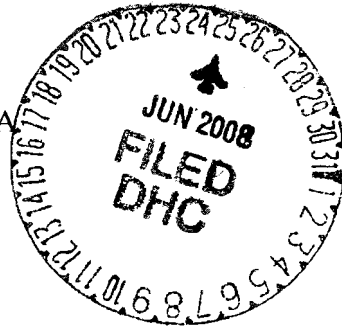


NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF
THE NORTH CAROLINA STATE BAR
06 DHC 30

THE NORTH CAROLINA STATE BAR,
Plaintiff,

v.

CLYDE G. TRIGGS,
Attorney,
Defendant.

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

This matter was heard on February 14, 2008 and on May 21 and 22, 2008 by a Hearing Panel of the Disciplinary Hearing Commission composed of Tommy W. Jarrett, Chair, J. Michael Booe and H. Dale Almond. Katherine E. Jean and A. Root Edmonson represented plaintiff, the North Carolina State Bar. Defendant Clyde G. Triggs appeared *pro se*. Based upon the admissions in the defendant's answer, the stipulations of fact contained in the pretrial order and upon the evidence presented during the hearing, this Hearing Panel hereby makes by clear, cogent and convincing evidence the following

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, Clyde G. Triggs, (hereinafter "defendant"), was admitted to the North Carolina State Bar on August 19, 1973, and is, and was at all times referred to herein, an attorney at law licensed to practice law in North Carolina, subject to the rules, regulations and Revised Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During all or a portion of the relevant periods referred to herein, defendant was actively engaged in the private practice of law with a law office located in the town of Morganton, Burke County, North Carolina.
4. Beginning no later than 2000 and continuing to the present, defendant has been engaged in the private practice of law in the name of C. Gary Triggs, P.A.
5. Beginning in or before 1996, Triggs and C. Gary Triggs, P.A. were experiencing chronic cash flow problems. Triggs frequently borrowed money from clients, employees and others to cover payroll checks to his employees and to pay other office expenses.
6. Beginning no later than 2000 and continuing to the present, C. Gary Triggs, P.A., had a varying number of employees who provided services directly related to and for the benefit of defendant's law practice.
7. At all times pertinent to these allegations, defendant had signature authority on all bank accounts maintained by C. Gary Triggs, P.A.
8. During the times relevant to this disciplinary proceeding, defendant has provided the funds and signed the checks or authorized clerical employees in his office to stamp his signature on the checks with which C. Gary Triggs, P.A., paid the employees who worked in defendant's law office.
9. At all times beginning no later than 2000 to the present, defendant has controlled all funds in all bank accounts maintained by C. Gary Triggs, P.A. and has made all decisions regarding how funds in those accounts would be spent and when.
10. Defendant is a "responsible person" within the meaning of Title 26 of the United States Code.
11. When C. Gary Triggs, P.A. paid its employees, it withheld funds from the employees' paychecks to pay federal income, social security and medicare taxes.

12. From the time the funds were withheld from employees' paychecks until they were or are paid to the Internal Revenue Service ("IRS"), C. Gary Triggs, P.A. and defendant were obligated to hold the funds in trust for the benefit of IRS.
13. Defendant personally had control of all funds withheld from employee paychecks unless and until those funds were delivered to IRS.
14. No later than December 31, 2003, defendant was aware that his clerical employees had failed to deliver funds withheld from employee paychecks to IRS at least quarterly and that it was his obligation to make sure that the funds were timely paid to IRS in the future.
15. During the quarters ending December 31, 2003, June 30, 2004, and September 30, 2004 ("the lien periods"), funds withheld by C. Gary Triggs, P.A. from employee paychecks were not delivered to IRS as required by law and were instead utilized for the benefit of C. Gary Triggs, P.A. and/or for the benefit of defendant.
16. The funds withheld from employee paychecks during the lien periods were entrusted funds which C. Gary Triggs, P.A. and defendant were required to hold in trust as fiduciaries for the funds' rightful owner, IRS. C. Gary Triggs, P.A. and defendant had a fiduciary duty to deliver all withheld funds to IRS.
17. During the lien period, defendant's failure to pay over to IRS funds withheld from employee paychecks was willful.
18. During the lien period, defendant's use of the withheld funds for his own benefit and/or for the benefit of C. Gary Triggs, P.A. was willful.
19. Defendant's conduct as described above was a violation of 26 U.S.C. 7202.
20. In and before June, 2002, defendant represented Todd McNeely (hereinafter "McNeely") in a lawsuit brought by Southern Door of Mooresville, Inc. (hereinafter "Southern") against McNeely and against Audrey Hall and Melvin Hall (hereinafter "the Halls"). Southern was a subcontractor seeking payment for labor and materials utilized by McNeely in constructing a home for the Halls.

21. The lawsuit was settled in a mediated settlement conference on June 26, 2003.
Defendant signed the settlement agreement as attorney for McNeely.
22. The settlement agreement provided that the Halls would deposit \$6500 into defendant's trust account and provided that defendant "will apply the proceeds to mechanics and materialmen who provided labor or materials on the Hall home." The settlement agreement provided that Southern "will be paid first from the \$6500."
23. On or about July 15, 2003, Sherwood Carter (hereinafter "Carter"), counsel for the Halls, delivered to defendant a letter and a check in the amount of \$6500 drawn on Carter's trust account in full payment of the Halls' obligation under the settlement agreement. Carter's letter states "[t]his money is to be disbursed solely to pay those subcontractors who remain unpaid for work on the Hall job undertaken by your client and general contractor, Todd McNeely." Carter's July 15, 2003, letter to defendant states "[p]lease advise promptly if Mr. McNeely does not agree with the expected use of the Halls' funds as above-stated, as the Halls are required by law to satisfy any liens on funds in their hands still owed to a general contractor which these funds represent."
24. The \$6500 delivered to defendant was entrusted funds.
25. Defendant deposited the \$6500 into defendant's trust account on or about July 16, 2003.
26. On or about July 16, 2003, a check was written on defendant's trust account disbursing \$2000 of the \$6500 to C. Gary Triggs, P.A. as a fee.
27. As of August 19, 2003, defendant had not applied any of the \$6500 to pay any of the subcontractors as he was required to do by the express terms of the settlement agreement and by the express terms of Carter's July 15, 2003, letter.
28. Beginning on or about August 19, 2003, Carter began contacting defendant requesting documentation demonstrating that the subcontractors had been paid. Carter wrote defendant letters on August 19, 2003, September 10, 2003, September

- 11, 2003, September 17, 2003, and October 16, 2003. Defendant did not respond to Carter's contacts.
29. On November 5, 2003, Carter wrote to defendant requesting an accounting of defendant's handling of the \$6500.
30. Defendant but did not respond to Carter's November 5, 2003 letter and did not provide an accounting to Carter.
31. On or about November 19, 2003, Carter encountered and questioned defendant. Defendant informed Carter that defendant had paid himself a \$2000 fee from the \$6500, had paid \$956 to Southern, and had not paid any other subcontractor. In that conversation, defendant represented to Carter that defendant did not know the identities of unpaid subcontractors. Carter stated to defendant that defendant was not entitled to take a fee from the \$6500 and that all of the \$6500 was required by the settlement agreement to be paid to subcontractors.
32. No later than June 26, 2003, defendant had information in his possession, custody or control from which he could readily ascertain the identities of all subcontractors who defendant was obligated to pay from the \$6500 in his trust account.
33. After the November 19, 2003 encounter, Carter provided defendant with information about the identities of subcontractors entitled to payment, which information was already in defendant's possession.
34. After the November 19, 2003 encounter in which defendant was told by Carter that defendant was not entitled to take any portion of the \$6500 as a fee, defendant did not return the \$2000 to his trust account.
35. Sometime after the November 19, 2003 encounter, defendant instructed McNeely to deliver \$2000 to defendant. On or about January 16, 2004, McNeely delivered \$2000 to defendant. On or about January 16, 2004, defendant deposited the \$2000 delivered by McNeely into defendant's trust account.

36. In about September 2003 through April of 2004, while he was engaged in an attorney/client relationship with Jeannette Ann Anderson, defendant borrowed money from Anderson totaling approximately \$55,000.
37. Defendant did not transmit the terms of all the loan agreements to Anderson in writing. Some of the loans were memorialized by promissory notes. The remainder were memorialized only by checks written from Anderson to defendant.
38. Defendant did not advise Anderson in writing of the desirability of seeking the advice of independent legal counsel on the transactions and did not afford Anderson a reasonable opportunity to seek the advice of independent legal counsel on the transactions.
39. Defendant did not obtain Anderson's informed consent in writing to the essential terms of the transactions, especially those where there was no promissory note, and did not inform her as to defendant's role in the transactions, including whether defendant was representing Anderson in the transactions.
40. Defendant failed to disclose to Anderson the true financial condition of himself and of C. Gary Triggs, PA.
41. The loans made by Anderson to defendant constitute business transactions within the meaning of Rule 1.8(a) of the Revised Rules of Professional Responsibility.
42. As of the date of the hearing in this matter, defendant still had not repaid \$28,446.00 of the loans which had become the subject of a civil lawsuit.
43. Defendant had provided valuable legal services to Anderson by recovering in excess of \$81,000.00 for her on her civil claim without taking any fee for his representation. Defendant also did not recover the \$5,800.00 in expenses he had incurred during the representation.
44. The State Bar took a voluntary dismissal of the fourth claim for relief.
45. The State Bar failed to prove the fifth claim for relief by clear, cogent and convincing evidence.

Based upon the foregoing Findings of Fact, the Hearing Panel makes the following

CONCLUSIONS OF LAW

1. By failing promptly to pay over to IRS funds withheld from the paychecks of employees of C. Gary Triggs, P.A., defendant committed criminal acts reflecting adversely on his honesty, trustworthiness and fitness in other respects in violation of Revised Rule of Professional Conduct 8.4(b) and engaged in conduct involving dishonesty in violation of Revised Rule of Professional Conduct 8.4(c).
2. By failing to maintain a sufficient balance in his trust account at all times to cover the amount required to pay the entire \$6500 to subcontractors, defendant failed to properly identify, hold and maintain the separate identity of funds he held in trust in violation of Rule 1-15.2(a).
3. By utilizing \$2000 of the \$6500 received from Carter for purposes other than disbursing the entire \$6500 to subcontractors, as required by the terms of the settlement agreement and as required by the instruction contained in Carter's July 15, 2003, letter, defendant utilized entrusted funds either for his own benefit or for the benefit of someone other than the legal or beneficial owner of the funds in violation of Rule 1.15-2(j).
4. By entering into business transactions with Anderson and failing to transmit the terms of the loan agreements in writing to Anderson, defendant violated Rule 1.8(a)(1) of the Revised Rules of Professional Conduct.
5. By failing to advise Anderson in writing of the desirability of seeking the advice of independent legal counsel on the transactions and failing to afford Anderson a reasonable opportunity to seek the advice of independent legal counsel on the transactions, defendant violated Rule 1.8(a)(2) of the Revised Rules of Professional Conduct.
6. By failing to obtain Anderson's informed consent in writing to the essential terms of the transactions, and to defendant's role in the transactions, including whether defendant was representing Anderson in the transaction, defendant violated Rule 1.8(a)(3) of the Revised Rules of Professional Conduct.

Based upon the foregoing findings of fact and conclusions of law, the Hearing Panel makes by clear, cogent, and convincing evidence, the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. Defendant's misconduct is aggravated by the following factors:

a. Prior disciplinary offenses, including an Admonition in 2006 for providing a slow response to a State Bar inquiry and a Censure in 1996 for borrowing money from three clients without making full disclosure about his financial condition and under circumstances that were unfair to the clients;

- b. Dishonest or selfish motive;
- c. Pattern of misconduct;
- d. Multiple offenses; and
- e. Substantial experience in the practice of law.

2. Defendant's misconduct is mitigated by the following factors:

- a. Timely good faith efforts to rectify consequences of misconduct, specifically with regard to the IRS;
- b. Full and free disclosure to the Hearing Committee and cooperative attitude toward the proceedings;
- c. Several lawyers and judges testified that defendant has a good reputation for providing high quality legal services to his clients and for being an effective trial lawyer. The Hearing Panel therefore finds that defendant has good character and a good reputation; and
- d. Remorse.

3. The aggravating factors outweigh the mitigating factors.

4. Defendant's misconduct significantly harmed the reputation of the legal profession. Attorneys have a duty to conduct themselves honestly and to comply with all state and federal laws. When attorneys do not do so they engender distrust of the profession, harming the profession as a whole.

5. Defendant's failure to pay over to IRS funds withheld from employee paychecks resulted in harm to the public in that funds that belong to the government, and therefore the public, for use in providing services to the public, were instead utilized by defendant for unauthorized purposes.

6. Defendant's misconduct resulted in actual harm to his client, Ann Anderson. Defendant borrowed from Ms. Anderson money defendant had recovered to compensate her for damages sustained in a personnel matter. When defendant borrowed the money, the money was not

available to Ms. Anderson. Because he did not make his financial situation clear to Ms. Anderson, Ms. Anderson did not fully understand the risk that she would not be repaid promptly. From April 2004 to the present, defendant has been in possession of \$28,446.00 of funds he borrowed from Ms. Anderson and has not repaid.

7. This Hearing Panel has considered lesser alternatives and finds that a public censure or reprimand would not be sufficient discipline because of the seriousness of defendant's misconduct and the gravity of the harm caused by defendant's conduct to the public and to the profession and because entry of an order imposing discipline less than a suspension would send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

8. This Hearing Panel believes and so finds that an Order calling for a discipline short of a suspension of defendant's law license would not be appropriate, given the clear demonstration of multiple offenses and prior history of discipline established by the evidence.

Based upon the foregoing findings and conclusions of law and the arguments of the parties, the Hearing Panel hereby enters the following

ORDER OF DISCIPLINE

1. The law license of defendant, Clyde G. Triggs, is hereby suspended for five (5) years.
2. The suspension of Triggs' law license is stayed for five (5) years upon the following terms and conditions. During the stayed suspension, Triggs shall:
 - a. Not violate the laws of any state or of the United States;
 - b. Not violate any provision of the Revised Rules of Professional Conduct;
 - c. Pay the costs of this proceeding, including but not limited to deposition costs and court reporting and transcription costs, as assessed by the Secretary of the North Carolina State Bar, within 1 year of notice of the costs being served upon him;
 - d. Respond to any notice of a petition for Mandatory Fee Dispute Resolution issued to him by the State Bar's Fee Dispute Resolution Program within the time set forth in the notice and participate in good faith in all proceedings conducted by the State Bar's Fee Dispute Resolution Program;
 - e. Pay all State Bar membership dues and Client Security Fund assessments and comply with all Continuing Legal Education requirements on a timely basis;
 - f. Notify the State Bar of any change in his address within ten (10) days of such change, promptly 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 such communications;

g. Within one (1) year of the effective date of this Order, Triggs shall complete twelve (12) hours of law office management training by a law office management training provider approved by the Office of Counsel of the North Carolina State Bar. The Office of Counsel shall not unreasonably withhold its approval of any qualified provider. This obligation is in addition to Triggs' obligation to fulfill the ordinary annual continuing legal education requirements imposed upon all active members of the State Bar. The State Bar's Continuing Legal Education Director shall be solely responsible for determining whether Triggs' fulfillment of this condition (g) is also sufficient to fulfill Triggs' ordinary annual CLE requirement;

h. Within thirty (30) days of the effective date of this Order, Triggs shall provide to the Office of Counsel releases authorizing and directing the Internal Revenue Service and the North Carolina Department of Revenue to provide the Office of Counsel copies of all records relating in any way to tax filings and payment of payroll taxes by Triggs and by any partnership, law firm, P.L.L.C., or P.A. in which Triggs has or acquires any ownership interest. Triggs shall provide additional such releases each year during the period of the stay of his suspension. Triggs shall not revoke any release provided to the Office of Counsel pursuant to this condition (h);

i. Within ninety (90) days of the effective date of this Order, Triggs shall enter into an agreement with IRS to pay to IRS all amounts then owed to IRS by Triggs and/or C. Gary Triggs, P.A. for funds withheld from employee paychecks and for any other payroll taxes that were not timely paid over to IRS, along with all penalties and interest assessed by IRS. The agreement shall require Triggs to pay all such amounts due within one (1) year of the effective date of this Order;

j. Triggs and any law firm, law partnership, P.L.L.C., P.C. or P.A. in which Triggs has or acquires any ownership interest shall pay all payroll taxes withheld from any employee paycheck over to IRS and to NCDOR and shall pay all employment taxes owed by the employer on or before the date when such payments are due;

k. Beginning thirty (30) days from the effective date of this Order, Triggs and any law firm, law partnership, P.L.L.C., P.C. or P.A. in which Triggs has or acquires an ownership interest shall each week deposit into a dedicated payroll bank account the gross amount of compensation earned by each employee, i.e., the net amount of the paycheck which will be delivered to each employee plus the total amount of state and federal tax withheld from each employee's paycheck. The gross amount of compensation shall remain in the payroll account until the net compensation is delivered to the employee through a paycheck. Thereafter, the funds remaining in the dedicated payroll account, i.e., taxes withheld from each employee's paycheck, shall remain in the payroll account until those withheld funds are delivered to IRS and NCDOR. Triggs or any law firm, law partnership, P.L.L.C., P.C. or P.A. in which Triggs has or acquires an ownership interest may also deposit into the dedicated payroll account funds representing employment taxes owed to IRS and NCDOR by the employer. No funds other than gross employee compensation and employment taxes owed by the employer to IRS and NCDOR shall be deposited into the dedicated payroll account. Triggs or any law firm, law partnership, P.L.L.C., P.C. or P.A. in which Triggs has or acquires an ownership interest shall not utilize any funds which were deposited into the dedicated payroll account for any purpose other than (i) delivering earned compensation to employees, (ii) holding in trust and delivering to IRS and

NCDOR taxes withheld from employee paychecks, and (iii) holding and then delivering to IRS and NCDOR employment taxes owed by the employer;

l. Triggs will retain a certified public accountant that will provide written reports to the State Bar twice each year certifying that Triggs is in full compliance with each of conditions i, j and k above. Such reports shall also certify that the certified public accountant has examined Triggs' trust account records and determined those records to be in full compliance with all requirements of Revised Rules of Professional Conduct 1-15.2 and 1-15.3. The reports of the certified public accountant shall be received by the Office of Counsel each July 1 and January 1 throughout the period of stayed suspension, beginning on January 1, 2009;

m. July 1 and January 1 of each year during the stay of Triggs' suspension Triggs shall deliver to the Office of Counsel copies of all tax reports and tax returns submitted to IRS and to NCDOR within the preceding 6 months and shall provide proof that all employment taxes owed to IRS and NCDOR were paid on or before the date when such payments were due;

n. Triggs shall submit to and cooperate in random audits of all bank accounts over which he has signatory authority and into which client or fiduciary funds have been deposited. The State Bar may conduct no more than two (2) random audits in any twelve (12) month period. Triggs will provide the State Bar with all documents requested by the State Bar within five (5) business days of the State Bar's request. Triggs will be solely responsible for all expenses associated with complying with random audits;

o. Within six (6) months of the effective date of this Order, Triggs shall make an Offer of Judgment to Jeanette Ann Anderson in the amount of \$28,446.00 in the civil lawsuit that is pending between them. The Offer of Judgment shall comply with the provisions of the North Carolina Rules of Civil Procedure. At the time Triggs makes the Offer of Judgment and throughout the time when Anderson is permitted by the North Carolina Rules of Civil Procedure to accept the Offer of Judgment, Triggs shall have in his possession an official bank check in the amount of \$28,446.00 payable to Jeanette Ann Anderson. Triggs will fulfill this condition by making the Offer of Judgment while he is in possession of the official bank check and by paying the check over to Anderson if she accepts the Offer of Judgment. If Anderson does not accept the Offer of Judgment, Triggs will have no other obligation to make restitution to Anderson as a condition of the stay of his suspension;

p. Within two (2) months of the effective date of this Order, Triggs will contract with a licensed North Carolina attorney who maintains a private law practice in the judicial district in which Triggs maintains his primary law office to serve as a practice monitor. Triggs will first secure the approval of his proposed practice monitor by the Office of Counsel of the North Carolina State Bar, which approval will not be unreasonably withheld. Triggs will personally meet with his practice monitor at least once a month throughout the stayed suspension of his law license. Triggs will keep the monitor apprised of all open and pending client matters and the status of all such matters. Within 15 days after the end of each calendar quarter (i.e., by January 15, April 15, July 15, and October 15) of each year during the stayed suspension of his law license, Triggs will deliver to the Office of the Counsel written reports signed by the practice monitor confirming that the meetings are occurring and reporting any problems or potential

problems with any of Triggs' client matters. It is Triggs' responsibility to ensure that the practice monitor prepares such quarterly reports. Failure of the practice monitor to prepare the report will not justify failure of Triggs to comply with this condition. Triggs will be solely responsible for all costs associated with monitoring his law practice.

3. If during the stay of the five (5) year suspension Triggs fails to comply with any one or more of the conditions stated in paragraph 2(a) through 2(p) above, the stay of the suspension of his law license may be lifted as provided in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules;

4. If the stay of the suspension is lifted and the suspension is activated for any reason, Triggs must show by clear, cogent, and convincing evidence that he complied with each of the following conditions before seeking reinstatement:

a. That he submitted his law license and membership card to the Secretary of the North Carolina State Bar no later than thirty (30) days from the effective date of the order activating his suspension;

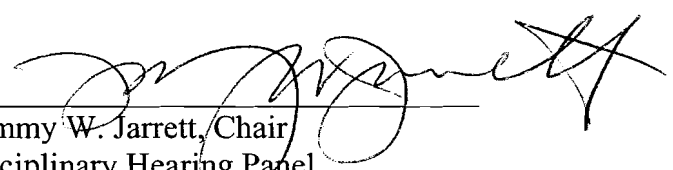
b. That he timely complied with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the North Carolina State Bar Discipline & Disability Rules;

c. That he has complied with all of the conditions 2(a) through 2(i) and 2(o) above.

5. If the stay of the suspension is lifted and the suspension is activated for any reason, at the end of the five (5) year period of suspension it shall be Triggs' burden to demonstrate by clear, cogent and convincing evidence that he has complied with all conditions set forth in paragraphs 2(a) through 2(i), 2(o), 4(a) and 4(b) above before Triggs will be reinstated to the practice of law.

6. 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 24 day of June, 2008.


Tommy W. Jarrett, Chair
Disciplinary Hearing Panel