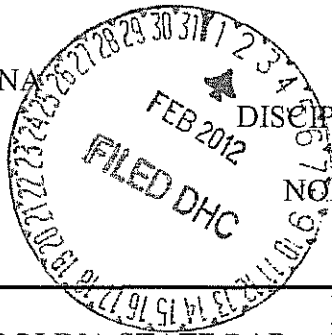


NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
11 DHC 25

THE NORTH CAROLINA STATE BAR,)
Plaintiff)

v.)

RANDOLPH E. SHELTON, JR., Attorney,)
Defendant.)

CONSENT ORDER OF
DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of M.H. Hood Ellis, Chair, Joshua W. Willey, Jr., and Joe Castro. William N. Farrell represented the North Carolina State Bar. Randolph E. Shelton, Jr. was represented by Mary McLauchlin Pope. Defendant has agreed to waive a formal hearing in this matter. The parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Defendant also stipulates that, by consenting to the entry of this order, he waives his right to appeal or challenge in any way the sufficiency of the findings in this consent order.

Based on 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, Randolph E. Shelton, Jr. ("Shelton"), 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, Shelton was engaged in the practice of law in the State of North Carolina and maintained a law office in Moore County, North Carolina.

4. Shelton qualified as the personal representative of the Estate of Mark Alan Westbrook ("the Estate"), Moore County File 06 E 608, on or about September 18, 2006.

5. On or about October 18, 2007, Shelton was given Notice to File a Final Account in the Estate within thirty (30) days.

6. On or about December 4, 2007 the Clerk of Court found that Shelton had failed to file the final account for the Estate as required by law and ordered that he file the final account within twenty (20) days.

7. On or about February 5, 2008 the Assistant Clerk of Court found that Shelton had willfully failed and refused to file the final account as previously ordered by the Clerk of Court and that Shelton was in default of the Order of the Court.

8. Shelton was ordered to personally appear before the Clerk of Court on March 11, 2008 at 10:00 a.m. to show cause why he should not be removed as personal representative of the Estate and attached for contempt for failure to comply with the Order of the Court.

9. Shelton failed to appear on March 11, 2008 before the Clerk of Court as required by the Order to Show Cause.

10. At the show cause hearing on March 11, 2008, the Clerk of Court found that Shelton had willfully failed to comply with the Order of the Court to file an Account and was held to be in Civil Contempt.

11. Shelton was removed as personal representative of the Estate by the Clerk of Court.

12. During the time he was the personal representative of the Estate, Shelton conducted the closing for the sale of a business, the Broad Street Bar and Grill, on or about January 26, 2007.

13. Shelton prepared two settlement statements for the transaction. The initial statement with a closing date of January 26, 2007 showed the following:

Contract Price:	\$90,000.00
-----------------	-------------

Attorney Fees for Buyer:	\$975.00
--------------------------	----------

Attorney Fees for Seller:	\$975.00
---------------------------	----------

14. This closing statement was signed by Phil Peterson on behalf of the buyer and by Shelton on behalf of the seller, the Estate of Mark Allen Westbrook.

15. Shelton failed to disburse the funds from the sale of the business to the Estate until June 5, 2008, subsequent to being removed as the personal representative of the Estate.

16. In June 2008, Shelton prepared a second and different settlement statement for the sale of the business which he had earlier closed on January 26, 2007.

17. The two settlement statements are different in the amounts charged the buyer and seller for certain costs.

18. The June 2008 settlement statement shows a charge to the Seller for document preparation in the amount of \$1,950.00, which had not been charged to the Seller during the closing on January 26, 2007.

19. The June 2008 settlement statement shows a charge to the Buyer for attorney fees to Shelton in the amount of \$2,200.00, an increase of \$1,225.00 over the attorney fees charged to the Buyer during the January 26, 2007 closing.

20. Shelton explained the discrepancy in his charges to the Seller-Estate, in part, as follows:

“My fee was changed to reflect not only my fee for the bar closing but also my fee for the remaining work which I had done on behalf of the estate (will probate, dealing with creditors, etc.).”

21. Shelton failed to seek approval of his collection of legal fees from the Estate from the Clerk of Superior Court as required by N.C. Gen. Stat. 28A-23-4.

22. Shelton received \$1,950.00 from the Estate to which he was not entitled because the Clerk of Court had not approved any attorney fees to be paid to Shelton.

23. During the time that Shelton was the personal representative of the Estate he held the proceeds from the sale of the business in his trust account.

24. During this time he disbursed funds from the trust account by checks that failed to identify the client whose funds were being disbursed, including checks to himself which did not identify the client.

25. During the time that Shelton was the personal representative of the Estate and received the proceeds from the sale of the business, Defendant allowed the balance in his trust account to fall below the minimum amount he should have been holding for the Estate during the time he was making disbursements for the Estate.

26. The personal representative of the Estate, who was appointed following Defendant's removal, found no evidence that any proceeds from the sale or disbursements associated with the sale of the business, described in paragraph 12 above, were misappropriated or missing while Defendant served as personal representative of the Estate.

27. On or about March 20, 2009, Shelton was served with a letter of notice in State Bar grievance file number 08G0728 (“grievance”).

28. Shelton's response to the letter of notice was due on or about April 4, 2009.

29. Shelton failed to respond to the letter of notice by April 4, 2009.

30. On or about May 5, 2009 the State Bar sent Shelton a follow up letter asking him to respond to the letter of notice by May 15, 2009.

31. Shelton failed to respond by May 15, 2009.

32. On or about July 24, 2009 Shelton responded to the letter of notice.

33. On or about January 25, 2010, State Bar staff counsel sent Shelton a letter asking for documentation showing receipt and disbursement of funds for the Estate.

34. On or about January 27, 2010 State Bar staff counsel sent Shelton a letter with specific inquiries, including an explanation for his unilateral changes to the settlement statement signed by the parties and his collection of his legal fees from the sales proceeds.

35. Shelton's response was due by February 26, 2010.

36. On or about February 26, 2010, Shelton contacted staff counsel and stated that he would respond to the January 27, 2010 letter after a meeting which was to occur on March 1, 2010.

37. Shelton failed to respond to the January 25, 2010 letter.

38. Shelton failed to respond to the January 27, 2010 letter.

39. On or about March 31, 2010, Shelton was served with a subpoena requiring his appearance on April 29 2010, production of documents and written response to the State Bar's January 27, 2010 letter.

40. Shelton appeared on April 29, 2010 but failed to produce all of the subpoenaed documents or the written response to the January 27, 2010 letter.

41. Shelton was given until May 10, 2010 to produce the documents and written response by letter dated April 30, 2010.

42. Shelton failed to produce the documents or the written response by May 10, 2010.

43. On or about December 11, 2010, Shelton was served with a supplemental subpoena requiring production of additional documents, identification of clients for unidentified disbursements, and a written response to the accompanying letter dated December 10, 2010.

44. In the letter accompanying the subpoena, Shelton was asked to explain the following:

- Why the single ledger balance report for the closing showed a deposit of \$92,000.00 yet the bank records showed only a deposit of \$90,000.00.
- Why numerous checks from his trust account did not identify from which client balances the disbursements were made.
- Why there was a failure to continuously maintain minimum balances in his trust account for the proceeds received from the closing.
- Why there was a failure to identify clients on disbursement checks from his trust account.
- Whether he had explanations for the State Bar's concerns that various Rules of Professional Conduct had been violated.

45. Shelton's production of documents and response to the letter was due on January 10, 2011.

46. Shelton failed to appear and produce the requested documents on January 10, 2011 as required by the subpoena and failed to respond to the letter of December 10, 2010.

47. Shelton was the closing attorney for a real estate transaction in which Elizabeth Foster ("the Seller") sold real property located on US Highway 1, Southern Pines, NC to SLK2, LLC ("the Buyer") or about April 15, 2010.

48. As the closing attorney, Shelton represented the Buyer.

49. Shelton prepared a HUD-1 Settlement Statement for the transaction which showed receipt of cash and disbursements for the transaction. A true and accurate copy of the HUD-1 Settlement Statement is attached hereto as Exhibit C.

50. The HUD-1 Settlement Statement shows that Shelton collection \$910.00 for title insurance from the Buyer and disbursed \$910.00 to Fidelity National Title Insurance Company for the Buyer's title insurance.

51. Shelton failed to apply for title insurance for the Buyer until approximately 4 months after the closing.

52. Shelton failed to promptly respond to the buyer's requests for information and the title policy.

53. On or about August 20, 2010, Shelton was served with a letter of notice from the State Bar which requested the production of documents with his response.

54. Shelton failed to produce the documents requested in the letter of notice.

55. On or about October 7, 2010, the State Bar sent Shelton a letter asking him to produce documents relating to the closing.

56. Shelton failed to respond to the October 7, 2010 letter and failed to produce the requested documents.

57. On or about December 11, 2010, Shelton was served with a subpoena that required his appearance and production of documents on January 10, 2011.

58. Shelton failed to appear on January 10, 2011 and did not produce the requested documents.

Based on 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 and the subject matter of this proceeding.

2. Defendant's actions, as set forth in the foregoing Findings of Fact, constitute grounds for discipline pursuant to N.C.G.S. §§ 84-28(b)(2) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of his actions as follows:

- (a) By failing to timely respond in the Estate matter to the letter of notice, various requests for information and failing to comply with subpoenas from the North Carolina State Bar, Shelton failed to respond to lawful demands for information from a disciplinary authority in violation of Rule 8.1 (b);
- (b) By failing to carry out his duties as a personal representative for the Estate of Mark Allen Westbrook and being held in civil contempt by the Clerk of Court, Shelton engaged in conduct that is prejudicial to the administration of justice in violation of Rule 8.4 (d);
- (c) By allowing his trust account balance to fall below the minimum balance he should have been holding for the estate, Shelton failed to hold and maintain entrusted property in violation of Rule 1.15-2 (a);
- (d) By disbursing funds from his trust account that failed to identify the client whose funds were being disbursed, including checks to Shelton which did not indicate the balance on which the check was drawn, Shelton failed to keep the minimum records required for general trust accounts in violation of Rule 1.15-3 (b) and made disbursements from his trust account payable

to himself that did not indicate the client balance on which the instrument was drawn in violation of Rule 1.15-2 (h);

- (e) By taking \$1,950.00 in fees from the Estate with out the approval of the Clerk of Court Defendant engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- (f) By failing to promptly complete the work for the title insurance policy and failing to promptly respond to the buyer's requests for information, Shelton failed to act with reasonable diligence and promptness in representing a client and failed to comply with reasonable requests for information in violation of Rule 1.3 and Rule 1.4;
- (g) By failing to timely complete the work for the title insurance policy and disburse the funds received from the buyer for title insurance, Shelton failed to promptly pay or deliver the entrusted property in violation of Rule 1.15-2 (m); and
- (h) By failing in the Foster closing to provide the documents requested by the North Carolina State Bar in the letter of notice, by failing to respond to a further requests for information and by failing to comply with a subpoena, Shelton failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1 (b).

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Panel also enters the following

ADDITIONAL FINDINGS REGARDING DISCIPLINE

1. Defendant has substantial experience in the practice of law.
2. Defendant has no prior discipline.
3. Defendant has reimbursed the Estate for legal fees he collected from the Estate which had not been submitted to the Clerk of Court for approval.
4. Defendant has completed the Foster closing and has obtained the title insurance policy.
5. Defendant's failure to respond to multiple inquiries from the State Bar, including requests in writing and by subpoena, 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.
6. Defendant's conduct has caused harm and potential significant harm to his clients, the public, and the legal profession. Defendant's failure to abide by the Clerk of

Court's Orders and being held in contempt have the potential to cause significant harm to the legal profession in the eyes of the public because these actions show a disregard for his duties as an attorney and an officer of the court. Erosion of public confidence in attorneys foster disrespect for the profession as a whole.

7. Defendant's failure to maintain proper trust account records in accordance with the Rules of Professional Conduct has the potential to harm future clients and the public.

8. Defendant's failure to maintain appropriate trust account records in compliance with the Rules of Professional Conduct does not allow this Panel to reach any conclusion at this time concerning whether Defendant has maintained all trust funds in his trust account in full compliance with the Rules of Professional Conduct. Accordingly, the State bar is not prohibited from investigating and pursuing further disciplinary action against Defendant, if necessary, based upon the results of the audit as set forth in the Order of Discipline to follow below.

Based on the foregoing Findings of Fact, Conclusions of Law, and Additional Findings 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 finds the following factors are applicable in this matter:

- a. Defendant's lack of prior disciplinary offenses;
- b. Defendant's timely good faith efforts to make restitution or to rectify consequences of misconduct;
- c. Defendant's multiple offenses;
- d. Defendant's pattern of misconduct; and
- e. Defendant's substantial experience in the practice of law.

2. The Hearing Panel has also 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 finds the following factor warrants suspension of Defendant's license:

3. Elevation of the Defendant's own interest above that of the client;
4. Negative impact of the Defendant's actions on client's or public's perception of the profession;

5. Negative impact of the Defendant's actions on the administration of justice; and

6. Multiple instances of failure to participate in the legal profession's self-regulation process.

7. Any sanction less than an active suspension of Defendant's license 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 by members of the Bar.

8. Due to the Defendant's neglect of his obligations to the profession, the administration of justice, his clients, and his refusal to participate in the self-regulating process of the North Carolina State Bar, the Hearing Panel concludes that the public and the profession will only be adequately protected by imposing a period of active suspension of Defendant's law license. The Hearing Panel has considered an admonition, reprimand or censure but concludes that such discipline would not be sufficient to protect the public and profession.

9. 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 on the foregoing Findings of Fact, Conclusions of Law, and Findings and Conclusions Regarding Discipline, and upon consent of the parties, the Hearing Panel enters the following

ORDER OF DISCIPLINE

1) The license of Defendant, Randolph E. Shelton, Jr., is hereby suspended for three (3) years from the date this Order of Discipline is entered.

2) Eighteen (18) months from the date this Order is entered, Defendant may apply for a stay of the remaining period of suspension imposed by this Order upon filing a petition with the Secretary of the North Carolina State Bar demonstrating by clear, cogent, and convincing evidence that, in addition to complying with the general provisions for reinstatement listed in 27 N.C.A.C. 1B § .0125(b) of the North Carolina State Bar Discipline & Disability Rules, Defendant has complied with the following conditions:

(a) Paid the costs and administrative fees of this action within 30 days of service upon him of the statement of costs by the Secretary;

- (b) Completed six (6) hours of continuing legal education in the area of trust account management approved in advance by the Office of Counsel of the North Carolina State Bar;
 - (c) Within ninety (90) days of the effective date of this Order, Defendant shall, at his sole expense, complete an audit and reconciliation of his trust accounts and any other accounts in which Defendant has deposited client funds under the supervision and certification of a licensed certified public accountant (CPA). Such audit and reconciliation shall demonstrate that all client funds have been fully identified, as to the rightful owner, and accounted for, properly disbursed to their rightful owners, and that there are no funds in the account belonging to Defendant unless permitted under Rule 1.15 of the Rules of Professional Conduct. Defendant will deliver a report prepared and signed by the CPA certifying compliance with this provision;
 - (d) Defendant shall keep his address of record current with the State Bar and respond to all letters of notice and requests for information from the State Bar by the deadline stated in the communication. Defendant's address of record shall not be a post office box;
 - (e) Defendant shall participate fully and timely in the fee dispute program when notified of any petitions for resolution of disputed fees;
 - (f) Did not violate the laws of any state or of the United States; and
 - (g) Did not violate any provision of the Rules of Professional Conduct.
- 3) 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) During the period of stayed suspension Defendant will retain the services of a Certified Public Accountant (CPA) to review the status of any accounts into which client or fiduciary funds have been deposited. Defendant will deliver to the Office of Counsel a report prepared and signed by the Certified Public Accountant certifying that Defendant has reconciled each account with the bank balance, that he has maintained client ledgers identifying all funds in each account, and that Defendant is otherwise in compliance with all requirements of Rule 1.15 of the Rules of Professional Conduct;
 - (b) Defendant is to submit such reports by each January 15, April 15, July 15 and October 15 during the period of stay, and shall provide the CPA the necessary information to satisfactorily prepare such quarterly reports;

- (c) If the CPA finds any accounting irregularities or deviance from the Rules of Professional Conduct requiring remedial action and provide proof of such to the Office of Counsel of the State Bar 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 requiring remedial action, the CPA shall provide a final report regarding whether Defendant's remedial actions were sufficient and whether Defendant's trust account or accounts has/have been brought into compliance with the Rules of Professional Conduct. This final report shall be provided to the Office of Counsel with a copy to Defendant within thirty (30) days of Defendant's provision of proof of remedial action;
- (e) Defendant will be solely responsible for all costs associated with the monitoring of his trust account(s). Defendant will be liable for the cost of the CPA's services. Under no circumstances will the State Bar be liable for the cost of the CPA's services rendered to satisfy the requirements of this order;
- (f) Defendant 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 keep a trust account, by the deadline stated in the request;
- (g) 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 and will keep the Membership Department advised of his current mailing address and physical address;
- (h) 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;
- (i) Defendant will timely comply with the State Bar continuing legal education requirements and will pay all fees and costs assessed by the applicable deadline;
- (j) Defendant will pay all membership, Client Security Fund, and any other related dues, fees, and/or costs by the applicable deadline;
- (k) Defendant will not violate any of the Rules of Professional Conduct in effect during the period of the stay; and

(1) Defendant will not violate any laws of the State of North Carolina or of the United States during the period of the stay.

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 his law license may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

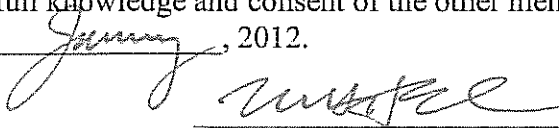
5) If Defendant does not seek a stay of the active portion of the suspension of his law license or if some part of the suspension is stayed and thereafter the stay is revoked, Defendant must provide in his application for reinstatement clear, cogent, and convincing evidence of the following:

(a) Compliance with the general provisions for reinstatement listed in 27 N.C.A.C. 1B § .0125 of the North Carolina State Bar Discipline & Disability Rules; and

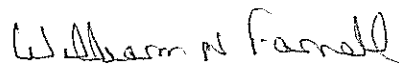
(b) Compliance with the conditions set out in Paragraphs 2 & 3 above.

6) 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 any period of stayed suspension.

Signed by the Chair with the full knowledge and consent of the other members of the Hearing Panel, this 31st day of January, 2012.

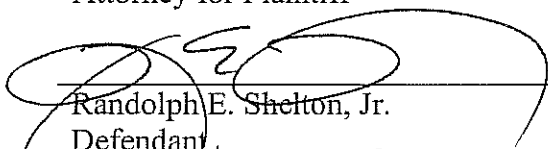

M.H. Hood Ellis, Chair
Disciplinary Hearing Panel

Agreed and consented to by:

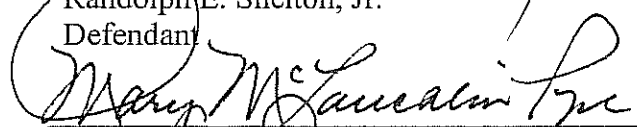


William N. Farrell
Attorney for Plaintiff

1-27-12
Date


Randolph E. Shelton, Jr.
Defendant

1/20/12
Date


Mary McLauchlin Rope
Defendant's Attorney

January 26, 2012
Date

RANDOLPH E. SHELTON, JR.
ATTORNEY AT LAW

OPERATING ACCOUNT
1100 MORGANSON RD. #20
SPRINGHURST, NC 28389

07-12-99
02

5684

Pay Estate of Mark Whitcomb

\$1950.00

TO THE ORDER OF
Catherine Whitcomb F. J. J.

DOLLARS

BRANCH BANKING AND TRUST COMPANY
WWW.BANKBBT.COM

FOR DEPOSIT ONLY

⑆053101121⑆0005211481244⑆05684