account.

42. Defendant did not confirm that the bank had credited his trust account for the \$3,000.00 lost due to the forged check, nor did he replenish the \$3,000.00 deficit in the old trust account caused by the theft before he transferred clients' entrusted funds into the new trust account.

43. Defendant did not deposit \$3,000.00 into the new trust account to offset the amount of entrusted funds that had been stolen until December 2020 after he personally learned that the funds had not been replenished by the bank.

44. From August 2018 through December 2020, merchant services fees for client payments made by credit card were debited from the new trust account.

45. From August 2018 through December 2020, at least \$2,800.00 of entrusted client funds were withdrawn from the new trust account without client authorization to pay merchant services fees, which benefited Defendant's law firm.

46. Defendant did not consistently perform monthly reconciliations of the old and new trust accounts.

47. Defendant did not maintain complete accurate client ledgers for the old and new trust accounts reflecting all receipts and disbursements of entrusted funds on behalf of each client and failed to adequately supervise his office staff who were maintaining them.

48. Defendant did not always identify the client on whose behalf a deposit was made into the old and new trust accounts.

49. Defendant did not consistently review monthly bank statements and cancelled checks for the old and new trust accounts.

50. Defendant did not perform quarterly reviews of random representative transactions in the old and new trust accounts.

51. Defendant did not perform quarterly three-way reconciliations of the old and new trust accounts.

52. On multiple occasions Defendant disbursed from the new trust account more funds on behalf of a client than he had in trust for that client.

53. The over-disbursements from the old and new trust accounts resulted in part from Defendant's lack of staff or employee supervision.

54. When Defendant disbursed more funds on behalf of a client than he had in trust for that client, he used other clients' entrusted funds for the benefit of the client for whom he over-disbursed.

55. Defendant was not authorized to use other clients' entrusted funds for the benefit of the clients for whom he over-disbursed from his trust accounts.

56. Defendant did not have in place adequate measures giving reasonable assurance that the conduct of his employees was compatible with the professional obligations regarding trust accounting, nor did he make reasonable efforts to ensure that his employees' conduct was compatible with those obligations

57. As of 31 October 2021, more than thirty-seven of Defendant's clients had a negative balance in the new trust account due to over-disbursements.

58. As of 31 October 2021, there were thirty-five clients whose entrusted funds had remained in the new trust account with no change in the balance since it was opened in August 2018. Defendant had not rendered accountings at least annually to these clients for whom he continued to hold entrusted funds.

59. As of 28 November 2021, the balance in Defendant's new trust account was at least \$31,847.90 less than the total amount of client funds he should have been holding in trust.

60. This deficit was discovered in late 2021 after this grievance matter arose because Defendant hired an accountant to review his trust account. Defendant promptly replenished the deficit in the trust account.

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the panel has jurisdiction over Defendant, Lloyd T. Kelso, and over the subject matter.

2. Defendant's conduct, as set forth in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

- a. By continuing to represent H.S. in her domestic case while also pursuing a romantic relationship with her, Defendant represented a client under circumstances where the representation might be materially limited by his personal interests in violation of Rule 1.7(a)(2);
- b. By sending graphic messages, explicit propositions, and nude pictures to H.S., Defendant attempted to engage in sexual relations with a current client;
- c. By giving H.S. money and allowing her to use his credit card, Defendant provided financial assistance to a client in violation of Rule 1.8(e);
- d. By disclosing to opposing counsel that he had given H.S. money when that disclosure was not reasonably necessary to defend against allegations that Defendant engaged in misconduct, Defendant revealed confidential client information in violation of Rule 1.6(a);
- e. By including in his fee agreement provisions indicating that under certain circumstances the client would be obligated to pay the entire contingent fee on a settlement offer even if the client discharged Defendant prior to recovering on the claim, Defendant engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- f. By including in his fee agreement a provision indicating that under certain circumstances Defendant would have a charging lien on the client's recovery even if the client discharged Defendant prior to recovering on the claim, Defendant violated Rule 1.5(a);
- g. By altering a settlement statement that had already been signed and notarized without the client's consent, Defendant engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- h. By failing to deposit all entrusted client funds into a trust account, Defendant failed to properly deposit, disburse, and distribute entrusted funds in violation of Rule 1.15-2(a) and (c);

- i. By using clients' entrusted funds without authorization to pay merchant services fees and to cover over-disbursements made for the benefit of other clients, Defendant used entrusted funds for the benefit of someone other than the beneficial owner of the funds in violation of Rule 1.15-2(k);
- j. By allowing client funds to remain in the trust account with the balance unchanged for more than three years, Defendant failed to promptly pay or deliver property to which the client is entitled in violation of Rule 1.15-2(n) and failed to account for entrusted funds at least annually in violation of Rule 1.15-3(e);
- k. By failing to always identify the client on whose behalf funds were deposited into the trust account Defendant violated Rule 1.15-3(b)(1);
- l. By failing to maintain complete accurate client ledgers Defendant violated Rule 1.15-3(b)(5);
- m. By failing to perform monthly and quarterly reconciliations of his trust accounts Defendant violated Rule 1.15-3(d);
- n. By failing to conduct the trust account reviews that were required after the trust accounting rules were amended in June 2016, Defendant violated Rule 1.15-3(i); and
- o. By failing to put in place adequate measures giving reasonable assurance that his nonlawyer employees' conduct was compatible with his professional obligations and failing to ensure that his employees' conduct was compatible with his professional obligations, Defendant violated Rule 5.3(a) and (b).

ADDITIONAL FINDINGS REGARDING DISCIPLINE

- 1. The findings of fact in paragraphs 1-60 above are reincorporated as if set forth herein.
- 2. Defendant has been licensed to practice law for more than 45 years, during which he had no professional discipline.
- 3. Defendant fully cooperated with all of the State Bar's inquiries regarding these matters.
- 4. Defendant has indicated remorse for his actions.
- 5. At the time Defendant engaged in a relationship with H.S., it was foreseeable that his actions would create a conflict of interest.

6. H.S. was financially and emotionally vulnerable during the period of time when Defendant represented her.

7. Defendant's inattention to his trust account foreseeably caused potential significant harm by putting client funds at risk.

8. Defendant retained an accountant on October 26, 2021, to assist with producing prior reconciliation reports and had, by November 2021, rectified all errors discovered through those reconciliations. Defendant later implemented additional measures to safeguard his clients' entrusted funds, including the continued use of an accountant to assist with reconciliations and performing three-way reconciliations on a monthly basis.

9. Defendant committed multiple offenses and engaged in a pattern of misconduct. At the time of this conduct, Defendant knew or should have known that his actions could harm his clients.

10. Defendant's failure to properly maintain, manage, and handle entrusted funds and adequately supervise his staff betrays a vital trust that clients and the public place in attorneys and the legal profession. Clients are entitled to have their funds handled with the utmost care.

11. 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 consent of the parties, 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:

- (B) Defendant committed acts or omissions where the harm or potential harm was foreseeable;
- (D) Defendant elevated his own interest above that of the client;
- (E) Defendant's actions had a negative impact on clients' or the public's perception of the profession; and

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- (F) Defendant's actions had a negative impact on the administration of justice.

3. The Hearing Panel has considered all of the factors contained in 27 N.C. Admin. Code 1B .0116(f)(2) and concludes that none of the factors requiring consideration of disbarment are present in this case.

4. The Hearing Panel has considered all of the factors contained in 27 N.C. Admin. Code 1B.0116(f)(3) and concludes that the following are applicable in this matter:

- (A) The absence of prior disciplinary offenses in this state or any other jurisdiction;
- (D) Timely good faith efforts to make restitution or to rectify consequences of misconduct;
- (G) Multiple offenses;
- (K) Full and free disclosure and cooperative attitude toward the proceedings;
- (P) Remorse;
- (R) Vulnerability of the victim; and
- (S) Degree of experience in the practice of law.

5. The Hearing Panel has considered all lesser sanctions, including censure, reprimand, and admonition, and finds that discipline less than a suspension would not adequately protect the public from Defendant's misconduct.

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

ORDER OF DISCIPLINE

1. Defendant's law license is hereby suspended for twelve (12) months, effective 60 days from entry of this order.

2. Defendant shall surrender his law license and permanent membership card to the Secretary of the North Carolina State Bar no later than 30 days following the effective date of this Order. If Defendant no longer has his license and/or membership card, he shall so state in the affidavit referred to in paragraph 3 below.

3. Defendant shall have 60 days from entry of this order to comply with the wind-down provisions contained in Rule .0128 of the North Carolina State Bar Discipline and Disability Rules, 27 N.C. Admin. Code 1B § .0128. As provided in § .0128(d), Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within 10 days of the effective date of this Order, certifying he has complied with the wind down rule.

4. Within 30 days after the effective date of this Order, Defendant shall provide the State Bar's Office of Counsel with an address and telephone number at which clients seeking return of files can communicate with Defendant and obtain their files.

5. Defendant shall be responsible for promptly responding to requests from his former clients for their files and for returning those files if requested. Former clients may send such requests to the address Defendant provides to the State Bar pursuant to paragraph 4 above.

6. Defendant shall pay the administrative fees and costs of this proceeding as assessed by the Secretary of the State Bar within 60 days of service upon him of the statement of administrative fees and costs.

7. Defendant may petition for reinstatement at the end of the twelve months of suspension by filing a verified petition with the Secretary of the North Carolina State Bar. Defendant may file a Petition for Reinstatement up to 30 days prior to the end of the suspension but shall not be reinstated prior to the end of the twelve-month suspension period.

8. In addition to complying with the general provisions for reinstatement listed in 27 N.C. Admin. Code 1B §.0129(b), to be eligible for reinstatement, Defendant must demonstrate by clear, cogent, and convincing evidence that during the period of suspension he complied with the following conditions:

- (a) Defendant timely complied with paragraphs 2-6 of this section of the Order of Discipline;
- (b) Defendant kept the North Carolina State Bar membership department advised of his current physical home address and telephone number, and notified the membership department within ten days of any change in contact information;
- (c) Defendant accepted all certified mail from the North Carolina State Bar and responded to all letters of notice and requests for information from the North Carolina State Bar by the deadline stated in the communication;
- (d) Defendant timely complied with State Bar membership and continuing legal education requirements and shall pay any fees and costs assessed by the State Bar and the Client Security Fund by the applicable deadline;

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- (e) Defendant participated fully and timely in the State Bar's fee dispute resolution program when notified of any petitions for resolution of disputed fees;
- (f) Defendant did not violate the Rules of Professional Conduct or any state or federal laws other than minor traffic violations during the period of suspension;
- (g) 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.
 - i. If non-attorney assistants and/or an accountant will be used to assist with these tasks, Defendant's written procedures shall include his personal review and supervision.
 - ii. Defendant shall submit these procedures to the Office of Counsel contemporaneous with his Petition for Reinstatement, and shall make any adjustments required by the Office of Counsel to ensure compliance with the Rules of Professional Conduct.
- (h) Defendant completed one hour of CLE on the topic of trust account management.

9. If Defendant satisfies the reinstatement conditions in paragraph 8, his license shall be reinstated subject to his compliance with the following conditions for one year after the reinstatement:

- a. Defendant shall provide to the Office of Counsel with quarterly trust account reconciliation reports and the quarterly review reports 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 first year after his reinstatement: 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. Defendant shall provide any other trust account related documentation or records requested by the Office of Counsel within 10 days of the request;
- b. Defendant shall not meet or communicate with any female client unless another person employed by his law office who has been trained in the obligations of an attorney under the Rules of Professional Conduct is present during all such meetings or copied on all such communications. This requirement shall not apply if such interactions occur in a court room during an open session of court or in another public common area of

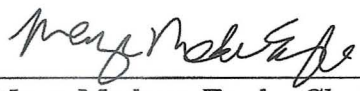
the courthouse. The employee and Defendant shall execute notarized affidavits attesting to whether s/he has been present for all Defendant's meetings and been copied on all communications with female clients and whether those interactions complied with the Rules of Professional Conduct during the previous quarter. Defendant shall ensure that the affidavits are submitted no later than 15 days after the end of each quarter during the first year after his reinstatement. Defendant and the employee shall cooperate with any requests for information from the State Bar concerning all such interactions and shall waive any applicable privileges against providing such information to the Bar upon request.

10. If Defendant fails to comply with any of the conditions set forth in paragraph 9 during the year following his reinstatement, his license shall be suspended for an additional six months. Defendant consents to using the procedures set forth in 27 N.C. Admin. Code 1B § .0118(a) and (b) if it is necessary to determine whether he violated the reinstatement conditions and is subject to the additional six-month suspension.

11. The Disciplinary Hearing Commission will retain jurisdiction of this matter, including jurisdiction to enforce the conditions set forth in paragraph 9 and make any determination regarding compliance with those conditions as described in paragraph 10.

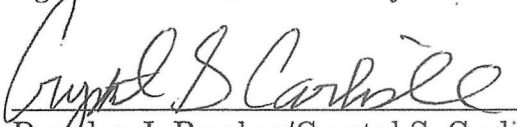
Signed by the undersigned Hearing Panel Chair with the consent of the other Hearing Panel members.

This the 1st day of November, 2022.

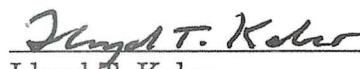


Maya Madura Engle, Chair
Disciplinary Hearing Panel

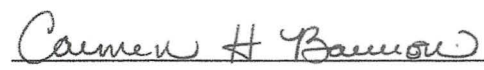
Agreed and consented to by:



Douglas J. Bocker/Crystal S. Carlisle
Attorneys for Defendant



Lloyd T. Kelso
Defendant



Carmen Hoyme Bannon
Attorney for Plaintiff