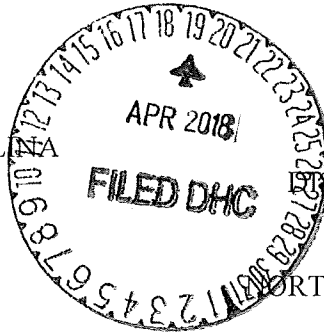


STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING
COMMISSION
OF THE
NORTH CAROLINA STATE BAR
17 DHC 32

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

PHILIP S. ADKINS, Attorney,
Defendant

CONSENT ORDER
OF DISCIPLINE

This matter was considered by a hearing panel of the Disciplinary Hearing Commission composed of Allison C. Tomberlin, Chair, Stephanie Davis, and Warren McDonald. Leonor Bailey Hodge represented Plaintiff, the North Carolina State Bar. Defendant, Philip S. Adkins represented himself. Defendant waives a formal hearing in the above referenced matter. The parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order. The parties consent to the discipline imposed by this order. By consenting to this order, Defendant knowingly, freely, and voluntarily waives his right to appeal this consent order or to challenge in any way the sufficiency of the findings.

Based on the foregoing and on the consent of the parties, the Hearing Panel hereby makes 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 North Carolina General Statutes, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. Defendant, Philip S. Adkins (hereafter “Defendant” or “Adkins”), was admitted to the North Carolina State Bar on 22 August 1981 and is an Attorney at Law subject to the rules, regulations, and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During the relevant period referred to herein, Adkins was actively engaged in the practice of law, maintaining a law office in Durham, Durham County, North Carolina until moving his practice to Snow Camp, Alamance County, North Carolina in or about December 2008.

4. Adkins maintained a general attorney trust account at PNC Bank, account ending in number 3455 (“trust account”).

5. Pursuant to the Consent Order of Preliminary Injunction entered on 17 November 2016 in 16 CVS 14221, Adkins was enjoined from handling entrusted funds.

6. Therefore, the funds Adkins maintained in the trust account have remained dormant in the trust account since entry of the preliminary injunction.

7. Before entry of the preliminary injunction, Adkins used the trust account as a general account into which all entrusted funds were deposited and disbursed.

8. On or about 17 August 2016, Adkins was served with a Subpoena for Random Audit.

9. The subpoena required Adkins to produce his trust account records for audit on 24 August 2016.

10. Adkins did not provide his trust account records in response to the subpoena. Instead, Adkins asked the State Bar’s auditor to reschedule the audit.

11. The auditor agreed to reschedule the audit twice. The final audit date was set as 18 October 2016.

12. Adkins did not appear on October 18th. Instead, Adkins called the auditor and stated that: (i) he had been out of town and (ii) he was still unable to access his trust accounting program.

13. The State Bar’s auditor extended the time for Adkins to produce his trust account records in response to the subpoena until 21 October 2016.

14. The State Bar’s auditor instructed Adkins to call her on October 21st.

15. Adkins did not call the auditor on October 21st.

16. The auditor called Adkins and agreed to a final extension of time for Adkins to produce his trust account records: 4 November 2016.

17. Adkins did not provide his trust account records on or before 4 November 2016.

18. Adkins’ trust account had previously been subject to random procedural audits in November 1989 and February 1997.

19. Adkins was cited in the November 1989 procedural audit for the following deficiencies in his trust account management pursuant to the rules in effect at the time:

- a. Failure to always indicate on checks drawn on the trust account the client balance from which the funds were drawn;

- b. Failure to always provide written accountings to the client upon complete disbursement of entrusted funds; and
- c. Failure to maintain a record of client balances when reconciling.

20. Adkins was cited in the February 1997 procedural audit for the following deficiencies in his trust account management pursuant to the rules in effect at the time:

- a. Failure to maintain client ledgers;
- b. Failure to print bank account reconciliation records; and
- c. Failure to provide a copy of the Amended Directive to the bank.

21. The State Bar obtained from the bank records for Adkins' trust account and conducted an investigative audit of the trust account.

22. Adkins did not provide any trust account records in furtherance of the investigative audit of the trust account and admitted failing to maintain the records required by the State Bar.

23. Adkins failed to maintain records for his trust account as required by the Rules of Professional Conduct.

24. The investigative audit revealed the following deficiencies in Adkins' trust account management:

- a. Failure to indicate on checks drawn on the trust account, including checks payable to Adkins, the client balance from which the funds were drawn;
- b. Failure to maintain client ledgers;
- c. Failure to provide annual accountings to clients for whom Adkins maintained entrusted funds in the trust account for more than twelve months;
- d. Disbursing funds from the trust account on behalf of a client for whom Adkins did not maintain in the trust account sufficient funds for such disbursement thereby using other clients' entrusted funds for this disbursement;
- e. Failure to promptly pay or deliver to clients, or to third parties as directed by clients, entrusted property belonging to the client and to which the client is currently entitled;
- f. Failure to maintain proper trust account records; and

- g. Failure to perform monthly and quarterly reconciliations of the trust account.

Based upon the consent of the parties and the foregoing 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, Philip S. Adkins, and over the subject matter.
2. Adkins' 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 failing to provide trust account records in response to the August 2016 Subpoena for Random Audit, Adkins failed to produce trust account records for copying and inspection in connection with a random audit by the State Bar in violation of Rule 1.15-3(h);
 - (b) By failing to indicate on checks drawn on the trust account, including checks payable to himself, the client balance from which the funds were drawn, Defendant failed to properly maintain entrusted funds in violation of Rule 1.15-2(a), failed to indicate on items payable to the lawyer the client balance from which the item was drawn in violation of Rule 1.15-2(h), and failed to maintain minimum records required for a general trust account in violation of Rule 1.15-3(b);
 - (c) By failing to maintain client ledgers, Defendant failed to maintain minimum records required for a general trust account in violation of Rule 1.15-3(b);
 - (d) By failing to provide annual accountings to clients for whom Defendant maintained funds in the trust account for more than twelve months, Defendant failed to render accountings to the client at least annually for funds retained for a period of more than one year in violation of Rule 1.15-3(e);
 - (e) By disbursing funds from the trust account on behalf of a client for whom Adkins did not maintain in the trust account sufficient funds for such disbursement, Defendant failed to properly maintain entrusted funds in violation of Rule 1.15-2(a) and used entrusted property for the personal benefit of persons other than the legal or beneficial owner in violation of Rule 1.15-2(j);

- (f) By failing to promptly pay to the clients or third parties as directed by clients entrusted property belonging to the client and to which the client is currently entitled, Defendant failed to pay to clients or third parties as directed by clients entrusted property in violation of Rule 1.15-2(m);
- (g) By failing to maintain any trust account records, Defendant failed to maintain minimum records required for a general trust account in violation of Rules 1.15-3(b) and (g); and
- (h) By failing to reconcile the trust account, Defendant failed to perform monthly and quarterly reconciliations of his trust account in violation of Rule 1.15-3(d).

Based upon the foregoing Findings of Fact and Conclusions of Law and the consent of the parties, the Hearing Panel hereby makes by clear, cogent, and convincing evidence the following:

ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE

1. Adkins' failure to properly maintain, manage, and handle entrusted funds betrays a vital trust clients and the public place in attorneys and the legal profession. Clients are entitled to have their funds handled with the utmost care.
2. Adkins' failure to properly maintain a trust account placed entrusted client 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 his disregard for certain of his duties as an attorney. This tends to erode the public's confidence in attorneys. Confidence in the legal profession is a building block for public trust in the entire legal system.
3. On 19 May 2010, Adkins was censured for failing to be diligent in his representation of two clients, failing to communicate in a client matter, engaging in conduct prejudicial to the administration of justice, and failing to timely respond to the State Bar.

Based on the foregoing Findings of Fact, Conclusions of Law, and Additional Findings of Fact Regarding Discipline, and with the consent of the parties, the Hearing Panel makes the following:

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has considered all of the factors contained in 27 N.C. Admin. Code 1B.0116(f)(1) and concludes that the following factors that warrant suspension or disbarment are present:
 - (a) Intent of the defendant to commit acts where the harm or potential harm is foreseeable; and

(b) Negative impact of defendant's actions on client's or public's perception of the profession.

2. The Hearing Panel has considered all of the factors contained in 27 N.C. Admin. Code 1B .0116(f)(2) and concludes that no factors that warrant disbarment are present.

3. The Hearing Panel has considered all of the factors contained in 27 N.C. Admin. Code 1B.0116(f)(3) and concludes that the following are applicable in this matter:

(a) Prior disciplinary offense in North Carolina: 2010 Censure;

(b) Multiple offenses;

(c) Cooperative attitude toward the proceedings; and

(d) Defendant has been licensed to practice law for approximately thirty-seven years.

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

5. Defendant's conduct placed 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 his disregard for certain of his 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.

6. The Hearing Panel has considered all lesser sanctions including: censure, reprimand, and admonition, and finds that discipline less than suspension would not adequately protect the public from Defendant's future misconduct because (i) of the gravity of potential significant harm to clients, and (ii) a period of reporting pursuant to a stayed suspension is necessary to ensure Defendant's proper handling of entrusted funds.

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

ORDER OF DISCIPLINE

1. Defendant, Philip S. Adkins, is hereby suspended from the practice of law for two years effective 30 days from service of this order upon Adkins. This suspension is stayed immediately as set forth herein and subject to the terms of paragraph 3 below.

2. Defendant shall pay, within 30 days of service of the statement of fees and costs upon him by the Secretary of the State Bar, the administrative fees and costs of this proceeding.

3. The two-year suspension is stayed for a period of two years as long as Defendant complies with all of the following conditions:

- (a) Defendant shall pay the administrative fees and costs of this proceeding as assessed by the Secretary of the State Bar within 30 days of service of the statement of fees and costs upon him.
- (b) Defendant shall certify that, at the time he signed this consent order, he is not (i) handling entrusted funds, or (ii) maintaining an attorney trust account.
- (c) Within thirty (30) days of this order's effective date, Defendant shall retain a certified public accountant ("CPA"), approved in advance by the Office of Counsel, who shall independently audit his trust account. Defendant will cooperate with the CPA to ensure that the audit is complete within sixty (60) days of the date the CPA is first retained. The CPA shall provide monthly written reports to the State Bar updating the State Bar on the audit's progress until the audit is complete. Upon completion of the audit, the CPA shall provide the State Bar with a written final audit report that identifies who owns the funds presently held in Defendant's trust account, identifies by owner and amount the funds Defendant was required to maintain in the trust account, and which identifies any shortage in the trust account. The CPA shall provide supporting documentation with the audit report. It is Defendant's sole responsibility to ensure that the CPA completes and submits the reports required herein. Defendant shall bear all costs of the audit, including any costs for preparation and submission of reports associated therewith.
- (d) Within fifteen (15) days of completion of the CPA's audit of Defendant's trust account, Defendant shall petition the court in Wake County Superior Court Case File No. 16 CVS 14221 (i) to replenish the trust account for any shortfall that the CPA has found to exist in his trust account, and (ii) to disburse to the rightful owners the funds held in his trust account.
- (e) Each month Defendant shall provide the Office of Counsel of the State Bar with the three-way reconciliation described in the State Bar Lawyer's Trust Account Handbook, using the Trust Account Reconciliation sheet available on the State Bar's website, for all trust accounts he maintains. Defendant shall provide (i) the three-way reconciliation report, (ii) client ledgers for all clients with funds in the trust account(s) during that month as may be requested by the Office of Counsel, (iii) ledger for any personal funds maintained in the trust account(s) for bank or credit card fees, (iv) trust account general ledger, (v) multiple balance ledger report (report

listing balance of funds maintained in trust for each client during reporting period), (vi) the bank statements, (vii) cancelled checks, and (viii) as may be requested by the Office of Counsel, deposit slips and copies of deposited items for each month. These documents are due on the 15th day of the following month – for example, the three-way reconciliation for the month of January is due on February 15.

- (f) Each quarter, Defendant shall have a CPA, or other accounting professional approved by the Office of Counsel of the State Bar, audit all trust accounts maintained by Defendant. This audit shall assess whether Defendant has in his trust account the client funds he is required to maintain for his clients at that time, as well as Defendant's compliance with all requirements of Rule 1.15-2 and Rule 1.15-3. The audit shall include addressing the items on the CPA Report Template which will be provided by the State Bar to Defendant. The quarterly audit reports from the CPA or accountant are due no later than 30 days after the end of the quarter – for example, the audit for the first quarter of the calendar year (January, February, and March) is due on or before April 30. It is Defendant's sole responsibility to ensure that the CPA or accountant completes and submits the reports required herein. Defendant shall bear the cost of preparation and submission of these reports.
- (g) If either the monthly three-way reconciliation report or the audit reveals any deviation from Defendant's obligations under Rule 1.15-2 or Rule 1.15-3, Defendant shall take remedial action within ten (10) days of the date of the three-way reconciliation report or the CPA or accountant audit and shall provide to the State Bar documentation showing the remedial action taken within 2 days of the date of the remedial action.
- (h) Defendant shall provide any other records requested by the Office of Counsel within ten (10) days of the request.
- (i) By the deadline stated in the request, Defendant shall comply with any requests from the Office of Counsel to provide any information regarding his trust account(s) or to sign and provide any release or authorization to allow the Office of Counsel to obtain information directly from any bank in which Defendant maintains a trust account.
- (j) Within fifteen (15) days of disbursement of entrusted funds pursuant to this order, Defendant shall provide the Office of Counsel of the State Bar with documentation showing the closing of any and all trust accounts. Thereafter, for as long as Defendant is not handling entrusted or fiduciary funds or maintaining an attorney trust account, 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 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 on March 31st and provided to the Office of Counsel by April 5th). Such affidavit shall be in lieu of the three-way reconciliation report and CPA audit required in paragraphs 3(e) and 3(f) above. For as long as Defendant is not handling any entrusted funds or fiduciary funds and is not maintaining an attorney trust account, the requirements of paragraph 3(e) and 3(f) above shall be tolled.

- (k) Within six months of the effective date of this order, Defendant shall complete two hours of continuing legal education (CLE) in the area of trust account management approved by the Office of Counsel of the State Bar. This CLE requirement is in addition to the CLE requirements set out in 27 N.C. Admin. Code 1D.1518. If the court lifts the preliminary injunction prohibiting Defendant from handling entrusted funds before Defendant complies with this provision, Defendant, nonetheless, shall not accept any new entrusted funds until he fully complies with the terms of the condition set forth in this paragraph.
- (l) Defendant shall keep the State Bar Membership Department advised of his current business address, office telephone number, and office e-mail address. Defendant shall notify the State Bar of any change of address within ten (10) days of such change. His current business address must be a street address, not a post office box or drawer.
- (m) Defendant shall accept all certified mail from the State Bar sent to the address on record with the Membership Department of the State Bar.
- (n) Defendant shall respond to all communications from the State Bar, including communications from the Attorney Client Assistance Program, within fifteen (15) days of receipt of such communication or by the deadline stated in the communication, whichever is sooner.
- (o) Defendant shall participate in good faith in the State Bar's fee dispute resolution process for any petition that is pending at the time of entry of this order or of which he receives notice after the effective date of this order.
- (p) Defendant shall timely comply with all State Bar continuing legal education requirements and will pay all fees and costs assessed therefor by the applicable deadline.
- (q) Defendant will pay all State Bar and judicial district membership dues, Client Security Fund assessments, and any other related dues, fees, assessments and/or costs by the applicable deadline.
- (r) Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or of any state or local government.

4. 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 pending motions or show cause proceedings alleging lack of compliance with the conditions of the stay of the suspension. Pursuant to 27 N.C. Admin. Code 1B.0118, 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.

5. If Defendant fails to comply with any one or more of the conditions set out above in this Order of Discipline, then the stay of the suspension may be lifted in accordance with 27 N.C. Admin. Code 1B.0118.

6. If the stay of the suspension is lifted and the suspension is activated for any reason, the Disciplinary Hearing Commission may enter an order imposing such conditions as it deems proper for the reinstatement of Defendant's license at the end of the suspension. Additionally, Defendant must establish the following by clear, cogent and convincing evidence prior to being reinstated to the practice of law after any period of active suspension:

- (a) Defendant submitted his law license and membership card to the Secretary of the State Bar within thirty (30) days of the date of the order lifting the stay and/or activating the suspension of his law license;
- (b) Defendant complied with the provisions of 27 N.C. Admin. Code 1B.0128 following entry of the order lifting the stay and/or activating the suspension of his law license;
- (c) Defendant timely paid all administrative fees and costs assessed against him in this proceeding as reflected on the statement of costs served upon him by the Secretary of the State Bar;
- (d) That within fifteen (15) days of the effective date of the order activating the suspension Defendant 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;
- (e) That Defendant provided within ten (10) days client files to all clients who made a request for return of their files;
- (f) Defendant kept the State Bar Membership Department advised of his current business street address (not post office box or drawer addresses)

and notified the State Bar of any change in address within ten (10) days of such change;

- (g) Defendant responded to all communications from the State Bar, including communications from the Attorney Client Assistance Program, within thirty (30) days of receipt or by the deadline stated in the communication, whichever is sooner;
- (h) At the time of his petition for reinstatement, Defendant is current in payment of all membership dues, fees and costs, including all Client Security Fund assessments, and other assessments, charges or surcharges the State Bar is authorized to collect from him, including all judicial district dues and assessments;
- (i) At the time of his petition for reinstatement, there is no deficit in Defendant's completion of mandatory CLE hours, in reporting of such hours, or in payment of any fees associated with attendance at CLE programs;
- (j) At the time of his petition for reinstatement, Defendant has completed within the six months that immediately preceded his petition for reinstatement two hours of CLE in the area of trust account management approved by the Office of Counsel of the State Bar;
- (k) Defendant did not violate the Rules of Professional Conduct or the laws of the United States, or the laws of any state or local government during his suspension; and
- (l) Defendant participated in good faith in the State Bar's fee dispute resolution process for any petition that was pending at the time of entry of this order or of which he received notice after the effective date of this order.

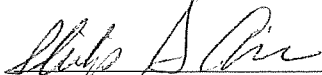
7. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code 1B.0118 until all conditions of the stay of suspension are satisfied.

Signed by the Chair with the consent of the other Hearing Panel members this the 18 day of April, 2018.



Allison C. Tomberlin, Chair
Disciplinary Hearing Panel

WE CONSENT:



Philip S. Adkins
Defendant



Leann Bailey Hodge, Deputy Counsel
Attorney for Plaintiff