



STATE OF NORTH CAROLINA

WAKE COUNTY

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
17 DHC 24

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

RICHARD B. SCHULTZ, Attorney,

Defendant

ORDER OF DISCIPLINE

THIS MATTER came on for consideration before a Hearing Panel of the Disciplinary Hearing Commission composed of R. Lee Farmer, Chair, and members Fred W. DeVore, III and Tyler B. Morris. Jennifer A. Porter represented Plaintiff, the North Carolina State Bar. William E. Moore represented Defendant, Richard B. Schultz.

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. Schultz 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. Schultz 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 ("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 (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, Richard B. Schultz ("Schultz"), was admitted to the North Carolina State Bar in 1975, 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, Schultz was engaged in the practice of law in the State of North Carolina and maintained a law office in Gastonia, Gaston County, North Carolina.

4. On June 2, 2015, an auditor for the North Carolina State Bar conducted a random audit of Schultz's trust account.

5. The following was found during the audit:

- a. Schultz was commingling funds by failing to promptly disburse earned fees to himself and retaining more funds belonging to him in the trust account than necessary to pay bank service charges or otherwise maintain the account;
- b. Schultz had not conducted all required monthly and quarterly reconciliations of his trust account. He had completed reconciliations in which he compared the total client balance with his bank statement balance for only the two most recent months prior to the audit.

6. Pursuant to 27 N.C. Admin. Code 1B.0128(b) (now recodified as 27 N.C. Admin. Code 1B.0132(b)), on August 18, 2015, the State Bar sent Schultz a letter seeking to confirm Schultz had taken appropriate corrective action to come into compliance with the Rules of Professional Conduct.

7. The State Bar requested Schultz confirm his compliance with Rule 1.15 of the Rules of Professional Conduct by providing a trust account reconciliation.

8. In its August 18, 2015 letter, the State Bar requested Schultz provide a trust account reconciliation through August 2015 along with the supporting documents by September 30, 2015.

9. Schultz failed to respond to the State Bar's August 18, 2015 letter.

10. On March 11, 2016, the State Bar sent Schultz a letter noting the State Bar had not received a response from Schultz to its August 18, 2015 letter and requesting Schultz provide a trust account reconciliation through February 2016 with supporting documents by March 31, 2016.

11. Schultz failed to respond to the State Bar's March 11, 2016 letter.

12. On April 28, 2016, the State Bar sent Schultz a letter noting the State Bar had not received a response from Schultz to its prior requests and requesting Schultz provide a trust account reconciliation through February 2016 with supporting documents by May 6, 2016.

13. Schultz failed to respond to the State Bar's April 28, 2016 letter.

14. On May 25, 2016, the State Bar sent Schultz a letter by certified mail noting the State Bar had not received a response from Schultz to its prior requests and requesting Schultz provide a trust account reconciliation through February 2016 with supporting documents within

ten days of receipt of the letter.

15. Schultz received the State Bar's May 25, 2016 letter by certified mail on June 2, 2016.

16. Schultz failed to respond to the State Bar's May 25, 2016 letter.

17. On October 6, 2016, the State Bar sent Schultz a letter of notice by certified mail notifying Schultz that a grievance file had been opened and that his response was required within fifteen days of his receipt of the letter of notice.

18. The letter of notice instructed Schultz to include with his response a monthly and quarterly trust account reconciliation for the immediately preceding month and quarter, respectively, using the State Bar's three-way reconciliation form for the quarterly reconciliation and providing the supporting documentation listed in the letter of notice.

19. Schultz received the State Bar's October 6, 2016 letter of notice by certified mail on October 13, 2016.

20. Schultz failed to timely respond to the letter of notice within fifteen days of receipt.

21. On November 4, 2016, the State Bar sent Schultz a letter notifying him that it had not received his response to the letter of notice. The State Bar asked Schultz to provide his response, although it would be considered late, by November 14, 2016.

22. Additionally, on November 4, 2016 a State Bar councilor e-mailed Schultz and left him a voicemail message, to encourage him to respond to the letter of notice.

23. On November 10, 2016, Schultz sent the State Bar a letter apologizing for not responding earlier to the State Bar and stating that upon his return to his office on November 14, 2016 he would prepare a response and send it immediately.

24. Schultz did not respond to the letter of notice by the November 14, 2016 date as requested in the State Bar's November 4, 2016 letter.

25. On November 30, 2016, the State Bar sent Schultz a letter noting that as of that date the State Bar had not received Schultz's response to the letter of notice. The State Bar encouraged Schultz to provide a response to the letter of notice that included addressing his failures to respond to the State Bar along with the requested reconciliations and documents by December 16, 2016.

26. On December 5, 2016, Schultz provided a response to the State Bar.

27. With his response, Schultz included handwritten reconciliations, not using the State Bar form as requested, on which he listed client balances and compared the total client balance with the bank statement balance for August 2015 through October 2016.

28. Schultz's reconciliations and his description of his trust account reconciliation process omitted any maintenance of a general ledger or use of the balance on the general ledger in his reconciliations.

29. Pursuant to a subsequent request made to him by the State Bar that included a request for his general ledger, on January 27, 2017 Schultz provided a completed three-way reconciliation form for October 2016.

30. In the materials he provided on January 27, 2017, Schultz did not provide a general ledger with the October 2016 reconciliation.

31. In his January 27, 2017 letter, Schultz stated that his methodology for keeping a ledger for the trust account was to maintain client ledgers on index cards.

32. In his January 27, 2017 letter, Schultz referenced his previous explanation regarding his trust account methodology, which was included in his December 5, 2016 letter.

33. In his December 5, 2016 letter, Schultz indicated that upon receipt of his monthly trust account bank statement, he would prepare a written list from the index cards of the clients and their respective balances and compare the total of the client balances with the bank statement balance.

34. The State Bar sent Schultz a letter dated April 24, 2017 addressing the issue of promptly disbursing earned fees from his trust account. Schultz was asked to update the State Bar by May 19, 2017 if he made any changes to his procedures after reviewing the letter.

35. Schultz did not respond to the State Bar's April 24, 2017 letter.

36. The State Bar sent Schultz a letter dated June 30, 2017 in which it notified Schultz that a general ledger, separate from the client ledgers, was now needed to conduct quarterly reconciliations in compliance with Rule 1.15-3(d)(1), pursuant to the revision effective September 30, 2016 under which the quarterly reconciliation process explicitly requires comparison of the balance that appears on the general ledger for the trust account with the total of client balances and with the bank statement balance.

37. The State Bar requested Schultz provide a general ledger for his trust account that he would maintain and use in his quarterly reconciliations by July 14, 2017.

38. Schultz did not respond to the State Bar's June 30, 2017 letter.

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 the parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, Richard B. Schultz, and the subject matter.

2. Defendant has engaged in conduct constituting grounds for discipline as follows:
  - a. Pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:
    - 1) By failing to promptly disburse earned fees to himself and retaining more funds belonging to him in the trust account than necessary to pay bank service charges or otherwise maintain the account, Schultz failed to maintain entrusted funds separate from his property in violation of Rule 1.15-2(a);
    - 2) By failing to reconcile the balance of his trust account as shown in his records with the bank statement balance for the trust account each month, Schultz failed to conduct the required monthly reconciliations in violation of Rule 1.15-3(d)(2);
    - 3) By failing to reconcile the total of individual client balances with the bank statement balance at least quarterly, and by failing to reconcile the balance from a general ledger for his trust account with the total of client balances and with the bank statement balance at least quarterly after September 30, 2016, Schultz failed to conduct the required quarterly reconciliations in violation of Rule 1.15-3(d)(1);
    - 4) By failing to provide the reconciliation and supporting documents requested by the State Bar pursuant to 27 N.C. Admin. Code 1B.0128(b) (now recodified as 27 N.C. Admin. Code 1B.0132(b)) in relation to the violation of the Rules of Professional Conduct discovered in the random audit of Schultz's trust account, Schultz failed to produce in a random audit records required by Rule 1.15 upon request in violation of Rule 1.15-3(h); and
    - 5) By failing to timely respond to the letter of notice in the grievance file and failing to respond to subsequent inquiries of the State Bar in the grievance file, Schultz knowingly failed to adequately or timely respond to a lawful demand for information from a disciplinary authority in connection with a disciplinary matter in violation of Rule 8.1(b).
  - b. Pursuant to N.C. Gen. Stat. § 84-28(b)(3) in that Schultz failed to adequately or timely answer a formal inquiry of the North Carolina State Bar in a disciplinary matter.

Based on the foregoing Findings of Fact, the Conclusions of Law, 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 additional

#### FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1 – 38 above are reincorporated as if set forth herein.

2. The legal profession is entrusted with the privilege of self-regulation. When an attorney fails to participate in the profession's self-regulation by failing to respond to the inquiries of the State Bar, this interferes with the State Bar's ability to regulate attorneys and undermines the privilege of lawyers in this State to remain self-regulating.

3. A keystone of the public's trust in the legal profession is the proper management by attorneys of attorney trust accounts. The ability and willingness of attorneys to demonstrate that proper management to the State Bar fosters public confidence and facilitates the State Bar's regulation of the profession for the protection of the public.

4. Defendant maintained client ledgers for his trust account

5. Although not as frequently as required, Defendant engaged in review of his trust account records in the course of maintaining entrusted funds.

6. There is no evidence of any dishonest motive on the part of Defendant.

7. Prior to the revision of Rule 1.15-3(d)(1) effective September 30, 2016, Defendant's reconciliation process was sufficient to meet the requirements of the quarterly reconciliation previously in effect, if timely done.

8. Defendant has begun maintaining a general ledger for his trust account and conducting reconciliations in which he compares his bank balance, general ledger balance, and client ledger balance total.

9. With the addition of the maintenance of a general ledger and the incorporation of comparison of the general ledger balance with the client ledger balance and the adjusted bank balance in his reconciliations, Defendant's current reconciliation process is compliant with the current version of Rule 1.15-3(d)(1).

10. Defendant has acknowledged that his failures to respond to the State Bar's inquiries greatly exacerbated this matter. Defendant is taking steps to address the underlying physical and mental health concerns that impacted his responsiveness to the State Bar. Defendant has established procedures to ensure his prompt receipt of and response to State Bar communications.

11. Defendant has been practicing law for over 40 years and has established a reputation for good character.

12. Defendant has no prior discipline.

Based on the foregoing Findings of Fact, Conclusions of Law, and Additional Findings Regarding Discipline, the Hearing Panel enters the following

### CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(w)(1), (2) and (3) of the Rules and Regulations of the State Bar. We conclude that there are no applicable factors under § 1B.0116(w)(2). We conclude that the following factors under .0116(w)(1) and (3) are applicable:

#### 27 N.C. Admin. Code 1B.0116(w)(1)

- a. Factor (F), Potential negative impact of Defendant's actions on the administration of justice, to wit: the State Bar's regulation of the legal profession; and
- b. Factor (J), Multiple instances of failure to participate in the legal profession's self-regulation process.

#### 27 N.C. Admin. Code 1B.0114(w)(3)

- c. Factor (A), No history of prior disciplinary offenses;
- d. Factor (C), Absence of selfish motive;
- e. Factor (D), Timely good faith efforts to rectify the consequences of his misconduct;
- f. Factor (F), Pattern of misconduct;
- g. Factor (G), Multiple offenses;
- h. Factor (H), Effect of personal or emotional problems on the conduct in question;
- i. Factor (I), Effect of any physical or mental disability or impairment on the conduct in question;
- j. Factor (J), Interim rehabilitation;
- k. Factor (K), Full and free disclosure to the hearing panel and a cooperative attitude toward the proceedings;
- l. Factor (P), Remorse;
- m. Factor (Q), Excellent character reputation; and
- n. Factor (S), Substantial degree of experience in the practice of law.

2. Defendant's failures to adequately or timely respond to the State Bar caused potential significant harm to the profession and its self-regulation.

3. There is no evidence of actual harm caused by Defendant's conduct.

4. The Hearing Panel considered all of the disciplinary options available to it. In the course of this consideration, the Hearing Panel carefully considered the factor that could be considered in imposing a suspension or stayed suspension. In light of all of the evidence, the Hearing Panel concluded a reprimand is a more appropriate discipline.

5. The Hearing Panel considered all lesser sanctions and concluded that discipline short of reprimand would not adequately protect the public. Imposition of a lesser discipline would fail to acknowledge the seriousness of the offenses Defendant committed and would send the wrong message to members of the Bar and the public regarding the conduct expected of members of the Bar of this State.

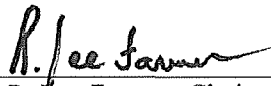
Based on the foregoing Findings of Fact, Conclusions of Law, and additional Findings of Fact and Conclusions of Law Regarding Discipline, the Hearing Panel hereby enters the following

ORDER OF DISCIPLINE

1. Defendant, Richard B. Schultz, is hereby REPRIMANDED.

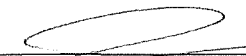
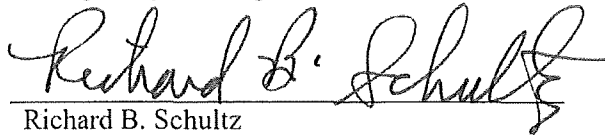
2. Defendant shall pay the administrative fees and costs of this proceeding, including the costs of all depositions, as assessed by the Secretary of the North Carolina State Bar. Defendant must pay the costs within 30 days of service upon him of the statement of costs by the Secretary.

Signed by the Chair with the consent of the other Hearing Panel members, this the 1st day of March, 2018.

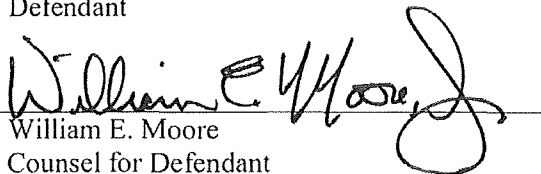


R. Lee Farmer, Chair  
Disciplinary Hearing Panel

CONSENTED TO BY:

  
Jennifer A. Porter  
Counsel for Plaintiff

Richard B. Schultz  
Defendant

  
William E. Moore  
Counsel for Defendant