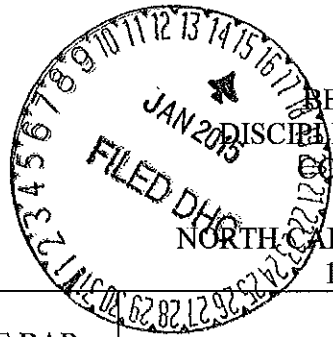


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING
COMMISSION
OF THE
NORTH CAROLINA STATE BAR
14 DHC 35

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

JAMES H. PARDUE, 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, Joshua W. Willey, Jr., and Michael S. Edwards. Leonor Bailey Hodge represented Plaintiff, the North Carolina State Bar. Deanna S. Bocker represented defendant, James H. Pardue. Defendant waives a formal hearing in the above referenced matter. 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. Defendant knowingly, freely and voluntarily waives his right to appeal this consent order or to challenge in any way the sufficiency of the findings by consenting to entry of this order.

Based on the foregoing and on the consent of the parties, the Hearing Panel hereby makes 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 North Carolina General Statutes, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. Defendant, James H. Pardue ("Pardue" or "Defendant"), was admitted to the North Carolina State Bar on 22 August 1981 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, Pardue 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. Pardue's law practice from 2005 through 2008 consisted almost entirely of real estate closing transactions.

5. Pardue closed an average of 500 real estate transactions per year from 2005 through 2008.

6. Pardue maintained a general attorney trust account with SunTrust bank, account number ending 1283 (hereinafter "trust account").

7. Pardue maintained the trust account for his real estate practice.

8. On 10 July 2008, Pardue was the subject of a random audit of his trust account.

9. The random audit showed deficiencies in Pardue's management of his trust account.

10. The random audit also showed that Pardue held less money in his trust account than he was required to hold for clients.

11. The shortage in Pardue's trust account was caused by clerical errors and Pardue's failure to stop payment on two checks before issuing duplicate checks.

12. Pardue had failed to reimburse the trust account for the shortage in his trust account until after the random audit when he deposited \$6,022.90 into the trust account on 29 September 2008 and \$9,927.07 into the trust account on 31 October 2008.

13. As a result of the deficiencies found during the random audit, the State Bar conducted an investigative audit of Pardue's trust account for the period 1 January 2006 through 31 October 2008.

14. The random and investigative audits of Pardue's trust account showed the following deficiencies.

15. Pardue failed to reconcile the individual client ledger balances for the trust account with the general ledger and adjusted bank statement balances for the trust account at least quarterly.

16. Pardue failed to always identify the source of deposits on deposit slips.

17. The dates of deposits as shown on the client ledger did not always reconcile with the date of deposit as shown on the bank statement.

18. Pardue failed to provide accountings at least annually to clients for whom he held funds in trust for more than twelve months.

19. The investigative audit showed the following additional deficiencies in Pardue's handling of entrusted funds.

20. On 22 occasions, Pardue disbursed legal fees to himself from the trust account on the account of clients for whom he had not yet deposited funds into the trust account.

21. Pardue made the deposits into the trust account for each of these transactions one to three days after disbursing funds to himself.

22. In 13 other instances, Pardue disbursed funds on behalf of clients for whom Pardue had not yet deposited funds into the trust account.

23. In most of these instances, Pardue deposited funds into the trust account one to two days after the disbursements.

24. In one instance, Pardue failed to deposit funds into the trust account for five months.

25. On 9 occasions, Pardue disbursed funds to himself and third parties on behalf of clients for whom Pardue had not yet deposited funds into the trust account.

26. In most instances, Pardue made the deposits for these disbursements one to three days after the disbursements.

27. In one instance Pardue made the deposit five days after making the disbursement.

28. In another instance, Pardue made the deposit eight days after the disbursement.

29. Pardue used other clients' entrusted funds to cover the above described disbursements Pardue made for clients whose funds he had not yet deposited into the trust account.

Based upon the consent of the parties and the foregoing 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, James H. Pardue, and over 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 as follows:

- (a) By failing to promptly reimburse the trust account for shortages that were created in the account by clerical errors and his failure to stop payment on two checks before issuing duplicate checks, Pardue failed to maintain entrusted property in accordance with the rules in violation of Rule 1.15-2(a) 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);
- (b) By failing to reconcile the total of all individual client ledger balances for the trust account with the total general ledger and adjusted bank statement balances for the trust account at least quarterly, Pardue failed to perform the requisite quarterly reconciliations of his general trust account in violation of Rule 1.15-3(d);
- (c) By failing to always identify the source of deposits and failing to accurately record the correct date of deposit on deposit slips, Pardue failed to maintain the minimum records required for general trust accounts in violation of Rule 1.15-3(b);
- (d) By failing to provide each client with a written accounting of his or her trust account balance at least annually, Pardue failed to provide written accountings of the receipt and disbursement of all trust funds to clients in violation of Rule 1.15-3(e); and
- (e) By disbursing funds from the trust account to himself and others on behalf of clients for whom Pardue had not yet deposited funds into the trust account, Pardue failed to maintain entrusted property in accordance with the rules in violation of Rule 1.15-2(a) 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).

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

ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE

1. In 1990 Pardue received a private reprimand for failing to take appropriate action after a conflict of interest arose between a limited partner and the general partner concerning the disbursement of net sales proceeds.

2. Pardue began conducting three-way reconciliations of his trust account quarterly, and sometimes monthly, after he received the results of the procedural audit.

3. In the beginning, the three-way reconciliations that Pardue conducted revealed that Pardue had disbursed for some clients more funds from the trust account than he deposited in trust on their behalf.

4. Pardue promptly reimbursed the trust account for the excess disbursements described in the foregoing paragraph.

5. In 2013, although Pardue did not make any disbursements prior to making the deposit, he still disbursed entrusted funds by checks that were dated before the deposit.

6. Pardue cooperated with the State Bar's investigation into his handling of entrusted client funds.

Based upon 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 OF LAW REGARDING DISCIPLINE

1. The Hearing Panel has considered all of the factors contained in 27 N.C.A.C. 1B § .0114(w)(1), the Rules and Regulations of the State Bar, and concludes that the following factors that warrant suspension or disbarment are present:

(a) Negative impact of defendant's actions on client's or public's perception of the profession.

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

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

(a) Prior disciplinary offense in North Carolina;

(b) Remoteness of prior disciplinary offense;

(c) Absence of dishonest or selfish motive;

(d) Multiple offenses;

- (e) Defendant's cooperative attitude toward the proceedings;
- (f) Defendant's remorse;
- (g) Good character and reputation; and
- (h) Defendant has been licensed to practice law for approximately thirty-three years.

4. Defendant caused potential significant harm to his clients by failing to properly manage their entrusted funds.

5. The Hearing Panel has considered all lesser sanctions including: censure, reprimand and admonition, and finds that discipline less than suspension would not adequately protect the public from Defendant's future misconduct because (i) of the gravity of potential significant harm to clients, and (ii) a period of reporting pursuant to a stayed suspension is necessary to ensure Defendant's proper handling of entrusted funds.

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

ORDER OF DISCIPLINE

1. Defendant, James H. Pardue, is hereby suspended from the practice of law for one year, effective 30 days from service of this order upon Pardue.

2. Defendant shall pay, within 30 days of service of the statement of fees and costs upon him by the Secretary of the State Bar, the administrative fees and costs of this proceeding.

3. The one year suspension is stayed for a period of eighteen months as long as Defendant complies with the following conditions:

- (a) Pardue pays the administrative fees and costs of this proceeding as assessed by the Secretary of the State Bar within 30 days of service of the statement of fees and costs upon him.
- (b) Pardue shall provide to the State Bar's Office of Counsel monthly the written report of the three-way reconciliation of all attorney trust accounts to which he has access using the reconciliation method described in the State Bar Lawyer's Trust Account Handbook, rev. 05/2011, pages 34 - 43. In addition to the three-way reconciliation report, Pardue shall provide (i) client ledgers for each client whose funds are held in the trust account(s) during the month covered by the submitted report, (ii) ledger for any personal funds Pardue maintained in the trust account(s) for bank or credit

card fees, (iii) the general ledger(s) for each trust account to which Pardue has access, and (iv) the following bank documentation for the month covered by the submitted report: the bank statement, canceled checks and deposit slips or other bank documentation that identifies the source of all deposits into the account for each trust account to which Pardue has access.

- (c) Pardue shall provide any other records requested by the Office of Counsel within ten days of the request.
- (d) Within six months of the effective date of this order, Pardue shall complete the trust account continuing legal education (CLE) course taught by State Bar Trust Accounting Compliance Counsel Peter Bolac (usually titled "Trust Accounting Rules" or "Trust Accounting Rules: Avoid the Pitfalls.") This CLE requirement is in addition to the CLE requirements set out in 27 N.C.A.C. 1D § .1518.
- (e) Pardue shall keep the State Bar Membership Department advised of his current business and home addresses. Pardue shall notify the State Bar of any change of address within ten days of such change. His current business address must be a street address, not a post office box or drawer.
- (f) Pardue shall respond to all communications from the State Bar, including communications from the Attorney Client Assistance Program, within thirty days of receipt of such communication or by the deadline stated in the communication, whichever is sooner.
- (g) Pardue shall participate 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.
- (h) Pardue shall timely comply with all State Bar Membership and CLE requirements.
- (i) Pardue shall not violate the Rules of Professional Conduct or the laws of the United States or of 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 eighteen months 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 one 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.

5. If Pardue 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 in accordance with 27 N.C.A.C. 1B § .0114(x).

6. If the stay of the suspension is lifted and the suspension is activated for any reason, the Disciplinary Hearing Commission may enter an order imposing such conditions as it deems proper for the reinstatement of Pardue's license at the end of the suspension. Additionally, Pardue 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) Pardue submitted his law license and membership card to the Secretary of the State Bar within thirty days of the date the order lifting the stay and/or activating the suspension of his law license;
- (b) Pardue complied with the provisions of 27 N.C.A.C. 1B § .0124 of the State Bar Discipline and Disability Rules following entry of the order lifting the stay and/or activating the suspension of his law license;
- (c) Pardue 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 15 days of the effective date of the order activating the suspension Pardue provided the State Bar with an address and telephone number at which clients seeking return of files can communicate with Pardue and obtain such files;
- (e) That Pardue promptly provided client files to all clients who made a request for return of their files;
- (f) Pardue has kept the State Bar Membership Department advised of his current business and home street addresses (not post office box or drawer addresses) and notified the State Bar of any change in address within ten days of such change;
- (g) Pardue has responded to all communications from the State Bar, including communications from the Attorney Client Assistance Program, within thirty days of receipt or by the deadline stated in the communication, whichever is sooner;

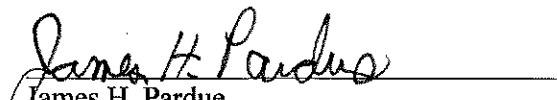
- (h) At the time of his petition for reinstatement, Pardue is current in payment of all membership dues, fees and costs, including all Client Security Fund assessments, and other charges or surcharges the State Bar is authorized to collect from him, including all judicial district dues and assessments;
- (i) At the time of his petition for reinstatement, there is no deficit in Pardue's completion of mandatory CLE hours in reporting of such hours or in payment of any fees associated with attendance at CLE programs;
- (j) At the time of his petition for reinstatement, Pardue has completed within the six months that immediately preceded his petition for reinstatement the trust account CLE course taught by NC State Bar Trust Accounting Compliance Counsel Peter Bolac (usually titled "Trust Accounting Rules" or "Trust Accounting Rules: Avoid the Pitfalls"); and
- (k) Pardue has not violated the Rules of Professional Conduct or the laws of the United States, or the laws of any state or local government during his suspension.

7. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C.A.C. 1B § .0114(x) until all conditions of the stay of suspension are satisfied.

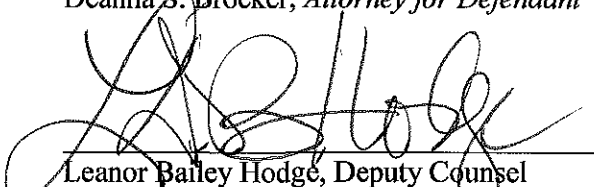
Signed by the Chair with the consent of the other Hearing Panel members this the 13th day of January, ~~2014~~ 2015 DM


Donald C. Prentiss, Chair
 Disciplinary Hearing Panel

WE CONSENT:


 James H. Pardue
 Defendant


 Deanna S. Brocker, Attorney for Defendant


 Leann Bailey Hodge, Deputy Counsel
 Attorney for Plaintiff