

STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
22 DHC 22

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

ANDRE N. HOGAN, Attorney,

Defendant

CONSENT
ORDER OF DISCIPLINE

THIS MATTER was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of James A. Davis, Chair, and members Irving L. Joyner and Brandon Gosey. J. Cameron Lee represented the Plaintiff, the North Carolina State Bar. Deanna Brocker represented Defendant, Andre N. Hogan.

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, Andre N. Hogan, was admitted to the North Carolina State Bar in 2005, 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 State Bar and the Rules of Professional Conduct.

3. During all or part of the relevant periods referred to herein, Hogan was engaged in the practice of law in the State of North Carolina and maintained a law office in Fayetteville, Cumberland County, North Carolina.

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

5. Defendant maintained one trust account in connection with his law practice: Wells Fargo Bank account number ending in 4451 (“the trust account”).

6. Defendant held entrusted funds on behalf of clients in the trust account.

7. On various occasions between September 2018 and April 2022, Defendant failed to:

- a. At least quarterly, prepare reconciliation reports showing the balance that appeared in the general ledger as of the reporting date, the total of all positive subsidiary ledger balances in the trust account as of the reporting date, and the adjusted bank balance and verify that the balances were identical, and review, sign, date, and retain a copy of those reports for a period of six years;
- b. At least monthly, reconcile the balance of the trust account as shown in his records with the then-current bank statement balance for his trust account, and review, sign, date and retain a copy of those reports for a period of six years;
- c. Identify on trust account checks the client whose funds in the trust account were being disbursed by the checks;
- d. Identify on wire transfers and/or electronic or online transfers the client whose funds in the trust account were being received or disbursed;
- e. Timely provide clients with written accountings of receipts and disbursements of all entrusted funds;
- f. Properly maintain and disburse funds, by disbursing more funds from the trust account for a client than were in the trust account for the client, including:
 1. On 13 March 2019, Defendant improperly disbursed \$500 from his trust account attributed to client N.D.
 2. On 13 June 2019, Defendant improperly disbursed \$1,000 from his trust account attributed to client J.P.
 3. On 27 June 2019, Defendant improperly disbursed \$235 from his trust account attributed to client R.L.
 4. On 13 March 2020, Defendant improperly disbursed \$30 from his trust account attributed to Client J.B.
- g. Complete and sign transaction reviews quarterly; and

h. Deposit entrusted funds provided by credit card into his trust account.

8. On 21 August 2020, the State Bar opened a grievance against Defendant to investigate the conduct described in paragraphs 7a to 7h above.

9. In the course of the grievance investigation, the State Bar sent Defendant a 28 January 2022 letter instructing Defendant to produce monthly and quarterly reconciliation reports for his trust account for 2021 or, alternatively, to explain why he could not do so.

10. Defendant failed to respond to the State Bar's 28 January 2022 letter.

Based upon the foregoing Findings of Fact and upon consent of the parties, the Hearing Panel makes the following:

CONCLUSIONS OF LAW

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

2. Defendant's conduct, as set forth in the Findings of Fact above, constitutes grounds for discipline as follows:

I. 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 at least quarterly to prepare reconciliation reports showing the balance that appeared in the general ledger as of the reporting date, the total of all positive subsidiary ledger balances in the trust account as of the reporting date, and the adjusted bank balance and verify that the balances were identical, Defendant failed to perform quarterly reconciliations of his attorney trust account in violation of Rules 1.15-3(d)(1), and failed to review, sign, date, and retain copies of reconciliations of his attorney trust account for a period of six years in violation of Rule 1.15-3(d)(3);

(b) By failing monthly to reconcile the balance of his trust account as shown on his records with the current bank statement balance for his trust account, Defendant failed to perform monthly reconciliations of his attorney trust account in violation of Rule 1.15-3(d)(2), and failed to review, sign, date and retain copies of reports of monthly reconciliations of his attorney trust account for a period of six years in violation of Rule 1.15-3(d)(3);

(c) By failing to always identify on trust account checks the client from whose balance checks from his trust account were drawn, Defendant failed to maintain the minimum records required for general trust accounts in violation of Rule 1.15-3(b)(2);

- (d) By failing to identify on all instructions, authorizations, and written or electronic records of transfers the client to whom the funds belong, Defendant failed to maintain the minimum records required for general trust accounts in violation of Rule 1.15-3(b)(3);
- (e) By failing to timely provide clients for whom he held entrusted funds with written accountings of the receipts and disbursements of all entrusted funds at the completion of all disbursements or at least annually if funds were held for more than a year, Defendant failed to render to his clients required accountings in violation of Rule 1.15-3(e);
- (f) By disbursing more funds from the trust account than he had in trust for clients N.D., J.P., R.L., and J.B., Defendant failed to deposit, disburse and distribute funds in accordance with Rule 1.15 in violation of Rule 1.15-2(a), failed to promptly pay or deliver to the client, or to third persons as directed by the client, any entrusted property belonging to the client and to which the client is currently entitled in violation of Rule 1.15-2(n), and used entrusted property for the benefit of himself or a third party in violation of Rule 1.15-2(k);
- (g) By failing 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 and failing to create and maintain reports for such reviews, Defendant failed to perform quarterly transaction reviews of his trust account in violation of Rule 1.15-3(i)(2), and failed to sign, date, and retain copies of quarterly transaction reports for a period of six years in violation of Rule 1.15-3(i)(5);
- (h) By failing to deposit entrusted funds provided by credit card into a trust account, Defendant failed to promptly deposit entrusted funds into a trust account in violation of Rule 1.15-2(b); and
- (i) By failing to respond to the State Bar's 28 January 2022 letter, Defendant knowingly failed to respond to a lawful demand for information from a disciplinary authority in connection with a disciplinary matter in violation of Rule 8.1(b).

II. Pursuant to N.C. Gen. Stat. § 84-28(b)(3) in that Defendant failed to answer the formal inquiry of the State Bar in a disciplinary matter.

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

ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1 – 10 above are reincorporated as if set forth herein.
2. Clients expect and are entitled to have their money handled with the utmost care. Defendant's failure to properly maintain, manage, and handle entrusted funds betrayed a vital trust that clients and the public place in attorneys and in the legal profession.
3. Defendant's failure to comply with the trust account record-keeping, review, and reconciliation requirements of the Rules of Professional Conduct put entrusted client funds at risk and, therefore, had the potential to cause significant harm to clients for whom Defendant maintained entrusted funds.
4. Public trust in the legal profession is foundational to public faith in the legal system. Defendant's failure to properly maintain his trust account has the potential to cause significant harm to the standing of the profession in the perception of the public because it shows Defendant's disregard for his duties as an attorney. Such disregard tends to erode the public's confidence in attorneys, thereby sullyng the reputation of, and fostering disrespect for the profession, and undermining the public's confidence in the legal system.
5. Defendant's failure to timely respond to inquiries from the State Bar during the grievance process interfered with the State Bar's ability to regulate its members and undermined the profession's privilege to remain self-regulating.
6. Defendant took corrective action and implemented measures to bring his trust account procedures into compliance with the Rules of Professional Conduct.
7. Defendant has accepted responsibility and expressed sincere remorse for his conduct.
8. The State Bar's investigation revealed no evidence to suggest that Defendant had stolen or otherwise intentionally misappropriated entrusted client funds.
9. Defendant has been cooperative during the pendency of this matter before the Disciplinary Hearing Commission and has fully complied with the State Bar's inquires and requests for information.
10. Defendant has no record of prior professional discipline.

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

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has carefully considered all the forms of discipline available to it.
2. The Hearing Panel concludes that the following factors from 27 N.C. Admin. Code 1B.0116(f)(1) are present in this case:
 - a. Factor (B), Intent of Defendant to commit acts where the harm or potential harm is foreseeable; and
 - b. Factor (E), Negative impact of Defendant's actions on client's and public's perception of the profession.
3. The Hearing Panel considered the factors listed in 27 N.C. Admin. Code 1B.0116(f)(2) and concludes that no factors in this section of the rule are present in this case.
4. The Hearing Panel concludes that the following factors from 27 N.C. Admin. Code 1B.0116(f)(3) are present in this case:
 - a. Factor (C), Absence of dishonest or selfish motive;
 - b. Factor (D), Timely good faith efforts 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.
5. The Hearing Panel considered all lesser sanctions and concluded that discipline short of a stayed suspension with conditions would fail to acknowledge the seriousness of Defendant's misconduct and would send the wrong message to the public and to members of the bar about the sort of 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, Andre N. Hogan, is hereby suspended from the practice of law for one year, effective thirty days from service of this Order upon him. This suspension is stayed immediately as set forth herein, subject to the terms of paragraph 3 below.

2. Defendant is taxed with the administrative fees and costs of this action as assessed by the Secretary of the North Carolina State Bar. Defendant shall pay the administrative fees and costs of this proceeding assessed by the Secretary within sixty days of the State Bar mailing the statement of costs to Defendant at the address on file with the State Bar Membership Department.

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

- a. Defendant shall ensure that all bank transactions (including all deposits, disbursements, bank charges, etc.) are recorded on the general ledger for his trust account and on any appropriate subsidiary trust account ledger and that all entries on all general ledgers and subsidiary trust account ledgers accurately reflect the corresponding bank transaction.
- b. Defendant shall personally perform the monthly and quarterly reconciliations and quarterly transaction reviews of all bank accounts into which Defendant deposits funds held in trust for the benefit of any client or third party. Defendant shall perform the reconciliations using the reconciliation methods described in the State Bar Lawyer's Trust Account Handbook and using the reconciliation form provided therein. Defendant shall provide reconciliation reports and all supporting documentation to a Trust Account Monitor ("TAM") as provided below within fifteen days of the end of each quarter (each January 15, April 15, July 15, and October 15 during the period of the stay).
- c. Defendant shall, at Defendant's sole expense, engage the services of a TAM to audit his trust account on a quarterly basis to ensure Defendant's compliance with the provisions of the Rules of Professional Conduct governing trust accounts:
 - i. The TAM must submit quarterly a written report to the Office of Counsel of the State Bar ("OOC") concerning whether Defendant's reconciliations and trust account records and activities comply with the Rules of Professional Conduct. The report must detail any accounting irregularities and any deviations from the requirements of the Rules of Professional Conduct. The TAM's reports are due to the OOC no later than thirty days after the end of each quarter (each January 30, April 30, July 20, and October 30 during the period of the stay), with a copy of the report sent simultaneously to Defendant. It is Defendant's sole responsibility to ensure the TAM completes and submits the reports as required by this order;

- ii. If any of the TAM's reports note any irregularities in Defendant's accounting, or deviations from the requirements of the Rules of Professional Conduct, Defendant shall 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 TAM and to the OOC within fifteen days of the submission date of the TAM's report; and
 - iii. Defendant's failure to ensure that the TAM submits any report required by this order or to take timely remedial action to correct any deficiency noted in the TAM's report as required in subparagraph (ii), *supra*, shall be grounds to lift the stay and activate the suspension.
- d. Defendant shall provide any records or information regarding his trust account(s) requested by the OOC and, when requested by the OOC to do so, sign and provide any release or authorization to allow the OOC to obtain information directly from any bank with which Defendant maintains a bank account into which has been deposited any funds delivered to Defendant in trust, within ten days of the request or by the deadline stated in the request, whichever is later.
 - e. If, at any point during the pendency of the stay of this suspension, Defendant ceases handling entrusted or fiduciary funds, Defendant shall submit to the OOC monthly an affidavit certifying that he did not handle any entrusted or fiduciary funds in that month. This affidavit shall be executed by the last day of each month and provided to the OOC by the fifth day of the following month (*e.g.* the affidavit for March would be executed by March 31st and provided to the OOC by April 5th).
 - f. Within six months after the effective date of this Order, Defendant shall complete two hours of CLE approved by the OOC on the topic of trust account management. This CLE requirement is in addition to the CLE requirements set out in 27 N.C. Admin. Code 1D.1518.
 - g. Defendant shall keep the North Carolina State Bar's Membership Department advised of his current business address. Defendant shall notify the Membership Department of any change of address within ten days of such change. Defendant's 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 and shall respond to all communications from the State Bar within thirty days of receipt of such communication or by the deadline stated in the communication, whichever is sooner.

- i. Defendant shall timely comply with all State Bar CLE requirements and pay all associated fees and costs by the applicable deadline.
- j. Defendant shall timely pay all membership dues, fees, and costs, including all Client Security Fund assessments and other charges or surcharges the State Bar is authorized to collect from him, including all judicial district dues, fees, and assessments.
- k. Defendant shall not violate the Rules of Professional Conduct of North Carolina or of any other jurisdiction in which he is or may become licensed to practice law or the laws of the United States or of any state or local government, other than minor traffic violations.

4. 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, and the suspension activated in accordance with 27 N.C. Admin. Code 1B.0118.

5. If the suspension is activated for any reason, the Disciplinary Hearing Commission (“DHC”) may enter an order imposing such conditions as it deems proper for the reinstatement of Defendant’s license at the end of the suspension. At minimum, 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. That Defendant submitted his law license and membership card to the Secretary of the State Bar within thirty days of the date of the order activating the suspension of his law license;
- b. That Defendant properly wound down his law practice and complied with the provisions of 27 N.C. Admin. Code 1B.0128 following entry of the order activating the suspension of his law license, including proper disbursement of any funds held in trust for any client or third party remaining in his trust account;
- c. That 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 days of the effective date of the order activating the suspension of his law license, Defendant provided the OOC 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 client files to all clients who made a request for return of their files within ten days of Defendant’s receipt of any such request;
- f. That Defendant kept the Membership Department advised of his current physical business address (not post-office box or drawer addresses), telephone number(s),

and e-mail address(es) and notified the Membership Department of any change in business address, telephone number(s), and email address(es) within ten days of such change;

- g. That Defendant responded to all communications from the State Bar within thirty days of receipt of such communication or by the deadline stated in the communication, whichever is sooner;
- h. That, 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 charges or surcharges the State Bar is authorized to collect from him, including all judicial district dues, fees, and assessments;
- i. That, 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 and costs associated with attendance at CLE programs;
- j. That Defendant completed, within the six months that immediately preceded his petition for reinstatement, two hours of CLE approved by the OOC in the area of trust account management, in addition to the CLE requirements set out in 27 N.C. Admin. Code 1D.1518; and
- k. That Defendant did not violate the Rules of Professional Conduct of North Carolina or of any other jurisdiction in which he is licensed to practice law, or the laws of the United States or of any state or local government, other than minor traffic violations.

6. If the stay of the 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, Defendant shall reimburse the State Bar for any 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 appointed trustee and/or the trustee's assistant(s) for time and travel associated with the trusteeship. The State Bar shall send an invoice of the expenses incurred by the State Bar in winding down Defendant's practice to Defendant at the address on file with the Membership Department. Defendant shall pay the expenses within thirty days of the State Bar mailing the invoice to him.

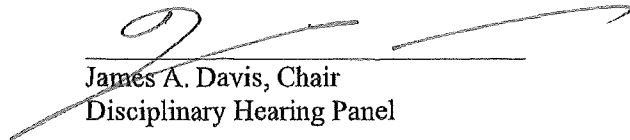
7. Unless Defendant's obligations under this Order are modified by further order of the DHC, Defendant's obligations under this Order end two years from the effective date of this Order, provided there are no pending motions to activate the suspension of his law license alleging lack of compliance with 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 jurisdiction and may 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.

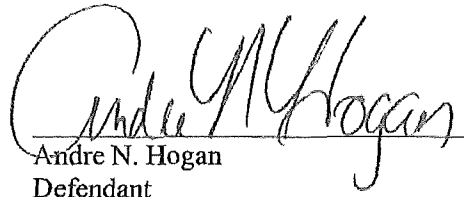
Signed by the Chair with the consent of the other Hearing Panel members this the 7th day of FEBRUARY, 2023.



J. Cameron Lee
Attorney for Plaintiff



James A. Davis, Chair
Disciplinary Hearing Panel



Andre N. Hogan
Defendant

Deanna Brocker
Attorney for Defendant


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 Chair with the consent of the other Hearing Panel members this the _____ day of _____, 2023.

James A. Davis, Chair
Disciplinary Hearing Panel

J. Cameron Lee
Attorney for Plaintiff

Andre N. Hogan
Defendant


Deanna Brocker
Attorney for Defendant