

STATE OF NORTH CAROLINA

WAKE COUNTY

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

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

WILLIAM DEVIN WEBB, II, Attorney,
Defendant

CONSENT ORDER OF DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Donald C. Prentiss, Chair, and members Fred W. DeVore, III and Bradley Lail, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0115(i). Plaintiff was represented by Brian P.D. Oten. Defendant, William Devin Webb, II, was represented by Alan M. Schneider. Defendant waives a formal hearing in this matter. The parties stipulate and agree to the findings of fact and conclusions of law recited in this order, and consent to the discipline imposed by this order. By consenting to the entry of 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 and conclusions herein.

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 (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, William Devin Webb, II (hereafter "Defendant" or "Webb"), was admitted to the North Carolina State Bar on 28 February 1989 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, Webb was actively engaged in the practice of law in Raleigh, Wake County, North Carolina.

4. Webb was properly served with the summons and complaint in this matter.

5. Webb maintained a trust account in connection with his law practice at BB&T Bank, account number ending in 1992 ("trust account").

6. Webb used his trust account as a general trust account.

7. Webb also maintained a business operating account in connection with his law practice at PNC Bank, account number ending in 2654 ("operating account").

8. On 3 July 2014, the State Bar conducted a random procedural audit of Webb's trust account.

9. The audit revealed numerous failures by Webb to properly monitor and maintain the records for his trust account as required by the Rules of Professional Conduct. Specifically, the audit revealed that Webb engaged in the following conduct:

- a. Webb failed to conduct monthly and quarterly reconciliations of his trust account;
- b. Webb failed to always identify the source of entrusted funds deposited into his trust account on the corresponding deposit slips;
- c. Webb failed to consistently deposit mixed client funds consisting of both entrusted client funds and attorney fees in his trust account by, at times, depositing such funds into his operating account;
- d. Webb failed to escheat unidentified/abandoned funds as required by N.C. Gen. Stat. § 116B-53, to wit: Webb has been unable to identify the owner(s) of over \$30,000 deposited in his trust account since at least 2005;
- e. Webb failed to provide a copy of an amended directive to the bank;
- f. Webb failed to promptly remove earned fees or costs from his trust account; and
- g. Webb failed to obtain front and back copies of check images drawn on his trust account.

10. The State Bar previously conducted a random procedural audit of Webb's former trust account located at First Citizens Bank in 1993.

11. The 1993 audit found similar deficiencies in Webb's handling and monitoring of entrusted client funds as those noted in the 2014 audit.

12. As a result of the 2014 random audit, the State Bar conducted a cause audit of Webb's trust account and determined that, in addition to the deficiencies noted in paragraph 8 above, Webb engaged in the following additional conduct regarding his trust account:

- a. Webb failed to consistently maintain and review his trust account's bank statements;
- b. Webb failed to consistently maintain accurate client ledgers that identified and tracked, per client, the entrusted funds received and disbursed for each client; and

- c. Webb often delegated his trust account recordkeeping responsibilities to various nonlawyer assistants over a period of years, but failed to adequately supervise the way his staff handled entrusted client funds and the way his staff monitored the trust account.

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

Conclusions of Law

1. All parties are properly before the Hearing Panel and the DHC has jurisdiction over Defendant, William Devin Webb, II, and over 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) in that Defendant violated the Rules of Professional Conduct as follows:

- (a) By failing to reconcile his trust account on a monthly and quarterly basis, Webb failed to conduct the requisite reconciliations of his trust account in violation of Rules 1.15-3(d)(1) and (2);
- (b) By failing to identify the client(s) on all deposit slips of entrusted funds into his trust account, Webb violated Rule 1.15-3(b)(1);
- (c) By failing to ensure that all entrusted client funds were deposited into his trust account, Webb failed to properly safeguard entrusted client funds in violation of Rules 1.15-2(a) and (b);
- (d) By maintaining a balance of over \$30,000 in unidentifiable funds in his trust account since at least 2005, Webb failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3, failed to promptly deliver entrusted property as directed by his client in violation of Rule 1.15-2(m) (presently codified as Rule 1.15-2(n)), and failed to take appropriate steps to escheat abandoned property in accordance with N.C. Gen. Stat. §116B-53 in violation of Rule 1.15-2(q) (presently codified as Rule 1.15-2(r));
- (e) By not providing the bank with a copy of the amended directive concerning his trust account, Webb failed to file with the bank a written directive requiring the bank to report to the executive director of the North Carolina State Bar when an instrument drawn on the account is presented for payment against insufficient funds in violation of Rule 1.15-2(k) (presently codified as Rule 1.15-2(l));
- (f) By failing to promptly remove earned fees or costs from his trust account, Webb failed to hold entrusted property separate from property belonging to Webb in violation of Rule 1.15-2(a);

- (g) By failing to obtain appropriate digital images of canceled checks drawn on the trust account, Defendant failed to maintain minimum records for trust accounts in violation of Rule 1.15-3(b)(2)(A);
- (h) By failing to consistently maintain and review his trust account's bank statements, Webb violated Rule 1.15-3(b)(4);
- (i) By failing to consistently maintain accurate client ledgers that identified and tracked, per client, the entrusted funds received and disbursed for each client, Webb failed to maintain ledgers containing a record of receipts and disbursements for each person for whom funds were received and showing the current balance of funds held in the trust account for each person in violation of Rule 1.15-3(b)(5); and
- (j) By failing to review his nonlawyer assistants' handling and record-keeping of entrusted funds, Webb failed to supervise his nonlawyer assistants to the extent necessary to ensure that their conduct was compatible with Webb's professional obligations in violation of Rule 5.3(b).

Based upon the consent of the parties, the Hearing Panel also finds by clear, cogent, and convincing evidence the following

Findings of Fact Regarding Discipline

1. Webb has substantial experience in the practice of law.
2. Webb has no prior disciplinary record concerning his license to practice law.
3. Webb enjoys a positive reputation in his local bar and community.
4. There is no evidence of misappropriation or improper disbursement of entrusted funds to Webb. There is also no evidence that Webb intended to harm his clients and there is no evidence of any dishonest or selfish motive on the part of Webb.
5. Webb's failure to conduct the required quarterly reconciliations, failure to otherwise monitor his trust account, and failure to supervise his staff to which he delegated trust account responsibilities caused potential significant harm to his clients. Conducting quarterly reconciliations of the trust account is the lynchpin of proper maintenance and protection of entrusted funds. Webb's continued failure to reconcile his trust account and failure to maintain proper trust account records – particularly after having been previously cited for the same deficiencies in his trust account management via the random audit process – combined with his failure to make reasonable efforts to ensure his non-lawyer assistants' conduct was compatible with his professional obligations in the handling of entrusted funds demonstrate a pattern of misconduct and demonstrate Webb's intent to commit acts where the potential harm was foreseeable.
6. Webb's conduct placed entrusted funds at risk and has the potential to cause significant harm to the standing of the profession in the eyes of the public because it shows his

disregard for 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. Webb is remorseful for his misconduct. Webb acknowledges that his trust account practices were insufficient and caused potential significant harm to his clients and the individuals for whom he held entrusted funds.

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 upon the Findings of Fact, Conclusions of Law, and Additional Findings Regarding Discipline, and with the consent of the parties, the Hearing Panel also enters the following

Conclusions Regarding Discipline

1. The Hearing Panel considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f) of the Discipline and Disability Rules of the North Carolina State Bar.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f)(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 the defendant to commit acts where the harm or potential harm is foreseeable;
- (b) Defendant's actions had a potential negative impact on his clients' and the public's perception of the legal profession.

3. The Hearing Panel concludes that none of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f)(2) of the Rules and Regulations of the North Carolina State Bar are present in this case.

4. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f)(3) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are applicable in this matter:

- (a) Defendant's lack of prior disciplinary offenses;
- (b) Absence of a dishonest or selfish motive;
- (c) Defendant engaged in a pattern of misconduct;
- (d) Defendant engaged in multiple offenses;
- (e) Defendant is remorseful; and

(f) Degree of experience in the practice of law.

5. Defendant's failure to properly safeguard entrusted client funds and properly supervise his non-lawyer assistants caused potential significant harm to his clients whose funds were placed at risk while entrusted to Defendant's care.

6. Defendant's conduct, if continued or tolerated by the Bar, poses significant potential harm to future clients and to the profession.

7. 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 offenses committed by Defendant and send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

8. The Hearing Panel concludes that Defendant's conduct warrants and can only be addressed through imposition of a suspension on Defendant's law license. The Hearing Panel further concludes that such suspension should be stayed upon Defendant's compliance with conditions outlined below that will ensure the public is protected from future transgressions by Defendant as well as ensure Defendant's continued adherence to the Rules of Professional Conduct.

Based upon the foregoing findings of fact and conclusions of law and the findings of fact and conclusion regarding discipline, and based upon the consent of the parties, the Hearing Panel enters the following

Order of Discipline

1. Defendant, William Devin Webb, is hereby suspended from the practice of law for two years. This order shall be effective upon filing.

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

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 employ an accountant approved in advance by the Office of Counsel to assist Defendant in monitoring and reconciling his trust account(s) as required by the Rules of Professional Conduct.

(b) Defendant shall open a new IOLTA trust account at a bank approved by the North Carolina State Bar for use in his law practice and Defendant shall cease using his current trust account (BB&T account number ending in 1992) except to properly disburse all remaining funds to the rightful owner(s) of the funds or as otherwise directed by his client(s). Upon halting his use of his current trust account, Defendant shall make one final attempt

to identify the funds remaining in his current trust account with the assistance of an accountant approved of in advance by the Office of Counsel (who may be the same accountant identified for compliance with paragraph 3(a) above). Defendant shall ensure the accountant provides the Office of Counsel with a final report on the attempted identification of funds and a proposed disbursement plan, including all documentation supporting all identifications made and proposed disbursements. After completing this final attempt to identify the owner(s) of all remaining funds, Defendant shall disburse all remaining funds to the rightful and identified owner(s) of the funds and escheat any remaining unidentified funds in accordance with N.C. Gen. Stat. § 116B-53. After disbursing all funds from Defendant's current trust account, Defendant shall close the account and solely utilize the new trust account described at the beginning of this paragraph for his law practice. Until the current trust account is closed, however, Defendant shall continue to monitor and complete all required reconciliations of all trust accounts utilized by Defendant for his law practice as described in paragraph 3(c) below;

- (c) Defendant shall provide the State Bar with reports of all quarterly reconciliations as required by Rule 1.15-3 for all trust accounts and fiduciary accounts to which Defendant has access and/or in which Defendant deposits entrusted funds as follows:
- i. In addition to the three-way reconciliation reports, for the months covered by the submitted report, Defendant shall provide: (i) client ledgers for each client whose funds are held in the trust account during the stay, (ii) any ledger for any personal funds maintained in the trust account(s) for bank or credit card fees, (iii) general ledger(s) for each trust account to which Defendant has access, and (iv) the bank statements, cleared checks, deposit slips, and deposit items associated with the reports;
 - ii. The reports are due no later than 30 days after the end of each quarter (first quarter's report due April 30, second quarter's report due July 30, third quarter's report due October 30, and fourth quarter's report due January 30);
 - iii. Defendant shall certify with each quarterly report that he has personally reviewed the reconciliation report(s) and all relevant ledgers, bank statements, cancelled checks, deposit slips, and deposit items associated with the report(s), and Defendant shall further certify that no entrusted funds received by him or his law office have been deposited into any account other than his trust account(s);
 - iv. If any of the quarterly reports referenced above note any irregularities or deficiencies, Defendant shall promptly take all

remedial action necessary to bring the trust account(s) into compliance with the Rules of Professional Conduct and shall provide proof of the remedial action and compliance to the Office of Counsel of the State Bar within 30 days of the date of the report;

- v. All reconciliations and reports referred to herein will be completed and submitted at Defendant's sole expense; and
 - vi. Failure of the Defendant to timely submit any report required by this Order shall be grounds to lift the stay and activate the suspension.
- (d) Defendant shall certify annually on or before June 30 to the North Carolina State Bar that all general trust accounts, dedicated trust accounts, and fiduciary accounts maintained by Defendant or his law firm are administered, to the best of his knowledge, in compliance with the requirements of Rule 1.15 (including all subparts) or that he is exempt from this provision because Defendant does not maintain any trust or fiduciary accounts for North Carolina client funds;
- (e) Defendant shall successfully complete two hours of continuing legal education (CLE) in the area of trust account management within the first year after the effective date of this order, one hour of which must be a trust account CLE taught by Trust Account Compliance Counsel for the North Carolina State Bar. Defendant shall provide written proof of successful completion of these CLE courses to the State Bar within ten days of completing the course;
- (f) Defendant shall have sole signatory authority on all general trust accounts, dedicated trust accounts, and fiduciary accounts maintained by Defendant and shall not allow the use of signature stamps, or electronic signature in lieu of his hand affixed signature;
- (g) During the period of stayed suspension, Defendant shall permit audits of his trust and operating accounts by the North Carolina State Bar. Such audits will be conducted at Defendant's expense, and all costs incurred during the course of the audit shall be paid by Defendant within thirty (30) days of the assessed costs being served upon Defendant. The North Carolina State Bar will not exercise the right to audit the Defendant's bank accounts more than twice a year. Such limitation on random audits will not preclude the North Carolina State Bar from conducting any audits for cause pursuant to the Rules of Professional Conduct. Furthermore, any information or documentation gained by the North Carolina State Bar while conducting said audit(s) may result in further disciplinary proceedings being brought against Defendant;

- (h) Defendant shall pay all Membership dues and Client Security Fund assessments and comply with all Continuing Legal Education requirements on a timely basis;
- (i) Defendant shall keep his physical address of record (not a Post Office box) with the North Carolina State Bar current, accept all certified mail from the North Carolina State Bar, and respond to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication;
- (j) Defendant shall not violate any of the Rules of Professional Conduct in effect during the period of the stay;
- (k) Defendant shall not violate any laws of the State of North Carolina or of the United States during the period of the stay excluding minor traffic infractions; and
- (l) Defendant shall timely comply with paragraph 2 above in paying all costs and administrative fees of this action as assessed by the Secretary within thirty (30) days after service of the statement of costs on him.

4. 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 his law license may be lifted as provided in § .0118(a) of the North Carolina State Bar Discipline and Disability Rules.

5. 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 Rule .0129(b) of the North Carolina State Bar Discipline and Disability Rules (27 N.C. Admin. Code 1B.0129) demonstrating compliance with the requirements therein as well as the following requirements by clear, cogent, and convincing evidence:

- (a) Defendant properly wound down his law practice and complied with the terms of 27 N.C. Admin. Code 1B.0128 of the State Bar Discipline & Disability Rules;
- (b) Defendant complied with paragraphs 3(b) & (e) above;
- (c) 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;
- (d) 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;
- (e) 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;

- (f) Defendant has come into compliance with any outstanding CLE or membership obligations at the time of the filing of his petition for reinstatement;
- (g) Defendant did not violate any of the Rules of Professional Conduct in effect during the period of the suspension;
- (h) Defendant did not violate any laws of the State of North Carolina or of the United States during the period of the suspension; and
- (i) 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.

6. If the stay of 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 and the Court appoints a trustee to wind down any portion of Defendant's practice, Defendant shall reimburse the State Bar for 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 the trustee and/or the trustee's assistant for time and travel associated with the trusteeship. After the Court has discharged the trustee, the State Bar shall send an invoice of wind-down expenses to Defendant at Defendant's last known address of record with the North Carolina State Bar. Defendant shall not be eligible for reinstatement until he has reimbursed the State Bar for all wind-down expenses incurred.


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 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 § .0118(a) 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.

Signed by the Disciplinary Hearing Panel Chair with the consent of the other hearing panel members, this the 25 day of June, 2018.

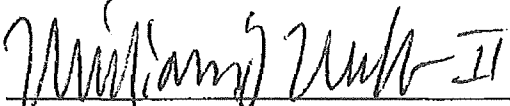


Donald C. Prentiss, Chair
Disciplinary Hearing Panel


CONSENTED TO BY:



Brian Oten, Deputy Counsel
Attorney for the North Carolina State Bar



William Devin Webb, II
Defendant



Alan M. Schneider
Attorney for Defendant