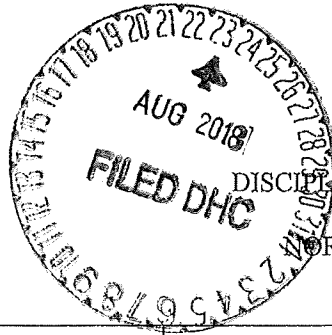


NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
18 DHC 15

THE NORTH CAROLINA STATE BAR,

Plaintiff,

v.

JOSEPH ERIC ALTMAN, Attorney,

Defendant.

CONSENT ORDER OF DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of N. Hunter Wyche, Jr., Chair, and members Allison C. Tomberlin and Tyler B. Morris pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B. Both Plaintiff and Defendant stipulate and agree to the findings of fact and conclusions of law recited in this Consent Order and to the discipline imposed. Defendant freely and voluntarily stipulates to the foregoing findings of fact and consents to the conclusions of law and entry of the Order of Discipline. Defendant freely and voluntarily waives any and all right to appeal the entry of this Consent Order of Discipline.

Based upon the pleadings in this matter, the parties' stipulations of fact, and with the consent of the parties, the Hearing Panel hereby finds 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, Joseph Eric Altman (hereafter "Altman"), was admitted to the North Carolina State Bar in September 2001 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 all or part of the relevant periods referred to herein, Altman was engaged in the practice of law in the State of North Carolina and maintained a law office in Rockingham, Richmond County, North Carolina. Altman also handled cases in Scotland County.

State v. Joseph Bright – 2012 Mistrial

4. In June 2012, Altman represented Joseph Bright who was charged in Richmond County (file number 11 CRS 52523) with Felony Conspiracy to Commit Common Law Robbery. Altman informed the jury in his opening statement that his client had engaged in a discussion about robbing a person. After hearing Altman's opening statement, the presiding judge excused the jury from the courtroom. The judge inquired of Altman's client if the client had consented to Altman making such an admission to the jury. The client denied authorizing Altman to make such an admission. The judge declared a mistrial.

5. After the mistrial, Altman told an Assistant District Attorney ("ADA") that his client intended to testify that he planned the robbery but it was a "joke among friends." Altman had not sought his client's specific consent prior to making this revelation.

State v. Jose Bocanecora

6. In March 2013, Altman met in the Richmond County jail with Jose Algerto A. Bocanecora, a defendant in Richmond County file number 12 CRS 052784.

7. At the time he met with Bocanecora in the jail, Altman was aware that Bocanecora was represented by a court-appointed attorney.

8. Altman did not inform Bocanecora's court-appointed attorney that he intended to meet with Bocanecora and did not obtain permission from Bocanecora's court-appointed attorney to meet with Bocanecora.

9. Bocanecora's family retained Altman to represent Bocanecora.

10. Altman entered a general appearance as Bocanecora's counsel.

11. Altman approached an ADA and revealed to the ADA information obtained from the family members.

12. Altman did not obtain the permission of Bocanecora's court-appointed attorney to discuss Bocanecora's case with the prosecutor.

13. Altman did not seek or obtain Bocanecora's permission to reveal to the prosecutor confidential information Altman obtained in the course of his communications with or on behalf of Bocanecora.

Trust Account Random Audits in 2008 and 2017

14. In 2008, Altman was randomly selected for an audit by the North Carolina State Bar's auditor. The audit was conducted on March 20, 2008.

15. In the March 20, 2008 audit, the auditor found that Altman had failed to reconcile his trust accounts quarterly, failed to identify the client and source of funds on trust account deposit slips, and failed to post deposits on individual ledgers for each client.

16. The auditor discussed the results of his audit with Altman and asked that corrective action be taken by Altman.

17. By letter directed to the auditor dated April 4, 2008, Altman advised the auditor that all discrepancies in his two trust accounts would be corrected as soon as possible.

18. In 2017, Altman was again randomly selected for an audit by the North Carolina State Bar's auditor. The audit was conducted on February 22, 2017.

19. In the February 22, 2017 audit, the auditor found the following:

- (a) Altman had failed in every quarter of the prior year to reconcile his trust account;
- (b) Altman had failed in every month of the prior year to reconcile the balance shown on his records for each trust account with the current bank statement balance for each trust account;
- (c) Altman had failed to identify the source of funds on trust account deposit slips if the client was not the source of the funds;
- (d) For many clients, Altman had failed to maintain individual ledgers that showed the client's current balance;
- (e) Altman had failed to indicate on trust account checks the clients from whose balances funds were drawn;
- (f) Altman had commingled attorney and client funds by failing to remove earned fees promptly;
- (g) Altman had failed to maintain complete general trust account records such as check images and bank statements;
- (h) Altman disbursed more funds from the trust account for clients than he had in the trust account for such clients;
- (i) Altman failed to promptly disburse funds for clients; and
- (j) Altman failed to escheat unidentified or abandoned funds.

20. The auditor discovered that Altman's QuickBooks records for his general trust accounts listed over 100 clients who were identified as having negative ledger balances, indicating that in the case of each of those clients, more funds had been disbursed from the trust account for the benefit of such client than Altman held in the trust account for such client.

21. Negative balance ledgers were caused by data entry errors.

22. Altman has two trust accounts at First Bank that he no longer utilizes and cannot identify the beneficial owners of the balances of \$131.10 in one trust account and \$145.59 in the other trust account.

23. Altman has one trust account at PNC that is currently being used.

24. Altman has held funds in his trust accounts that he has not completely disbursed.

Based upon the Findings of Fact and with the consent of the parties, the Hearing Panel makes the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the DHC has jurisdiction over Defendant, Joseph Eric Altman, and over the subject matter of this proceeding.

2. Altman's conduct, as set out in the stipulated Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Altman violated the Rules of Professional Conduct as follows:

State v. Joseph Bright – 2012 Mistrial

(a) By revealing to the jury in the June 2012 felony trial that Bright had engaged in a discussion about robbing someone without getting his client's consent, Altman revealed information acquired during the professional relationship without his client's informed consent in violation of Rule 1.6(a); by failing to consult with his client prior to making that revelation to the jury, Altman failed to consult with his client about the means by which his client's objectives of the representation would be accomplished in violation of Rule 1.2(a); and by engaging in conduct that led to the court declaring a mistrial, Altman engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d); and

(b) By revealing to an ADA his client Bright's intended testimony without first seeking his client's consent, Altman revealed information acquired during the professional relationship without his client's informed consent in violation of Rule 1.6(a) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

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(c) By meeting in the jail with Bocanecora when he knew that Bocanecora was represented without permission of Bocanecora's court-appointed attorney and by discussing Bocanecora's case with an ADA when he had not sought or obtained the permission of Bocanecora's court-appointed attorney, Altman violated Rule 4.2(a);

(d) By revealing confidential information learned from Bocanecora's family members without Bocanecora's informed consent, Altman revealed information acquired during the professional relationship without his client's informed consent in violation of Rule 1.6(a) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

Trust Account Violations

(e) By failing in any quarter during the year prior to the 2017 random audit to reconcile his trust account, Altman failed to prepare a reconciliation report for each of his trust accounts at least quarterly in violation of Rule 1.15-3(d)(1);

(f) By failing in any month during the year before the 2017 random audit to reconcile the balance shown on his records for each trust account with the current bank statement balance for each trust account, Altman violated Rule 1.15(d)(2);

(g) By failing to identify the source of funds on trust account deposit slips if the client was not the source of the funds, Altman failed to maintain the minimum records required for deposits to a general trust account in violation of Rule 1.15-3(b)(1);

(h) By failing to maintain complete individual ledgers for all of his clients who had funds deposited into his trust account, Altman failed to maintain a ledger for each person or entity for whom he received funds that showed the current balance held in his general trust account for that person or entity in violation of Rule 1.15-3(b)(5);

(i) By failing to indicate on trust account checks the client from whose balance funds were drawn, Altman failed to maintain minimum records required for general trust accounts containing the client name or other identifying information showing on whose balance the item was drawn in violation of Rule 1.15-3(b)(2);

(j) By commingling attorney and client funds when he failed to remove earned fees from his trust account promptly, Altman failed to maintain only entrusted property in his trust accounts in violation of Rule 1.15-2(f);

(k) By failing to maintain complete general trust account records, including check images and bank statements, Altman failed to maintain the minimum records required for general trust accounts in violation of Rule 1.15-3(b)(2) and 1.15-3(b)(4);

(l) By disbursing more funds from this trust account for the benefits of clients than he held in his trust account for the benefit of such clients, Altman failed to properly maintain and disburse entrusted funds in violation of Rule 1.15-2(a) and (n);

(m) By failing to accurately track the receipt and disbursement of funds in his trust accounts as a result of which there are now funds in his trust accounts for whom he cannot identify the beneficial owners, Altman failed to properly identify and maintain entrusted funds in violation of Rule 1.15-2(a);

(n) By failing to timely disburse entrusted funds for the benefit of clients, Altman failed to diligently complete that aspect of those clients' representation in violation of Rule 1.3 and failed to promptly disburse entrusted funds in violation of Rule 1.5-2(n); and

(o) By failing to timely escheat unidentified and abandoned funds, Altman violated Rule 1.15-2(r).

Based upon the consent of the parties, the Hearing Panel also finds by clear, cogent, and convincing evidence the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Altman has substantial experience in the practice of law.
2. There is no evidence of misappropriation or improper disbursement of entrusted funds to Altman.
3. There is no evidence that Altman intended to harm his clients.
4. There is no evidence of any dishonest or selfish motive on the part of Altman.
5. Altman's failure to conduct the required quarterly reconciliations and failure to otherwise monitor his trust account caused potential significant harm to his clients. Conducting quarterly reconciliations of the trust account is the lynchpin of proper maintenance and protection of entrusted funds. Altman's continued failure to reconcile his trust account and failure to maintain proper trust account records - particularly after having been previously cited for the same deficiencies in his trust account management via the random audit process - combined with his failure to make reasonable efforts to ensure his non-lawyer assistants' conduct was compatible with his professional obligations in the handling of entrusted funds demonstrate a pattern of misconduct and demonstrate Altman's intent to commit acts where the potential harm was foreseeable.
6. Altman'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 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.

7. The Hearing Panel has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension, and disbarment, in considering the appropriate discipline to impose in this case.

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

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f) of the Discipline and Disability Rules of the North Carolina State Bar.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f)(1) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors warrant suspension of Altman's license:

- (a) Intent of Altman to commit acts where the harm or potential harm is foreseeable;
- (b) Altman's actions had a potential negative impact on his clients' and the public's perception of the legal profession.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f)(2) of the Rules and Regulations of the North Carolina State Bar and concludes no factors are present that would warrant disbarment.

4. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f)(3) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are applicable in this matter:

- (a) Altman was reprimanded by the State Bar in February 2013 for three grievances filed in 2010 and 2011;
- (b) Absence of a dishonest or selfish motive by Altman;
- (c) Altman engaged in a pattern of misconduct;
- (d) Altman engaged in multiple offenses;
- (e) Altman's full and free disclosure and a cooperative attitude toward the proceedings;

- (f) Altman's acknowledgment of the violations of the trust accounting rules;
- (g) Altman's degree of experience in the practice of law.

5. Altman's failure to properly safeguard entrusted client funds caused potential significant harm to his clients whose funds were placed at risk while entrusted to Altman's care.

6. Altman's conduct, if continued or tolerated by the Bar, poses significant potential harm to future clients and to the profession.

7. The Hearing Panel has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure, and suspension, and the Hearing Panel concludes that discipline short of a suspension would not be sufficient because of the gravity of the potential harm to the clients. The Panel further concludes that discipline short of a suspension would fail to acknowledge the seriousness of the offenses committed by Altman and send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

8. The Hearing Panel concludes that Altman's conduct warrants and can only be addressed through imposition of a suspension on Altman's law license. The Hearing Panel further concludes that such suspension should be stayed upon Altman's compliance with conditions outlined below that will ensure the public is protected from future transgressions by Altman as well as ensure Altman's continued adherence to the Rules of Professional Conduct.

Based upon the foregoing findings of fact and conclusions of law and the findings of fact and conclusion regarding discipline, and based upon the consent of the parties, the Hearing Panel enters the following:

ORDER OF DISCIPLINE

1. Defendant, Joseph Eric Altman, is hereby suspended from the practice of law for two years. This order shall be effective upon filing.

2. Altman is taxed with the costs and administrative fees of this action. Altman shall pay the costs and administrative fees of this proceeding as assessed by the Secretary within 30 days of service of the statement of costs and administrative fees upon him.

3. The two-year suspension is stayed for a period of three years as long as Altman complies, and continues to comply during the period of the stay, with the following conditions:

(a) Altman shall employ an accountant approved in advance by the Office of Counsel to assist Altman in monitoring and reconciling his trust account(s) as required by the Rules of Professional Conduct.

(b) Altman shall provide the State Bar with reports of all quarterly reconciliations as required by Rule 1.15-3 for all trust accounts and fiduciary accounts to which Altman has access and/or in which Altman deposits entrusted funds as follows:

- i. In addition to the three-way reconciliation reports, for the months covered by the submitted report, Altman shall provide: (i) client ledgers for each client whose funds are held in the trust account during the stay, (ii) any ledger for any personal funds maintained in the trust account(s) for bank or credit card fees, (iii) general ledger(s) for each trust account to which Altman has access, and (iv) the bank statements, cleared checks, deposit slips, and deposit items associated with the reports;
- ii. The reports are due no later than 30 days after the end of each quarter (first quarter's report due April 30, second quarter's report due July 30, third quarter's report due October 30, and fourth quarter's report due January 30);
- iii. Altman shall certify with each quarterly report that he has personally reviewed the reconciliation report(s) and all relevant ledgers, bank statements, cancelled checks, deposit slips, and deposit items associated with the report(s), and Altman shall further certify that no entrusted funds received by him or his law office have been deposited into any account other than his trust account(s);
- iv. If any of the quarterly reports referenced above note any irregularities or deficiencies, Altman shall promptly take all remedial action necessary to bring the trust account(s) into compliance with the Rules of Professional Conduct and shall provide proof of the remedial action and compliance to the Office of Counsel of the State Bar within 30 days of the date of the report;
- v. All reconciliations and reports referred to herein will be completed and submitted at Altman's sole expense; and
- vi. Failure of Altman to timely submit any report required by this Order shall be grounds to lift the stay and activate the suspension.

(c) Altman shall certify annually on or before June 30 to the North Carolina State Bar that all general trust accounts, dedicated trust accounts, and fiduciary accounts maintained by Altman or his law firm are administered, to the best of his knowledge, in compliance with the requirements of Rule 1.15 (including all subparts);

(d) Altman shall successfully complete two hours of continuing legal education (CLE) in the area of trust account management within the first year after the effective date of this order, one hour of which must be a trust account CLE taught by

Trust Account Compliance Counsel for the North Carolina State Bar. Altman shall provide written proof of successful completion of these CLE courses to the State Bar within ten days of completing the course;

(e) Altman shall have sole signatory authority on all general trust accounts, dedicated trust accounts, and fiduciary accounts maintained by Altman and shall not allow the use of signature stamps, or electronic signature in lieu of his hand affixed signature;

(f) Altman shall pay all Membership dues and Client Security Fund assessments and comply with all Continuing Legal Education requirements on a timely basis;

(g) Altman shall keep his physical address of record (not a Post Office box) with the North Carolina State Bar current, 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 the communication;

(h) Altman shall not violate any of the Rules of Professional Conduct in effect during the period of the stay;

(i) Altman shall not violate any laws of the State of North Carolina or of the United States during the period of the stay excluding minor traffic infractions;

(j) Altman shall timely comply with paragraph 2 above in paying all costs and administrative fees of this action as assessed by the Secretary within 30 days after service of the statement of costs on him.

4. If during the stay of the suspension Altman fails to comply with any one or more of the conditions stated above, then the stay of the suspension of his law license may be lifted as provided in Rule .0118(a) of the North Carolina State Bar Discipline and Disability Rules.

5. If the stay of the suspension is lifted and the suspension is activated for any reason, Altman may apply for reinstatement after serving the activated suspension by filing a petition pursuant to Rule .0129(b) of the North Carolina State Bar Discipline and Disability Rules demonstrating compliance with the requirements therein as well as the following requirements by clear, cogent, and convincing evidence:

(a) Altman properly wound down his law practice and complied with the terms of Rule .0128 of the State Bar Discipline & Disability Rules;

(b) Altman complied with paragraph 3(d) above;

(c) Altman kept the Membership Department of the State Bar informed of his current information for his physical address (not a Post Office box), telephone number, and e-mail address throughout the period of his suspension;

(d) Altman accepted all certified mail from the State Bar sent to the address on record with the Membership Department of the North Carolina State Bar throughout the period of the suspension;

(e) Altman responded to all letters of notice and requests for information from the North Carolina State Bar by the deadline stated therein with full and complete responses and all requested documentation throughout the period of his suspension;

(f) Altman has come into compliance with any outstanding CLE or membership obligations at the time of the filing of his petition for reinstatement;

(g) Altman did not violate any of the Rules of Professional Conduct in effect during the period of the suspension;

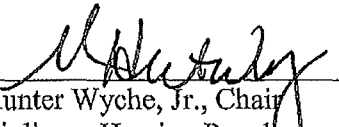
(h) Altman did not violate any laws of the State of North Carolina or of the United States during the period of the suspension; and

(i) Altman paid all costs and fees of this proceeding as assessed by the Secretary by the date of the filing of his petition for reinstatement.


6. If the stay of suspension is lifted and the suspension is activated for any reason, and if Altman fails to fully comply with Rule .0128 and the Court appoints a trustee to wind down any portion of Altman's practice, Altman shall reimburse the State Bar for all expenses incurred by the State Bar in winding down Altman's practice. Such expenses may include, but are not limited to, storage facility fees, rent payments, moving expenses, charges for secure disposal of client files, postage or other mailing expenses, and compensation paid to the trustee and/or the trustee's assistant for time and travel associated with the trusteeship. After the Court has discharged the trustee, the State Bar shall send an invoice of wind-down expenses to Altman at Altman's last known address of record with the North Carolina State Bar. Altman shall not be eligible for reinstatement until he has reimbursed the State Bar for all wind-down expenses incurred.

7. Unless Altman's obligations under this Order are modified by further order of the DHC, Altman's obligations under this Order end three years 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 Rule .0118(a) 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 two-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 Altman's obligation to comply with the conditions for the stay will continue until resolution of any such pending motion or show cause proceeding.

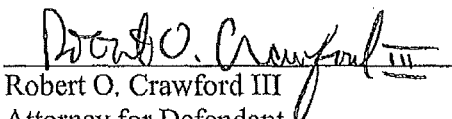
Signed by the Disciplinary Hearing Panel Chair with the consent of the other panel members, this the 23 day of AUGUST, 2018.


N. Hunter Wyche, Jr., Chair
Disciplinary Hearing Panel


CONSENTED TO BY:


A. Root Edmonson, Deputy Counsel
Attorney for Plaintiff

Dated: 8/21/2018


Robert O. Crawford III
Attorney for Defendant

Dated: 8/20/2018


Joseph Eric Altman
Defendant

Dated: 8.17.18