

STATE OF NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
15 DHC 19

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

JOHN C. JOHNSTON, Attorney,

Defendant

CONSENT ORDER OF  
DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Fred M. Morelock, Chair, and members Irvin W. Hankins and Michael S. Edwards, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff was represented by Mary D. Winstead. Defendant, John C. Johnston, appeared pro se. 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 has freely and voluntarily stipulated 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 enters 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, John C. Johnston was admitted to the North Carolina State Bar on March 21, 1986, 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, Defendant was engaged in the practice of law in the State of North Carolina and maintained a law office in Jefferson, Ashe County, North Carolina.

4. During the relevant period referred to herein, in connection with his law practice, Defendant maintained two trust accounts – one at Yadkin Valley Bank, ending in numbers 3954 and one at Fifth Third Bank, ending in numbers 3146 (“trust accounts”).

5. Defendant used the trust accounts as general trust accounts.

6. Since January 2011, Defendant only deposited entrusted funds into the Yadkin Valley Bank trust account.

7. On August 5, 2014, the State Bar conducted a random procedural audit of Defendant’s trust accounts.

8. The audit revealed numerous failures of Defendant to properly maintain and document his trust accounts. Specifically the audit revealed that Defendant failed to do the following as specified in the Rules of Professional Conduct:

- (a) maintain client ledgers for each person or entity from whom or for whom entrusted funds were received;
- (b) conduct the required monthly and quarterly reconciliations;
- (c) always identify the source of funds on deposit slips;
- (d) identify the client on wire/electronic transfers;
- (e) always provide written accountings to clients at the completion of disbursement or at least annually if funds were held for more than 12 months;
- (f) maintain a ledger of attorney funds to service the trust accounts;
- (g) escheat unidentified/abandoned funds as required by N.C.G.S. § 116B-53;
- (h) promptly remove earned fees or cost reimbursement resulting in commingling of attorney and client funds; and
- (i) always indicate on checks from which client balances the checks were drawn.

9. Defendant’s trust accounts had previously been audited by the State Bar on May 7, 2003 and March 22, 1989, and those audits revealed several of the same violations of the trust accounting rules that were found in the 2014 audit.

10. Defendant employed a nonlawyer assistant, Dawn C. Carrier (“Carrier”), in 2006.

11. Between December 2006 and April 2007, Carrier misappropriated over \$10,000 from Defendant’s law office.

12. Carrier signed a statement in 2007 admitting writing herself pay checks totaling \$8,646.75 to which she was not entitled and taking \$2,015 in cash.

13. Defendant did not notify law enforcement in 2007 of Carrier's misappropriation.

14. Defendant was aware in 2007 that Carrier owed money to another attorney from whom she had stolen.

15. Defendant did not terminate Carrier's employment when he discovered her misappropriation.

16. Carrier left Defendant's employment in 2008.

17. In 2011, Defendant rehired Carrier, who at that time was Dawn Aldridge, ("Aldridge") as a part time real estate paralegal.

18. Defendant had managerial and direct supervisory authority over Aldridge during her employment with his firm.

19. When Defendant rehired Aldridge, she did not have signature authority on the trust accounts, but she had access to the Yadkin Valley Bank trust account checkbook in connection with her responsibility of preparing checks for real estate transactions.

20. On October 2, 2014, Defendant reported to the State Bar that Aldridge had misappropriated money from his trust account.

21. Defendant also reported the misappropriation to law enforcement.

22. In an interview with law enforcement, Aldridge stated that she was aware that Defendant did not reconcile his bank account.

23. Aldridge also informed law enforcement that in some of the real estate closings, she would not transmit the checks for title insurance premiums to the title insurance companies, but would place the unnegotiated checks in the client file.

24. Aldridge knew that as a result of her not transmitting the premium checks to the title insurance companies, there were funds in the trust account that were available for her to take.

25. Defendant failed to discover that these checks for title insurance had not been negotiated and that unauthorized checks had been written and negotiated because he did not reconcile his trust account.

26. Aldridge misappropriated approximately \$57,368.15 in entrusted funds between 2011 and 2014.

27. Aldridge misappropriated funds by writing, on the Yadkin Valley Bank trust account, numerous unauthorized checks made payable to her landlords who had no business with the law firm that would have entitled them to disbursements from the trust account.

28. Aldridge also misappropriated funds by writing, on the Yadkin Valley Bank trust account, numerous unauthorized checks made payable to her husband and her husband's real estate company.

29. On numerous occasions, Aldridge forged the signature of another employee who was authorized to sign checks.

30. Aldridge also stole \$3,000 in entrusted funds in cash that was delivered to Defendant's office in connection with real estate transactions.

31. Aldridge's misappropriation went undetected for several years due to Defendant's lack of supervision and lack of attention to his trust account and bank records.

Based upon the consent of the parties and the foregoing stipulated 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 and the subject matter of this proceeding.

2. Defendant'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) as follows:

(a) By allowing a nonlawyer assistant who had previously stolen from him and another attorney access to his firm's trust account checkbook, and by failing to perform the required trust account reconciliations, Defendant failed to make reasonable efforts to ensure that he had in effect measures that gave reasonable assurance that his nonlawyer assistant's conduct was compatible with Defendant's professional obligations in violation of Rule 5.3(a) and failed to supervise his nonlawyer assistant to the extent necessary to ensure that her conduct was compatible with Defendant's professional obligations in violation of Rule 5.3(b);

(b) By failing to maintain a client ledger for each person from whom or for whom trust money was received, Defendant violated Rule 1.15-3(b)(5);

(c) By failing to compare the balance in the account as shown on his records to the bank statement balance on a monthly basis and by failing to total client ledger balances and compare them to the bank statement balance at

least quarterly, Defendant failed to perform monthly or quarterly reconciliations of his attorney trust account in violation of Rule 1.15-3(d);

- (d) By failing to identify the client on all deposit slips and electronic wire transfers, Defendant violated Rule 1.15-3(b)(1);
- (e) By failing to maintain a ledger of client funds to service the trust account, Defendant violated Rule 1.15-2(f)(1);
- (f) By failing to escheat unidentified or abandoned funds, Defendant violated Rule 1.15-2(q);
- (g) By failing to promptly remove earned fees or cost reimbursement from the trust account, Defendant commingled attorney and client funds in violation of Rule 1.15-2(f); and
- (h) By failing to indicate on all checks from which client balance the checks were drawn, Defendant violated Rule 1.15-3(b)(2).

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. Conducting quarterly reconciliations of the trust account is the keystone of proper maintenance and protection of entrusted funds.
2. Despite the fact that Defendant had been audited previously, he failed to conform his office practices to the State Bar's trust accounting rules.
3. Defendant's failure to monitor the activity in his trust account and to perform the required reconciliations created a risk of significant harm to clients' entrusted funds.
4. There was coverage in the local media about Aldridge's arrest and on at least one website there were comments which included comments about the trust accounting rules applicable to attorneys.
5. The failure to transmit title insurance premiums had the potential to cause significant harm should a title claim arise after the expiration of the title commitment, and potentially interfered with Johnston's clients' goal of obtaining title insurance.
6. Defendant has no prior disciplinary record concerning his license to practice law.
7. Defendant fully cooperated with all of the State Bar's inquiries regarding these trust account matters.

8. Defendant has expressed genuine remorse.
9. When Defendant discovered shortfalls in his trust account, he promptly reported that to the State Bar and took measures to rectify the problems.
10. By the time the complaint in this matter was filed, Defendant had submitted to the State Bar quarterly reconciliations of his trust account.
11. Defendant did not engage in the conduct described in the Findings of Fact above with any dishonest or selfish motive, and there is no evidence that he committed any act or failed to commit any act, for personal gain.
12. No client of Defendant ever contacted the State Bar to complain that funds had been mishandled or that a real estate closing was not conducted properly.
13. Defendant maintains, and the State Bar has no evidence to the contrary, that no title insurance company requested to audit his trust account.
14. From the time Defendant discovered the latest misappropriation, Defendant took many steps to safeguard funds in his trust account including, but not limited to:
  - (a) Reporting the misappropriation to law enforcement and terminating Aldridge's employment;
  - (b) Replenishing the trust account to cover the deficit;
  - (c) Purchasing new software to keep track of receipts and disbursements;
  - (d) Adopting written policies for the office which includes instructions for handling and documenting entrusted funds;
  - (e) Employing an independent accountant to assist with Defendant's trust account reviews and reconciliations.
15. Defendant has provided numerous letters attesting to his excellent reputation for honesty and legal knowledge among court officials and their employees with whom he transacts business on a regular basis and among other attorneys in his community.
16. 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 on the Findings of Fact and Conclusions of Law above and the additional Findings of Fact Regarding Discipline, the Hearing Panel makes the following:

**Conclusions With Respect To 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)(1) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors warrant suspension of Defendant's license:

- (a) Negative impact on the public's perception of the legal profession; and
- (b) Effect of conduct on third parties.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(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.

3. 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 lack of prior disciplinary offenses;
- (b) Absence of a dishonest or selfish motive;
- (c) Timely good faith efforts to make restitution or to rectify the consequences of the misconduct;
- (d) Defendant engaged in multiple offenses;
- (e) Defendant's cooperative attitude toward the proceedings;
- (f) Defendant's remorse;
- (g) Good character and reputation; and
- (h) Substantial experience in the practice of law.

4. Defendant's conduct, if continued or tolerated by the Bar, poses significant potential harm to future clients.

5. The Hearing Panel has considered issuing an admonition, reprimand or censure but concludes that such discipline would not be sufficient discipline because of the gravity of the potential harm to the clients. 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.

6. This Hearing Panel has considered lesser alternatives and concludes that a stayed suspension is necessary to ensure Defendant complies with necessary conditions to avoid significant harm or the potential for significant harm to clients.

7. For these reasons, this Hearing Panel finds that an order imposing discipline short of a stayed suspension of Defendant's law license would not be appropriate.

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, John C. Johnston, is hereby suspended from the practice of law for three years, effective 30 days from service of this order upon Defendant.

2. The three year suspension is stayed for a period of four years as long as Defendant complies, and continues to comply during the period of the stay, with the following conditions:

- (a) Defendant shall provide the State Bar with reports of all quarterly reconciliations required by Rule 1.15-3(d)(1) to ensure Defendant's compliance with the Rules of Professional Conduct as follows:
  - i. In addition to the three-way reconciliation reports, for the months covered by the submitted report, Johnston shall provide: (i) client ledgers for each client whose funds are held in the trust account during, (ii) 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 Johnston has access, and (iv) the bank statement, cancelled checks and deposit slips for each trust account to which Johnston has access;
  - 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. If any of the quarterly reports referenced in paragraph (a)(i) note any irregularities or deficiencies, Defendant shall 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;



- iv. All reconciliations and reports referred to herein will be completed and submitted at Defendant's sole expense;
- v. Failure of the Defendant to timely submit any report required by this Order shall be grounds to lift the stay and activate the suspension.

(b) In addition to providing the State Bar with quarterly reconciliations for all general trust accounts, dedicated trust accounts, and fiduciary accounts, Defendant shall personally review the following:

- i. Each month, the bank statement and cancelled checks for the month covered by the bank statement;
- ii. Each quarter, the settlement statement, client ledger, and cancelled checks of three representative real estate transactions to verify that the disbursements were properly made;
- iii. Any discrepancies discovered during the monthly and quarterly reviews must be investigated, identified, and resolved within ten days; and
- iv. A report of each monthly and quarterly review, including a description of the review, the transactions sampled, and any remedial action taken, will be prepared. Defendant shall sign, date, and retain a printed copy of the report and associated documentation for a period of six years in accordance with Rule 1.15-3(g).

(c) Defendant 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 Defendant or his law firm are administered, to the best of his knowledge, in compliance with the requirements of Rule 1.15 (including all subparts) or that he is exempt from this provision because Defendant does not maintain any trust or fiduciary accounts for North Carolina client funds;

(d) Defendant 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, and two hours of CLE in the area of trust account management within the fourth year of this suspension, one hour of which must be a trust account CLE taught by Trust Account Compliance Counsel for the North Carolina State Bar. Defendant shall provide written proof of successful completion of the CLE course to the State Bar within ten days of completing the course;

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

(f) Defendant shall personally review and personally sign with his hand every HUD-1 Settlement Statement for transactions in which he is the closing attorney, be present at all closings for which he is the closing attorney, and personally verify that all receipts and disbursements are accurately entered in the HUD-1 Settlement Statement;

(g) Defendant shall submit quarterly (i) a list of every closing conducted during the quarter, and (ii) a list of all title insurance premiums paid during the quarter. The list of title insurance premiums paid shall include the date of closing, amount of the premium, name of the client on whose behalf the premium was paid, check number and date the check cleared the bank.

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

(i) Defendant shall keep his address of record 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;

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

(k) Defendant 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; and

(l) Defendant shall pay all costs and fees as assessed by the Secretary within thirty (30) days after service of the notice of costs on him.

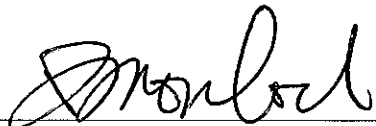
3. If during the stay of the suspension Defendant fails to comply with any one or more of the conditions stated above, then the stay of the suspension of his law license may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

4. If the stay of the suspension is lifted and the suspension is activated for any reason, Defendant may apply for reinstatement after serving the activated suspension by filing a petition pursuant to § .0125 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:

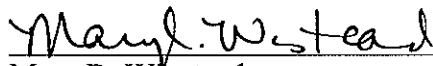
- (a) Defendant properly wound down his law practice and complied with the terms of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the State Bar Discipline & Disability Rules;
  - (b) Defendant kept the Membership Department of the State Bar informed of his current information for his physical address (not a Post Office box), telephone number, and e-mail address throughout the period of his suspension;
  - (c) Defendant 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;
  - (d) Defendant 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;
  - (e) Defendant has come into compliance with any outstanding CLE or membership obligations at the time of the filing of his petition for reinstatement;
  - (f) Defendant did not violate any of the Rules of Professional Conduct in effect during the period of the suspension;
  - (g) Defendant did not violate any laws of the State of North Carolina or of the United States during the period of the suspension; and
  - (h) Defendant paid all costs and fees of this proceeding as assessed by the Secretary by the date of the filing of his petition for reinstatement.
5. Unless Defendant's obligations under this Order are modified by further order of the DHC, Defendant's obligations under this Order end four 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 § .0114(x) 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 three 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.

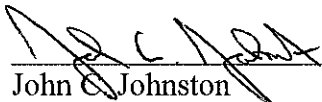
Signed by the undersigned Hearing Panel Chair with the consent of the other Hearing Panel members.

This the 4<sup>th</sup> day of June 2015.

  
Fred M. Morelock, Chair  
Disciplinary Hearing Panel

Agreed and consented to by:

  
Mary D. Winstead  
Attorney for Plaintiff

  
John C. Johnston  
Defendant