



STATE OF NORTH CAROLINA

WAKE COUNTY

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

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

WILLIAM T. BATCHELOR, II, Attorney,

Defendant

ORDER OF DISCIPLINE

This matter was heard on May 9, 2014 before a Hearing Panel of the Disciplinary Hearing Commission ("DHC") composed of Steven D. Michael, Chair, and members Beverly T. Beal and Scott A. Sutton. Plaintiff was represented by G. Patrick Murphy. Defendant, William T. Batchelor, II ("Batchelor" or "Defendant"), was represented at the hearing by Terry Richard Kane.

Prior to the hearing, the Hearing Panel granted summary judgment in favor of the State Bar concluding as a matter of law that Defendant violated the Rules of Professional Conduct as alleged in paragraphs a) through g), and i) and j) of the State Bar's Complaint. Based on the Hearing Panel's summary judgment order, the sole issue remaining for determination of what, if any, discipline is appropriate for the established rule violations came on for hearing.

Based on the Complaint, the Answer, the Order of Summary Judgment, the Stipulations of the parties, and the exhibits and evidence admitted during the hearing, there is no material dispute concerning the following facts:

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, William T. Batchelor, II, was admitted to the North Carolina State Bar on March 21, 1986, 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. Defendant was properly served with process and the matter came before the Hearing Panel with due notice to all parties.

4. During all or part of the relevant periods referred to herein, Batchelor was engaged in the practice of law in the State of North Carolina and maintained a law office in Wilmington, New Hanover County, North Carolina.

5. Between January 1, 2007 and June 30, 2010, Defendant had two trust accounts associated with his law practice: an account with Branch Banking & Trust Bank, account number ending in the digits 3231 ("TA 3231"), and an account with RBC Bank, account number ending in the digits 3840 ("TA 3840").

6. Before August 2009, Defendant maintained BB&T TA 3231. Defendant opened RBC TA 3840 in August 2009 but did not close BB&T TA 3231. Defendant took \$1,000.00 from BB&T TA 3231 and transferred that amount to open RBC TA 3840. Defendant did not identify the owner(s) of the \$1,000.00 he moved from BB&T TA 3231 to RBC TA 3840.

7. Deposit slips for RBC TA 3840 show that Defendant failed to always identify the source and the name of the client or other person to whom the funds belonged for cash deposits to RBC TA 3840.

8. During the period January 1, 2007 and June 30, 2010, it was Defendant's practice to collect a flat expense charge from clients to cover his costs for mail, postage, paper and printer cartridges ("expense charge"). The expense charge collected to cover these costs was either \$16.00 or \$25.00, depending on the case, and the money collected from the client was deposited into the trust account Defendant was using at the time.

9. The flat expense charge referenced in paragraph 8 was collected from clients irrespective of the actual cost Defendant incurred handling an individual client's case.

10. Between January 1, 2007 and August 31, 2009, Defendant used BB&T TA 3231 checks to disburse funds to suppliers for office supplies, expenses and equipment. These checks were written directly to the suppliers and not to Defendant.

11. Between August 1, 2009 and June 30, 2010, Defendant used a trust account check card to disburse funds from RBC TA 3840 to suppliers of office supplies and equipment. These check card disbursements were made directly to the suppliers.

12. When Defendant disbursed trust account funds by check or check card to vendors for office supplies, expenses or equipment, he arbitrarily apportioned the costs amongst clients with expense charge balances in his trust account as shown on client cards.

13. Defendant did not always indicate on checks drawn on BB&T TA 3231 and made payable directly to suppliers the client funds against which they were drawn.

14. Between January 1, 2007 and June 30, 2010, Defendant failed to properly conduct monthly reconciliations of the balance of BB&T TA 3231 as shown on his records with the current bank statement balance for BB&T TA 3231 as required by the Rules of Professional Conduct.

15. Between January 1, 2007 and June 30, 2010, Defendant failed to properly conduct quarterly reconciliations of the individual client balances shown on the ledger for BB&T TA 3231 with the current bank statement balance for BB&T TA 3231 as required by the Rules of Professional Conduct.

16. Between August 1, 2009 and June 30, 2010, Defendant failed to properly conduct monthly reconciliations of the balance of RBC TA 3840 as shown on his records with the current bank statement balance for RBC TA 3840 as required by the Rules of Professional Conduct.

17. Between August 1, 2009 and June 30, 2010, Defendant failed to properly conduct quarterly reconciliations of the individual client balances shown on the ledger for RBC TA 3840 with the current bank statement balance for RBC TA 3840 as required by the Rules of Professional Conduct.

In accordance with the Order of Summary Judgment, the Hearing Panel makes the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant and over the subject matter of this proceeding.

2. Defendant's conduct constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:

- a. By opening RBC TA 3840 in August 2009 with the transfer of \$1,000.00 from BB&T TA 3231 without identifying the client(s) for whom the entrusted funds were being held, Defendant failed to properly identify entrusted funds in violation of Rule 1.15-2(a) and Rule 1.15-3(b)(1);
- b. By failing to list on deposit slips the source and the name of the client or other person to whom the funds belonged, Defendant failed to properly identify entrusted funds in violation of Rule 1.15-2(a) and Rule 1.15-3(b)(1);
- c. By charging clients a flat expense charge of either \$16.00 or \$25.00 irrespective of the actual cost Defendant incurred in handling an individual client's case, Defendant charged and collected a clearly excessive amount for expenses in violation of Rule 1.5(a);
- d. By paying vendors directly for expenses and equipment with trust account checks and trust account check cards, Defendant failed to make items

drawn on his trust accounts for payment of expenses payable to himself in violation of Rule 1.15-2(h);

- e. By failing to conduct monthly reconciliations of the balance of his trust accounts as shown on his records with the monthly bank statement balance for his trust accounts, Defendant violated Rule 1.15-3(d)(2);
- f. By failing to reconcile the individual client balances shown on the ledgers of Defendant's general trust accounts with the current bank statements for Defendant's trust accounts on a quarterly basis, Defendant failed to conduct requisite reconciliations of his trust accounts in violation of Rule 1.15-3(d)(1);
- g. By drawing checks on his trust account without always identifying on the checks the client balance against which the item was drawn, Defendant violated Rule 1.15-3(b)(2); and
- h. By collecting a standard expense charge from clients and depositing those funds in his trust account, Defendant failed to hold and maintain entrusted property separate from the property of Defendant in violation of Rule 1.15-2(a) and Rule 1.15-2(f).

Based upon the foregoing undisputed material facts and Conclusions of Law, the Stipulations of the parties, and the exhibits and evidence admitted during the hearing, the Hearing Panel hereby finds by clear, cogent and convincing evidence, the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Defendant was licensed to practice law in North Carolina on March 21, 1986, and since that time has been engaged in private practice.
2. Defendant's mismanagement of his trust account resulted in numerous violations of the Rules of Professional Conduct.
3. Defendant's failure to comply with the Rules of Professional Conduct when handling entrusted funds has the potential to cause significant harm to clients of Defendant and to the public's perception of the legal profession.
4. Defendant presented character letters from colleagues in the practice of law and clients attesting to his good character.
5. Defendant has prior discipline from the Grievance Committee and Disciplinary Hearing Commission of the North Carolina State Bar, and discipline and sanctions from the United States Bankruptcy Court for the Eastern District of North Carolina as follows:
 - a. Reprimand by the DHC in 90 DHC 13;
 - b. Reprimand by the Grievance Committee in 07G0198;

- c. Order to return fees and suspension from filing petitions in Bankruptcy Court for approximately one month in *In re: Daniels*, 09-02547-8 (March 12, 2010); and
- d. Reprimand and monetary sanction in *In re: Amra*, 0-04882-8 (November 5, 2010).

6. A cornerstone of client trust in an attorney is that the attorney will properly protect and maintain entrusted funds. Failure to do so erodes the confidence clients place in attorneys who handle their affairs and harms the profession as a whole.

7. 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 undisputed material facts and Conclusions of Law above and the additional Findings of Fact Regarding Discipline, 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.A.C. 1B §.0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are present which warrant suspension of Defendant's license:

- a. Intent of Defendant to commit acts where the harm or potential harm is foreseeable, to wit: failing to comply with trust account rules to ensure proper maintenance of and accounting for entrusted funds;
- b. Elevation of Defendant's own interest above that of his clients; and
- c. Negative impact of Defendant's actions on the client's or public's perception of the legal profession.

2. The Hearing Panel has considered all of 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 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.A.C. 1B §.0114(w)(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 this state and the United States Bankruptcy Court;
- b. Pattern of misconduct;

- c. Multiple offenses;
 - d. Full and free disclosure to the Hearing Committee and Defendant's cooperative attitude toward the proceedings;
 - e. Defendant's good character and reputation with lawyers in his community and with clients as presented in letters written on his behalf; and
 - f. Substantial experience in the practice of law.
4. Defendant's failure to properly maintain, manage and handle entrusted funds betrays a vital trust that clients and the public place in attorneys and the legal profession.
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 significant harm to the clients. The 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. This Hearing Panel has considered lesser alternatives and concludes that a suspension is appropriate under the facts and circumstances of this case to address the potential for significant harm to Defendant's clients, and for the protection of Defendant's clients and the public.
7. For these reasons, this Hearing Panel finds that an order imposing discipline less than a suspension of Defendant's law license would not be appropriate.

Based upon the foregoing, the Hearing Panel enters the following:

ORDER OF DISCIPLINE

1. Defendant's license to practice law in the State of North Carolina is hereby suspended for three (3) years.
2. Defendant shall submit his license and membership card to the Secretary of the State Bar within 30 days of the effective date of this order.
3. Defendant shall comply with the wind down provisions of 27 N.C.A.C. 1B § .0124 of the State Bar Discipline and Disability Rules.
4. Within 15 days of the effective date of this Order, Defendant shall provide the State Bar Office of Counsel with an address and telephone number at which clients seeking return of files can communicate with Defendant and obtain such files, and

Defendant shall promptly provide client files to all clients who request return of their files.

5. Defendant is taxed with the costs and administrative fees of this action as assessed by the Secretary. Defendant shall be served with a statement of costs and fees. Defendant shall pay the amount assessed within thirty days of service of the statement of costs and fees upon him.

6. One year after the effective date of this Order, Defendant may seek a stay of the remaining period of suspension by filing a motion seeking a stay and demonstrating by clear, cogent and convincing evidence that Defendant has met all requirements for reinstatement set out in 27 N.C.A.C 1B § .0125, and has complied with paragraphs 2-5 of this section of the Order of Discipline and with the following conditions:

- a. That Defendant, at his sole expense, shall retain a certified public accountant ("CPA"), approved in advance by the Office of Counsel of the State Bar, who shall audit BB&T TA 3231 and RBC TA 3840 (collectively "trust accounts") from the to present back to the date necessary to identify the client(s) to whom the funds in his trust accounts belong. Upon completion of the audit, the CPA shall provide the State Bar with a written final audit report. Defendant shall cooperate with the CPA by producing all trust account records, bank account records, or any other financial record related to any client requested by the State Bar or the CPA to ensure the audit is completed in a timely fashion but in any event the audit shall be completed and the CPA's written final audit report shall be delivered to the State Bar's Office of Counsel within 90 days of the effective date of this Order. Defendant shall be solely responsible for payment of all fees and costs related to the preparation and submission of such audits and reports. It is Defendant's sole responsibility to ensure the CPA completes and submits the report as required herein;
- b. That, upon completion of the CPA's audit, submission of the audit report to the Office of Counsel, and the Office of Counsel's determination that the owners of funds have been identified and Defendant's trust accounts are in compliance with the Rules of Professional Conduct, Defendant disbursed all identified client funds in his trust accounts to the rightful owner(s) consistent with the Rules of Professional Conduct;
- c. That Defendant complied with Rule 1.15-2(q) regarding all unidentified funds existing in his trust accounts and complied with Chapter 116B of the General Statutes within forty-five (45) days of being statutorily permitted to escheat funds to the State;
- d. That, within the first year of this suspension, Defendant complete twelve hours of continuing legal education in the area of law office management and/or trust account management from any provider of CLE approved by

the North Carolina State Bar Office of Counsel and that Defendant provided written proof of successful completion of the CLE courses to the State Bar within 10 days of completing the courses. These twelve hours are in addition to the continuing legal education requirements set out in 27 N.C.A.C. 1D § .1518;

- e. That Defendant kept the North Carolina State Bar Membership Department advised of his current physical home address;
- f. That Defendant responded to all letters of notice and requests for information from the North Carolina State Bar by the deadline stated in the communication;
- g. That Defendant paid all outstanding membership fees, Client Security Fund assessments and fees or costs assessed by the DHC or the North Carolina State Bar, and, at the time of his motion to stay, there is no deficit in Defendant's completion of mandatory Continuing Legal Education (CLE) hours, in reporting such hours or in payment of any fees associated with attendance at CLE programs; and
- h. That during the term of suspension Defendant did not violate the Rules of Professional Conduct or the laws of the United States or any state.

7. If Defendant complies with the above conditions and is granted a stay of his suspension, the stay will remain in effect only if Defendant complies, and continues to comply, with the following conditions:

- a. Defendant shall, at his own expense, retain a CPA to audit Defendant's trust account(s) on a quarterly basis to ensure Defendant's continued compliance with the Rules of Professional Conduct. This audit shall assess whether Defendant has in his trust accounts the client funds he should be maintaining for his clients at that time and whether Defendant is in compliance with Rule 1.15-2 and Rule 1.15-3. The CPA must report quarterly to the Office of Counsel of the North Carolina State Bar 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 quarter (first quarter's report due April 30, second quarter's report due July 30, third quarter's report due October 30, and fourth quarter's report due January 30). Defendant shall be solely responsible for payment of all fees and costs related to the preparation and submission of such audits and reports. It is Defendant's sole responsibility to ensure the CPA completes and submits the reports as required herein;

- b. Each month Defendant shall provide the Office of Counsel of the North Carolina State Bar with the three-way reconciliation described in the State Bar Lawyer's Trust Account Handbook for all trust accounts maintained by him. Defendant shall provide the three-way reconciliation report, client ledgers for all clients with funds in the trust account(s) during that month, ledger for any personal funds maintained in the trust account(s) for bank or credit card fees, his trust account ledger, and the bank statements, cancelled checks, and deposit slips for each month. These documents shall be provided to the Office of Counsel by the 15th of the following month – for example, the three-way reconciliation for the month of January is due on February 15;
- c. If either the monthly three-way reconciliation or the CPA's audit or report reveals any irregularities or deficiencies from Defendant's obligations under Rule 1.15-2 and Rule 1.15-3, Defendant shall take remedial action necessary to bring the trust account into compliance with the Rules of Professional Conduct within 10 days of the date of the three-way reconciliation report or the CPA audit or report and shall provide proof of the remedial action and compliance to the Office of Counsel within 5 days of the date of the remedial action;
- d. Defendant shall comply with any requests from the Office of Counsel of the North Carolina State Bar to provide any information regarding his handling of entrusted funds and shall sign and provide any release or authorization to allow the Office of Counsel to obtain information directly from any bank in which Defendant maintained or maintains entrusted funds, by the deadline stated in the request;
- e. Defendant shall keep the North Carolina State Bar Membership Department advised of his current physical business address (not a Post Office box), telephone number, and email address and shall notify the North Carolina State Bar of any changes in address within ten (10) days of such change;
- f. Defendant shall accept all certified and regular mail from the North Carolina State Bar sent to the address on record with the Membership Department of the North Carolina State Bar;
- g. Defendant shall respond 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;
- h. Defendant will timely comply with the North Carolina State Bar CLE requirements and will pay all fees and costs assessed by the applicable deadline;

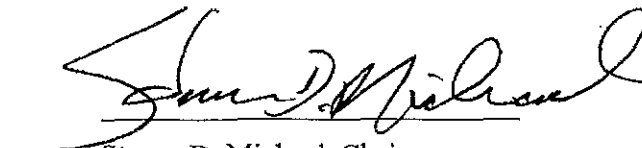
- i. Defendant will pay all membership, Client Security Fund, and any other related dues, fees, and/or costs by the applicable deadline;
- j. Defendant shall not violate any state or federal laws or any provisions of the Rules of Professional Conduct during the period of the stay; and
- k. Defendant shall comply with such other and further requirements as may be imposed by any hearing panel that may grant a stay of Defendant's suspension.

8. If during the stay of the suspension authorized by this Order Defendant fails to comply with any one or more of the conditions stated above, 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 & Disability Rules, and the DHC may enter an order imposing such conditions as it deems proper for the reinstatement of Defendant's license at the end of the suspension.

9. If Defendant does not obtain a stay of the suspension imposed by this Order, to be reinstated at the end of the 3 year term of suspension Defendant must demonstrate by clear, cogent and convincing evidence that Defendant has met all requirements for reinstatement set out in 27 N.C.A.C 1B § .0125, and has complied with all provisions of paragraphs 6 a. through h. of this Order of Discipline.

10. 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 & Disability Rules.

Signed by the Chair with the consent of the other Hearing Panel members, this the 22nd day of June 2014.


Steven D. Michael, Chair
Disciplinary Hearing Panel