

STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE

DISCIPLINARY HEARING COMMISSION
OF THE

NORTH CAROLINA STATE BAR

15 DHC 43

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

DAIVA S. BULLUCK, Attorney,

Defendant

CONSENT ORDER
OF DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Shirley L. Fulton, Chair, and members Beverly T. Beal and Bradley Lail, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff was represented by Jennifer A. Porter. Defendant Daiva S. Bulluck appeared *pro se*. 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. Defendant freely and voluntarily stipulates to the foregoing findings of fact and consents to the conclusions of law and entry of the order of discipline. Defendant 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 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, Daiva S. Bulluck ("Bulluck"), was admitted to the North Carolina State Bar in 2008, 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 was properly served with process and the matter came before the Hearing Panel with due notice to all parties.

4. During all or part of the relevant periods referred to herein, Defendant and Bridgette D. Johnson were engaged in the practice of law in the State of North Carolina and maintained a law office in Greensboro, Guilford County, North Carolina.

5. From 2009 to 2013, Defendant failed to comply with certain trust account requirements, as follows:

- a. Failed to maintain client ledgers for each person or entity from whom or for whom entrusted funds were received;
- b. Failed to conduct monthly and quarterly trust account reconciliations;
- c. Failed to identify clients on deposit slips; and
- d. Failed to use business size checks containing an auxiliary On-Us field.

6. Defendant failed to ensure there were funds in the trust account for a client before disbursing funds for the client from the trust account. On occasion this resulted in Defendant disbursing funds from the trust account attributed to a client for whom she did not have funds in the trust account. Some of these disbursements were to third parties on behalf of the clients and some of the disbursements were for attorney's fees to Defendant.

7. Defendant failed to ensure she deposited funds into the correct account and would sometimes inadvertently deposit entrusted funds into the operating account instead of the trust account.

8. On occasion, Defendant would try to rectify deposit and disbursement errors by transferring funds from the operating account to the trust account.

9. The State Bar conducted a random audit of Defendant's trust account in June 2013. In response to the results of the random audit, Defendant attempted to reconcile the trust account and made transfers from the operating account to try to address deficiencies.

10. Defendant and Ms. Johnson disbanded their firm in July 2014. Their firm trust account had a zero balance as of June 30, 2014.

11. Defendant provided the State Bar with certain trust account records. Subsequently, the State Bar requested additional records from Defendant. Defendant failed to respond to the State Bar's request for additional records made to her by telephone in April 2015.

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 Defendant and the subject matter of this proceeding.

2. Defendant's 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 failing to maintain client ledgers, Defendant failed to maintain a ledger containing a record of receipts and disbursements for each person or entity from whom and for whom entrusted funds were received and the current balance of funds held in the trust account for each such person or entity in violation of Rule 1.15-3(b)(5);
- (b) By failing to conduct monthly and quarterly reconciliations of the trust account, Defendant failed to total the individual client balances shown on the ledger of a general trust account with the current bank statement balance for the trust account each quarter in violation of Rule 1.15-3(d)(1) and failed to reconcile the balance of the trust account as shown on the lawyer's records with the current bank statement balance for the trust account each month in violation of Rule 1.15-3(d)(2);
- (c) By failing to identify on deposit slips the clients for whom funds were being deposited into the trust account, Defendant failed to maintain the requisite record listing the name of the client to whom the funds deposited into the trust account belonged in violation of Rule 1.15-3(b)(1);
- (d) By disbursing funds from the trust account for the benefit of clients who did not have funds in the trust account at that time, Defendant failed to appropriately maintain and disburse entrusted funds in violation of Rule 1.15-2(a), (j), and (m);
- (e) By failing to respond to the State Bar's April 2015 request for additional records, Defendant knowingly failed to respond to a lawful demand for information from a disciplinary authority in connection with a disciplinary matter in violation of Rule 8.1(b).

Upon 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. Maintaining client ledgers and conducting monthly and quarterly reconciliations of the trust account are integral to the proper maintenance and protection of entrusted funds.

2. When Defendant opened the law firm with Ms. Johnson after passing the bar, neither had any prior training or experience in managing a trust account.

3. Defendant and Ms. Johnson received help in operating as a business but had no assistance with managing a trust account.

4. Defendant has no prior discipline.

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

6. Defendant and Ms. Johnson disbursed funds for clients when they had no funds or insufficient funds in the trust account for the client, thus misusing other entrusted funds in the trust account.

7. Defendant and Ms. Johnson had remedied all deficiencies in the trust account when they closed their practice.

8. Defendant is not currently managing a trust account.

9. Defendant has acknowledged her failure to properly maintain entrusted funds.

10. The legal profession has the privilege of being self-regulating. It can only fulfill its regulatory duty, however, if its members participate in the self-regulation process. When attorneys fail to respond to inquiries of the State Bar, it jeopardizes the effectiveness of self-regulation.

11. Although Defendant failed to provide the additional client information requested by the State Bar, she did meet with the State Bar's investigator and provide some records.

12. 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, the Hearing Panel makes the following:

Conclusions With Respect To 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 factors warrant suspension:

a. Intent of Defendant to commit acts where the harm or potential harm is foreseeable, to wit: failing to maintain client ledgers and conduct

reconciliations and thus compromising her ability to properly maintain and disburse entrusted funds; and

b. Potential negative impact of Defendant's actions on clients' or the public's perception of the profession.

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. Absence of prior disciplinary offenses;
- b. Absence of a dishonest or selfish motive;
- c. Multiple offenses;
- d. A pattern of misconduct;
- e. Full and free disclosure to the Hearing Panel and cooperative attitude toward the proceedings;
- f. Remorse; and
- g. Vulnerability of Defendant's clients.

4. Defendant's 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. Defendant's conduct, if continued or tolerated by the Bar, poses significant potential harm to future clients.

6. 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 offenses committed by Defendant and send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

7. This Hearing Panel has considered lesser alternatives and concludes that a stayed suspension is necessary to ensure Defendant complies with necessary conditions to avoid significant harm or the potential for significant harm to clients.

8. 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 Conclusion Regarding Discipline, and based upon the consent of the parties, the Hearing Panel enters the following:

Order of Discipline

1. Defendant, Daiva S. Bulluck, is hereby suspended from the practice of law for three years.

2. Defendant is taxed with the costs and administrative fees of this action as assessed by the Secretary. Defendant shall be served with a statement of costs and fees. Defendant shall pay the costs within thirty days of service of the statement of costs upon her.

3. The three-year suspension is stayed for a period of three years as long as Defendant complies, and continues to comply during the period of the stay, with the following conditions:

a. Each month Defendant 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, using the Trust Account Reconciliation sheet provided in the Handbook, for all trust accounts she maintains. Defendant 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, her trust account ledger, and the bank statements, cancelled checks, and deposit slips for each month. 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;

b. Each quarter, Defendant shall have a CPA audit all trust accounts maintained by Defendant. This audit shall assess whether Defendant has in her trust account the client funds she should be maintaining for her clients at that time, as well as Defendant's compliance with Rule 1.15-2 and Rule 1.15-3. The CPA's audit shall include addressing the items on the CPA Report Template which will be provided by the State Bar to Defendant. 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;

c. If either the monthly three-way reconciliation report or the CPA audit reveals any deviation from Defendant's obligations under Rule 1.15-2 or Rule 1.15-3, Defendant shall take remedial action within 10 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 2 days of the date of the remedial action;

d. Defendant shall comply with any requests from the Office of Counsel to provide any information regarding her 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 maintains a trust account, by the deadline stated in the request;

e. Defendant certifies that she is not handling entrusted funds or maintaining an attorney trust account at the time she signed this consent order. Within 30 days of the effective date of this order, Defendant shall provide the Office of Counsel of the State Bar with documentation showing the closing of any and all trust accounts. Thereafter, for as long as Defendant is not handling entrusted or fiduciary funds or maintaining an attorney trust account, on a monthly basis Defendant shall submit to the Office of Counsel an affidavit certifying that she did not handle any entrusted or fiduciary funds in that month. This affidavit shall be executed on the last day of each month and provided to the Office of Counsel by the 5th day of the following month (e.g. the affidavit for January would be executed January 31st and due to the Office of Counsel by February 5th). Such affidavit shall be in lieu of the three-way reconciliation report required in paragraph 3a. For as long as Defendant is not handling any entrusted or fiduciary funds and is not maintaining an attorney trust account, the requirements of paragraphs 3a to 3d above shall be tolled;

f. Within the first year of the stayed period of suspension, Defendant shall 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 the Trust Accounting Rules Continuing Legal Education Program taught by the Trust Account Compliance Counsel for The North Carolina State Bar. Defendant shall provide written proof of successful completion of the CLE courses to the State Bar within ten days of completing the courses. These four hours are in addition to the continuing legal education requirements set out in 27 N.C. Admin. Code ID § .1518;

g. Defendant shall keep the North Carolina State Bar Membership Department advised of her 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 (10) days of such change;

h. 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. 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. 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. Defendant will pay all membership dues, Client Security Fund assessments, and any other related dues, fees, and/or costs by the applicable deadline;

l. Defendant will not violate any of the Rules of Professional Conduct in effect during the period of the stay;

m. Defendant will not violate any laws of the State of North Carolina or of the United States, other than minor traffic violations, during the period of the stay; and

n. 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 her.

4. Unless Defendant's obligations under this Order are modified by further order of the DHC, Defendant's obligations under this Order end three years 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 three 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 Defendant's obligation to comply with the conditions for the stay will continue until resolution of any such pending motion or proceeding.

5. Any order of the Administrative Committee of the North Carolina State Bar placing Defendant in inactive status for any reason shall toll the running of the suspension, the period of the stay of the suspension, and Defendant's obligation to comply with the terms of the stay of the suspension under this order. Upon Defendant's reinstatement to active status by the Administrative Committee, the tolling of the running of the suspension and the stay of the suspension under this order shall be lifted, at which

time such Defendant's obligation to comply with the conditions of the stay of the suspension in this order will resume.

6. If during the stay of the suspension Defendant fails to comply with any one or more of the conditions stated above, then the stay of Defendant's suspension may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

7. If the stay of the suspension is lifted and the suspension is activated for any reason, Defendant may apply for reinstatement after serving the activated suspension by filing a petition, demonstrating compliance with the requirements § .0125 of the North Carolina State Bar Discipline and Disability Rules, any requirements in the order activating the suspension, and the following requirements by clear, cogent, and convincing evidence:

a. Defendant properly wound down her 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 kept the Membership Department of the State Bar informed of her current information for her physical address (not a Post Office box), telephone number, and e-mail address throughout the period of her suspension;

c. 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;

d. 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 her suspension;

e. Defendant has come into compliance with any outstanding continuing education or membership obligations at the time of the filing of her petition for reinstatement;

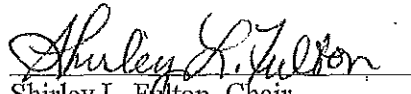
f. Defendant did not violate any of the Rules of Professional Conduct in effect during the period of the suspension;

g. Defendant did not violate any laws of the State of North Carolina or of the United States, other than minor traffic violations, during the period of the suspension; and

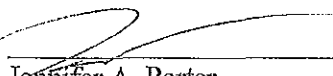
h. Defendant paid all administrative fees and costs of this proceeding as assessed by the Secretary by the date of the filing of her petition for reinstatement.

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 throughout the period of the stayed suspension.

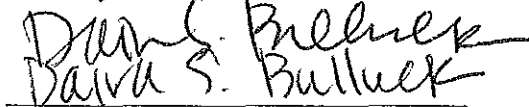
7th Signed by the Chair with the consent of the other hearing panel members, this the
day of December 2015.


Shirley L. Fulton, Chair
Disciplinary Hearing Panel

Agreed and consented to by:


Jennifer A. Porter
Attorney for Plaintiff

11-24-15
Date


Daiva S. Bulluck
Defendant

11.19.15
Date