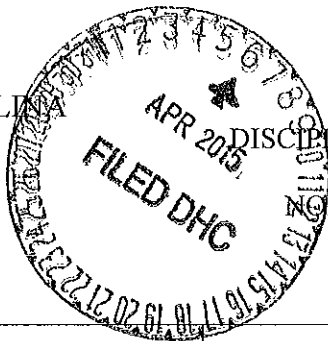


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
15 DHC 5

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

ROBERT GRAY AUSTIN III, Attorney,

Defendant

CONSENT
ORDER OF DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Renny W. Deese, Chair, and members Walter E. Brock, Jr. and Randy A. Moreau pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff was represented by Deputy Counsel Margaret T. Cloutier. Defendant was represented by Deanna S. Brocker.

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. Austin 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. Austin 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 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, Robert Gray Austin III (hereinafter "Austin" or "Defendant"), was admitted to the North Carolina State Bar on August 26, 2003 and is, and was at all times referred to herein, 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 times relevant herein, Defendant actively engaged in the practice of law in the State of North Carolina and maintained a law office in Indian Trail, Union County, North Carolina.

4. Between March 1, 2012 and March 31, 2014 (hereinafter "the audit period") Defendant maintained a client trust account with Fifth Third Bank, account number ending in the digits 3479 (hereinafter the "trust account").

5. Defendant used the trust account as a general trust account in which Defendant deposited and disbursed client funds.

6. From time to time during the audit period, Defendant electronically transferred earned fees from the trust account to Defendant's operating account without identifying on the transfer the client balance from which each disbursement was drawn.

7. On several occasions during the audit period, Defendant disbursed funds for expenses relating to specific clients before depositing funds from those clients to cover these disbursements.

8. On several occasions during the audit period, Defendant disbursed more funds for specific clients than he received on behalf of those clients.

9. From time to time during the audit period, Defendant accepted credit card payments directly into the trust account. Defendant allowed the credit card companies to deduct the fees they charged Defendant directly from the trust account.

10. While Defendant maintained in the trust account some funds specifically to cover such things as service charges, credit card fees and the like, the amount was often insufficient to cover the advanced fees, overdisbursements and credit card fees described above.

11. During the audit period, Defendant did not promptly remove earned fees from the trust account.

12. Although Defendant did not correlate these earned fees specifically to the advances, overdisbursements and credit card fees described above, the fees were sufficient to prevent other clients' funds from being used to cover those disbursements.

13. Defendant did not prepare and keep client ledger cards reflecting funds held in trust for his clients. Defendant did not prepare and keep a ledger card for his own funds Defendant held in the trust account.

14. Although Defendant made efforts to reconcile the trust account's bank statement balance with the checkbook balance, Defendant did not then reconcile the adjusted bank balance with the individual client balances. Thus, Defendant failed to conduct a proper quarterly reconciliation.

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 indicate on electronic disbursements the client balance from which each disbursement was made, Defendant withdrew lawyer's fees without indicating on the item the client balance on which it was drawn in violation of Rule 1.15-2(h) and failed to maintain minimum records for a trust account in violation of Rule 1.15-3(b);
 - (b) by disbursing funds on behalf of clients before depositing funds from those clients and by disbursing more funds for specific clients than he received on behalf of those clients, Defendant failed to pay or deliver to the client or third parties funds belonging to the client to which the client is currently entitled in violation of Rule 1.15-2(a) and (m);
 - (c) by failing to promptly remove earned fees from the trust account thereby commingling his earned fees with entrusted funds of his clients, Defendant did not hold entrusted property separate from the property of the lawyer in violation of Rule 1.15-2(a);
 - (d) by failing to prepare and keep client ledger cards reflecting funds held in trust for his clients and for himself, Defendant did not maintain ledgers containing a record of receipts and disbursements for each person or entity from whom and for whom funds are received and showing the current balance of funds held in the trust account for each such person or entity in violation of Rule 1.15-3(b)(5); and
 - (e) by failing to at least quarterly total and reconcile the individual client balances with the adjusted bank statement balance for the account, Defendant did not conduct proper quarterly reconciliations in violation of Rule 1.15-3(d)(1).

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's actions in failing to adhere to the trust accounting requirements put the entrusted funds belonging to his clients at risk of being mishandled and /or misappropriated.

2. Although no client funds were used to cover the deficiencies created by advancing funds for his clients, excess disbursements and credit card fees, this was not the result of the exercise of diligence by Defendant. Defendant did not timely track or correlate the deficiencies with his own funds commingled in the account. Thus, Defendant was not aware at the time of writing checks advancing funds for clients, disbursing more than he deposited, and using funds in the trust account for credit card fees whether he had sufficient earned fees in the account to cover these disbursements.

3. By commingling his personal funds in the form of earned fees with entrusted funds belonging to his clients, Defendant put his clients' funds at risk of garnishment, attachment or other legal process affecting Defendant's assets.

4. Defendant has fully cooperated with the State Bar's review of his trust account.

5. Defendant has no prior professional discipline.

6. Defendant enjoys a reputation for good character in his community.

7. 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.

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) Negative impact of Defendant's actions 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) Absence of prior professional discipline;
- (b) Absence of dishonest or selfish motive;
- (c) Existence of a pattern of misconduct;
- (d) Defendant's full and free disclosure to the Hearing Panel and cooperative attitude toward the proceedings;
- (e) Defendant's remorse; and
- (f) 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 a 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, Robert Gray Austin III, is hereby suspended from the practice of law for two years, effective thirty days from service of this Order upon him. This suspension is stayed immediately, as set forth in, and subject to the terms of, paragraph 3 below.

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 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 period of suspension, Defendant shall complete four 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 next calendar quarter (i.e., by March 30, June 30, etc.) 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 four hours are in addition to the continuing legal education requirements set out in 27 N.C.A.C. 1D § .1518;
- (d) During the stayed suspension, Defendant shall personally perform the three-way reconciliations of his trust account(s) using the reconciliation method described in the State Bar Lawyer's Trust Account Handbook. 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 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 years 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.

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

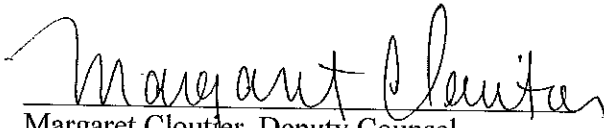


North Carolina State Bar Discipline and Disability Rules throughout the period of the stayed suspension.

Signed by the Chair with the consent of the other Hearing Panel members, this the 31st day of March, 2015.



Chair, Disciplinary Hearing Panel

CONSENTED TO:


Margaret Cloutier, Deputy Counsel
Robert Gray Austin III, Defendant
Deanna S. Brocker, Counsel for Defendant