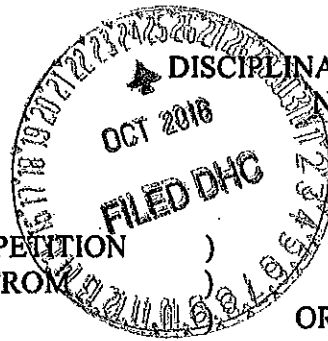


NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION OF THE
NORTH CAROLINA STATE BAR
16 BSR 2 AND 10 DHC 33

IN RE MATTER OF THE PETITION
FOR REINSTATEMENT FROM
SUSPENSION OF:

ORDER OF REINSTATEMENT

PORTER W. STAPLES

On October 5, 2016, a hearing panel of the Disciplinary Hearing Commission composed of Fred M. Morelock, Chair; N. Hunter Wyche, Jr.; and Jane B. Weathers heard the above referenced matter pursuant to 27 NCAC 1B, Sec. 0.125(b). F. Lane Williamson represented Petitioner Porter W. Staples ("Staples") and Margaret Cloutier represented the North Carolina State Bar. Pursuant to 27 NCAC 1B, Sec. .0125(b)(3), Staples had the burden of proving by clear, cogent and convincing evidence that he has satisfied all of the elements qualifying him for reinstatement.

Based upon the evidence presented at the hearing, the hearing panel makes the following:

FINDINGS OF FACT

1. Effective June 22, 2011, Staples was suspended from the practice of law for a period of three years in *N.C.S.B. v. Staples*, 10 DHC 35. The Order of Discipline provided that, after the three year active suspension, he may apply for reinstatement upon demonstrating compliance with certain enumerated conditions set forth in the Order of Discipline. The underlying facts leading to the suspension are set forth more fully in the earlier Order of Discipline.
2. Staples retired from the active practice of law on September 1, 2006. At that time, he maintained a trust account with Bank of Asheville (now First Bank). This account, bearing an account number ending in 9324, was used for short term trust deposits related primarily to real estate transactions.
3. Following his retirement, his partner continued to use this trust account for a period of time, although Staples did not use the account at all following his 2006 retirement. The situation regarding the mistaken wire transfer into this account in 2004 that gave rise to the Order of Discipline did not come to light until August of 2008, after Staples retired and stopped using the account.
4. Staples has attempted to obtain records of the trust account in order to determine whether the funds remaining in the account are the property of any client or third party. Staples'

former partner no longer has any records of the trust account and First Bank cannot provide records of the account prior to Staples' retirement in 2006.

5. There is no evidence that the funds still in the trust account belong to any client. It is possible that the funds remaining in the account are traceable to the mistaken wire transfer.

6. While the disciplinary order finds in paragraph 15 that "as of August 31, 2007, there was only \$4,959.57 in the trust account," as of the time of the entry of the Order of Discipline, an account statement from the time of the entry of the order in 2011 that was introduced into evidence reflects a balance of \$3,462.00. This difference presumably reflects trust account activity when Staples' former partner utilized the account. The current balance is \$3,450.79. The twelve dollar difference is due to service charges for the account incurred prior to Staples having the bank stop imposing these charges. Staples has not disbursed these funds.

7. Staples also maintained a trust account with Branch Banking & Trust Company bearing an account number ending in 4808. Staples used this account for funds held on a longer term basis. Staples liquidated and closed this account in January of 2014 by depositing funds with the Clerk of Court that had been held in escrow for one particular transaction since 1999, and by returning to himself the funds that were used to open the account. Documents relating to the closing of this account were introduced into evidence.

8. The aggrieved party, Randolph Romeo, who suffered the financial loss of the \$81,578.96 that was mistakenly wired to Staples' trust account, has been fully reimbursed for his loss. A receipt from Mr. Romeo for this reimbursement was introduced into evidence.

9. Staples failed to timely comply with the order of discipline in several other respects, including the following:

- (a) He did not file an affidavit with the Secretary of the North Carolina State Bar within 10 days of the effective date of the order, certifying compliance with the wind down rule, Sec. 0.124(b) of the North Carolina State Bar and Discipline and Disability Rules;
- (b) He did not provide the North Carolina State Bar with his current address;
- (c) As set forth above, he did not timely disburse all client or fiduciary funds held in the trust accounts nor did he provide the State Bar with contact information of all persons or entities for whose benefit he held funds in trust; and
- (d) He did not pay the costs and administrative fees of the disciplinary proceedings assessed against him until May 25, 2014, shortly before filing a previous reinstatement petition in 2014.

10. At the time of the entry of the order of discipline in 2011, Staples had been retired for approximately five years, and had no active practice. He also did not intend at that time to ever resume the active practice of law.

11. Staples testified at the hearing that he did not believe it was necessary to comply with the wind down provisions because at the time he did not have any practice to wind down and did not intend to seek reinstatement. He also testified that while he had sufficient funds to pay the costs, it would have been a stretch for him financially to do so.

12. Staples in 2014 paid the costs of the proceeding, closed the Branch Banking & Trust Company trust account and filed *pro se* a reinstatement petition.

13. Following his suspension, Staples has not engaged in conduct constituting the unauthorized practice of law or that would constitute a violation of the Rules of Professional Conduct.

14. Within one year of filing the current reinstatement petition, Staples attended a program of 15 hours of CLE approved by the Board of Continuing Legal Education.

BASED UPON the foregoing FINDINGS OF FACT, the panel makes the following:

CONCLUSIONS OF LAW

1. Although Staples did not comply with the conditions for reinstatement set forth in the Order of Discipline in a timely manner, Staples has subsequently substantially complied with the conditions, save and except final disbursement of the funds remaining in the First Bank trust account having an account number ending in 9324.

2. It cannot be determined with certainty who is entitled to the funds remaining in said trust account, although it appears that the funds do not belong to any client of Staples or to any third party.

3. The hearing panel has the power pursuant to NCAC 1B, Sec. .0125(d) to impose reasonable conditions on Staples' reinstatement where such conditions are necessary for the protection of the public.

4. Despite Staples' lack of timely compliance with the provisions in the Order of Discipline, but in light of the absence of a dishonest or selfish notice on behalf of Staples, and that there has been no evidence of misappropriation of client funds or harm to clients, the hearing panel in its discretion deems it appropriate to allow reinstatement of Staples' license to practice law.

5. However, the history of Petitioner's poor compliance with the trust account rules and the conditions set forth in the Order of Discipline gives rise to a concern by the hearing panel as to Staples' compliance going forward.

6. The hearing panel therefore deems it appropriate to condition Staples' reinstatement upon strict compliance by him with certain conditions that the hearing panel finds to be necessary for protection of the public, as set out below.

WHEREFORE, BASED UPON the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the hearing panel makes the following:

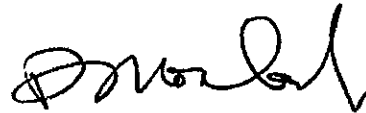
ORDER

1. Staples is reinstated to the active practice of law in North Carolina as of the date of entry of this Order, subject to strict compliance by Staples with the following conditions:

- (a) Staples shall properly maintain and reconcile all trust accounts. Staples shall supply an affidavit to the State Bar within 30 days from the hearing date, stating that he has employed a certified public accountant who, at least quarterly for one year, will review Staples' three-way reconciliations to ensure his compliance with the requirements of the Rules of Professional Conduct. Staples shall ensure that the CPA submits quarterly reports to the State Bar certifying such review and compliance;
- (b) Staples shall forfeit the funds remaining in the First Bank trust account to the Client Security Fund, and thereafter close said account within 30 days from the hearing date; and
- (c) The costs of this hearing are taxed against Staples, and he shall pay the costs within 30 days after the statement of costs is served upon him.

2. Should Staples fail to strictly comply with any of the foregoing conditions, then the State Bar may apply to the chair of the hearing panel for an order summarily revoking Staples' reinstatement to the active practice of law in North Carolina.

Signed by the undersigned Chair of the Hearing Panel with the full knowledge and consent of the other members of the panel this 24th day of October, 2016.



Fred M. Morelock, Chair