

STATE OF NORTH CAROLINA  
WAKE COUNTY

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
20 DHC 4

<p>THE NORTH CAROLINA STATE BAR,  Plaintiff  v.  YUANYUE MU, Attorney,  Defendant</p>	<p>CONSENT ORDER OF DISCIPLINE</p>
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THIS MATTER was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of R. Lee Farmer, Chair, and members Maya Madura Engle and Tyler B. Morris. Jennifer A. Porter represented Plaintiff, the North Carolina State Bar. Defendant, Yuanuye Mu, was represented by Deanna S. Brocker.

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 upon the stipulated facts and upon the consent of the parties, the Hearing Panel hereby finds by clear, cogent, and convincing evidence the following

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar (Chapter 1 of Title 27 of the North Carolina Administrative Code).
2. Defendant, Yuanyue Mu ("Mu"), was admitted to the North Carolina State Bar in 2011, 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, Mu was engaged in the practice of law in the State of North Carolina and maintained a law office in Cary, Wake County, North Carolina.

4. Mu was properly served with process and the matter came before the Hearing Panel with due notice to all parties.

5. Mu maintained an attorney trust account at Wells Fargo Bank, N.A., account number ending in the digits 7192.

6. Until Mu began utilizing a computer software program to help him manage his trust account (hereinafter "software program") in about December 2018, Mu failed to conduct reconciliations of his trust account comparing the total of all subsidiary trust account ledgers with a positive balance with his general ledger balance and his adjusted bank statement balance quarterly (hereinafter "quarterly reconciliation").

7. Using the software program, beginning in about December 2018 Mu produced quarterly reconciliation reports of his trust account each month, including for the periods ending December 31, 2018, January 31, 2019, and February 28, 2019.

8. Mu failed to properly conduct quarterly reconciliations for the periods ending December 31, 2018, January 31, 2019, and February 28, 2019, however, because he included client ledgers with a negative balance when calculating the total of subsidiary trust account ledger balances that was compared with the general ledger balance and the adjusted bank statement balance.

9. Until Mu began utilizing the software program in about December 2018, Mu failed to conduct reconciliations of his trust account comparing the balance of the trust account shown in his records and the bank statement balance monthly.

10. Although Mu periodically checked the transactions on his client ledgers against the cleared deposits and disbursements shown on his bank statements, through at least May 2019 he did not each month review the bank statement and cancelled checks for his trust account.

11. Through at least May 2019, Mu did not review the statement of costs and receipts, client ledger, and cancelled checks of a random sample of representative transactions completed during the quarter on a quarterly basis.

12. Mu failed to promptly deposit entrusted funds into his trust account, including but not limited to on multiple occasions between April 2017 and November 2018.

13. On occasion between May 2017 and February 2019, Mu disbursed more funds for a client than he had in the trust account for the client at that time.

14. Mu disbursed \$210.00 more from his trust account for client matter designated CL 1001 than he had in the trust account for that client in March 2018 and did not deposit funds to cure the resulting deficit until September 2019.

15. Mu failed to ensure prompt disbursement of funds from his trust account to DF as follows:

- a. In May 2017, Mu received earnest money from his client SZ, who was the buyer in an intended real estate purchase transaction.
- b. DF was the seller in the intended real estate transaction.
- c. Mu deposited the earnest money from SZ into his trust account.
- d. In June 2017, the parties terminated the purchase contract.
- e. In September 2018, SZ provided Mu the written release Mu required in order to release the earnest money to DF.
- f. In October 2018, Mu instructed his nonlawyer assistant to prepare and mail the check disbursing the earnest money to DF.
- g. When his assistant handed him the check to sign, Mu failed to notice she had made the check payable to SZ instead of DF.
- h. Mu's assistant mailed the check to DF.
- i. On October 22, 2018, SZ notified Mu's assistant of the error and asked that the check be re-issued.
- j. Mu relied upon his assistant to prepare a new check disbursing the earnest money to DF.
- k. Mu failed to ensure that his assistant timely prepared a new check for him to sign disbursing the earnest money to DF.
- l. Mu failed to ensure he timely signed a new check disbursing the earnest money to DF.
- m. No replacement check was issued to DF until December 6, 2018.

Based on the foregoing Findings of Fact and upon the consent of the parties, the Hearing Panel enters the following

#### CONCLUSIONS OF LAW

1. All the parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, Yuanyue Mu, and the subject matter.

2. Defendant'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 in effect at the time of the conduct as follows:

- a. By failing to compare the total of subsidiary trust account ledgers with a positive balance with his general ledger balance and his adjusted bank statement balance each quarter, Mu failed to conduct quarterly reconciliations of his trust account in violation of Rule 1.15-3(d)(1);
- b. By failing to compare the balance of the trust account shown in his records and the bank statement balance each month, Mu failed to conduct monthly reconciliations of his trust account in violation of Rule 1.15-3(d)(2);
- c. By failing to review the bank statement and cancelled checks for his trust account each month, Mu failed to conduct monthly reviews of his trust account in violation of Rule 1.15-3(i)(1);
- d. By failing to review the statement of costs and receipts, client ledger, and cancelled checks of a random sample of representative transactions completed in his trust account during the quarter on a quarterly basis, Mu failed to conduct quarterly reviews of his trust account in violation of Rule 1.15-3(i)(2);
- e. By failing to promptly deposit entrusted funds in his trust account, Mu failed to properly maintain and deposit entrusted funds in violation of Rule 1.15-2(a) and (b);
- f. By disbursing more funds for clients than he maintained in the trust account for such clients at that time, Mu failed to properly maintain and disburse entrusted funds in violation of Rule 1.15-2(a), (k), and (n); and
- g. By failing to ensure his assistant properly prepared the check to DF, by failing to ensure his assistant timely prepared a replacement check to DF, and by failing to ensure he timely signed a replacement check to DF, Mu failed to make reasonable efforts to ensure that the nonlawyer's conduct was compatible with his professional obligations in violation of Rule 5.3(b) and failed to ensure entrusted funds were promptly disbursed to the appropriate recipient in violation of Rule 1.15-2(a) and (n).

Based on the foregoing Findings of Fact and Conclusions of Law, the stipulated facts, and upon the consent of the parties, the Hearing Panel hereby finds by clear, cogent and convincing evidence the following additional

#### FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1 – 15 above are reincorporated as if set forth herein.

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

3. The trust account record-keeping, review, and reconciliation requirements of the Rules of Professional Conduct are designed to assist with the proper protection, maintenance, and disbursement of entrusted funds, and to facilitate prompt detection and correction of any errors. Defendant's failure to have complied with these requirements as set out above caused significant harm, including the failure to detect and promptly correct the \$210.00 deficiency described above.

4. To the extent an attorney utilizes non-attorney assistants and/or software programs to carry out tasks for the trust account, the attorney remains responsible for supervising the assistants and/or reviewing the reports of the software program to ensure the trust account records, reviews, and reconciliations are in compliance with the Rules of Professional Conduct. By failing to sufficiently supervise his assistant, Defendant caused significant harm to a third party by unnecessarily delaying disbursement of funds to which the third party was entitled. By failing to sufficiently review and bring into compliance with the Rules of Professional Conduct the reports produced by the software system he utilized, Defendant caused potential significant harm to his clients by creating reports that made it appear that he had sufficient funds for his clients in his trust account when he did not.

5. By March 2019, Defendant had reimbursed the trust account for all negative balances shown in the software reconciliation reports from December 2018, January 2019, and February 2019.

6. Defendant has taken corrective action by implementing use of a software program for the reconciliation of his trust account. Additional action is necessary to address all of the deficiencies in compliance with the trust account record-keeping, review, and reconciliation requirements identified above. Defendant has provided the State Bar with trust account records for the fourth quarter of 2019 demonstrating the efforts he is making to come into compliance.

7. Defendant has no prior discipline.

8. Defendant acknowledges that his prior practices with his trust account have not been in compliance with the Rules of Professional Conduct, is remorseful, and has made efforts to come into compliance with the Rules.

9. Defendant is not maintaining any entrusted funds for which he cannot identify the client for whom such funds are maintained, with the exception of \$30,000.00 received by unanticipated wire on September 23, 2019. Defendant has taken steps to attempt to identify the purpose and for whom the funds were wired to him, and to obtain the information necessary to return the funds if he cannot identify a client matter for which the funds were sent. Defendant is continuing to investigate this matter.

10. The Hearing Panel finds by clear, cogent, and convincing evidence the facts contained in the conclusions set out below of the applicable factors regarding discipline from those listed in 27 N.C. Admin. Code 1B.0116(f).

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

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel carefully considered all of the different forms of discipline available to it.
2. The Hearing Panel considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f).
3. The Hearing Panel concludes that the following factors from 27 N.C. Admin. Code 1B.0116(f)(1), which are to be considered in imposing suspension or disbarment, are present in this case:
  - a. Factor (B), Intent of Defendant to commit acts where the harm or potential harm is foreseeable;
  - b. Factor (E), Negative impact of Defendant's actions on client's and public's perception of the profession; and
  - c. Factor (H), Effect of Defendant's conduct on third parties.
4. The Hearing Panel considered the factors listed in 27 N.C. Admin. Code 1B.0116(f)(2), which are factors warranting consideration of disbarment, and concluded no factors in this section of the rule are present in this case.
5. The Hearing Panel concludes that the following factors from 27 N.C. Admin. Code 1B.0116(f)(3), which are to be considered in all cases, are present in this case:
  - a. Factor (C), Absence of dishonest or selfish motive;
  - b. Factor (D), Timely make a good faith effort to make restitution and to rectify consequences of misconduct;
  - c. Factor (F), A pattern of misconduct;
  - d. Factor (G), Multiple offenses;
  - e. Factor (J), Interim rehabilitation;
  - f. Factor (K), Full and free disclosure to the Hearing Panel and a cooperative attitude toward the proceedings;
  - g. Factor (P), Remorse; and

h. Factor (S), Degree of experience in the practice of law.

6. The Hearing Panel considered all of the disciplinary options available to it and determined that a stayed suspension with conditions is appropriate in this case, in light of the significant harm and potential harm caused by Defendant's conduct to his clients and the profession. A stayed suspension with conditions designed to ensure all necessary corrections are made to achieve and maintain full compliance with the trust account record-keeping, review, and reconciliation requirements of the Rules of Professional Conduct is necessary to protect clients and the public.

7. The Hearing Panel has considered all lesser sanctions and finds that discipline short of a stayed suspension would not adequately protect the public for the following reasons:

- a. Supervision under a stayed suspension is necessary to ensure all required corrections are made and sustained; and
- b. Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses Defendant committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar of this State.

Based on the foregoing Findings of Fact, Conclusions of Law, additional Findings of Fact and Conclusions of Law Regarding Discipline, and with the consent of the parties, the Hearing Panel hereby enters the following

#### ORDER OF DISCIPLINE

1. Defendant, Yuanyue Mu, is hereby suspended from the practice of law for two years. The effective date of this Order is 30 days from service of this Order upon Defendant pursuant to 27 N.C. Admin. Code 1B.0128(c). This suspension is stayed from its inception subject to the terms set out below.

2. Defendant is taxed with the administrative fees and costs of this proceeding. Defendant shall pay the administrative fees and costs of this proceeding as assessed by the Secretary of the North Carolina State Bar. Defendant must pay the costs within 30 days of service upon him of the statement of costs by the Secretary.

3. Defendant's two-year suspension is stayed for two years. The stay of Defendant's suspension of his law license will continue in effect only as long as Defendant complies with the following conditions:

- a. Within 30 days of the effective date of this order, Defendant establishes written procedures for complying with all provisions of Rule 1.15-2 and Rule 1.15-3 of the Rules of Professional Conduct. If non-attorney assistants and/or a CPA will be used to assist with these tasks, Defendant shall include written procedures for his personal review and supervision. No later than 30 days from the effective date of

this order, Defendant shall submit these procedures to the Office of Counsel. Defendant shall make any adjustments required by the Office of Counsel to ensure compliance with the Rules of Professional Conduct;

- b. Defendant provides monthly to the State Bar's Office of Counsel a written report of the three-way reconciliation of all attorney trust accounts to which he has access, using the State Bar's Reconciliation Report form from the State Bar's website and the reconciliation methods described in the State Bar Lawyer's Trust Account Handbook on the State Bar's website, and including with each such report, for the account and period covered by the report, the following documents: (1) list of clients whose funds are held in the trust account that includes the amount of each client's funds; (2) subsidiary ledger for any personal funds of Defendant in the account; (3) general ledger; (4) bank statement; (5) canceled checks; (6) deposit slips; (7) deposited items; and (8) bank statement for any account into which funds are directly transferred from the trust account. This documentation is due 15 days after the end of each month (e.g. documentation for January due February 15<sup>th</sup>, etc.);
- c. Defendant provides any other trust account related documentation or records requested by the Office of Counsel within 10 days of the request;
- d. With respect to the \$30,000.00 received by unanticipated wire on September 23, 2019, Defendant makes all possible efforts to identify for whom and the purpose for which he received the funds and, if not confirmed as received for a client, to return the funds to the originator account holder or other proper recipient within 60 days from the effective date of this Order, and provides documentation of all such efforts to the Office of Counsel no later than 70 days from the effective date of this Order;
- e. Defendant complies with Rule 1.15-2(r) and Chapter 116B of the General Statutes regarding any and all abandoned or unidentified funds in any trust account of Defendant's within 30 days of being statutorily permitted to escheat funds to the State;
- f. Defendant provides to the Office of Counsel the quarterly review report and supporting documents required under Rule 1.15-3(i), using the Quarterly Review Report form from the State Bar's website, no later than 15 days after the end of the quarter, on the following dates as they occur during the stayed suspension: January 15, for the fourth quarter of the prior year; April 15, for the first quarter of the calendar year; July 15 for the second quarter of the calendar year; and October 15, for the third quarter of the calendar year;
- g. For each calendar year of the stayed suspension, Defendant completes one additional hour of CLE on the topic of trust account management. This CLE requirement is in addition to Defendant's other CLE requirements;

- h. Defendant keeps the State Bar's Membership Department advised of his current business address, which address must be a street address, not a post office box or drawer;
- i. Defendant notifies the State Bar of any change of address within 10 days of such change;
- j. Defendant responds to all communications from the State Bar, including communications from the Attorney Client Assistance Program, within 30 days of receipt of such communication or by the deadline stated in the communication, whichever is sooner;
- k. Defendant participates in good faith in the State Bar's fee dispute resolution process for any petition of which he receives notice after the effective date of this Order; and
- l. Defendant does not violate the Rules of Professional Conduct or the laws of the United States or 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 motions or proceedings pending 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 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 proceeding.

5. 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 Defendant's law license may be lifted as provided in 27 N.C. Admin. Code 1B.0118.

6. If the stay of the suspension is lifted and the suspension is activated for any reason, Defendant may apply for reinstatement after serving the activated suspension by filing a petition pursuant to 27 N.C. Admin. Code 1B.0129 demonstrating compliance by clear, cogent, and convincing evidence with the requirements therein as well as the following requirements:


- a. Defendant properly wound down his law practice and complied with the terms of 27 N.C. Admin. Code 1B.0128;

- b. Defendant submitted his law license and membership card to the Secretary of the State Bar no later than 30 days following the effective date of the order lifting the stay;
- c. Within 15 days of the effective date of this Order, Defendant shall have provided the Office of Counsel and the Membership Department of the State Bar with an address and telephone number at which clients seeking return of files can communicate with Defendant and obtain such files. Defendant must have kept this information current with the Membership Department of the State Bar, providing updated information to the State Bar within 15 days of any change;
- d. Defendant shall have promptly returned client files in his possession, custody, or control to clients upon request, within 5 days of receipt of such request. Defendant will be deemed to have received any such request 3 days after the date such request is sent to Defendant if the request is sent to the address Defendant provided the Membership Department of the State Bar pursuant to the preceding paragraph;
- e. Defendant disbursed to the proper recipients all identified client funds in any trust account he maintained upon the termination of his representation by the activation of his suspension;
- f. With respect to the \$30,000.00 received by unanticipated wire on September 23, 2019, Defendant attempted to identify for whom and the purpose for which he received the funds and, if not confirmed as received for a client, to return the funds to the originator account holder or other proper recipient;
- g. Defendant complied with Rule 1.15-2(r) and Chapter 116B of the General Statutes regarding any and all abandoned or unidentified funds in any trust account of Defendant's within 30 days of being statutorily permitted to escheat funds to the State;
- h. Defendant completed four hours of continuing legal education in the area of trust account management approved by the Office of Counsel of the State Bar, including at least one CLE by the Trust Account Compliance Counsel for the North Carolina State Bar;
- i. Defendant kept the Membership Department of the State Bar informed of his current information for his physical address (not a Post Office box), telephone number, and e-mail address throughout the period of his suspension;
- j. Defendant accepted all certified mail from the State Bar sent to the address on record with the Membership Department of the North Carolina State Bar throughout the period of the suspension;


- k. Defendant responded to all letters of notice and requests for information from the North Carolina State Bar by the deadline stated therein with full and complete responses and all requested documentation throughout the period of his suspension;
- l. Defendant came into compliance with any outstanding continuing education or membership obligations at the time of the filing of his petition for reinstatement;
- m. Defendant did not violate any of the Rules of Professional Conduct in effect during the period of the suspension;
- n. Defendant did not violate any laws of the State of North Carolina or of the United States during the period of the suspension;
- o. Defendant paid all costs and fees of this proceeding as assessed by the Secretary by the date of the filing of his petition for reinstatement; and
- p. If Defendant failed to fully comply with 27 N.C. Admin. Code 1B.0128, Defendant shall reimburse the State Bar for any and 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 any appointed trustee and/or the trustee's assistant for time and travel associated with the trusteeship. The State Bar shall send an invoice of wind-down expenses to Defendant at Defendant's last known address of record with the State Bar. Defendant shall not be eligible for any stay of suspension or reinstatement from suspension until he has reimbursed the State Bar for any wind-down expenses incurred.

6. 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 the suspension are satisfied.

Signed by the Chair with the consent of the other Hearing Panel members, this the 14th day of February, 2020.

  
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R. Lee Farmer, Chair  
Disciplinary Hearing Panel

WE CONSENT:



Yuanyue Mu  
Defendant

02/10/2020  
Date



Deanna S. Brocker  
Attorney for Defendant

02/11/2020  
Date



Jennifer A. Porter, Deputy Counsel  
Attorney for Plaintiff

2/13/2020  
Date