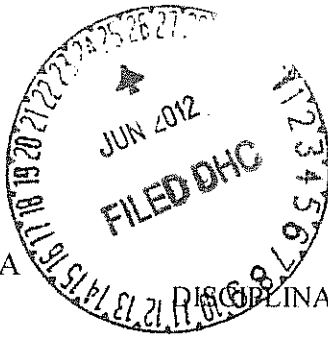




STATE OF NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
12 DHC 3

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

ROYDERA D. HACKWORTH, Attorney,

Defendants

ORDER OF DISCIPLINE

This matter was heard on May 17 & 18, 2012 before a hearing panel of the Disciplinary Hearing Commission composed of the Chair, Fred M. Morelock, Joshua W. Willey, Jr., and Percy L. Taylor. William N. Farrell represented Plaintiff, the North Carolina State Bar. Donald R. Vaughn represented the Defendant, Roydera D. Hackworth.

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, Roydera D. Hackworth ("Hackworth" or "Defendant"), was admitted to the North Carolina State Bar in 1997 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 the State of North Carolina and maintained a law office in Greensboro, Guilford County, North Carolina.

4. In or about March 2008 Defendant was retained by Daniel M. Macedo to handle an immigration matter on his behalf.

5. Macedo was a Mexican National making Application to Register Permanent Residence or Adjust Status.

6. On or about August 25, 2008, Macedo paid Defendant \$3,500.00 for costs and penalties due the US Bureau of Citizenship and Immigration Services ("USCIS"), and attorney fees.

7. \$2,010.00 of the \$3,500.00 received from Macedo by Defendant was to be held in Defendant's trust account and disbursed to the (USCIS) for fees and penalties on behalf of Macedo.

8. Defendant did not make a ledger card for Macedo showing the receipt of the \$3,500.00 from him and the current balance of funds held in the trust account for him.

9. On or about October 1, 2008 Defendant wrote a check from her trust account to the USCIS for \$2,010.00 with "I485A BM" on the memo line.

10. This check was not deposited or negotiated by the USCIS but was returned to the Defendant by the USCIS on or about November 2008, along with the application to Register Permanent Residence or Adjust Status submitted on behalf of Macedo by Defendant to the USCIS.

11. \$2,010.00 should have remained in Defendant's trust account at all times for disbursement to the USCIS from the time Defendant received the \$3,500.00 from Macedo on or about August 25, 2008. The trust account balance fell to \$436.00 on September 30, 2008.

12. On numerous occasions since October 1, 2008 the balance in Defendant's trust account dropped below \$2,010.00, according to the monthly trust account statements, even though the USCIS never negotiated the \$2,010.00 for Macedo's penalties and fees and Defendant never returned this money to Macedo.

13. On or about January 1, 2008 Defendant made a cash deposit of \$1,000.00 into the trust account from an unidentified client or source, making an account balance of \$1,636.42.

14. On or about January 4, 2008 Defendant deposited \$2,000.00 from Home Expectations, Inc. ("Home Expectations"), Defendant's business, into the trust account, making an account balance of \$3,636.42.

15. On January 8, 2008 Defendant wrote a check in the amount of \$2,395.00 from the trust account to Williams Chiropractic on behalf of a client named Jessup.

16. Jessup did not have \$2,395.00 in Defendant's trust account on January 1 or January 8, 2008 which could have been used to pay Williams Chiropractic.

17. Without the \$1,000.00 deposit from an unknown source and the \$2,000.00 deposit from Defendant's business on January 4, 2008, there was an insufficient balance in the trust account to pay Williams Chiropractic on behalf of Jessup.

18. Jessup's trust account balance was short \$1,758.58 on January 1, 2008, assuming the entire \$636.42 in the trust account on that date was Jessup's.

19. Defendant told the State Bar that Jessup was a personal injury case but could not explain why his funds were not in the trust account on January 1, 2008.

20. Between January 1, 2008 and September 27, 2010 Defendant maintained a trust account with Branch Banking & Trust (BB&T) under the name, Roydera Hackworth, Attorney at Law IOLTA Account, account number ending in digits 1196 (hereinafter “the trust account”).

21. Defendant used the trust account as a general trust account in which she deposited and from which she disbursed client funds.

22. Defendant routinely deposited her earned attorney fees in the trust account and left those funds in the trust account.

23. During the period of time between January 1, 2008 and September 27, 2010, Defendant deposited funds into the trust account without listing the name of the client or other person to whom the funds belonged.

24. During the period between January 1, 2008 and September 27, 2010, Defendant disbursed or withdrew funds from the trust account without indicating the name of the client or other person to whom the funds belonged.

25. During the period of time between January 1, 2008 and September 27, 2010, Defendant placed and commingled personal funds in the trust account.

26. Defendant failed to document what personal funds that she improperly deposited in the trust account.

27. During the period of time between January 1, 2008 and September 27, 2010, Defendant was the co-owner (50%) of Carolina Café Services, Inc. (“Carolina Café”) and Home Expectations, two entities not connected with Defendant’s law practice.

28. During the aforesaid time, Defendant commingled funds belonging to Carolina Café and Home Expectations in the trust account along with client funds and her personal funds also deposited therein.

29. Defendant borrowed money from Carolina Café and deposited said funds in the trust account commingling said funds with client funds.

30. Defendant transferred funds from the trust account to her operating account, account number ending in digits 6441, without showing the name or other person to whom the funds belonged.

31. Defendant wrote checks to herself and transferred funds from the trust account to her operating account, 6441, without indicating on the item the client balance on which the item was drawn.

32. Check stubs were not recorded for the trust account by Defendant between January 1, 2008 and September 27, 2010.

33. The State Bar made several requests for Defendant's check register and check stubs for the trust account. Defendant never produced these items.

34. Defendant did not keep a cash receipt journal or deposit summary between January 1, 2008 and September 27, 2010.

35. Defendant did not maintain a ledger for the trust account which contained a record of receipts and disbursements for each person or entity from whom and for whom funds were received and showing the current balance of funds held in the trust account for each such person or entity during 2008, 2009 and 2010.

36. During 2008, 2009 and 2010 Defendant did not reconcile her trust account.

37. Defendant made a trust account check payable to cash in the amount of \$2,500.00 on or about December 30, 2008.

Based on the foregoing Findings of Fact, the Hearing Panel enters the following:

CONCLUSIONS OF LAW

1. All Parties are properly before the Disciplinary Hearing commission and the Disciplinary Hearing Commission has jurisdiction over Defendant and the subject matter of this proceeding.
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 in effect at the time as follows:
 - a. By making misrepresentations to the North Carolina State Bar, Defendant engaged in conduct involving dishonesty, deceit or misrepresentation in violation of Rule 8.4(c);
 - b. By depositing personal funds into the trust account whereby these funds were commingled with entrusted client funds, Defendant failed to identify, hold and maintain the entrusted funds of clients in violation of Rule 1.15-2(a);
 - c. By depositing her own personal funds in the trust account, including funds from other businesses unrelated to the practice of law, Defendant failed to segregate funds belonging to the lawyer in violation of Rule 1.15-2(f);
 - d. By drawing checks on the trust account made payable to herself and transferring funds to her operating account without indicating on the items or transfers the client balance on which the item or transfer was drawn,

Defendant failed to indicate the client balance against which items were withdrawn from the trust account and withdrew trust funds in violation of Rule 1.15-2(h);

- e. By writing a check on the trust account made payable to cash, Defendant made a bearer item in violation of Rule 1.15-2(i);
- f. By failing to maintain bank receipts or deposit slips listing the source of all funds deposited in the trust account and failing to name the client to whom the funds belonged, Defendant failed to maintain records in violation of Rule 1.15-3(b)(1);
- g. By failing to maintain a ledger containing a record of receipts and disbursements and showing client balances of funds held for clients in the trust account, Defendant failed to maintain a ledger in violation of Rule 1.15-3(b)(5);
- h. By drawing checks on the trust account without indicating on the item the client balance against which the item was drawn, Defendant failed to maintain records in violation of Rule 1.15-3(b)(2);
- i. By failing to reconcile her trust account quarterly, Defendant failed to balance her individual client balances shown on the ledger and reconcile them with the current bank balance for the trust account in violation of Rule 1.15-3(d); and
- j. By failing to promptly pay or deliver to Mr. Macedo his entrusted property, Defendant failed to deliver entrusted property to a client in violation of Rule 1.15-2(m).

Based upon the evidence presented at the hearing, the Hearing Panel also finds by clear, cogent and convincing evidence the following:

ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE

1. Defendant grossly mismanaged her trust account.
2. Defendant's conduct harmed her client, Mr. Macedo.
3. Defendant's mismanagement of her trust account had the potential to harm any client or third party who had entrusted funds in the trust account.
4. Defendant's mismanagement of the trust account put entrusted funds at risk and erodes the confidence that clients place in attorneys who handle their money and affairs. As a result, such conduct harms the profession as a whole.
5. Defendant made misrepresentations in her communications with the North Carolina State Bar and was evasive during the proceedings in this matter.
6. Defendant's reputation in the community is good and Defendant has no prior discipline.
7. Defendant has provided access to the legal system to those who would not have been otherwise able to afford access to the legal system.
8. Defendant has not demonstrated remorse for her misconduct.
9. Defendant has demonstrated an indifference to rectify the consequences of her misconduct and an indifference to making restitution.

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

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. § .0114(w) of the Rules and Regulations of the North Carolina State Bar and determined that there is evidence of and that the following factors are applicable in this matter:

- a. From Rule .0114(w)(1)
 - i. The intent to commit acts where the harm or potential harm is foreseeable;
 - ii. Circumstances reflecting the Defendant's lack of honesty with the Bar;
 - iii. Negative impact of Defendant's actions on the client's or public's perception of the profession;
 - iv. Negative impact of the Defendant's actions on the administration of justice;
 - v. Impairment of the client's ability to achieve the goals of the representation;
 - vi. Effect of Defendant's conduct on third parties; and
 - vii. Acts of misrepresentation as it relates to the Bar.
- b. From Rule .0114(w)(3)
 - i. The absence of prior disciplinary offenses;
 - ii. The absence of any dishonest or selfish motive;
 - iii. Indifference to making restitution;
 - iv. A pattern of misconduct;
 - v. Multiple offenses;

- vi. Refusal to acknowledge wrongful nature of conduct;
- vii. Good reputation;
- viii. Vulnerability of victim; and
- ix. Substantial experience in the practice of law.

2. The hearing panel has considered the factors enumerated in 27 N.C.A.C. 1B § .0114(w) (2) of the Rules and Regulations of the North Carolina State Bar and determined that none of those factors are established by the evidence in this case.

3. The hearing panel has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure and suspension, in considering the appropriate discipline to impose in this case.

4. The hearing panel has considered all lesser forms of discipline available to it and finds that the suspension of Defendant's license to practice law is the only appropriate discipline to impose in this case.

5. The panel determines that any discipline short of suspension would not adequately protect the public, the legal profession, or the administration of justice for the following reasons:

- a. The factors under Rule .0114(w)(1) and (3) that are clearly established by the evidence in this case are of a nature that supports imposition of a suspension as the appropriate discipline.
- b. Defendant's conduct involved a violation of the trust of her clients, the legal profession and the legal system.
- c. Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses Defendant committed and

would send the wrong message to attorneys and to the public regarding the conduct expected of members of the Bar of this state.

- d. The protection of the public and the legal profession requires that Defendant not be permitted to represent clients until she demonstrates (1) that she has reformed and that she understands her obligations to her clients, the public and the legal profession and (2) that permitting her to practice law will not be detrimental to the public, the integrity and standing of the legal profession, or the administration of justice.

Based upon the Findings of Fact, Conclusions of Law, the Additional Findings of Fact Regarding Discipline, and the Conclusions Regarding Discipline, the hearing panel enters the following:

1. The license to practice law in the State of North Carolina of Defendant, Roydera D. Hackworth, is hereby suspended for four years effective thirty days from the date this Order of Discipline is served upon her.

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

3. The costs, administrative fees and deposition costs of this action are taxed to Defendant. Defendant shall pay the costs, administrative fees and deposition costs within 30 days of service of the statement of costs upon her.

4. Defendant shall comply with the wind down provisions contained in 27 N.C.A.C. 1B § .0124. Defendant shall file an affidavit with the Secretary of the North

Carolina State Bar within ten days of the effective date of this Order of Discipline certifying she has complied with the wind down rule.

5. 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 other matters upon her.

6. After the completion of one year of active suspension of her law license Defendant may apply for a stay of the three year balance of the four year suspension upon filing a verified petition with the Secretary of the North Carolina State Bar at least thirty days before any proposed effective date of the stay as provided in 27 N.C.A.C. 1B § .0125. The remaining term of Defendant's suspension may be stayed only if she establishes by clear, cogent and convincing evidence the following:

- a. That she properly wound down her law practice and complied with the terms of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124(b) of the North Carolina State Bar Discipline & Disability Rules;
- b. That she timely paid the costs, administrative fees and deposition costs of this proceeding;
- c. That she has kept her address of record with the North Carolina State Bar current, promptly 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 deadlines stated in the communication;

- d. That she has not engaged in conduct constituting the unauthorized practice of law or that would constitute a violation of the Rules of Professional Conduct if she were not suspended from practice;
- e. That she properly disbursed all client or fiduciary funds in any trust accounts or otherwise in her possession or control on a timely basis and within ninety (90) days of the effective date of this order, provided the State Bar with the names, addresses, and telephone numbers of all persons or entities for whose benefit she holds any funds in a trust account;
- f. That she made restitution in the amount of \$2,010.00 to Daniel M. Macedo within ninety (90) days of the effective date of this order;
- g. That she has taken twelve (12) hours of Continuing Legal Education in trust account management and office practice management before she applies for a stay of the balance of her suspension; and
- h. That she has made arrangements for a practice monitor, approved by the Office of Counsel, at the time she applies for a stay of the balance of her suspension. Defendant shall meet with the practice monitor at least monthly to review all of the Defendant's pending cases. The monitor will supervise all client matters and ensure that the Defendant handles all matters in a timely fashion and that the Defendant communicates adequately with her clients. The Defendant will ensure that the monitor submits written reports to the Office of Counsel confirming that the meetings are occurring and that the Defendant is meeting deadlines and conferring with clients. The reports shall be received in the Office of

Counsel each Jan 15, April 15, July 15, and Oct. 15 throughout the period of the stayed suspension.

7. If Defendant successfully seeks a stay of the suspension of her law license after one year, such stay will continue in force only as long as she 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 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 shall not violate the Rules of Professional Conduct or the laws of the United States or any state or local government during her suspension;
- d. 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;
- e. The Defendant will permit the State Bar to conduct random audits of all accounts over which she has signatory authority and into which client or fiduciary funds have been deposited. The Defendant shall provide the State Bar with all documents requested by the State Bar within 5 business days and shall be solely responsible for the expense of complying with the

random audit request. The State Bar shall not conduct more than one random audit in any 12 month period.

- f. The Defendant, at her sole expense, shall retain a certified public accountant who shall provide semi-annual written reports to the N.C. State Bar, confirming that the Defendant's trust account(s) complies with all applicable provisions of the Rules of Professional Conduct. The reports shall be received in the Office of Counsel each July 1 and Jan. 1 throughout the period of the stayed suspension.

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

9. 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 conditions set out in paragraphs 6(a) through (f) above before seeking reinstatement of her license to practice law.

Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Panel, this the 27 day of JUNE, 2012.



Fred M. Morelock, Chair
Hearing Panel