

STATE OF NORTH CAROLINA  
WAKE COUNTY

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
18 DHC 22

THE NORTH CAROLINA STATE BAR,  
Plaintiff  
v.  
HUBERT N. ROGERS, III, Attorney,  
Defendant

CONSENT ORDER  
OF  
DISCIPLINE

This matter was considered by a hearing panel of the Disciplinary Hearing Commission composed of David W. Long, Chair, R. Lee Farmer, and Ronald C. Brinson. Leonor Bailey Hodge represented Plaintiff, the North Carolina State Bar. Defendant, Hubert N. Rogers, III, was represented by Alan M. Schneider. 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. By consenting to 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.

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 (hereafter "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, Hubert N. Rogers, III (hereafter "Defendant" or "Rogers"), was admitted to the North Carolina State Bar on 23 August 1980 and is 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 relevant period referred to herein, Rogers actively engaged in the practice of law in the State of North Carolina and maintained a law office in Lumberton, Robeson County, North Carolina.

4. During the relevant period referred to herein, Rogers maintained a general attorney trust account at PNC Bank, account number ending 6489 (hereinafter "PNC trust account").

5. Rogers used the PNC trust account as a general account into which all entrusted client funds were deposited and from which such funds were disbursed.

6. On or about 29 August 2017, Rogers' PNC trust account was the subject of a random procedural audit by the State Bar.

7. Rogers had previously been subject to random procedural audits in April 1994 and June 1997.

8. Rogers was cited in the April 1994 procedural audit for the following deficiencies in his trust account management:

- a. Failure to perform quarterly reconciliations of his trust account;
- b. Failure to provide written accountings upon completion of disbursement of entrusted funds;
- c. Advancing funds from the trust account for bank charges due to failure to maintain sufficient funds in trust for bank charges; and
- d. Failure to identify clients on deposit slips.

9. Rogers was cited in the June 1997 audit for the following deficiencies in his trust account management:

- a. Failure to perform quarterly reconciliations of his trust account;
- b. Failure to perform monthly reconciliations of his trust account;
- c. Failure to always provide written accountings to clients at completion of disbursement or at least annually if funds are held for more than twelve months;
- d. Advancing funds from the trust account;
- e. Failure to always indicate current balance on client ledgers;
- f. Failure to maintain a ledger of attorney funds to service the trust account;
- g. Failure to escheat abandoned funds as appropriate and failure to provide a copy of the escheat form to the State Bar;
- h. Failure to provide a copy of the Amended Directive to the bank and State Bar;
- i. Failure to promptly remove from the trust account earned fees or cost reimbursement thereby commingling attorney funds with client funds; and
- j. Failure to always indicate on items payable to the lawyer the client balance from which the funds are drawn.

10. The August 2017 audit revealed the following deficiencies in Rogers' trust account management, including:

- a. Failure to perform quarterly reconciliations of the following PNC trust account balances: the balance as it appeared on Rogers' general ledger for the PNC trust account, the total of all subsidiary ledger balances, and the adjusted bank balance;
- b. Failure to perform monthly reconciliations of the balance of the PNC trust account as shown on Rogers' records and the balance of the PNC trust account as shown on the current bank statement;
- c. Failure to provide a copy of the directive on NSF trust checks to the bank;
- d. Failure to review monthly bank statements and cancelled checks;
- e. Failure to maintain client ledgers;
- f. Failure to maintain, sign, and date reconciliation reports; and
- g. Failure to complete quarterly transaction reviews of transactions occurring in the PNC trust account.

11. Rogers was deficient in his management of the PNC trust account as described in paragraph 11 above.

12. Rogers also failed to disburse entrusted funds from the PNC trust account on behalf of several clients who were currently entitled to such funds.

13. In some instances, Rogers had maintained these clients' entrusted funds in the PNC trust account since 2014.

14. Rogers employed non-lawyer assistants to whom he delegated several of his trust account management duties, including but not limited to monthly and quarterly reconciliation of the PNC trust account and maintenance of client ledgers.

15. Rogers had direct supervisory authority over such non-lawyer assistants.

16. Rogers did not make reasonable efforts to ensure that his non-lawyer assistants performed monthly reconciliations of the PNC trust account.

17. Rogers did not make reasonable efforts to ensure that his non-lawyer assistants performed quarterly reconciliations of the PNC trust account.

18. Rogers did not make reasonable efforts to ensure that his non-lawyer assistants maintained client ledgers.

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, Hubert N. Rogers, III, and over the subject matter.

2. Rogers' 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 perform a three-way reconciliation of the PNC trust account quarterly and monthly reconciliation of the balance of the PNC trust account as shown on Rogers' records and the balance of the PNC trust account as shown on the current bank statement, Defendant failed to conduct the required reconciliations of his trust account in violation of Rule 1.15-3(d);
- b. By failing to provide a copy of the directive on NSF trust checks to the bank, Defendant failed to provide the required bank directive in violation of Rule 1.15-2(l);
- c. By failing to review monthly bank statements and canceled checks for the PNC trust account, failing to maintain, sign, and date reconciliation reports, and failing to complete quarterly transaction reviews of transactions occurring in the PNC trust account, Defendant failed to conduct the required trust account reviews in violation of Rule 1.15-3(i);
- d. By failing to maintain client ledgers, Defendant failed to maintain the minimum records required for general trust accounts in violation of Rule 1.15-3(b);
- e. By failing to timely disburse his clients' entrusted funds, Defendant failed to diligently represent his clients' interests in violation of Rule 1.3, failed to properly maintain entrusted funds in violation of Rule 1.15-2(a), and failed to promptly pay to the client or to a third person as directed by the client entrusted property belonging to the client in violation of Rule 1.15-2(n); and
- f. By failing to supervise his non-lawyer assistants' management of the PNC trust account, Defendant failed to supervise his non-lawyer assistants to the extent necessary to ensure that their conduct was compatible with Defendant's professional obligations in violation of Rule 5.3(b).

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. Rogers received a reprimand in 1991 for failing to personally inspect the public records before certifying to the lender that the property's title was marketable.
2. Rogers failed to take reasonable corrective actions to the supervision of his non-lawyer assistants and the management of his trust account to ensure that entrusted funds were properly safeguarded and to ensure his compliance with the Rules of Professional Conduct.
3. Rogers' failure to properly maintain, manage, and handle entrusted funds betrays a vital trust clients and the public place in attorneys and the legal profession. Clients are entitled to have their funds handled with the utmost care.
4. Rogers' failure to always perform quarterly reconciliations of his trust account after having been twice previously cited for such failure demonstrates his intent to commit acts where the potential harm is foreseeable.

Based on the foregoing Findings of Fact, Conclusions of Law, and 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 considered all of the factors contained in 27 N.C. Admin. Code 1B.0116(f)(1) and concludes that the following factors that warrant suspension or disbarment are present:
  - a. Intent of the defendant to commit acts where the harm or potential harm is foreseeable; and
  - b. 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. Admin. Code 1B .0116(f)(2) 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. Admin. Code 1B.0116(f)(3) and concludes that the following are applicable in this matter:
  - a. Remoteness of prior offense;
  - b. Multiple offenses;

- c. Full and free disclosure to the hearing panel and cooperative attitude toward the proceedings; and
  - d. Defendant has been licensed to practice law for approximately thirty-eight years.
4. Defendant caused potential significant harm to his clients by failing to properly manage their entrusted funds.
5. Defendant's conduct placed entrusted funds at risk and has the potential to cause significant harm to the standing of the profession in the eyes of the public because it shows his disregard for certain of his duties as an attorney. Such erosion of public confidence in attorneys tends to sully the reputation of, and fosters disrespect for, the profession as a whole. Confidence in the legal profession is a building block for public trust in the entire legal system.
6. 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, Hubert N. Rogers, III, is hereby suspended from the practice of law for two years effective 30 days from service of this order upon Rogers. This suspension is stayed immediately as set forth herein and subject to the terms of paragraph 3 below.
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 two-year suspension is stayed for a period of four years as long as Defendant complies with all the following conditions:
- a. Defendant shall pay 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. Each month Defendant shall provide the Office of Counsel of the State Bar with the three-way reconciliation described in the State Bar Lawyer's Trust Account Handbook, using the Trust Account Reconciliation sheet available on the State Bar's website, for all trust accounts he maintains. Defendant shall provide (i) the three-way reconciliation report, (ii) client ledgers for all clients

with funds in the trust account(s) during that month as may be requested by the Office of Counsel, (iii) ledger for any personal funds maintained in the trust account(s) for bank or credit card fees, (iv) trust account general ledger, (v) multiple balance ledger report (report listing balance of funds maintained in trust for each client during reporting period), (vi) the bank statements, (vii) canceled checks, and (viii) as may be requested by the Office of Counsel, deposit slips for each month. These documents are due on the 15<sup>th</sup> day of the following month – for example, the three-way reconciliation for the month of January is due on February 15;

- c. Each quarter, Defendant shall have a CPA or other accounting professional approved by the Office of Counsel of the State Bar audit all trust accounts maintained by Defendant. This audit shall assess whether Defendant has in his trust account the client funds he is required to maintain for his clients at that time, as well as Defendant's compliance with all requirements of Rule 1.15-2 and Rule 1.15-3. The audit shall include addressing the items on the CPA Report Template which will be provided by the State Bar to Defendant. The quarterly audit reports from the CPA or accountant are due no later than 30 days after the end of the quarter – for example, the audit for the first quarter of the calendar year (January, February, and March) is due on or before April 30. It is Defendant's sole responsibility to ensure that the CPA or accountant completes and submits the reports required herein. Defendant shall bear the cost of preparation and submission of these reports;
- d. If either the monthly three-way reconciliation report or audit reveals any deviation from Defendant's obligations under Rules 1.15-2 or 1.15-3, Defendant shall take remedial action within 10 days of the date of the three-way reconciliation report or audit and shall provide documentation showing the remedial action to the State Bar within 2 days of the date of such action;
- e. Defendant shall provide any other records requested by the Office of Counsel within 10 days of the request;
- f. By the deadline stated in the request, Defendant shall comply with any requests from the Office of Counsel to provide any information regarding his trust account(s) or to sign and provide any release or authorization to allow the Office of Counsel to obtain information directly from any bank in which Defendant maintains a trust account;
- g. Within 6 months of the effective date of this order, Defendant shall complete 2 hours of continuing legal education on the topic of trust account management approved by the Office of Counsel of the State Bar. This continuing legal education requirement is in addition to the requirements set out in 27 N.C. Admin. Code 1D.1518;

- h. Defendant shall keep the State Bar Membership Department advised of his current business address, office telephone number, and office e-mail address. Defendant shall notify the State Bar of any change of address within 10 days of such change. His current business address must be a street address, not a post office box or drawer;
- i. Defendant shall accept all certified mail from the State Bar sent to the address on record with the Membership Department of the State Bar;
- j. Defendant shall respond to all communications from the State Bar, including communications from the Attorney Client Assistance Program, within 30 days of receipt of such communication or by the deadline stated in the communication, whichever is sooner;
- k. Defendant shall participate in good faith in the State Bar's fee dispute resolution process for any petition that is pending at the time of entry of this order or of which he receives notice after the effective date of this order;
- l. Defendant shall timely comply with all State Bar continuing legal education requirements and will pay all fees and costs assessed therefor by the applicable deadline;
- m. Defendant will pay all State Bar and judicial district membership dues, Client Security Fund assessments, and any other related dues, fees, assessments and/or costs by the applicable deadline; and
- n. Defendant 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 Disciplinary Hearing Commission, Defendant's obligations under this Order end 4 years from the effective date of the Order provided there are no pending motions or show cause proceedings alleging lack of compliance with the conditions of the stay of the suspension. Pursuant to 27 N.C. Admin. Code 1B .0118, the Disciplinary Hearing Commission 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 2 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 Defendant 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. Admin. Code 1B.0118.



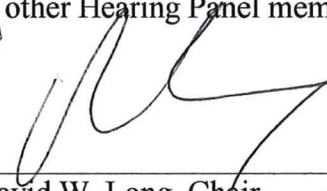
6. If the stay of the suspension is lifted and the suspension is activated for any reason, the Disciplinary Hearing Commission may enter an order imposing such conditions as it deems proper for the reinstatement of Defendant's license at the end of the suspension. Additionally, Defendant must establish the following by clear, cogent and convincing evidence prior to being reinstated to the practice of law after any period of active suspension:

- a. Defendant submitted his law license and membership card to the Secretary of the State Bar within 30 days of the date of the order lifting the stay and/or activating the suspension of his law license;
- b. Defendant complied with the provisions of 27 N.C. Admin. Code 1B.0128 following entry of the order lifting the stay and/or activating the suspension of his law license;
- c. Defendant 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 Defendant 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;
- e. That Defendant provided within 10 days client files to all clients who made a request for return of their files;
- f. Defendant kept the State Bar Membership Department advised of his current address and notified the State Bar of any change in address within 10 days of such change;
- g. Defendant responded to all communications from the State Bar, including communications from the Attorney Client Assistance Program, within 30 days of receipt or by the deadline stated in the communication, whichever is sooner;
- h. At the time of his petition for reinstatement, Defendant is current in payment of all membership dues, fees and costs, including all Client Security Fund assessments, and other assessments, 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 Defendant's completion of mandatory continuing legal education hours in reporting of such hours or in payment of any fees associated with attendance at continuing legal education programs;

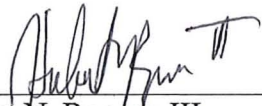
- j. At the time of his petition for reinstatement, Defendant has completed within the 6 months that immediately preceded his petition for reinstatement 2 hours of continuing legal education on the topic of trust account management approved by the Office of Counsel of the State Bar;
- k. Defendant did not violate the Rules of Professional Conduct or the laws of the United States, or the laws of any state or local government during his suspension; and
- l. Defendant participated in good faith in the State Bar's fee dispute resolution process for any petition that was pending at the time of entry of this order or of which he received notice after the effective date of this order.

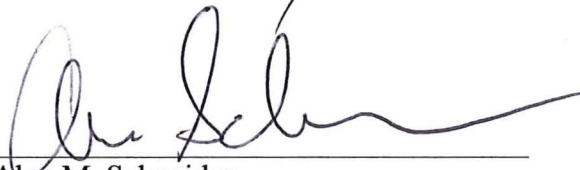
7. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code 1B.0118 until all conditions of the stay of suspension are satisfied.

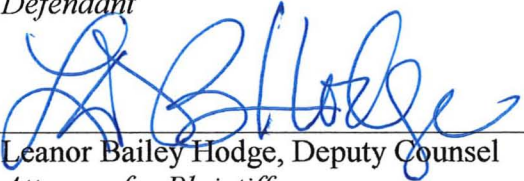
Signed by the Chair with the consent of the other Hearing Panel members this  
the 4<sup>th</sup> day of January, 2018.

  
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David W. Long, Chair  
Disciplinary Hearing Panel

WE CONSENT:

  
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Hubert N. Rogers, III  
*Defendant*

  
\_\_\_\_\_  
Alan M. Schneider  
*Attorney for Defendant*

  
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Leonor Bailey Hodge, Deputy Counsel  
*Attorney for Plaintiff*