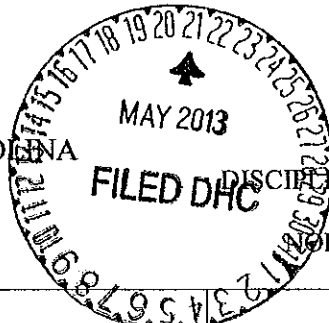


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
12 DHC 40

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

VICTOR H. MORGAN, Jr., Attorney,

Defendant.

ORDER OF DISCIPLINE

THIS MATTER was heard on April 5, 2013 before a hearing panel of the Disciplinary Hearing Commission composed of Ronald R. Davis, Chair, Renny W. Deese and Joe Castro. Plaintiff, the North Carolina State Bar, was represented by G. Patrick Murphy. Defendant, Victor H. Morgan, Jr., appeared in this disciplinary matter *pro se*. Based on the Complaint, Answer of Defendant and exhibits and evidence admitted during the hearing, 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, Victor H. Morgan, Jr. ("Morgan" or "Defendant"), was admitted to the North Carolina State Bar on August 21, 1983, 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, Defendant was engaged in the practice of law in the State of North Carolina and maintained a law office in Jacksonville, Onslow County, North Carolina.
4. On November 1, 2010, Defendant was contacted by Bruno E. DeMolli ("DeMolli"), Auditor for the North Carolina State Bar, and a random audit of Defendant's trust account maintained with RBC (now PNC), account # XX-XXX-770-3 ("TA 7703"), was conducted.

5. DeMolli's audit of TA 7703 discovered that Defendant was in violation of numerous provisions of Rule 1.15 of the Rules of Professional Conduct, which regulate lawyers' handling of entrusted funds. Specifically, the audit revealed that Defendant:

- a. Failed to perform quarterly reconciliations of the account and did not have a current monthly reconciliation of the account;
- b. Used deposit slips that did not always identify the source of funds;
- c. Did not provide clients with written accountings of entrusted funds upon complete disbursement, or annually if funds were held for more than one year;
- d. Failed to escheat abandoned or unidentified funds as required by statute;
- e. Did not direct the bank where the trust account was maintained to notify the State Bar in the event a trust account check was presented against insufficient funds;
- f. Failed to promptly pay entrusted funds as directed by clients; and
- g. Failed to maintain images of the back of cancelled trust account checks, showing the endorsement on the check.

6. On November 19, 2010, DeMolli discussed the trust account deficiencies with Defendant and Defendant was given 45 days to provide assurance to the State Bar that the deficiencies identified in the audit had been corrected.

7. Although Defendant signed the audit summary provided by DeMolli acknowledging the deficiencies and the requirement to correct the deficiencies and provide assurance of corrected practices within 45 days of the audit, Defendant failed to provide any evidence of corrective action or otherwise communicate with DeMolli within 45 days of the audit.

8. As of the date the State Bar filed its complaint in this matter, Defendant had not provided assurance that corrective action had been taken with respect to Defendant's violations of Rule 1.15 uncovered by the random audit referenced in paragraph 5 above.

9. On August 12, 2011, Defendant was served with a Letter of Notice informing him that a grievance file had been opened based on his violations of Rule 1.15 as revealed in DeMolli's random audit. The Letter of Notice required Defendant to respond in writing within 15 days. Defendant failed to respond, request an extension of time, or otherwise communicate with the State Bar within the 15 day period.

10. On May 21, 2012, the State Bar wrote to Defendant reminding him that he never responded in writing to the Letter of Notice that was served on him on August 12, 2011 and that he had never demonstrated that corrective action had been taken regarding the deficiencies in his trust account documented by the random audit. Defendant did not respond to the State Bar's May 21, 2012 letter.

11. Defendant has failed to provide adequate records and information to allow the State Bar to audit his trust account and ascertain whether client funds have been appropriately protected and maintained.

Based upon the foregoing Findings of Fact, the Hearing Panel enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the panel has jurisdiction over Defendant, Victor H. Morgan, Jr., and the subject matter of this proceeding.
2. Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-28(b)(2) and 84-28(b)(3) as follows:
 - a. By failing to reconcile TA 7703 quarterly, Defendant violated Rule 1.15-3(d)(1);
 - b. By failing to conduct monthly reconciliations of the balance of the trust account as shown on Defendant's records with the monthly bank statement balance for TA 7703, Defendant violated Rule 1.15-3(d)(2);
 - c. By failing to ensure that deposit slips for TA 7703 always identified the source of funds, Defendant violated Rule 1.15-3(b)(1);
 - d. By failing to provide clients with written accountings of entrusted funds upon complete disbursement, or annually if the funds were held more than twelve (12) months, Defendant violated Rule 1.15-3(e);
 - e. By failing to escheat abandoned or unidentified funds pursuant to N.C. Gen. Stat. §116B-53, Defendant violated Rule 1.15-2(q);
 - f. By failing to direct RBC (PNC) to notify the North Carolina State Bar in the event a trust account check was presented against insufficient funds on TA 7703, Defendant violated Rule 1.15-2(k);
 - g. By failing to ensure that funds in the possession of Defendant belonging to clients, and to which the client was entitled, were promptly paid to the client, Defendant violated Rule 1.15-2(m);
 - h. By failing to maintain images of the back of cancelled trust account checks showing the endorsement on the check, Defendant violated Rule 1.15-3(b)(2);
 - i. By failing to respond within 45 days as directed by the State Bar and provide evidence of corrective action having been taken based on the violations of Rule 1.15 uncovered by DeMolli's random audit, Defendant violated Rule 8.1(b) and N.C. Gen. § 84-28(b)(3);
 - j. Based on the aggregate deficiencies revealed by DeMolli's audit which are listed in paragraph 5 of the Findings of Fact on page 2 above, and Defendant's failure to provide DeMolli evidence of corrective action, Defendant failed to safeguard entrusted funds in violation of Rule 1.15-2(a) and (b); and

- k. By failing to respond in writing to the Letter of Notice served on Defendant on August 12, 2011, Defendant violated Rule 8.1(b) and N.C. Gen. § 84-28(b)(3).

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

FINDINGS OF FACT REGARDING DISCIPLINE

1. Defendant has substantial experience in the practice of law.
2. Defendant's failure to comply with the State Bar's regulations related to his trust account has the potential to cause significant harm to clients of Defendant and to the public's perception of the legal profession.
3. Defendant's failure to respond to multiple inquiries from the State Bar demonstrates a refusal to participate in the self-regulatory process. Such conduct interferes with the Bar's ability to regulate its members and undermines the profession's privilege to remain self-regulating.
4. Defendant's failure to respond to multiple inquiries from the State Bar and to provide assurances that he had corrected the deficiencies discovered in the random audit necessitated that the State Bar obtain an injunction prohibiting Defendant from handling entrusted funds, in order to protect the public. Such conduct has the potential to cause significant harm to clients of Defendant and to the public's perception of the legal profession.
5. Defendant's failure to respond to multiple inquiries from the State Bar required the State Bar to seek judicial intervention in the form of an injunction. Such conduct necessitated the expenditure of judicial resources, delayed clients' access to their funds, and has the potential to cause significant harm to the administration of justice.
6. On February 14, 2011, Defendant was admonished by the Grievance Committee of the State Bar for conduct which included failing to respond to the State Bar's request for information.
7. The State Bar's review of Defendant's trust account is ongoing but there is no evidence at this time of misappropriation of entrusted funds.

Based upon the Findings of Fact, Conclusions of Law and Findings of Fact Regarding Discipline, the Hearing Panel also enters 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)(3) of the Rules and Regulations of the North Carolina State Bar and determines the following factors are applicable in this matter:
 - a. Prior disciplinary offense;

- b. A pattern of misconduct;
- c. Multiple offenses;
- d. Extensive experience in the practice of law; and
- e. Records provided by Defendant indicate a number of client trust account balances of significant age.

2. The Hearing Panel has carefully 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 determines the following factors which warrant suspension of Defendant's license are applicable to this matter:

- a. Negative impact of Defendant's actions on public's perception of the profession;
- b. Negative impact of Defendant's actions on the administration of justice;
- c. Multiple instances of failure to participate in the legal profession's self-regulation process; and
- d. Impairment of his clients' abilities to achieve the goals of representation.

3. The Hearing Panel has also 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.

4. The Hearing Panel has considered written discipline but finds that an admonition, reprimand, or censure would not be sufficient discipline because of the potential harm to the clients and the public as demonstrated by the facts in the present case. Furthermore, the panel finds that any sanction less than an active suspension would fail to acknowledge the seriousness of the offenses committed by Defendant, would not adequately protect the public, and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar in this State.

5. Defendant should be allowed the opportunity to apply for a stay of a portion of the active suspension imposed by this Order upon compliance with certain conditions designed to ensure protection of the public and to ensure Defendant's compliance with the Rules of Professional Conduct.

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

ORDER OF DISCIPLINE

1. Defendant's license to practice law in the State of North Carolina is hereby suspended for three (3) years effective June 15, 2013.

Eighteen months (18) from the effective date of this Order, Defendant may seek a stay of the remaining period of suspension imposed by this Order by filing a motion and demonstrating by clear, cogent and convincing evidence that Defendant has complied with the following conditions:

- (a) All costs and administrative fees of this action are taxed to Defendant. Defendant must pay the costs and administrative fees of this action within 30 days of service upon him by the Secretary of the statement of costs and administrative fees;
- (b) Complete four (4) hours of continuing legal education ("CLE") in the area of law office management approved in advance by the Office of Counsel of the North Carolina State Bar. A portion of this CLE must include trust account management. These four (4) hours are in addition to the continuing legal education requirements set out in 27 N.C.A.C. 1D § .1518. Documentation of completion of each qualifying course shall be provided to the Office of Counsel of the State Bar no later than 30 days from the date of the course;
- (c) Defendant shall, at his own expense, retain a certified public accountant ("CPA"), approved in advance by the Office of Counsel of the State Bar, who shall audit TA 7703 to identify the client(s) to whom the funds in TA 7703 belong(s). Upon completion of the audit, the CPA shall provide the State Bar with a written final audit report. Defendant shall cooperate with the CPA by producing all trust account records, bank account records, or any other financial record related to any client requested by the State Bar or the CPA to ensure the audit is completed in a timely fashion but in any event the audit shall be completed and the CPA's written final audit report delivered to the State Bar's Office of Counsel within 90 days of the effective date of this Order. It is Defendant's sole responsibility to ensure the CPA completes and submits the report as required herein;
- (d) Upon completion of the CPA's audit of TA 7703, submission of the CPA's report to the Office of Counsel, and the Office of Counsel's determination that the owner(s) of funds have been identified and that TA 7703 is in compliance with the Rules of Professional Conduct, Defendant and the Office of Counsel may apply to the Superior Court to lift the injunction on TA 7703;
- (e) Within forty-five (45) days of the lifting of the injunction, Defendant shall disburse all identified client funds existing in TA 7703 to their rightful owner(s) consistent with the Rules of Professional Conduct;
- (f) Defendant shall comply with Rule 1.15-2(q) regarding all unidentified funds existing in TA 7703 and comply with Chapter 116B of the General Statutes within forty-five (45) days of being statutorily permitted to escheat funds to the State;
- (g) Defendant shall keep his address of record current with the State Bar and respond to all communications from the State Bar whether by telephone, fax, U.S. mail,

email or other method by the deadline stated in the communication. Defendant's address of record shall not be a post office box;

- (h) Defendant shall participate fully and timely in the fee dispute program when notified of any petitions for resolution of disputed fees;
- (i) Defendant shall not violate the laws of any state or of the United States; and
- (j) Defendant shall not violate any provision of the Rules of Professional Conduct.

2. If Defendant successfully seeks a stay of the suspension of his law license pursuant to this Order, any stay will continue in force only as long as Defendant complies with the following conditions:

- (a) Defendant shall have, at his own expense, a CPA audit Defendant's trust account(s) on a quarterly basis to ensure Defendant's compliance with the Rules of Professional Conduct. The CPA must report quarterly to the Office of Counsel concerning the compliance of Defendant's account(s) with the Rules of Professional Conduct, including but not limited to any accounting irregularities and any deviance from the requirements of the Rules of Professional Conduct, with a copy of the report sent simultaneously to Defendant. The CPA's 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). It is Defendant's sole responsibility to ensure the CPA completes and submits the reports as required herein;
- (b) Defendant shall provide the Office of Counsel of the State Bar copies of his monthly reconciliations of his trust account(s) for the duration of his stayed suspension. The monthly reconciliations shall be provided to the Office of Counsel by the 25th of the following month;
- (c) If any of the CPA's reports note any irregularities or deficiencies, Defendant shall take all remedial action necessary to bring the trust account into compliance with the Rules of Professional Conduct and shall provide proof of the remedial action and compliance to the Office of Counsel and to the CPA within thirty (30) days of the date of the CPA's report;
- (d) If any of the CPA's reports note any irregularities or deficiencies, the CPA shall provide a subsequent report regarding whether Defendant's remedial actions were sufficient and whether Defendant's account(s) have been brought into compliance with the Rules of Professional Conduct. The CPA shall provide this report regarding remedial measures to the Office of Counsel within thirty (30) days of Defendant's provision of proof of remedial action. It is Defendant's sole responsibility to ensure the CPA completes and submits the report(s) as required herein;

- (e) Defendant shall comply with any requests from the Office of Counsel to provide any information regarding his 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 Defendant keeps a trust account, by the deadline stated in the request;
- (f) Defendant shall keep the North Carolina State Bar membership department advised of his current physical home and business addresses and telephone numbers. Defendant shall accept all certified mail from the North Carolina State Bar and respond to all requests for information or communications from the North Carolina State Bar by the deadline stated in the communication;
- (g) Defendant shall pay all Membership dues and Client Security Fund assessments and comply with all Continuing Legal Education requirements on a timely basis; and
- (h) Defendant shall not violate any state or federal laws or any provisions of the Rules of Professional Conduct during the period of the stayed suspension.

3. If Defendant fails to comply with any one or more of the conditions stated in Paragraph 2 above, then the stay of the suspension of his law license may be lifted as provided in 27 N.C.A.C. 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules. If the stay is lifted and the suspension of Defendant's license is activated for any reason, before a subsequent stay of the suspension can be entered or before Defendant's reinstatement to the active practice of law in North Carolina Defendant must show by clear, cogent, and convincing evidence that he has complied with the terms of 27 N.C. Admin. Code 1B § .0124 of the State Bar Discipline & Disability Rules and that he has complied with any conditions for reinstatement included in any order lifting the stay of his suspension.

4. Because the audit of Defendant's trust account is not complete at this time, the State Bar is not prohibited from investigating and pursuing further disciplinary action against Defendant, if necessary, based upon the results of the audit required by paragraph 1(c) under the Order of Discipline section of this Order.

5. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C.A.C. 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of the suspension.

Signed by the Chair with the consent of the other hearing panel members, this the 20th day of May, 2013.

Ronald R. Davis, PANEL CHAIR
 Ronald R. Davis, Chair
 Disciplinary Hearing Panel