

STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
17 DHC 30

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

DARNELL PARKER, Attorney,

Defendant

CONSENT ORDER OF
DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Fred M. Morelock, Chair, and members William O. King and Randy Moreau, pursuant to 27 N.C.A.C 1B § .0115(j). Plaintiff was represented by G. Patrick Murphy. Defendant, Darnell Parker, 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 has freely and voluntarily stipulated 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 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 promulgated thereunder.
2. Defendant, Darnell Parker ("Defendant" or "Parker"), was admitted to the North Carolina State Bar on March 22, 1997 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 Greenville, Pitt County, North Carolina.

4. At all times relevant to this Order, Defendant was engaged in the practice of law operating as PARKER LAW OFFICES, PC, and Defendant maintained an attorney trust account for his law practice with Branch Banking & Trust Company (“BB&T”), last four numbers 9829 (“TA 9829”).

5. In 2001, Defendant’s trust account was the subject of a random audit. Among other deficiencies found in the audit, Defendant was not conducting quarterly reconciliations and did not maintain client ledgers.

6. On January 19, 2016, BB&T notified the State Bar that a check written on TA 9829 in the amount of \$150.00 was presented against insufficient funds (“NSF”).

7. On January 25, 2016, the State Bar asked Defendant to provide an explanation of the overdraft and to supply bank records related to the overdraft.

8. On February 2, 2016, Defendant responded to the State Bar’s letter advising the State Bar that the NSF notification was caused by the following:

- a. Defendant was overdrawn on four client accounts identified as A. Curtis (\$150.00), T. Purvis (\$56.00), L. Hall (\$340.00) and J. Hallums (\$300.00); and
- b. Defendant had erred by depositing \$545.00 of entrusted funds into his personal account and then drew against the \$545.00 he thought was in his trust account.

9. Defendant used other clients’ entrusted funds to fund the excess disbursements for client accounts identified in paragraph 8.

10. Defendant advised the State Bar that he had replenished his trust account for the \$545.00 identified in paragraph 8.

11. On February 10, 2016, the State Bar asked Defendant to provide two (2) quarters of his trust account 3-way reconciliation reports.

12. The reconciliations that Defendant provided the State Bar did not total client balances and compare that total to the balance on the trust account bank statements and the general ledger balance.

13. The reconciliations that Defendant provided the State Bar were not signed and dated by Defendant.

14. In a February 23, 2016 letter to the State Bar, Defendant amended his statement about having four overdrawn client accounts and stated that the account of A. Curtis was not overdrawn.

15. Defendant provided an amended ledger for A. Curtis detailing that a \$150.00 deposit was made for A. Curtis on May 2, 2015.

16. The State Bar's analysis of TA 9829 source documents did not support Defendant's claim that he deposited \$150.00 to his trust account on behalf of A. Curtis in May 2015.

17. The only deposit to TA 9829 in May 2015 was for \$150.00 and was attributed to W. Grissom and disbursed for W. Grissom.

18. Defendant failed to maintain accurate client ledgers, including for A. Curtis, T. Purvis, L. Hall, and J. Hallums.

19. At all times relevant to this Order, Defendant employed a bookkeeper to assist in maintaining his trust account.

20. During 2015, Defendant did not meet with his bookkeeper on a regular schedule in order to ensure his trust account was in compliance with the Rules of Professional Conduct.

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 depositing \$545.00 of entrusted funds into his personal account, Defendant failed to deposit entrusted funds into a trust account and failed to maintain entrusted property separate from his own in violation of Rule 1.15-2(a) and 1.15-2(b);
- b. By disbursing more funds for clients than he had in his trust account for such clients and using other clients' funds for such disbursements, Defendant failed to maintain and disburse entrusted funds in violation of Rule 1.15-2(a) and (m) and used entrusted property for the benefit of persons other than the legal or beneficial owner in violation of Rule 1.15-2(j);
- c. By failing to maintain accurate client ledgers, Defendant failed to maintain requisite trust account records in violation of Rule 1.15-3(b)(5); and
- d. By failing to conduct and keep records of quarterly reconciliations whereby he would total client balances and compare that total with the bank balance for his trust account, Defendant failed to conduct the required quarterly reconciliations of his trust account and maintain such records in violation of Rule 1.15-3(d)(1) and 1.15(d)(3).

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

FINDINGS OF FACT REGARDING DISCIPLINE

1. Defendant was licensed to practice law in 1997 and has substantial experience in the practice of law.

2. Deficient trust account practices, including the failure to conduct quarterly reconciliations and to maintain client ledgers, were found in a 2001 random audit of Defendant's trust account.

3. Defendant's more recent failure to follow sound accounting practices including maintaining accurate ledgers and conducting regular reconciliations exposed entrusted funds in his custody to mismanagement and resulted in over-disbursements.

4. Defendant's conduct has the potential to cause significant harm to the legal profession in the eyes of the public because it shows his neglect of his duties as an attorney. Defendant's conduct undermines the public's confidence in lawyers' ability to safely and efficiently manage entrusted client funds.

5. Defendant has no prior discipline.

6. Defendant cooperated with the State Bar's investigation.

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

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has carefully considered all of the different forms of discipline available. In addition, the Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0116(f)(1) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors warrant suspension of Defendant's license:

(a) negative impact of Defendant's actions on the public's perception of the legal profession; and

(b) elevation of Defendant's own interest above that of his clients.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0116(f)(2) of the Rules and Regulations of the North Carolina State Bar and concludes no factors are present that would warrant disbarment.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0116(f)(3) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are applicable in this matter:

- (a) Defendant's lack of prior disciplinary offenses;
- (b) Defendant's experience in the practice of law;
- (c) similar deficiencies found in a prior random audit;
- (d) absence of a dishonest or selfish motive;
- (e) Defendant engaged in multiple offenses;
- (f) Defendant's cooperative attitude toward the proceedings; and
- (g) timely good faith efforts to make restitution or to rectify consequences of misconduct.

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

5. The Hearing Panel has considered an admonition, reprimand and censure but concludes that such discipline would not be sufficient discipline because of the gravity of the potential harm to the clients. The Hearing Panel further concludes that such discipline would fail to acknowledge the seriousness of the offenses committed by Defendant and would send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

6. The Hearing Panel has considered lesser alternatives and concludes that a suspension, stayed with conditions designed to ensure Defendant complies with sound trust accounting practices, is necessary to avoid significant harm or the potential for significant harm to clients.

7. The 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 conclusions regarding discipline, and based upon the consent of the parties, the Hearing Panel enters the following:

ORDER OF DISCIPLINE

1. The law license of Defendant, Darnell Parker, is hereby suspended for two (2) years effective on the date this Order of Discipline is filed. The period of suspension is

stayed for two (2) years as long as Defendant complies and continues to comply with the following conditions:

- (a) Within the first year of the stayed period of suspension, Defendant shall complete six (6) hours of continuing legal education in the area of trust account management approved by the Office of Counsel of the State Bar to include in part attending, live or online, the Trust Accounting Rules Continuing Legal Education Program taught by Peter Bolac, Trust Account Compliance Counsel, and provide documentation of compliance with this condition to the Office of Counsel of the State Bar within 10 days of completion of the CLE. These six hours are in addition to the continuing legal education requirements set out in 27 N.C.A.C. 1D § .1518;
- (b) Within ninety (90) days of this Order's effective date, Defendant shall retain a certified public accountant ("CPA") approved in advance by the Office of Counsel who shall audit his trust account(s) to identify the beneficial owners of all funds in Defendant's trust account(s) and to confirm Defendant's trust account(s) is/are in compliance with the Rules of Professional Conduct. Defendant will cooperate with the CPA to ensure the audit is completed in a timely fashion. The CPA shall provide monthly written reports to the State Bar updating the State Bar on the audit's progress until the audit is complete. Upon completion of the audit, the CPA shall provide the State Bar with a written final audit report identifying the owner of entrusted funds and confirming that Defendant's trust account(s) is/are in compliance with the Rules of Professional Conduct. It is Defendant's sole responsibility to ensure that the CPA completes and submits the reports required herein;
- (c) Within sixty (60) days of completion of the CPA's audit, Defendant shall disburse all identified client funds that are due or overdue for distribution to the rightful owner(s);
- (d) Defendant shall comply with Rule 1.15-2(r) regarding all unclaimed funds in Defendant's accounts and comply with Chapter 116B of the General Statutes within sixty (60) days of being statutorily permitted to escheat funds to the State;
- (e) Defendant shall provide the Office of Counsel with copies of the monthly reconciliations of his trust account performed in compliance with Rule 1.15-3(d)(2) and (3) of the Rules of Professional Conduct, and all supporting records, on or before the 15th day of the following month for each month of the stayed suspension (January monthly reconciliation is due by February 15);

- (f) Defendant shall provide the Office of Counsel with copies of the quarterly reconciliations of his trust account performed in compliance with Rule 1.15-3(d)(1) and (3) of the Rules of Professional Conduct, and all supporting records, on or before the 15th day of the following month for each quarter during the stayed suspension;
- (g) Defendant shall provide all other records related to his trust account(s) that may be requested by the Office of Counsel within ten (10) days of the request;
- (h) During the period of the stay, Defendant will permit random audits of his trust account(s) by the Office of Counsel upon ten (10) days advance written notice. Such audit will be conducted at Defendant's expense;
- (i) Beginning six months from entry of this Order, Defendant shall have the CPA audit Defendant's trust accounts on a semi-annual basis to ensure Defendant's compliance with the Rules of Professional Conduct. The CPA must report to the Office of Counsel concerning the compliance of Defendant's account(s) with the Rules of Professional Conduct, including but not limited to 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 semi-annual audit. Defendant shall be solely responsible for ensuring that the CPA completes and submits the reports as required herein and Defendant shall be solely responsible for all costs associated with preparation of the CPA's reports;
- (j) If any of the CPA's reports note any irregularities or deficiencies, Defendant shall take all remedial action necessary to bring the trust account(s) into compliance with the Rules of Professional Conduct and shall provide proof of the remedial action and compliance 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;
- (k) Defendant shall keep the North Carolina State Bar Membership Department advised of his current business and home addresses; Defendant shall notify the Bar of any change in address within ten (10) days of such change. Defendant's current business address must be a street address, not a P.O. Box or drawer;
- (l) Defendant shall respond to all communications from the North Carolina State Bar, including communications from the Attorney Client Assistance Program, within thirty (30) days of receipt or by the deadline stated in the communication, whichever is sooner, and 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. This provision applies to all communications from the State Bar except requests from the Office of Counsel for records which is governed by paragraph g above;

- (m) Defendant shall timely comply with all State Bar membership and Continuing Legal Education requirements including the timely remittance of dues, fees or costs;
- (n) Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or of any state or local government during his stayed suspension; and
- (o) Defendant shall pay all administrative fees and costs assessed against him by the Secretary of the State Bar for this disciplinary proceeding within six (6) months of service of the Secretary's invoice upon him.

2. If Defendant fails to comply with any of the conditions of the stayed suspension provided in paragraph 1(a) – (o) above, the stay of the suspension may be lifted as provided in 27 N.C.A.C 1B § .0118(a) and (b) of the North Carolina State Bar Discipline and Disability Rules.

3. If the stay granted herein is lifted or the suspension of Defendant's license is activated for any reason, before seeking reinstatement of his license to practice law, Defendant must show by clear, cogent and convincing evidence that he has complied with each of the following conditions:

a) Defendant submitted his license and membership card to the Secretary of the North Carolina State Bar within thirty (30) days after the date of the order lifting the stay and/or activating the suspension of her law license;

b) Defendant complied with all provisions of 27 N.C.A.C. 1B § .0128 of the State Bar Discipline and Disability Rules following the order lifting the stay and activating the suspension of his law license;

c) That Defendant timely paid all administrative fees and costs assessed against him in this proceeding;

d) That within thirty (30) days of entry of the order lifting the stay and activating the suspension of Defendant's law license, Defendant disbursed all identified client funds in Defendant's trust account(s) to their rightful owner(s) as shown on bank records and complied with Rule 1.15-2(r) regarding all unidentified funds in Defendant's trust accounts;

e) That within sixty (60) days of being statutorily permitted to escheat funds to the State, Defendant complied with Chapter 116B of the General Statutes;

f) Defendant has kept the North Carolina State Bar Membership Department advised of her current business and home street addresses (not P.O. box or drawer addresses) and notified the Bar of any change in address within ten (10) days of such change;

g) Defendant has responded to all communications from the North Carolina State Bar, including communications from the Attorney Client Assistance Program, within thirty (30) days of receipt or by the deadline stated in the communication, whichever is sooner, and has participated 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;

h) That at the time of his petition for stay, Defendant is current in payment of all Membership dues, fees and costs, including all Client Security Fund assessments and other charges or surcharges the State Bar is authorized to collect from him, and including all judicial district dues, fees and assessments;

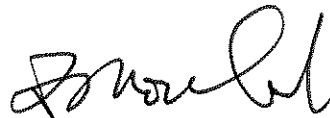
i) That at the time of his petition for stay, there is no deficit in Defendant's completion of mandatory Continuing Legal Education (CLE) hours, in reporting of such hours or in payment of any fees associated with attendance at CLE programs;

j) Defendant has not violated the Rules of Professional Conduct or the laws of the United States or of any state or local government during his suspension;

k) Defendant has paid the fees and costs of this proceeding as reflected on the statement of costs served upon him by the Secretary of the State Bar; and

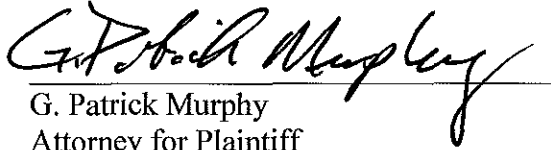
l) Defendant has complied with all provisions of 27 N.C.A.C. 1B § .0129(b).

Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Panel, this is the 13th day of December, 2017.




Fred M. Morelock, Chair
Hearing Panel

Agreed and consented to by:



G. Patrick Murphy
Attorney for Plaintiff



Darnell Parker
Defendant