

STATE OF NORTH CAROLINA

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
19 DHC 1

WAKE COUNTY

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

CARL D. LEE, Attorney,

Defendant

CONSENT ORDER OF
DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Shannon R. Joseph, Chair, and members Beverly T. Beal and Cindy L. Marrelli, pursuant to 27 N.C. Admin. Code 1B.0115(b). Plaintiff was represented by Maria J. Brown. Defendant, Carl D. Lee, 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 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 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, Carl D. Lee ("Lee" or "Defendant"), was admitted to the North Carolina State Bar in August 1980 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 the relevant period referred to herein, Defendant was administratively suspended from the practice of law in North Carolina. He was admitted

to the State Bar of Arizona on 23 October 1982 and was engaged in the practice of law in Arizona.

4. Defendant had a dispute with the IRS regarding unpaid taxes. On 21 February 2017, Defendant's tax attorney informed Defendant that the IRS would levy Defendant's bank accounts, including his client trust account.

5. As of 21 February 2017, Defendant was holding a total of \$2,330.98 in entrusted funds in his client trust account: \$2,000.00 on behalf of client E.G. and \$330.98 on behalf of client B.L.

6. Defendant miscalculated and believed that the amount of client funds remaining in his trust account at that time was \$2,300.00.

7. On 21 February 2017, intending to protect the client funds in his trust account from the IRS levy, Defendant wrote a check from his trust account for \$2,300.00, payable to himself, cashed the check, and placed the funds in a safe at his home for safekeeping.

8. On 24 February 2017, a legal order debit was made to the IRS, leaving Defendant's trust account with a zero balance. At the same time, a bank fee of \$125 to process the IRS debit was assessed against the account, leaving Defendant's trust account with a negative balance of \$125.00.

9. The overdraft of Defendant's account was reported to the State Bar of Arizona.

10. On 24 February 2017, Defendant wrote trust account check number 6537 for \$2,000.00, payable to a lien holder on behalf of client E.G. On that date, the balance in Defendant's trust account was negative \$125.00.

11. Check number 6537 was not posted by the bank until 7 March 2017, at which time Defendant's trust account contained sufficient funds to cover the check.

12. Defendant reached an agreement with the IRS to resolve his dispute regarding a substantial amount owed in back taxes for the period of 2002 to 2014.

13. In the course of the State Bar of Arizona's investigation of Defendant's trust account, Defendant acknowledged that his trust accounting practices were not in full compliance with the State Bar of Arizona's trust accounting rule, Rule 43.

14. Specifically, Defendant commingled funds in his trust account by failing to remove earned fees promptly and failed to maintain individual client ledgers, an administrative funds ledger, a compliant checkbook register, monthly reconciliations, and copies of checks by which funds were disbursed from the trust account.

15. Pursuant to a 22 December 2017 Agreement for Discipline by Consent between Defendant and the State Bar of Arizona, a Final Judgment and Order was entered against Defendant on 3 January 2018 for the misconduct described in paragraphs 4 to 14. Defendant was reprimanded and placed on two (2) years of probation, subject to conditions.

16. Defendant failed to inform the North Carolina State Bar of the imposition of discipline for his violation of the Arizona Rules of Professional Conduct until early September 2018, when he applied to be reinstated to active practice from administrative suspension.

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 creating conditions under which his clients' entrusted funds could not safely be maintained in his trust account, Defendant failed to safeguard entrusted property in violation of Rule 1.15-2(a);
 - (b) By failing to remove earned fees promptly from his trust account, Defendant maintained funds belonging to him in the trust account in violation of Rule 1.15-2(f);
 - (c) By failing to maintain individual client ledgers, an administrative funds ledger, a compliant checkbook register, monthly reconciliations, and copies of checks by which funds were disbursed from the trust account, Defendant failed to maintain complete and accurate records of all entrusted property he received in violation of Rule 1.15-3(g); and
 - (d) By failing to report timely to the North Carolina State Bar the professional discipline imposed on him in Arizona, Defendant failed to inform the secretary of the North Carolina State Bar of discipline for violation of the Rules of Professional Conduct in effect in another state in writing within 30 days after entry of the order of discipline in violation of Rule 8.3(d).

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. As a lawyer admitted in North Carolina, Defendant is subject to the disciplinary authority of North Carolina notwithstanding the fact that the misconduct at issue occurred in Arizona.
2. Defendant has not actively practiced law in North Carolina since 1982 and now seeks to do so.
3. Defendant has no prior professional discipline in North Carolina. In 2003, Defendant was censured and placed on probation in Arizona for violation of the trust accounting Rules in that jurisdiction.

4. Defendant fully cooperated with all of the State Bar's inquiries regarding these matters.

5. Defendant suffers from clinical depression and anxiety which worsened in the period leading up to the IRS levy on his accounts. Defendant commenced and has continued regular treatment for these issues and has shown improvement in his mental health as a result.

6. Defendant timely complied with all requests for information from the State Bar of Arizona related to his trust account practices, worked to rectify his trust accounting issues, hired a bookkeeper to perform a monthly review of this trust accounts and perform three-way reconciliations, and provided accurate trust account records.

7. In both Arizona and North Carolina, Defendant unconditionally admitted to the deficiencies in his trust account practices.

8. Defendant's conduct concerning the trust accounting Rules demonstrates a lack of understanding or disregard of the Rules regarding the safeguarding of client funds and creates a threat of significant harm to his clients wherever he might practice.

9. The Hearing Panel has carefully considered all of 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 on the Findings of Fact, Conclusions of Law, the additional Findings of Fact Regarding Discipline, and the consent of the parties, the Hearing Panel makes the following:

CONCLUSIONS WITH RESPECT TO DISCIPLINE

1. The Hearing Panel has carefully considered all of the different forms of discipline available to it. In addition, the Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 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) Intent of the defendant to commit acts where the harm or potential harm is foreseeable.

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

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 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) Prior disciplinary offenses in another jurisdiction;
- (b) Remoteness of the prior offenses;

- (c) Absence of a dishonest or selfish motive;
- (d) Timely good faith efforts to make restitution or to rectify consequences of misconduct;
- (e) A pattern of misconduct;
- (f) Multiple offenses;
- (g) Effect of personal or emotional problems on the conduct in question;
- (h) Cooperative attitude toward the proceedings;
- (i) Defendant's cooperative attitude toward the proceedings; and
- (j) Degree of experience in the practice of law.

4. Defendant caused significant potential harm to his clients by failing to properly manage their entrusted funds.

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

6. This Hearing Panel has considered lesser alternatives and concludes that a stayed suspension is necessary to ensure Defendant complies with necessary conditions to avoid significant harm or the potential for significant harm to clients.

7. For these reasons, this 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 conclusion regarding discipline, and based upon the consent of the parties, the Hearing Panel enters the following:

ORDER OF DISCIPLINE

1. Defendant, Carl D. Lee, is hereby suspended from the practice of law for one year, effective 30 days from service of this order upon Defendant.

2. The one year suspension is stayed for a period of two years as long as Defendant complies, and continues to comply, with the following conditions each year the stay is in effect:

- (a) To ensure Defendant's compliance with Rule 1.15 of the Rules of Professional Conduct:
 - i. During the period of stayed suspension, Defendant will retain the services of a Certified Public Accountant satisfactory to the State Bar to conduct a quarterly review of the status of any North Carolina accounts

into which Defendant has deposited client or fiduciary funds. Each quarter Defendant will deliver to the Office of Counsel a quarterly report prepared and signed by the accountant certifying that Defendant has reconciled each account with the bank balance, that he has maintained client ledgers identifying all funds in each account, and that Defendant is otherwise meeting all requirements of Rule 1.15 of the Rules of Professional Conduct;

- ii. Defendant is to submit such quarterly reports by each April 15, July 15, October 15, and January 15 during the period of the stay and shall provide the accountant the information necessary to prepare such quarterly reports;
 - iii. In addition to the required quarterly reports, Defendant shall provide to the State Bar: (i) a report showing proper three-way reconciliation of each trust account to which Defendant has access during the quarter; (ii) a list of clients whose funds are held in the trust account at the end of quarter with corresponding balances, (iii) ledger for any personal funds maintained in the trust account(s) for bank or credit card fees, (iv) general ledger(s) for each trust account to which Defendant has access, (v) the bank statement for each month covered by the quarterly report with all associated cancelled checks, (vi) list of outstanding deposits at the end of the quarter, (vii) list of outstanding disbursements at the end of the quarter, (viii) if requested by Trust Account Compliance Counsel, deposit slips for each trust account which Defendant maintains, and (ix) if requested by Trust Account Compliance Counsel, client ledgers for each client whose funds are held in the trust account during the quarter;
 - iv. If any quarterly report reveals 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 within 15 days of the date of the report;
 - v. Defendant shall provide any other records requested by the Office of Counsel within 10 days of the request; and
 - vi. All reports referred to herein will be completed and submitted at Defendant's sole expense;
- (b) On or before July 30 each year the stay is in effect, Defendant shall submit an affidavit certifying to the North Carolina State Bar that all general trust accounts, dedicated trust accounts, and fiduciary accounts maintained by Defendant or his law firm in North Carolina are administered, to the best of his knowledge, in compliance with the requirements of Rule 1.15 (including all subparts) or that he is exempt from this provision because Defendant does not maintain any trust or fiduciary accounts for North Carolina client funds;

- (c) If Defendant does not have access to or maintain any trust accounts in North Carolina at the time he is required to provide reports and documents pursuant to paragraphs 2(a) and 2(b) of this order, Defendant shall certify that he is not handling entrusted funds on behalf of clients in North Carolina or maintaining an attorney trust account in North Carolina. Thereafter, for as long as Defendant is not handling entrusted or fiduciary funds on behalf of clients in North Carolina or maintaining an attorney trust account in North Carolina, Defendant shall, on a monthly basis, submit to the Office of Counsel an affidavit certifying that he did not handle any entrusted or fiduciary funds in North Carolina in that month. This affidavit shall be executed on the last day of each month and provided to the Office of Counsel by the 5th day of the following month (e.g., the affidavit for March would be executed March 31st and due to the Office of Counsel by April 5th). Such affidavit shall be in lieu of any of the reports and documentation required by paragraphs 2(a) and 2(b) above. For as long as Defendant is not handling any entrusted or fiduciary funds on behalf of clients in North Carolina and is not maintaining an attorney trust account in North Carolina, the requirements of paragraphs 2(a) and 2(b) shall be tolled.
- (d) In addition to the CLE requirements set out in 27 N.C. Admin. Code 1D.1518, Defendant shall, within one year of the effective date of this Order, successfully complete four hours of Continuing Legal Education (CLE) in the topic of trust account management, one hour of which shall be a trust account CLE taught by Trust Account Compliance Counsel for the North Carolina State Bar. The courses proposed to fulfill the requirements of this paragraph must be approved in advance by the Office of Counsel and will be at Defendant's own expense. Defendant shall provide written proof of successful completion of the trust account management courses to the Office of Counsel within 10 days of completion of each course;
- (e) Defendant shall pay all Membership dues and comply with all Continuing Legal Education requirements;
- (f) 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 suspension;
- (g) Defendant shall keep the North Carolina State Bar Membership Department advised of his current business and home addresses and shall notify the Bar of any change in address within ten days of such change;
- (h) Defendant shall respond to all communications from the North Carolina State Bar, including communications from the Attorney Client Assistance Program, within thirty 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 she receives notice after the effective date of this Order;

- (i) Defendant shall promptly accept service of all certified mail that is sent to him from the State Bar;
- (j) Defendant shall timely comply with all State Bar Membership and Continuing Legal Education requirements; and
- (k) Defendant shall pay all costs and administrative fees of this action within 30 days of service of the statement of fees and costs upon him.

3. Failure of the Defendant to timely submit any document required by this Order shall be grounds to lift the stay and activate the suspension.

4. If during the stay of the suspension Defendant fails to comply with any one or more of the conditions stated above, the stay of the suspension of his law license may be lifted as provided in 27 N.C. Admin. Code 1B.0118 of the North Carolina State Bar Discipline and Disability Rules.

5. If the stay of the suspension is lifted and the suspension is activated for any reason, Defendant may apply for reinstatement after serving the activated suspension by filing a petition pursuant to 27 N.C. Admin. Code 1B.0129(b) of the North Carolina State Bar Discipline and Disability Rules, demonstrating compliance with the requirements therein as well as the following requirements by clear, cogent, and convincing evidence:

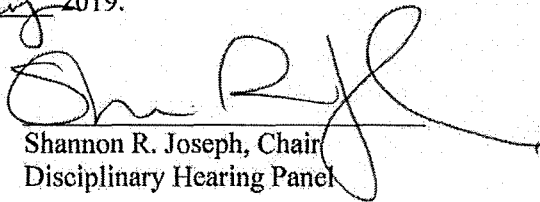
- (a) Defendant properly wound down his law practice and complied with the terms of 27 N.C. Admin. Code 1B.0128 of the State Bar Discipline & Disability Rules;
- (b) Defendant kept the Membership Department of the State Bar informed of his current information for his physical address (not a Post Office box), telephone number, and e-mail address throughout the period of his suspension;
- (c) Defendant accepted all certified mail from the State Bar sent to the address on record with the Membership Department of the North Carolina State Bar throughout the period of the suspension;
- (d) Defendant responded to all letters of notice and requests for information from the North Carolina State Bar by the deadline stated therein with full and complete responses and all requested documentation throughout the period of his suspension;
- (e) Defendant has come into compliance with any outstanding CLE or membership obligations at the time of the filing of his petition for reinstatement;
- (f) Defendant did not violate any of the Rules of Professional Conduct in effect during the period of the suspension;
- (g) Defendant did not violate any laws of the State of North Carolina or of the United States during the period of the suspension; and

(h) Defendant paid all costs and fees of this proceeding as assessed by the Secretary by the date of the filing of his petition for reinstatement.


6. Unless Defendant's obligations under this Order are modified by further order of the DHC, Defendant's obligations under this Order end two years 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 27 N.C. Admin. Code 1B.0118 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 two year suspension in whole or in part if it finds that any of the conditions of the stay have not been met. The stay of the suspension and Defendant's obligation to comply with the conditions for the stay will continue until resolution of any such pending motion or show cause proceeding.

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


This the 16th day of February 2019.


Shannon R. Joseph, Chair
Disciplinary Hearing Panel

Agreed and consented to by:



Maria J. Brown
Attorney for Plaintiff



Carl D. Lee
Defendant