

STATE OF NORTH CAROLINA

WAKE COUNTY

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

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

GINA E. ESSEY, Attorney,
Defendant

CONSENT ORDER OF DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Fred W. DeVore III, Chair, and members Margaret M. Hunt and Heath R. Jenkins, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0115(i). Plaintiff was represented by Deputy Counsel Margaret Cloutier. Defendant, Gina E. Essey, was represented by Alan M. Schneider. Defendant waives a formal hearing in this matter. The parties stipulate and agree to the findings of fact and conclusions of law recited in this order, and consent to the discipline imposed by this order. By consenting to the entry of this order, Defendant knowingly, freely, and voluntarily waives her right to appeal this consent order or to challenge in any way the sufficiency of the findings and conclusions herein.

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 ("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, Gina E. Essey ("Essey"), was admitted to the North Carolina State Bar in 2008, 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, Essey was engaged in the practice of law in the State of North Carolina and maintained a law office in Oak Island, Brunswick County, North Carolina.
4. Essey was properly served with the summons and complaint in this matter.

5. Essey maintained a trust account in connection with her law practice at BB&T, account number ending in 9512 ("trust account").
6. Essey used her trust account as a general trust account.
7. Essey failed to conduct monthly and quarterly reconciliations of her trust account and maintain signed and dated copies thereof.
8. Essey failed to maintain accurate client ledgers for each person or entity from whom or for whom entrusted funds were received.
9. Essey failed to perform quarterly reviews of a random sample of transactions in her trust account.
10. Essey failed to promptly remove earned fees from her trust account.
11. Essey failed to accurately identify on electronic transfers from her trust account the clients for whom the disbursements to the firm were made.
12. Essey disbursed more funds from her trust account on behalf of clients than she had in the account for those clients, resulting in negative client balances within the trust account and funds being used for the benefit of someone other than the beneficial owner of the funds.

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) in that Defendant violated the Rules of Professional Conduct as follows:
 - (a) By failing to reconcile her trust account on a quarterly and monthly basis, Essey failed to quarterly compare the general ledger balance, the balance of all subsidiary ledgers, and the adjusted bank balance to verify that they are identical in violation of Rules 1.15-3(d)(1), failed to monthly reconcile the balance of the trust account as shown on her records with the current bank statement balance in violation of Rule 1.15-3(d)(2), and failed to review, sign, date and retain a copy of the reconciliations for the requisite time period in violation of Rule 1.15-3(d)(3);
 - (b) By failing to consistently maintain accurate client ledgers that identified and tracked, per client, the entrusted funds received and disbursed for each client, Essey failed to maintain ledgers containing a record of receipts and disbursements for each person for whom funds were received and showing the current balance of funds held in the trust account for each person in violation of Rule 1.15-3(b)(5);
 - (c) By failing to perform transaction reviews quarterly, Defendant failed to review the statement of costs and receipts, client ledger, and canceled checks of a random

sample of representative transactions completed during the quarter to verify that the disbursements were properly made in violation of Rule 1.15-3(i)(2) and (5);

- (d) By failing to promptly remove earned fees from her trust account, Essey failed to hold entrusted property separate from property belonging to Essey in violation of Rule 1.15-2(a);
- (e) By failing to accurately identify the clients on electronic transfers for fees made to the firm, Defendant drew items on a trust account for the payment of her fees without indicating on the item by client name, file number, or other identifying information the client from whose balance the item was drawn in violation of Rule 1.15-2(b); and
- (f) By disbursing more funds from the trust account on behalf of clients than she had in the account for those clients, Defendant used or pledged entrusted property to obtain personal benefit for someone other than the legal or beneficial owner of that property in violation of Rule 1.15-2(k).

Based 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. Essey has substantial experience in the practice of law.
2. Essey has no prior disciplinary record concerning her license to practice law.
3. Essey enjoys a positive reputation in her local bar and community.
4. There is also no evidence that Essey intended to harm her clients and there is no evidence of any dishonest or selfish motive on the part of Essey.
5. Essey made a good faith effort to reconstruct client ledgers, but the chaotic condition of her records resulted in instances of Essey transferring duplicate fees on some ledgers, not transferring earned fees on many other ledgers, and wrong attributions on several others. As a result, while multiple client ledgers reflected negative balances, many more ledgers reflected earned fees to which Essey was entitled but did not disburse. As of the date of the audit, the account contained sufficient funds belonging to Essey to cover the negative client balances.
6. Essey's failure to conduct the required quarterly and monthly reconciliations and her failure to otherwise monitor her trust account caused potential significant harm to her clients. Conducting quarterly reconciliations of the trust account is the lynchpin of proper maintenance and protection of entrusted funds. Essey's continued failure to reconcile her trust account and failure to maintain proper trust account records demonstrate a pattern of misconduct and Essey's intent to commit acts where the potential harm was foreseeable.

7. Essey's conduct places entrusted funds at risk and has the potential to cause significant harm to the standing of the profession in the eyes of the public because it shows her disregard for her duties as an attorney. Such erosion of public confidence in attorneys tends to sully the reputation of, and fosters disrespect for, the profession as a whole. Confidence in the legal profession is a building block for public trust in the entire legal system.

8. Essey is remorseful for her misconduct. Essey acknowledges that her trust account practices were insufficient and caused potential significant harm to her clients and the individuals for whom she held entrusted funds.

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 upon the Findings of Fact, Conclusions of Law, and Additional Findings Regarding Discipline, and with the consent of the parties, the Hearing Panel also enters the following

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f) of the Discipline and Disability Rules of the North Carolina State Bar.

2. 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;
- (b) Defendant's actions had a potential negative impact on her clients' and the public's perception of the legal profession.

3. The Hearing Panel concludes that none 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 are present in this case.

4. 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) Defendant's lack of prior disciplinary offenses;
- (b) Absence of a dishonest or selfish motive;
- (c) Defendant engaged in a pattern of misconduct;
- (d) Defendant engaged in multiple offenses;

- (e) Defendant's full and free disclosure to the Hearing Panel and cooperative attitude toward the proceedings;
- (f) Defendant's remorse; and
- (g) Degree of experience in the practice of law.

5. Defendant's failure to properly safeguard entrusted client funds caused potential significant harm to her clients whose funds were placed at risk while entrusted to Defendant's care.

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

7. 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 acknowledge the seriousness of the offenses committed by Defendant and send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

8. The Hearing Panel concludes that Defendant's conduct warrants and can only be addressed through imposition of a suspension on Defendant's law license. The Hearing Panel further concludes that such suspension should be stayed upon Defendant's compliance with conditions outlined below that will ensure the public is protected from future transgressions by Defendant as well as ensure Defendant's continued adherence to the Rules of Professional Conduct.

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, Gina E. Essey, is hereby suspended from the practice of law for two years. This order shall be effective upon filing.
2. Defendant is taxed with the costs and administrative fees of this action. Defendant shall pay the costs and administrative fees of this proceeding as assessed by the Secretary within thirty days of service of the statement of costs and administrative fees upon her.
3. The two-year suspension is stayed for a period of two years as long as Defendant complies, and continues to comply during the period of the stay, with the following conditions:
 - (a) Defendant shall open a new IOLTA trust account at a bank approved by the North Carolina State Bar for use in her law practice and Defendant shall cease using her current general trust account (BB&T account number ending

in 9512) except to properly disburse all remaining funds to the rightful owner(s) of the funds or as otherwise directed by her client(s). Upon halting use of her current trust account, Defendant shall identify the funds remaining in the current trust account. Defendant shall provide the Office of Counsel with a proposed disbursement plan. Upon the Office of Counsel's approval of the proposed disbursement plan, Defendant shall disburse all remaining funds to the rightful and identified owner(s) of the funds. After disbursing all funds from Defendant's current trust account, Defendant shall close the account and solely utilize the new trust account described at the beginning of this paragraph for her law practice. Until the current trust account is closed, however, Defendant shall continue to monitor and complete all required reconciliations of all trust accounts utilized by Defendant for her law practice as described in paragraph 3(b) below;

- (b) Defendant shall provide the State Bar with reports of all quarterly reconciliations as required by Rule 1.15-3, using the State Bar's Reconciliation Report form located on the State Bar's website, for all trust accounts and fiduciary accounts to which Defendant has access and/or in which Defendant deposits entrusted funds as follows:
- i. In addition to the three-way reconciliation reports, for the months covered by the submitted report, Defendant shall provide: (i) client ledgers for each client whose funds are held in the trust account during the stay, (ii) any ledger for any personal funds maintained in the trust account for bank or credit card fees, (iii) general ledger for each trust account, and (iv) the bank statements, cleared checks, deposit slips, and deposited items associated with the account;
 - ii. The reports are due no later than thirty days after the end of each quarter (i.e., April 30, July 30, October 30, and January 30);
 - iii. Defendant shall certify with each quarterly report that she has personally reviewed the reconciliation reports and all relevant ledgers, bank statements, cancelled checks, deposit slips, and deposited items associated with the reports, and Defendant shall further certify that no entrusted funds received by her or her law office have been deposited into any account other than her trust account;
 - iv. If any of the quarterly reports referenced above note any irregularities or deficiencies, Defendant shall promptly take all remedial action necessary to bring the trust account 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 thirty days of the date of the report;

- v. All reconciliations and reports referred to herein will be completed and submitted at Defendant's sole expense; and
 - vi. Failure of the Defendant to timely submit any report required by this Order shall be grounds to lift the stay and activate the suspension.
- (c) Defendant shall successfully complete two hours of continuing legal education (CLE) in the area of trust account management within the first year after the effective date of this order, one hour of which must be a trust account CLE taught by Trust Account Compliance Counsel for the North Carolina State Bar. Defendant shall provide written proof of successful completion of these CLE courses to the State Bar within ten days of completing the course;
- (d) During the period of stayed suspension, Defendant shall permit audits of her trust accounts by the North Carolina State Bar. Such audits will be conducted at Defendant's expense, and all costs incurred during the course of the audit shall be paid by Defendant within thirty days of the assessed costs being served upon Defendant. The North Carolina State Bar will not exercise the right to audit the Defendant's bank accounts more than twice a year. Such limitation on random audits will not preclude the North Carolina State Bar from conducting any audits for cause pursuant to the Rules of Professional Conduct. Furthermore, any information or documentation gained by the North Carolina State Bar while conducting said audits may result in further disciplinary proceedings being brought against Defendant;
- (e) Defendant shall pay all Membership dues and Client Security Fund assessments and comply with all Continuing Legal Education requirements on a timely basis;
- (f) Defendant shall keep her physical address of record (not a Post Office box) with the North Carolina State Bar current, accept all certified mail from the North Carolina State Bar, and respond to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication or within fifteen days, whichever is sooner;
- (g) Defendant shall not violate any of the Rules of Professional Conduct in effect during the period of the stay;
- (h) Defendant shall not violate any laws of the State of North Carolina or of the United States during the period of the stay excluding minor traffic infractions; and
- (i) Defendant shall timely comply with paragraph 2 above in paying all costs and administrative fees of this action as assessed by the Secretary within thirty days after service of the statement of costs on her.

4. If during the stay of the suspension Defendant fails to comply with any one or more of the conditions stated above, then the stay of the suspension of her law license may be lifted as provided in § .0118(a) 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 Rule .0129(b) of the North Carolina State Bar Discipline and Disability Rules (27 N.C. Admin. Code 1B § .0129) demonstrating compliance with the requirements therein as well as the following requirements by clear, cogent, and convincing evidence:

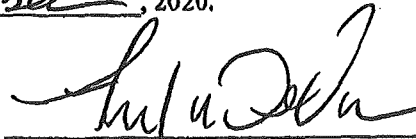
- (a) Defendant properly wound down her law practice and complied with the terms of 27 N.C. Admin. Code 1B § .0128 of the State Bar Discipline & Disability Rules;
- (b) Defendant successfully completed the CLE hours as set forth in paragraph 3(c) above;
- (c) Defendant kept the Membership Department of the State Bar informed of her physical address (not a Post Office box), telephone number, and e-mail address throughout the period of suspension;
- (d) 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 suspension;
- (e) 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 suspension;
- (f) Defendant has come into compliance with any outstanding CLE or membership obligations at the time of the filing of the petition for reinstatement;
- (g) Defendant did not violate any of the Rules of Professional Conduct in effect during the period of suspension;
- (h) Defendant did not violate any laws of the State of North Carolina or of the United States during the period of suspension; and
- (i) Defendant timely paid all costs and fees of this proceeding as assessed by the Secretary.

6. If the stay of suspension is lifted and the suspension is activated for any reason, and if Defendant fails to fully comply with 27 N.C. Admin. Code 1B § .0128 and the Court appoints a trustee to wind down any portion of Defendant's practice, Defendant shall reimburse the State Bar for all expenses incurred by the State Bar in winding down Defendant's practice. Such expenses may include, but are not limited to, storage facility fees, rent payments, moving

expenses, charges for secure disposal of client files, postage or other mailing expenses, and compensation paid to the trustee and/or the trustee's assistant for time and travel associated with the trusteeship. After the Court has discharged the trustee, the State Bar shall send an invoice of wind-down expenses to Defendant at Defendant's last known address of record with the North Carolina State Bar. Defendant shall not be eligible for reinstatement until she has reimbursed the State Bar for all wind-down expenses incurred.


7. 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 § .0118(a) 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 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 Disciplinary Hearing Panel Chair with the consent of the other Hearing Panel members, this the 27 day of October, 2020.



Fred W. DeVore III, Chair
Disciplinary Hearing Panel

CONSENTED TO BY:



Margaret Cloutier, Deputy Counsel
Attorney for the North Carolina State Bar



Gina E. Essey
Defendant



Alan M. Schneider
Attorney for Defendant