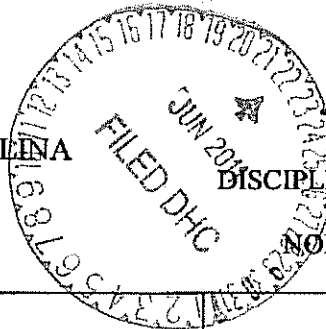


STATE OF NORTH CAROLINA

WAKE COUNTY



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

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

PORTER W. STAPLES, Attorney,

Defendant

FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
ORDER OF DISCIPLINE

This matter was heard before a Hearing Panel of the Disciplinary Hearing Commission composed of J. Michael Booe, Chair; and members Fred M. Morelock and Karen B. Ray on May 13, 2011. William N. Farrell represented the North Carolina State Bar. Porter W. Staples appeared *pro se*.

The Panel first considered The North Carolina State Bar's Motion for Summary Judgment. After hearing arguments from the parties, the Panel granted summary judgment as to the allegation that Defendant failed to reconcile his trust account quarterly in violation of Rule 1.15-3(c). The summary judgment motion was denied as to the other alleged rule violations. Thereafter the Panel proceeded to the trial of this matter on the merits.

Based upon the admissions in the Answer, the stipulations of fact, and the evidence presented at the hearing, the Hearing Panel finds that the following has been established by clear, cogent, and convincing evidence:

#### FINDINGS OF FACT

1. Plaintiff, the North Carolina 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, Porter W. Staples, (hereinafter "defendant" or "Staples"), was admitted to the North Carolina State Bar on December 20, 1985, 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 State of North Carolina State Bar and the laws of the State of North Carolina.

3. During all or most of the relevant periods referred to herein, Staples was actively engaged in the private practice of law in Asheville, Buncombe County, North Carolina.

4. Between 2002 and December 2006 Staples maintained a client trust account with the Bank of Asheville, account number ending in the digits 9324 (hereinafter the "trust account").
5. Staples used the trust account as a general trust account in which he deposited and from which he disbursed client funds.
6. On or about June 17, 2004 Staples received \$81,570.99 from Asheville Savings Bank (hereinafter "ASB") by wire transfer into his trust account at the Bank of Asheville.
7. The \$81,570.99 did not belong to Staples and should not have been wired to the trust account.
8. ASB mistakenly wired the \$81,570.99 to Staples, when the funds should have been wired to the trust account of attorney Randolph C. Romeo.
9. Staples closed numerous loans for ASB before and after the mistaken wire. Staples acknowledged that he closed 40 to 50 loans for ASB.
10. ASB was not aware of the misdirected wire until 2008.
11. In August 2008 ASB notified Staples that it had mistakenly wired the \$81,570.99 to his trust account.
12. Staples eventually told ASB, sometime in late 2008 or early 2009, that the funds were not in his trust account at that time.
13. Staples had no right in law or equity to receive or retain said funds.
14. From the time of receipt of the funds, the minimum account balance in Staples' trust account should have been \$81,570.99, the amount mistakenly wired into the account by ASB. Staples' trust account reflects that the daily balance dropped to \$79,144.06 on January 11, 2005 and \$31,932.69 on January 12, 2005.
15. As of August 31, 2007 there was only \$4,959.57 in the trust account.
16. Staples has not accounted for what happened to the \$81,570.99 that he received from ASB and has not returned the funds to ASB.
17. Staples did not maintain a ledger card containing a record of receipts and disbursement and showing the balance of the funds held in the trust for his clients.
18. Staples failed to maintain bank receipts or deposit slips listing ASB as the source of the funds wired into his trust account.
19. Staples failed to reconcile his trust account quarterly at least between June 2004 and August 2008.

Based on the foregoing Findings of Fact, the Panel enters the following:

### CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel of the Disciplinary Hearing Commission, and the Hearing Panel has jurisdiction over Staples and the subject matter of this proceeding.

2. The \$81,570.00 wired in to Staples trust account by ASB was entrusted property which Staples held in connection with the performance of legal services for ASB. These funds, although mistakenly wired to Staples, are entrusted funds. These funds were deposited in the trust account that Staples used in the ordinary course of his practice of law. The funds were sent to the trust account by ASB in its ordinary course of its business with Staples in the manner in which it had sent funds for other closings that he handled for ASB.

3. Staples' 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 Staples violated the Revised Rules of Professional Conduct in effect at the time as follows:

- a. By disbursing \$81,570.99 belonging to ASB from his trust account, Staples failed to identify, hold and maintain entrusted property in violation of Rule 1.15-2(a) of the Revised Rules of Professional Conduct;
- b. By failing to maintain bank receipts or deposit slips listing the source of all funds deposited in the trust account Staples failed to maintain records in violation of Rule 1.15-3(a)(1) of the Revised Rules of Professional Conduct;
- c. By failing to maintain a ledger containing a record of receipts and disbursements and showing the balance of the funds delivered by ASB in the trust account, Staples failed to maintain a ledger in violation of Rule 1.15-3(a)(5) of the Revised Rules of Professional Conduct; and
- d. By failing to reconcile his trust account quarterly, defendant failed to balance his individual client balances and reconcile them with the current bank balance for the trust account in violation of Rule 1.15-3(c) of the Revised Rules of Professional Conduct.

Based upon the evidence presented at the hearing, the Panel also finds by clear, cogent and convincing evidence the following:

### ADDITIONAL FINDINGS REGARDING DISCIPLINE

1. ASB and Randolph Romeo suffered harm as a result of Defendant's mismanagement of his trust account. There is no evidence that any of Defendant's

actions described in the Findings of Fact above were intentional misappropriations but rather were the result of gross inattention to the status of the trust account in general. Such mismanagement in the handling of entrusted funds puts the entrusted funds at risk and erodes the confidence that clients place in attorneys who handle their affairs. As a result, such conduct harms the profession as a whole.

2. Defendant received a private reprimand, the least serious form of discipline authorized at the time, from the Grievance Committee in February 1989. This prior discipline is so remote that it is more of a positive factor than a negative factor. Defendant has no other discipline.

3. There is no evidence of a dishonest motive or selfish motive in the conduct of Defendant.

4. Defendant has not demonstrated a good faith effort to make restitution and appears indifferent to addressing the shortfall in the trust account.

5. There were multiple offenses in failing to reconcile the trust account. At least twelve quarters went by without reconciliation before the mistaken wire was discovered four years after the fact.

6. Defendant demonstrated a cooperative attitude toward the disciplinary proceedings and was cooperative in answering all of the Panel's questions. Defendant was cooperative with the State Bar and its investigators during the investigation of this matter.

7. Although Defendant stated he was remorseful and embarrassed over his conduct, his actions demonstrate a refusal to acknowledge his responsibility.

8. Defendant is known for good character and reputation in his community.

9. Although ASB made an error when it mistakenly wired the money to Defendant, the bank was vulnerable. Any bank that delivers money to a lawyer in trust reasonably expects that the money will be properly handled and accounted for.

10. Defendant's failure, for many years, to perform reviews and reconciliations of his trust account created the risk that entrusted funds could be compromised as a result of fraud or bank error, and that such loss would not be detected.

11. Defendant's repeated failure to reconcile the trust account was an intentional act, where the harm is foreseeable. The rules requiring reconciliation of trust accounts exists to properly account for and maintain entrusted property. It is essential that a lawyer regularly reconcile his trust account as required by the rules.

12. Defendant's conduct can only negatively impact the public's perception of the legal profession. The lawsuit involving Defendant, ASB and Randolph Romeo is a matter of public record and some members of the public know about it.

13. Defendant's conduct negatively impacted third parties, ASB and Randolph Romeo.

#### 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)(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 prior disciplinary offense;
- b. Remoteness of Defendant's prior disciplinary offense;
- c. Absence of a dishonest or selfish motive relating to the trust account violations;
- d. Lack of good faith efforts to make restitution or to rectify the consequences of the misconduct;
- e. Indifference to making restitution;
- f. Defendant engaged in multiple offenses;
- g. Defendant's full and free disclosure to the Hearing Panel and cooperative attitude toward the proceedings;
- h. Refusal to acknowledge the wrongful nature of the conduct;
- i. Defendant's good character and reputation in the community;
- j. Vulnerability of ASB; and
- k. Degree of experience in the practice of law.

2. The Hearing Panel has also 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. Defendant's failure to reconcile his trust account was an intentional act, where the potential harm is foreseeable; and

- b. Defendant's actions potentially had a negative impact on the public's perception of the legal profession.

3. The Hearing Panel has also considered all of the factors enumerated in 27 N.C.A.C. 1B § (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.

4. The Hearing Panel has considered issuing an admonition, reprimand and censure but concludes that such discipline would not be sufficient discipline because of the gravity of the potential harm to entrusted client funds. 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.

5. No discipline short of an active suspension can maintain the reputation of the legal profession and instill the public's trust in the legal profession and in the administration of justice.

6. For these reasons, this DHC Panel finds that an order of discipline short of a long term suspension of Staples' license would not be appropriate. An active term of suspension is the only sanction that can adequately protect the public.

Based on the foregoing Findings of Fact and Conclusions of Law regarding Discipline, the Hearing Committee enters the following:

#### ORDER OF DISCIPLINE

1. The license of Defendant, Porter W. Staples, is hereby suspended for three (3) years from the date this Order of Discipline is served upon him.

2. Staples shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon Staples.

3. Staples shall comply with the wind down provisions contained in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124(b) of the North Carolina State Bar Discipline & Disability Rules. Staples shall file an affidavit with the Secretary of the North Carolina State Bar within 10 days of the effective date of this order, certifying he has complied with the wind down rule.

4. Within 15 days of the effective date of this order, Staples shall provide the State Bar with an address at which clients seeking return of files can obtain such files and shall promptly return all files to his clients upon request. As part of his wind down from practice, Staples will properly disburse all client or fiduciary funds or property held in any trust accounts or otherwise in his possession or control. Within ninety (90) days of the effective date of this order, Staples will provide the State Bar with a complete and


accurate accounting for the disbursement of all funds or property held in trust, including the names, addresses, and telephone numbers of all persons or entities for whose benefit he disbursed during the wind down period and any remaining funds or property held in trust.

5. The costs and administrative fees of this proceeding are taxed to Staples and shall be paid or assessed by the Secretary within 90 days of the entry of this order.

6. After completion of the three (3) year active suspension, Staples may apply for reinstatement upon filing a petition with the Secretary of the North Carolina State Bar demonstrating the following by clear, cogent, and convincing evidence:

- a. That he properly wound down his law practice and complied with the terms of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124(b) of the North Carolina State Bar Discipline & Disability Rules;
- b. That he has paid the costs and administrative fees of this proceeding;
- c. That he has kept his address of record with the North Carolina State Bar current, promptly accepted all certified mail from the North Carolina State Bar, and responded to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication;
- d. That he has not engaged in conduct constituting the unauthorized practice of law or that would constitute a violation of the Revised Rules of Professional Conduct if he were not suspended from practice;
- e. That he properly disbursed all client or fiduciary funds in any trust accounts or otherwise in his possession or control on a timely basis and within ninety (90) days of the effective date of this order, provided the State Bar with the names, addresses, and telephone numbers of all persons or entities for whose benefit he holds any funds in a trust account; and
- f. That the aggrieved party or parties who suffered the financial loss of the \$81,570.99 that was mistakenly wired to Staples have been fully reimbursed for their loss, either by Staples or through some other source of payment.

Signed by the Chair with the consent of the other hearing committee members,  
this the 22<sup>nd</sup> day of June, 2011.

  
J. Michael Booe, Chair  
Disciplinary Hearing Panel