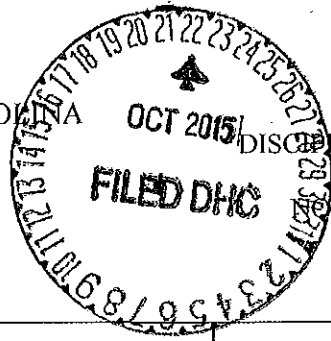


STATE OF NORTH CAROLINA
WAKE COUNTY



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

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

JOSEPH C. DELK III, Attorney,

Defendant

CONSENT
ORDER OF DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Joshua W. Willey, Jr., Chair, and members R. Lee Farmer and Karen B. Ray pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff was represented by Margaret T. Cloutier. Defendant, Joseph C. Delk III, was represented by Dudley A. Witt.

Both Plaintiff and Defendant stipulate and agree to the findings of fact and conclusions of law recited in this Consent Order and to the discipline imposed. Delk has freely and voluntarily stipulated to the foregoing findings of fact and consents to the conclusions of law and entry of the Order of Discipline. Delk freely and voluntarily waives any and all right to appeal the entry of this consent Order of Discipline.

Based upon the pleadings in this matter, the parties' stipulations of fact, and with the consent of the parties, the Hearing Panel hereby enters the following:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the North Carolina General Statutes, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. Defendant, Joseph C. Delk III ("Delk" or "Defendant"), was admitted to the North Carolina State Bar on August 22, 1976, 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 the relevant periods referred to herein, Delk was engaged in the practice of law in the State of North Carolina and maintained a law office in Lenoir, Caldwell County, North Carolina.

4. Delk maintained two attorney trust accounts; Certus Bank trust account ending in no. 985 (hereinafter "Certus trust account") and CommunityOne Bank trust account ending in no. 458 (hereinafter "CommunityOne trust account").

5. In January 2015, Delk was the subject of a random audit of his trust accounts.

6. The random audit showed deficiencies in Delk's management of his trust accounts.

7. Delk had previously been the subject of a random audit in 1993 which showed similar deficiencies.

8. As a result of the findings of the January 2015 random audit, a more thorough review of Delk's trust accounts was conducted. That review showed deficiencies in Delk's management of his clients' entrusted funds as detailed below.

9. Delk failed to at least quarterly total the individual client balances shown on client ledgers and reconcile those to the bank statement balance for each trust account as a whole.

10. Delk failed to keep accurate general ledgers for the trust accounts that would enable him to properly reconcile the bank statements with his records.

11. Delk failed to always maintain accurate client ledgers.

12. Delk failed on many occasions to record on checks the client account against which the items were drawn.

13. Delk failed to indicate on the face of checks made payable to him the client account from which the items were drawn.

14. Delk failed to maintain copies of the front and back of canceled checks.

15. From time to time Delk accepted into the trust accounts payments made by clients via credit or debit card. Defendant allowed the credit/debit card processor to deduct its fees from the payments and then deposit the remainder in Delk's trust accounts.

16. Delk credited each such client's ledger with the full amount the client paid without regard to the fees deducted by the credit/debit card processor.

17. Delk thereafter disbursed court costs and/or his fees for the full amount the client paid without regard to the fees deducted by the credit/debit card processor.

18. Delk failed to maintain in the trust accounts his own funds specifically to cover the credit/debit card fees described above. As a result, Delk utilized funds he held for the benefit of one client to pay for the credit/debit card fees deducted from payments made by other clients.

19. Delk failed to promptly reimburse the trust accounts for the credit card fees described above.

20. Delk failed to ensure that deposits made directly to the trust accounts via credit or debit cards listed the name of the client for whose benefit the funds were deposited into the trust accounts.

21. Before September 2012, Delk from time to time represented T.C. for issues arising from T.C.'s ownership and operation of a restaurant.

22. In or about September 2012, T.C. negotiated the sale of the restaurant to other clients of Delk, who he represented on other matters.

23. Delk undertook to prepare a Management Agreement and Agreement to Purchase on behalf of both parties based on the arrangement agreed upon by the parties.

24. The terms of the arrangement agreed upon by the parties were such that T.C. was disadvantaged by the arrangement. Thus, Delk's representation of both parties constituted a concurrent conflict of interest.

Based upon the consent of the parties and the foregoing stipulated 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 and the subject matter of this proceeding.

2. Defendant's conduct, as set out in the stipulated Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:

- (a) By failing to at least quarterly total the individual client ledger balances and reconcile those and the general ledger balances with the adjusted bank statement balances for each trust account as a whole, Delk failed to

perform quarterly reconciliations of the trust accounts in violation of Rule 1.15-3(d);

- (b) By failing to maintain accurate general and client ledgers, failing to record on checks the client account against which the items were drawn, failing to maintain a copy of the front and back of canceled checks, and failing to ensure that deposits made by credit/debit card listed the name of the client to whom the funds belong, Delk failed to maintain the minimum records required for general trust accounts in violation of Rule 1.15-3(b);
- (c) By failing to identify on trust account checks payable to Delk the client account from which the funds were drawn, Delk failed to indicate on an item payable to the lawyer the client account from which the item was drawn in violation of Rule 1.15-2(h);
- (d) By disbursing funds from the trust accounts in the full amounts paid by clients without regard to fees deducted by the credit/debit card processor and by failing to promptly reimburse the accounts for those fees, Delk failed to properly maintain and disburse entrusted funds in violation of Rule 1.15-2(a) and (m), and used entrusted property for the personal benefit of persons other than the legal or beneficial owners of that property in violation of Rule 1.15-2(j); and
- (e) By preparing an agreement on behalf of both parties to a transaction by which terms one party was disadvantaged, Delk engaged in a concurrent conflict of interest in violation of Rule 1.7(a).

Based upon the foregoing Findings of Fact and Conclusions of Law, and with the consent of the parties, the Hearing Panel enters the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Defendant has fully cooperated with the State Bar's review of his trust account.
2. Defendant was previously disciplined by admonition in 2014 for instructing his assistant to notarize documents that were signed outside of her presence.
3. Defendant enjoys a reputation in his community for good character.
4. Defendant has expressed his sincere remorse for his conduct.
5. Defendant'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. Clients are entitled to have their funds handled with the utmost care.

6. Failing to properly maintain a trust account places 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 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.

7. Defendant's continued failure to reconcile his trust account and failure to maintain proper trust account records in light of a previous audit demonstrates a pattern of misconduct and demonstrates Defendant's intent to commit acts where the potential harm is foreseeable.

8. The Hearing Panel has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension, and disbarment, in considering the appropriate discipline to impose in this case.

Based on the Findings of Fact and Conclusions of Law above and the 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 carefully considered all of the different forms of discipline available to it. In addition, the Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors warrant suspension of Defendant's license:

- (a) Intent of Defendant to commit acts where the harm or potential harm is foreseeable; and
- (b) Defendant's actions potentially had a negative impact on the public's perception of the profession.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(2) of the Rules and Regulations of the North Carolina State Bar and concludes no factors are present in this instance that would warrant disbarment.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(3) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are applicable in this matter:

- (a) Prior professional discipline;

- (b) Absence of dishonest or selfish motive;
- (c) Existence of a pattern of misconduct;
- (d) Multiple offenses;
- (e) Defendant's full and free disclosure to the Hearing Panel and cooperative attitude toward the proceedings;
- (f) Defendant's remorse; and
- (g) Defendant's good character and reputation.

4. The Hearing Panel has considered issuing an admonition, reprimand or censure but concludes that such discipline would not be sufficient discipline because of the gravity of the potential harm to the clients. The Panel further concludes that such discipline would fail to acknowledge the seriousness of the violations committed by Defendant and send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

5. This Hearing Panel has considered lesser alternatives and concludes that a stayed suspension with conditions is necessary and sufficient to adequately protect the public.

6. For these reasons, this Hearing Panel finds that an order imposing discipline short of stayed suspension of Defendant's law license would not be appropriate.

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

ORDER OF DISCIPLINE

1. Defendant, Joseph C. Delk III, is hereby suspended from the practice of law for two years, effective thirty days from service of this Order upon him.
2. Administrative fees and costs are taxed to Defendant.
3. The two-year suspension is stayed for a period of two years as long as Defendant complies, and continues to comply during the period of the stay, with the following conditions:

- (a) Defendant shall pay all administrative fees and costs of this proceeding as assessed by the Secretary within thirty days after service of the statement of costs on him;
- (b) Within thirty days of the date this Order is served upon him, Defendant shall properly disburse all entrusted funds that are appropriate to be distributed as of that date. Defendant shall provide the State Bar Office of Counsel proof of such distribution within ten days thereafter;
- (c) Within the first year of the stayed suspension, Defendant shall complete two hours of continuing legal education in the area of trust account management approved by the Office of Counsel of the State Bar. At least one such session shall be taken before the end of the third month following the entry of this order and at least one such session shall be the Trust Accounting Rules Continuing Legal Education Program taught by Peter Bolac, Trust Account Compliance Counsel for The North Carolina State Bar. Defendant shall provide written proof of successful completion of the CLE courses to the State Bar within ten days of completing the courses. These two hours are in addition to the continuing legal education requirements set out in 27 N.C.A.C. ID § .1518;
- (d) During the stayed suspension, Defendant shall personally perform the three-way reconciliations of all his trust accounts using the reconciliation method described in the State Bar Lawyer's Trust Account Handbook using the reconciliation form provided therein. Defendant shall provide the three-way reconciliation report and all appropriate supporting documentation to the CPA as provided below within fifteen days of the end of each quarter;
- (e) Defendant shall engage the services of a Certified Public Accountant (CPA) to audit his trust account on a quarterly basis to ensure Defendant's compliance with the Rules of Professional Conduct.
 - i. The CPA must submit quarterly a written report to the Office of Counsel concerning the compliance of Defendant's reconciliations and trust account with the Rules of Professional Conduct, including but not limited to report of any accounting irregularities and any deviation from the requirements of the Rules of Professional Conduct, with a copy of the report sent simultaneously to Defendant. The CPA's reports are due no later than thirty days after the end of each quarter (each January 30, April 30, July 30, and October 30 during the period of stay). It is Defendant's sole responsibility to ensure the CPA completes and submits the reports as required herein;
 - ii. If any of the CPA reports note any irregularities or deficiencies, 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 CPA and to the Office of Counsel of the State Bar within fifteen days of the date of the CPA's report;

- iii. All CPA evaluations, reports, and services referred to herein will be completed and submitted at Defendant's sole expense; and
 - iv. Failure of Defendant to ensure the CPA submits any report required by this Order shall be grounds to lift the stay and activate the suspension;
- (f) Defendant shall not violate any state or federal laws or any provisions of the Rules of Professional Conduct during the period of the stayed suspension;
 - (g) Defendant shall respond to all State Bar requests for information as required by Rule 8.1(b) of the Rules of Professional Conduct by the earlier of the deadline stated in the communication or within thirty days of receipt;
 - (h) Defendant shall timely comply with all State Bar membership and Continuing Legal Education requirements; and
 - (i) Defendant shall keep the North Carolina State Bar membership department advised of his current home and business street (not P.O. Box) addresses and telephone numbers.

4. If Defendant fails to comply with any one or more of the conditions set out in this Order of Discipline, then the stay of the suspension of his law license may be lifted and the suspension activated as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

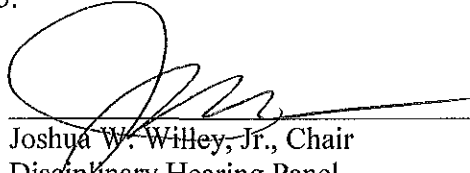
5. Unless Defendant's obligations under this Order are modified by further order of the DHC, Defendant's obligations under this Order end two years from the effective date of the Order provided there are no motions or show cause proceedings pending alleging lack of compliance with the conditions of the stay of the suspension. Pursuant to § .0114(x) of the North Carolina Discipline and Disability Rules, the DHC retains jurisdiction until all conditions of the stay of the suspension have been met. If a motion or show cause proceeding alleging lack of compliance with the conditions for the stay of the suspension is pending when the period of 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

6. If the stay of the suspension is lifted and the suspension is activated for any reason, the DHC may enter an Order imposing such conditions as it deems necessary for the reinstatement of Defendant's license at the end of the suspension. Furthermore, Defendant will have complied with each of the following conditions before he will be eligible for reinstatement:

- (a) Submitted his license and membership card to the Secretary of the North Carolina State Bar no later than thirty days from the effective date of the order activating his suspension;
- (b) Complied with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the North Carolina State Bar Discipline and Disability Rules on a timely basis;
- (c) Paid any outstanding disciplinary administrative fees and costs; and
- (d) Within fifteen days of the effective date of the order activating the suspension Defendant shall have 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, and Defendant shall have promptly returned all files to clients upon request during the active suspension.

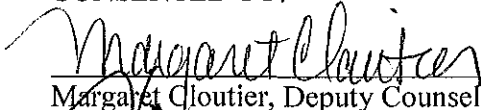
7. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of the stayed suspension.

19th Signed by the Chair with the consent of the other Hearing Panel members, this the October day of October, 2015.



Joshua W. Witley, Jr., Chair
Disciplinary Hearing Panel

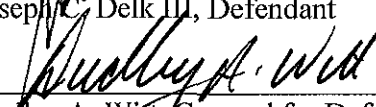
CONSENTED TO:



Margaret Cloutier, Deputy Counsel



Joseph C. Delk III, Defendant



Dudley A. Witt, Counsel for Defendant