

STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
14 DHC 32

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

A. WAYLAND COOKE and
H. DAVIS NORTH, III, Attorneys,

Defendants

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

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Donald C. Prentiss, Chair, and members Irvin W. Hankins, III and Michael S. Edwards, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff was represented by Jennifer A. Porter. Defendants A. Wayland Cooke ("Cooke") and H. Davis North, III ("North") were represented by Alan M. Schneider. Both Plaintiff and Defendants stipulate and agree to the findings of fact and conclusions of law recited in this Consent Order and to the discipline imposed. Defendants freely and voluntarily stipulate to the foregoing findings of fact and consent to the conclusions of law and entry of the Order of Discipline. Defendants freely and voluntarily waive 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 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 A. Wayland Cooke ("Cooke"), was admitted to the North Carolina State Bar in 1976, 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. Defendant H. Davis North, III ("North"), was admitted to the North Carolina State Bar in 1980, 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.

4. Defendants were properly served with process and the matter came before the Hearing Panel with due notice to all parties.

5. During all or part of the relevant periods referred to herein, Cooke and North engaged in the practice of law in the State of North Carolina and maintained a law office in Greensboro, Guilford County, North Carolina.

6. Cooke and North practiced together in a law partnership, in which they shared trust and operating accounts and utilized a non-attorney assistant referenced herein as AR

7. Since about November 2008, Cooke and North relied upon AR to manage the trust and operating accounts and to perform the necessary bookkeeping and reconciliations.

8. Cooke and North failed to supervise AR's management of the accounts and requisite bookkeeping and reconciliations.

9. Neither Cooke nor North conducted monthly or quarterly reconciliations of their trust accounts.

10. From about February 2011 through January 2012, AR misappropriated funds from the trust and operating accounts of Cooke and North.

11. During this time period, Cooke and North kept earned attorneys fees from their criminal cases in their two trust accounts, withdrawing earned funds as needed for attorney draws or operating expenses.

12. Only one of the two trust accounts contained entrusted client funds. The entrusted funds constituted a small portion of the funds in that account.

13. The funds misappropriated by AR from the trust accounts were funds belonging to Cooke and North and there was always a sufficient balance to cover the funds belonging to clients in the one trust account that contained client funds.

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 Defendants and the subject matter of this proceeding.
2. Defendants' 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 depositing and maintaining earned fees in their attorney trust accounts, Defendants failed to maintain entrusted funds separate from personal funds in violation of Rule 1.15-2(a) and (f); and
 - (b) By delegating trust account management, bookkeeping, and reconciliation duties to AR without providing supervision to AR of these duties, Defendants failed to supervise a non-attorney assistant to the extent necessary to ensure the assistant's conduct was compatible with the professional obligations of Defendants in violation of Rule 5.3(b), failed to ensure entrusted funds were properly maintained in violation of Rule 1.15-2(a), and failed to ensure their trust accounts were reconciled monthly and quarterly in violation of Rule 1.15-3(d).

Based upon the foregoing Findings of Fact and Conclusions of Law, and with the consent of the parties, the Hearing Panel finds by clear, cogent, and convincing evidence the following

FINDINGS OF FACT REGARDING DISCIPLINE

1. AR was a trusted, long-time employee who had been trained to conduct the bookkeeping and reconciliations of the firm's trust accounts by a former law partner who has since passed away.
2. The former law partner had supervised AR's bookkeeping and reconciliation of the firm's trust accounts and had reported no problems with her capabilities in this area.
3. AR had signatory authority on Defendants' trust accounts.
4. Defendants allowed a non-attorney assistant to have access to entrusted funds and delegated to the assistant the management, bookkeeping, and reconciliation of their trust accounts with no provision for attorney supervision for a 5 year period.
5. Cooke and North reviewed end of month statements prepared by AR that listed the funds in the trust account and identified the corresponding clients. Those

statements did not constitute the required monthly or quarterly reconciliations of the trust account, however, nor did the statements prepared by AR track activity in the account

6. Defendants' excessive delegation without adequate supervision created circumstances that enabled AR to misappropriate funds belonging to these attorneys from their trust accounts.

7. In January 2012, AR failed to return to work. Defendants took prompt and appropriate action to examine their trust accounts in light of AR's aberrant behavior.

8. Upon finding that AR had written checks to herself from the trust and operating accounts, Defendants promptly retained a CPA to audit their accounts and determine whether any entrusted funds had been affected.

9. Defendants appropriately disbursed the funds remaining in the two trust accounts after CPA review, and opened a new trust account for which only they have signatory authority.

10. Defendants have acknowledged their failure to properly maintain their trust accounts and have described changes designed to ensure future compliance. Defendants have disbursed all earned fees from their trust accounts and no longer deposit earned fees into their trust accounts. Defendants hired a new assistant and arranged for her to be trained by their CPA in bookkeeping procedures for the operating and trust accounts. Defendants have arranged for their CPA to review the assistant's bookkeeping and bank activities for the firm monthly and to reconcile the firm's trust account quarterly.

11. Defendants reported the matter to the State Bar and fully cooperated with the State Bar's review of their trust accounts and procedures.

12. Neither Defendant has prior discipline.

13. Each Defendant has been practicing law for over 30 years and enjoys an excellent reputation in the legal community.

14. There is no evidence of any dishonest or selfish motive on the part of either Defendant.

15. Although Defendants' delegation and failure to supervise AR created the potential risk of significant client harm, there is no evidence that any client of Defendants suffered actual harm.

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, and with the consent of the parties, the Hearing Panel makes the following

CONCLUSIONS REGARDING 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 factor warrants suspension of Defendants' licenses:

- (a) Defendants' actions potentially had a negative impact on the public's perception of the legal profession, although there is no evidence that any client of Defendants suffered actual harm.

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) No prior disciplinary offenses;
- (b) Absence of dishonest or selfish motive;
- (c) Timely good faith efforts to rectify the consequences of the Rule violations;
- (d) Defendants' full and free disclosure to the Hearing Panel and cooperative attitude toward the proceedings;
- (e) Defendants' remorse;
- (f) Defendants' good character and reputation;
- (g) Each Defendant has practiced law for over 30 years.

4. Defendants' failure to properly maintain, manage, and handle entrusted funds betrays a vital trust clients and the public place in attorneys and the legal profession.

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 violations committed by Defendants 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 with conditions is necessary and sufficient to adequately protect the public.

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 Conclusions regarding discipline, and based upon the consent of the parties, the Hearing Panel enters the following:

ORDER OF DISCIPLINE

1. Defendants, A. Wayland Cooke and H. Davis North, III, are each hereby suspended from the practice of law for one year. Defendants are each taxed with the costs of this action as assessed by the Secretary. Defendants shall each be served with a statement of costs stating the costs assessed against each Defendant. Each Defendant shall pay the costs within thirty days of service of the statement of costs upon him.

2. The one-year suspension is stayed for a period of one year for each Defendant as long as said Defendant complies, and continues to comply during the period of the stay, with the following conditions:

- (a) Within 30 days of the effective date of this order, Defendants shall establish procedures to ensure that client funds are appropriately maintained and disbursed and that monthly and quarterly reconciliations of the trust account are properly conducted. If non-attorney assistants and/or a CPA will be used to assist with these tasks, Defendants shall establish procedures for personal review and supervision. No later than 30 days from the effective date of this order, Defendants shall submit these procedures to the Office of Counsel. Defendants shall make any adjustments required by the Office of Counsel to ensure compliance with the Rules of Professional Conduct;
- (b) Each month Defendants 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 for all trust accounts maintained by them. Defendants shall provide the three-way reconciliation report, client ledgers

for all clients with funds in the trust account(s) during that month, ledger for any personal funds maintained in the trust account(s) for bank or credit card fees, trust account ledger, and the bank statements, cancelled checks, and deposit slips for each month. Defendants shall also provide documentation showing they followed the procedures established under the preceding paragraph. These documents are due on the 15th day of the following month – for example, the three-way reconciliation for the month of January is due on February 15;

- (c) Each quarter, Defendants shall have a CPA audit all trust accounts. Defendants will be responsible for any associated costs. This audit shall assess whether Defendants have in the trust account(s) the client funds they should be maintaining for their clients at that time, as well as Defendants' compliance with Rule 1.15-2 and Rule 1.15-3. The CPA's audit shall include addressing the items on the Accountant Checklist for Probation Cases which will be provided by the State Bar to Defendants. The quarterly audit reports from the CPA are due no later than 30 days after the end of the quarter – for example, the CPA audit for the first quarter of the calendar year (January, February, and March) is due on April 30;
- (d) If either the monthly three-way reconciliation report or the CPA audit reveals any deviation from Defendants' obligations under Rule 1.15-2 or Rule 1.15-3, Defendants shall take remedial action within ten days of the date of the three-way reconciliation report or the CPA audit and shall provide documentation showing the remedial action to the State Bar within two days of the date of the remedial action;
- (e) Defendants shall comply with any requests from the Office of Counsel to provide any information regarding their trust accounts or to sign and provide any release or authorization to allow the Office of Counsel to obtain information directly from any bank in which Defendants maintain a trust account, by the deadline stated in the request;
- (f) Defendants shall each complete four hours of continuing legal education in the area of trust account management approved by the Office of Counsel of the State Bar. At least one such session shall be taken before the end of the next calendar quarter (i.e., by March 30, June 30, etc.) following the entry of this order and at least one such session shall be a CLE taught by Peter Bolac, Trust Account Compliance Counsel for the North Carolina State Bar. Each Defendant shall provide written proof of successful completion of the CLE courses to the State Bar within ten days of completing the courses. ;
- (g) Each Defendant shall keep the North Carolina State Bar Membership Department advised of his current physical business address (not a Post

Office box), telephone number, and e-mail address and shall notify the Bar of any change in address within ten days of such change;

- (h) Each Defendant shall accept all certified mail from the State Bar sent to the address on record with the Membership Department of the North Carolina State Bar;
- (i) Each Defendant shall respond 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;
- (j) Each Defendant will timely comply with the State Bar continuing legal education requirements and will pay all fees and costs assessed by the applicable deadline;
- (k) Each Defendant will pay all membership, Client Security Fund, and any other related dues, fees, and/or costs by the applicable deadline;
- (l) Each Defendant will not violate any of the Rules of Professional Conduct in effect during the period of the stay;
- (m) Each Defendant will not violate any laws of the State of North Carolina or of the United States during the period of the stay; and
- (n) Each Defendant paid the costs and fees of this proceeding as assessed by the Secretary within thirty days after the statement of costs and fees was served upon him.

3. Unless Defendants' obligations under this Order are modified by further order of the DHC, Defendants' obligations under this Order end one year from the effective date of the Order provided there are no motions or 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 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 one 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 Defendants' obligation to comply with the conditions for the stay will continue until resolution of any such pending motion or proceeding.

4. If during the stay of the suspension either Defendant fails to comply with any one or more of the conditions stated above, then the stay of the suspension of said Defendant's law license may be lifted as provided in § .0114(x) 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 for either Defendant, said 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 by clear, cogent, and convincing evidence with the requirements therein as well as the following requirements:

- (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 completed four hours of continuing legal education in the area of trust account management approved by the Office of Counsel of the State Bar, including at least one CLE by the Trust Account Compliance Counsel for the North Carolina State Bar.
- (c) Defendant established procedures by which he personally reconciles his trust accounts or by which he personally supervises any CPA or non-attorney assistant who he utilizes to reconcile his trust accounts. Defendant shall submit these procedures to the Office of Counsel 30 days prior to the filing of the petition for reinstatement. Defendant shall have made any adjustments required by the Office of Counsel to ensure compliance with the Rules of Professional Conduct and provided any corrected procedures with the petition;
- (d) 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;
- (e) 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;
- (f) 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;
- (g) Defendant has come into compliance with any outstanding continuing education or membership obligations at the time of the filing of his petition for reinstatement;
- (h) Defendant did not violate any of the Rules of Professional Conduct in effect during the period of the suspension;

- (i) Defendant did not violate any laws of the State of North Carolina or of the United States during the period of the suspension; and
- (j) 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.

6. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules until all conditions of the stay of the suspension are satisfied.


Signed by the Chair with the consent of the other Hearing Panel members, this the 13 day of November, 2014.


Donald C. Prentiss
Chair, Disciplinary Hearing Panel


CONSENTED TO BY:


Jennifer A. Porter
Counsel for Plaintiff

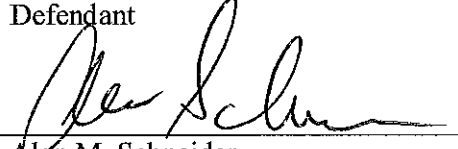
11-7-14
Date


A. Wayland Cooke
Defendant

10/29/14
Date


H. Davis North, III
Defendant

10/23/14
Date


Alan M. Schneider
Counsel for Defendants

10/31/14
Date