

STATE OF NORTH CAROLINA

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR

WAKE COUNTY

17 DHC 8

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

BRENT F. KING, Attorney,

Defendant

CONSENT ORDER
OF
DISCIPLINE

This matter was considered by a hearing panel of the Disciplinary Hearing Commission composed of Fred M. Morelock, Chair, Allison C. Tomberlin and Christopher R. Bruffey. Leonor Bailey Hodge represented Plaintiff, the North Carolina State Bar. Defendant, Brent F. King, was represented by Alan M. Schneider. 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 (hereafter "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 promulgated thereunder.

2. Defendant, Brent F. King (hereafter "Defendant" or "King"), was admitted to the North Carolina State Bar on 24 August 1996 and is an attorney at law licensed to practice in North Carolina, 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, King actively engaged in the practice of law in the State of North Carolina and maintained a law office in Huntersville, Mecklenburg County, North Carolina.

4. Defendant leased property owned by M. Le and H. Ho d/b/a Amajes, LLC ("Amajes").

5. In or about June 2014, Defendant's law practice lost a significant portion of its revenue stream after the departure of two associate attorneys, two paralegals and several clients from his firm.

6. As part of the fallout of the staff and client departures from the firm, Defendant faced financial difficulties from June 2014 through December 2014 ("period of financial difficulty").

7. Defendant was also left renting a space that was far larger than that required to operate his now one attorney law firm.

8. Accordingly, Defendant took steps during the period of financial difficulty to try to mitigate the effects of the loss of revenue as he worked to rebuild his law practice.

9. One such step included contacting Le seeking to either modify or be released from the terms of his lease.

10. Le refused Defendant's request.

11. During the period of financial difficulty, Defendant's earnings decreased such that he often only earned just enough to meet his monthly financial obligations.

12. Also, a large part of Defendant's time was devoted to travel as he worked to rebuild his law practice and increase revenue.

13. As a result, Defendant was often unaware of the daily balance in his operating account.

14. Between 30 July 2014 and 31 October 2014, Defendant provided Amajes with two checks drawn on his operating accounts that were returned unpaid due to insufficient funds in the accounts.

15. Upon learning that the checks to Amajes had been returned unpaid due to insufficient funds, Defendant made payment to Amajes by other means.

16. On or about 4 December 2014, Defendant issued check no. 1002 drawn on his Fifth Third Bank operating account payable to Amajes in the amount of \$3,400.00.

17. Defendant provided this check to Ho as payment of his November 2014 rent.

18. After Defendant provided check no. 1002 to Ho, Defendant engaged in discussions with Le about the possibility of re-letting the property so that Defendant could be released from the terms of the lease.

19. During these discussions, Amajes did not present check no. 1002 to the bank for payment.

20. Because of the tenuous nature of Defendant's financial situation, Defendant stopped payment on check no. 1002 when he learned that Amajes had not yet presented it for payment and instead sought to make other payment arrangements with Amajes.

21. Defendant paid Amajes for November 2014 rent by other means.

22. Amajes declined to make alternate payment arrangements with Defendant and instead sued Defendant for unpaid rent.

23. Defendant paid Amajes for unpaid rent through January 2015.

24. Defendant vacated Amajes' property on or about 5 February 2015.

25. Defendant left the Amajes property in satisfactory condition and did not pursue return of his security deposit.

26. The State Bar audited Defendant's trust accounts for transactions occurring from 1 January 2014 through 31 December 2014.

27. During the audit period, Defendant maintained four active trust accounts.

28. The active trust accounts were Bank of North Carolina trust account ending in no. 0462 ("Bank of North Carolina trust account"), Fidelity Bank trust account ending in no. 2452 ("Fidelity trust account"), BB&T Bank trust account ending in no. 7667 ("BB&T trust account"), and First Citizens Bank trust account ending in no. 8288 ("First Citizens trust account").

29. Defendant opened the First Citizens trust account, a general trust account, in September 2014.

30. Defendant transferred the entrusted funds that remained in the Bank of North Carolina trust account and Fidelity trust account as of September 2014 to the First Citizens trust account.

31. Defendant maintains a balance of \$10.00 of his personal funds in the BB&T trust account. There are no client funds in the BB&T trust account.

32. As of September 2014, all of Defendant's trust accounts except the First Citizens trust account were inactive.

33. The State Bar extended the end date of the transactions analyzed in the First Citizens trust account through March 2015.

34. Defendant failed to promptly disburse his legal fees from the First Citizens trust account.

35. Between 12 November 2014 and 10 February 2015, Defendant issued approximately 33 checks payable to cash drawn from the First Citizens trust account.

36. In addition to failing to list a payee, the checks Defendant issued payable to cash did not indicate from which client accounts the payments were drawn.

37. Defendant either cashed or deposited into an account for his personal use the trust account checks that were issued as payable to cash. At the time that Defendant issued these checks, he had sufficient legal fees in the First Citizen's trust account to fund the disbursements, so these checks were not funded using client funds.

38. Defendant failed to properly account for the disbursements to himself that he made by checks payable to cash on the client ledgers.

39. Defendant also failed to properly account for earnest money deposits he received on behalf of clients on such clients' trust account ledgers.

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, Brent King, and over the subject matter.

2. King's conduct, as set forth in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

(a) By failing to promptly disburse legal fees from the First Citizens trust account, Defendant failed to maintain entrusted property separate from property of the lawyer in violation of Rule 1.15-2(a);

(b) By issuing checks drawn on the First Citizens trust account as payable to cash, Defendant issued items drawn on the trust account as payable to cash in violation of Rule 1.15-2(i) and failed to manage entrusted funds in accordance with Rule 1.15 in violation of Rule 1.15-2(a);

(c) By failing to list the client account from which funds were drawn on items issued from the First Citizens trust account for payment of his fees, Defendant failed to indicate on items issued for payment of the lawyer's fees the client balance on which the item was drawn in violation of Rule 1.15-2(h), failed to manage entrusted funds in accordance with Rule 1.15 in violation of Rule 1.15-2(a), and failed to maintain proper records for general trust accounts in violation of Rule 1.15-3(b);

(d) By failing to maintain accurate client ledgers, Defendant failed to maintain proper records for general trust accounts in violation of Rule 1.15-3(b).

3. King's conduct, as set forth in the Findings of Fact above, does not establish violation of Rule 8.4(b) and Rule 8.4(c).

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. King was issued a Letter of Warning in May 2017 for failure to supervise and take reasonable security measures in disbursement of real estate closing proceeds. Remedial measures were taken to prevent a recurrence.
2. King's failure to properly maintain, manage, and handle entrusted funds betrays a vital trust clients and the public place in attorneys and the legal profession.
3. King's 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.
4. During the pendency of this disciplinary matter, on 1 January 2018, King completed the continuing legal education two-part trust accounting series taught by the State Bar's Trust Account Compliance Counsel.

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) Absence of prior disciplinary offenses;

(b) Multiple offenses;

(c) Good character and reputation; and

(d) Defendant has been licensed to practice law for approximately twenty-two years.

4. Defendant caused potential significant harm to his clients by failing to properly manage their entrusted funds and to the standing of the profession.

5. 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, Brent F. King, is hereby suspended from the practice of law for two years effective 30 days from service of this order upon King. 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) 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 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;

- (c) 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;
- (d) 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 10 days of the date of the three-way reconciliation report or the CPA or accountant audit and shall provide documentation showing the remedial action to the State Bar within 2 days of the date of the remedial action;
- (e) Defendant shall provide any other records requested by the Office of Counsel within ten days of the request;
- (f) 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;
- (g) 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;
- (h) Defendant shall accept all certified mail from the State Bar sent to the address on record with the Membership Department of the State Bar;
- (i) Defendant shall respond to all communications from the State Bar, including communications from the Attorney Client Assistance Program, within thirty (30) days of receipt of such communication or by the deadline stated in the communication, whichever is sooner;

- (j) 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;
- (k) 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;
- (l) 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; and
- (m) 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.

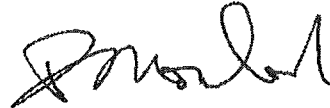
6. If the stay of the suspension is lifted and the suspension is activated for any reason, the Disciplinary Hearing Commission may enter an order imposing such conditions as it deems proper for the reinstatement of Defendant's license at the end of the suspension. Additionally, Defendant must establish 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 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 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 continuing legal education (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.

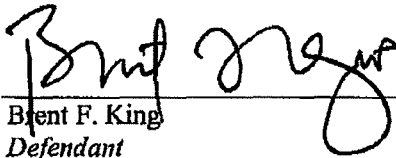
7. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code 1B.0118 until all conditions of the stay of suspension are satisfied.

Signed by the Chair with the consent of the other Hearing Panel members this the 30th day of July, 2018.

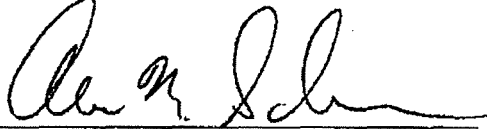


Fred M. Morelock, Chair
Disciplinary Hearing Panel

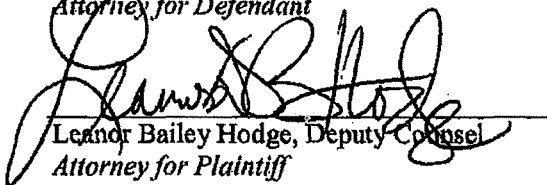
WE CONSENT:



Brent F. King
Defendant



Alan M. Schneider
Attorney for Defendant



Leandr Bailey Hodge, Deputy Counsel
Attorney for Plaintiff