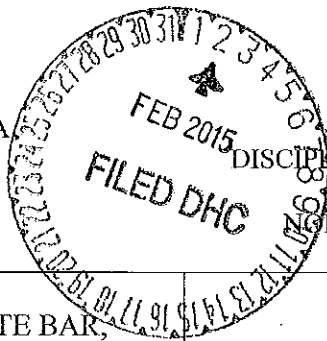


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE  
 DISCIPLINARY HEARING COMMISSION  
 OF THE  
 NORTH CAROLINA STATE BAR  
 14 DHC 25

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

PETER A. PAUL, Attorney,

Defendant

ORDER OF DISCIPLINE

THIS MATTER was heard on December 11 and 12, 2014 before a Hearing Panel of the Disciplinary Hearing Commission composed of Walter E. Brock, Jr., Chair, and members Shirley L. Fulton and Christopher R. Bruffey. Jennifer A. Porter represented Plaintiff, the North Carolina State Bar. Defendant, Peter A. Paul, was present and represented by Douglas J. Brocker and K. Brooke Ottesen.

Based upon the pleadings, the stipulated facts, and the evidence admitted at the hearing, the Hearing Panel hereby finds by clear, cogent, and convincing evidence 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, Peter A. Paul ("Paul"), was admitted to the North Carolina State Bar in 1989 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, Paul was engaged in the practice of law in the State of North Carolina and maintained a law office in Cashiers, Jackson County, North Carolina.

4. Paul was properly served with process, a hearing in this matter was set, and the matter came before the hearing panel with due notice to all parties

5. Paul maintained an attorney trust account located at United Community Bank.

6. Paul maintained balances for clients for more than one year but did not provide annual accountings to those clients, including but not limited to the clients identified by Paul's client file numbers 05-006-16, 05-308-01-B, 05-292-03, and 06-247-12.

7. In 2008, Paul received a refund of \$15.00 from the Register of Deeds for the client in file number 06-247-12. Paul deposited the \$15.00 in his trust account for the client.

8. Client funds from that client's closing in 06-247-12 were used to pay the costs due to the Register of Deeds, and the refund of \$15.00 belonged to the client.

9. Paul drafted a check to the client in 06-247-12 dated on or about May 28, 2008 to refund the \$15.00 to the client, but then voided the check.

10. Paul kept the client's \$15.00 in his trust account until January 2012, when he transferred it to his firm operating account.

11. Paul stated on the client ledger for 06-247-12 that this disbursement of \$15.00 to himself in January 2012 was for "recording fees paid in advance."

12. Paul did not pay recording fees for 06-247-12 from his operating or personal funds, however, and was not due the \$15.00 as reimbursement for recording fees in client file 06-247-12.

13. Paul paid recording fees in related matters on behalf of the client in file 06-247-12 from his operating account, which cost advances the client never fully reimbursed prior to January 2012. The client also owed Paul attorney's fees that were never fully paid. The amounts of unreimbursed advanced costs and unpaid fees exceeded the \$15.00 Paul transferred.

14. There was no agreement from the client in file 06-247-12 that Paul could disburse the \$15.00 to himself in January 2012, to pay outstanding fees or costs or for any other purpose.

15. In 2008, Paul disbursed funds from a loan for the clients in file 05-006-16. Paul was unable to obtain a specific payoff for a prior loan on the same property prior to the closing date. As a result, Paul estimated the payoff and retained funds to pay off the prior loan for the clients. After obtaining the payoff amount, Paul disbursed funds to pay off the prior loan but \$2,606.03 remained of the clients' loan proceeds after the payoff.

16. Paul kept the \$2,606.03 in his trust account until January 2012, when he transferred it to his firm operating account.

17. At the time of the transfer, the clients owed Paul amounts of unreimbursed advanced costs and unpaid fees exceeding the \$2,606.03 Paul transferred.

18. There was no agreement from the clients in file 05-006-16 that Paul could disburse the \$2,606.03 to himself in January 2012, to pay the outstanding fees or costs or for any other purpose.

19. On November 29, 2012, Paul was served with a letter of notice from the North Carolina State Bar concerning his handling of and accounting for funds for the clients in file 05-006-16.

20. On December 3, 2012, at Paul's direction, \$2,606.03 was transferred from his operating account into his trust account for file 05-006-16.

21. On December 4, 2012, Paul submitted a written statement to the State Bar asking that the grievance be dismissed along with a supporting affidavit from client V.H. in file 05-006-16 stating her satisfaction with Paul's representation and that she had no grievance against Paul.

22. On or about December 10, 2012, Paul issued a check from the trust account for \$2,606.03 to client V.H. in 05-006-16.

23. On January 15, 2013, Paul produced trust account records pursuant to the request of the State Bar.

24. In the records produced on January 15, 2013, Paul produced a client ledger for 05-006-16.

25. The client ledger did not show the disbursement of the \$2,606.03 to Paul in January 2012 or the redeposit on December 3, 2012.

26. The client ledger created the misapprehension that the balance of \$2,606.03 remained in Paul's trust account from 2008 through December 10, 2012 when it was disbursed to client V.H.

27. Paul had this inaccurate client ledger for 05-006-16 created, shortly after receiving the grievance, by instructing his bookkeeper to not show on the ledger the interim disbursement to Paul and the subsequent deposit from Paul.

28. Before providing the ledger for 05-006-16 to the State Bar, Paul instructed his bookkeeper to fix the ledger so that it was accurate.

29. The bookkeeper notified Paul that she could not undo what she had done and was not comfortable with making further additions and deletions in the records.

30. Paul provided the inaccurate ledger to the State Bar without any explanation or notes concerning the changes that had been made to the ledger or the items missing from the ledger.

31. At the time Paul provided the ledger to the State Bar, however, he also produced accurate bank statements and trust account reconciliations documents. Paul was aware the records contained details revealing all of the disbursements and deposits of the \$2,606.03. From these documents produced by Paul on January 15, 2013, the State Bar was able to trace what had occurred with the \$2,606.03.

32. When the State Bar asked Paul about the disbursement of the \$2,606.03 from and the deposit back into his trust account noted above, Paul admitted the transfers and also disclosed his instructions to create the inaccurate ledger shortly after receiving the grievance.

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

#### CONCLUSIONS OF LAW

1. All the parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, Peter A. Paul, and 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 holding funds in his trust account for clients for more than one year but failing to provide annual accountings to those clients of those funds, Paul failed to provide annual accountings to clients in violation of Rule 1.15-3(e);
- b. By providing an inaccurate client ledger in 05-006-16 to the State Bar without accompanying explanation or notation, Paul failed to disclose facts necessary to correct a misapprehension he knew would arise in violation of Rule 8.1(b);
- c. By disbursing to himself \$2,606.03 of client funds in his trust account for the client in file 05-006-16 without the client's knowledge or authorization, Defendant failed to maintain entrusted funds in trust in violation of Rule 1.15-2(a) and disbursed funds improperly to himself and for his benefit in violation of Rule 1.15-2(j); and
- d. By disbursing to himself \$15.00 of client funds in his trust account for the client in file 06-247-12 without the client's knowledge or authorization, Defendant failed to maintain entrusted funds in trust in violation of Rule 1.15-2(a) and disbursed funds improperly to himself and for his benefit in violation of Rule 1.15-2(j).

3. Although no violation of Rule 8.1(b) was alleged in the State Bar's complaint against Defendant, the hearing panel found it was tried by implied consent, established by the evidence, and warranted under the State Bar's prayer for relief for such other and further relief as is appropriate. Defendant stated he did not object to the hearing panel's consideration of Rule 8.1(b) or the finding of a violation of Rule 8.1(b).

4. The hearing panel found that the allegations of violations of Rules 8.1(a), 8.4(b), and 8.4(c) and of N.C. Gen. Stat. § 84.28(b)(3) were not established by clear, cogent, and convincing evidence.

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Panel hereby finds by clear, cogent and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1 – 30 above are reincorporated as if set forth herein.

2. The legal profession has the privilege of being self-regulating. An integral part of self-regulation is the forthright participation and disclosure by members of the Bar.

3. Defendant's creation of an inaccurate ledger and provision of the ledger to the State Bar without explanation created the risk that the State Bar would be misled about the disbursements of entrusted funds in that client's matter.

4. Defendant provided the inaccurate ledger to client Mr. H without explanation notifying Mr. H of all deposits and disbursements of those funds.

5. Defendant was upset when he received the grievance and, in that state of mind, Defendant instructed his bookkeeper to delete the January 2012 disbursement to him from the 05-006-16 ledger. After Defendant had a chance to calm down and contemplate the matter, Defendant told his bookkeeper to fix the ledger.

6. Although Defendant did not provide any explanations or notations disclosing the inaccuracy of the ledger when he first provided the documents, Defendant acknowledged the transfers and that he had created and provided the inaccurate ledger when the State Bar subsequently asked about the transfers and the inaccurate ledger.

7. Defendant has established a reputation for good character, veracity, and truthfulness.

8. Defendant has a prior reprimand. The reprimand is from 2004 and concerns conduct unrelated to that which is at issue in this case.

9. Defendant has instituted a new system for providing annual accountings of entrusted funds to ensure future compliance with this requirement.

10. Defendant has indicated remorse.

11. Defendant has been licensed since 1989. With his degree of experience, Defendant should have known better than to engage in these acts that have led to the discipline imposed in this order.

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

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(1), (2) and (3) of the Rules and Regulations of the State Bar, and concludes the following factors are applicable:

27 N.C.A.C. 1B § .0114(w)(1)

- a. Factor (E), Negative impact of Defendant's actions on client's or public's perception of the profession;
- b. Factor (F), Negative impact of Defendant's actions the administration of justice; and

27 N.C.A.C. 1B § .0114(w)(2)

- a. Factor (B), Impulsive acts of fabrication without timely remedial efforts.

27 N.C.A.C. 1B § .0114(w)(3)

- a. Factor (A), History of prior disciplinary offenses, to wit: the 2004 reprimand;
- b. Factor (B), Remoteness of prior offenses;
- c. Factor (C), Absence of dishonest or selfish motive;
- d. Factor (G), Multiple offenses;
- e. Factor (N), Submission of false evidence, false statements, or other deceptive practices during the disciplinary process, to wit: submission of the inaccurate ledger without contemporaneous adequate explanation;
- f. Factor (P), Remorse;
- g. Factor (Q), Good character and reputation;
- h. Factor (S), Substantial degree of experience in the practice of law.

2. Although the Hearing Panel determined one of the factors under 27 N.C.A.C 1B §.0114(w)(2) to be present, the Hearing Panel concluded that disbarment was not warranted in light of all of the circumstances of the case.

3. Defendant's creation of an inaccurate ledger and provision of the ledger to the State Bar without explanation created the risk that the State Bar would be misled about the disbursements of entrusted funds in that client's matter and constituted potential significant harm to the legal profession and the administration of justice.

4. Defendant's provision of the inaccurate client ledger to the client, Mr. H, created the risk that the client would be misled about the disbursements of entrusted funds in that client's matter and constituted potential significant harm to the client.

5. Proper maintenance and management of entrusted funds is a cornerstone of the public's trust in the legal profession. Failing to communicate with clients regarding the status of funds held for over a year and failing to properly disburse entrusted funds violates the public's trust and negatively impacts the public's perception of the profession. Defendant's failure to provide annual accountings and failure to properly disburse funds constituted potential significant harm to the clients and the legal profession.

6. The Hearing Panel considered all of the disciplinary options available to it and determined that imposition of a suspension is appropriate, and that the suspension should be stayed.

7. The Hearing Panel considered all lesser sanctions and concluded that discipline short of suspension would not adequately protect the public. Imposition of a lesser discipline would fail to acknowledge the seriousness of the offenses Defendant committed and would send the wrong message to members of the Bar and the public regarding the conduct expected of members of the Bar of this State.

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, Peter A. Paul, is hereby suspended from the practice of law for one year, effective 30 days from service of this Order upon Defendant. This suspension is stayed immediately, as set forth in, and subject to the terms of, paragraph 3 below.

2. Defendant shall pay the administrative fees and costs of this proceeding, including the costs of all depositions, as assessed by the Secretary of the North Carolina State Bar. Defendant must pay the costs within 120 days of service upon him of the statement of costs by the Secretary.

3. The one-year suspension is stayed for a period of one year as long as Defendant complies, and continues to comply during the period of the stay, with the following conditions:

- a. Defendant pays all administrative fees and costs of this proceeding as assessed by the Secretary within 120 days after service of the statement of costs on him;

- b. Defendant completes 12 hours of continuing legal education in addition to the hours required under 27 N.C. Admin. Code Chapter 1, Subchapter D, Section .1518. These 12 hours shall consist of instruction in trust account management, law office management, and billing practices. These additional hours must be completed prior to the expiration of the one-year stayed suspension period;
- c. Defendant shall ensure that the 12 additional CLE hours are reported to the State Bar Continuing Legal Education department and are included on his State Bar CLE report;
- d. Defendant shall provide documentation of completion of the 12 additional CLE hours to the Office of Counsel 30 days prior to the expiration of the one-year stayed suspension period;
- e. Defendant shall not violate any state or federal laws or any provisions of the Rules of Professional Conduct during the period of the stayed suspension;
- f. Defendant shall respond to all State Bar requests for information as required by Rule 8.1(b) of the Rules of Professional Conduct by the earlier of the deadline stated in the communication or within 30 days of receipt;
- g. Defendant shall timely comply with all State Bar membership and Continuing Legal Education requirements; and
- h. Defendant shall keep the North Carolina State Bar membership department advised of his current home and business street (not P.O. Box) addresses and telephone numbers.

4. If Defendant fails to comply with any one or more of the conditions set out in this Order of Discipline, then the stay of the suspension of his law license may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

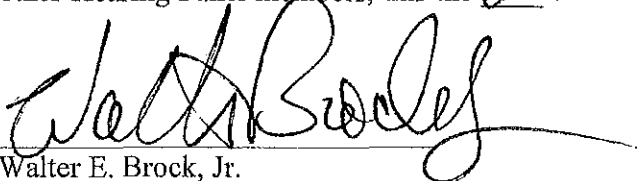
5. Unless Defendant's obligations under this Order are modified by further order of the DHC, Defendant's obligations under this Order end one year from the effective date of the Order provided there are no motions or show cause proceedings pending alleging lack of compliance with the conditions of the stay of the suspension. Pursuant to § .0114(x) of the North Carolina Discipline and Disability Rules, the DHC retains jurisdiction until all conditions of the stay of the suspension have been met. If a motion or show cause 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 one 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 show cause proceeding.

6. If the stay of the suspension is lifted and the suspension is activated for any reason, the DHC may enter an Order imposing such conditions as it deems necessary for the reinstatement of Defendant's license at the end of the suspension. Furthermore, Defendant must have complied with each of the following conditions precedent to reinstatement before he can be reinstated to the active practice of law:

- a. Submitted his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days from the effective date of the order activating his suspension;
- b. Complied with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the North Carolina State Bar Discipline and Disability Rules on a timely basis;
- c. Paid any outstanding disciplinary administrative fees and costs; and
- d. Within 15 days of the effective date of order activating the suspension Defendant shall have provided the State Bar with an address and telephone number at which clients seeking return of files could communicate with Defendant and obtain such files, and Defendant shall have promptly returned all files to clients upon request.

7. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of the stayed suspension.

Signed by the Chair with the consent of the other Hearing Panel members, this the 20  
day of February, 2015.

  
Walter E. Brock, Jr.  
Chair, Disciplinary Hearing Panel