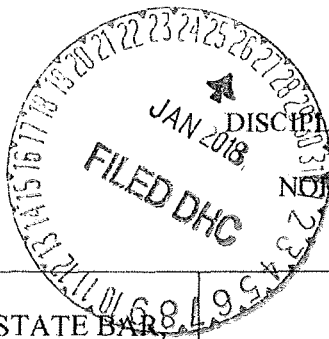


NORTH CAROLINA
WAKE COUNTY



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

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

DAVID A. LLOYD, Attorney,

Defendant

ORDER ON
SHOW CAUSE HEARING

THIS SHOW CAUSE came on for hearing on January 5, 2018 before R. Lee Farmer, Chair, and members Richard V. Bennett and Michael S. Edwards sitting as a Hearing Panel of the Disciplinary Hearing Commission upon the Order to Show Cause issued on September 21, 2017 by Fred M. Morelock, Chair of the Disciplinary Hearing Commission. Pursuant to the North Carolina State Bar Discipline and Disability Rules, the Order to Show Cause directed Defendant, David A. Lloyd ("Lloyd" or "Defendant"), to appear and show cause why an order should not be entered lifting the stay of his suspension and suspending his license to practice law in the State of North Carolina for failure to comply with the Order of Discipline entered in this disciplinary proceeding on March 10, 2015. Plaintiff was represented at the hearing by Deputy Counsel G. Patrick Murphy. Defendant appeared at the hearing *pro se*. Based on the testimony and evidence presented at the hearing, the stipulations of the parties, and the record proper, the Hearing Panel makes 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.

2. Defendant was admitted to the North Carolina State Bar on August 18, 1990, 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. On March 10, 2015, an Order of Discipline (hereinafter "the 2015 Order") was entered against Defendant by a Hearing Panel of the Disciplinary Hearing Commission. On March 20, 2015, the 2015 Order was served on Defendant.

4. The 2015 Order suspended Defendant's license to practice law in North Carolina for three (3) years but stayed suspension for three (3) years as long as Defendant complied with several conditions stated in the 2015 Order.

5. Paragraph 2(f) of the 2015 Order required Defendant to open a trust account within thirty (30) days of entry of the Order and to maintain a trust account for the duration of the stayed suspension. Defendant did not timely comply with this condition.

6. On or about August 31, 2015, Deputy Counsel G. Patrick Murphy sent Defendant a letter notifying Defendant that he had not complied with paragraph 2(f) of the 2015 Order. In that letter, Defendant was also reminded that pursuant to paragraph 2(j) he was required to have his trust account audited by a CPA on a semi-annual basis and that he had to provide reports of the audit to the Office of Counsel no later than July 1 and January 1 throughout the period of stayed suspension. The State Bar's letter advised Defendant that it had no record that he had complied with condition 2(j) of his stayed suspension.

7. Defendant opened a trust account with BB&T, accounting ending in 5434 ("TA 5434"), on September 2, 2015.

8. Pursuant to paragraph 2(h) of the 2015 Order, Defendant was required to complete three (3) hours of CLE in the area of trust account management each of the three years of the stayed suspension and he was required to provide written proof of the successful completion of those courses to the Office of Counsel of the North Carolina State Bar ("State Bar") within 10 days of completing each course. These CLE requirements were in addition to the CLE requirements set out in 27 N.C.A.C. 1D § .1518. Defendant did not comply with this condition, and Defendant did not provide the Office of Counsel with documentation of compliance with this condition.

9. As of the date of the Show Cause hearing, Defendant had taken three (3) hours of CLE in the area of trust account management: one (1) hour on November 15, 2015; and two (2) hours on October 29, 2017.

10. Pursuant to paragraph 2(i) of the 2015 Order, Defendant was required to complete a course of training in law office management approved by the State Bar within six (6) months of the date of the 2015 Order and provide written proof of the successful completion of the course to the Office of Counsel within 10 days of its completion. Completion of the course was required by September 10, 2015. This requirement was in addition to the CLE requirements set out in 27 N.C.A.C. 1D § .1518. Defendant did not in comply with this condition.

11. As of the date of the Show Cause hearing, Defendant had taken a one (1) hour CLE course in law office management, which he took on January 1, 2018. Defendant's stated reason for not complying with paragraph 2(i) was that he could not find a course that fit his practice model.

12. Pursuant to paragraph 2(j), Defendant was required to retain a certified public accountant ("CPA") to audit Defendant's trust account semi-annually and provide written reports

to the State Bar confirming that Defendant's trust account was in compliance with all applicable provisions of the Rules of Professional Conduct. The report of the CPA was to be provided to the Office of Counsel no later than July 1 and January 1 throughout the period of the stayed suspension. Defendant was solely responsible to ensure that reports were submitted. Despite being reminded by the State Bar in August 2015 of his obligation under this condition, Defendant did not comply.

13. The State Bar conducted a procedural review of TA 5434 on February 4, 2016. Despite the procedural review, Defendant did not engage a CPA to comply with paragraph 2(j) until after he was served with the Show Cause Order.

14. After he was served with the Order to Show Cause, Defendant employed Michael A. Gray, a CPA, who audited his trust account and provided the State Bar with a report dated November 2, 2017. The CPA report confirmed that Defendant had not complied with paragraph 2(j) of the 2015 Order. The CPA report also documented that Defendant was not conducting monthly and quarterly reconciliations of his trust account as required by the North Carolina Rules of Professional Conduct.

15. Pursuant to paragraph 2(m) of the 2015 Order, Defendant was required to pay the administrative fees and costs of the 2015 disciplinary proceeding within thirty (30) days of service of the statement of fees and costs upon him by the Secretary of the State Bar. A statement of fees and costs in the amount of \$3,336.07 was served on Defendant on April 17, 2015 making them due by May 17, 2015. Defendant did not comply with this condition.

16. On December 29, 2017, Defendant issued a check in the amount of \$3,336.07 to the State Bar for the fees and costs of the 2015 disciplinary proceeding. Defendant's stated reason for not timely paying the fees and costs was that he forgot about the statement of fees and costs.

17. At the hearing, Defendant and Plaintiff submitted stipulations to the Hearing Panel. The stipulations establish that Defendant did not comply with the conditions contained in paragraphs 2(h), 2(i), 2(j) and 2(m) of the 2015 Order of Discipline.

18. Defendant did not offer any reasonable justification for his failure to comply with the conditions contained in paragraphs 2(h), 2(i), 2(j) and 2(m) of the 2015 Order. Defendant's stated reasons for failing to comply with the conditions included: he forgot; he misunderstood/misread how many trust account management CLE hours he needed; he was not sure what would satisfy the office management CLE and could not find one that fit his practice; he complied with the spirit of the order; and, he assumed the procedural review by the State Bar sufficed to show he was properly managing TA 5434.

Based on the foregoing findings of fact, the Hearing Panel makes the following conclusions of law by the greater weight of the evidence:

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 willfully violated paragraphs 2(h), 2(i), 2(j) and 2(m) of the 2015 Order of Discipline of the Disciplinary Hearing Commission in *The North Carolina State Bar v. David A. Lloyd*, 14 DHC 15.
3. Defendant's willful failure to comply with the conditions of the 2015 Order of Discipline shows Defendant's indifference to his obligations as a lawyer subject to a disciplinary proceeding and is harmful to the State Bar's self-regulation process.
4. Defendant's demonstrated willful failure to comply with the conditions of his own stayed suspension calls into question his willingness to abide by, and his appreciation for, his duty and obligation to meet deadlines, correctly interpret and advise clients on legal matters, and to follow rules related to the proper accounting for entrusted client funds.
5. Based on Defendant's willful violations of the conditions of the 2015 Order of Discipline, the appropriate sanction is to lift the stay and activate the suspension of Defendant's license to practice law in North Carolina.

ORDER

WHEREFORE, IT IS HEREBY ORDERED:

1. That Defendant's license to practice law in North Carolina is suspended for three (3) years as imposed in the 2015 Order of Discipline effective upon the service of this Order on Defendant;
2. As a condition for reinstatement of Defendant's license to practice law, Defendant must be in full compliance with 27 N.C.A.C 1B § .0129(b) and with all monitoring, restitution, CLE, and accrued costs requirements as set forth in the 2015 Order of Discipline, paragraphs 2(a) through (m) on pages 8-9, and paragraphs 5(a) through (l) on pages 10-11;
3. As a further condition of reinstatement, Defendant must reestablish a trust account as mandated in the 2015 Order and comply with the restrictions set forth therein for auditing and monitoring;
4. Defendant shall comply with the wind down provisions of 27 N.C.A.C 1B § .0128); and
5. Defendant shall pay the administrative fees and costs of this Show Cause proceeding within thirty (30) days of service of the statement of fees and costs upon him by the Secretary of the State Bar.

SO ORDERED. Entered and signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Panel, this 26th day of January, 2018.

A handwritten signature in black ink, appearing to read "R. Lee Farmer", written over a horizontal line.

R. Lee Farmer, Chair
Hearing Panel