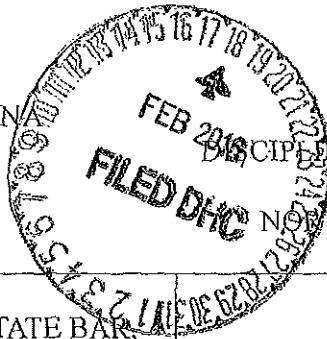


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE

DISCIPLINARY HEARING COMMISSION

OF THE

NORTH CAROLINA STATE BAR

15 DHC 40

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

WADE H. LEONARD, JR., Attorney,

Defendant

CONSENT ORDER

OF

DISCIPLINE

This matter was considered by a hearing panel of the Disciplinary Hearing Commission composed of Fred M. Morelock, Chair, William O. King, and Randy A. Moreau. Leonor Bailey Hodge represented Plaintiff, the North Carolina State Bar. Defendant, Wade H. Leonard, Jr., appeared *pro se*. Defendant waives a formal hearing in the above referenced matter. The parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order. The parties consent to the discipline imposed by this order. Defendant knowingly, freely, and voluntarily waives his right to appeal this consent order or to challenge in any way the sufficiency of the findings by consenting to entry of this order.

Based on the foregoing and on the consent of the parties, the Hearing Panel hereby makes by clear, cogent, and convincing evidence the following:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar (hereafter "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 promulgated thereunder.

2. Defendant, Wade H. Leonard, Jr. (hereafter "Defendant" or "Leonard"), was admitted to the North Carolina State Bar on 12 August 1972 and is an attorney at law licensed to practice in North Carolina, subject to the rules, regulations, and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During the relevant period referred to herein, Leonard actively engaged in the practice of law in the State of North Carolina and maintained a law office in Mocksville, Davie County, North Carolina.

4. Between January 2010 and January 2012, Leonard maintained a general attorney trust account with BB&T bank, account number ending 7138 (hereinafter "trust account").

5. Leonard used the trust account as a general account into which all entrusted client funds were deposited and disbursed.

6. Leonard employed two non-lawyer assistants, J.D. Stroud (hereinafter "Stroud") and K.R. Jones (hereinafter "Jones").

7. Leonard had managerial and direct supervisory authority over Stroud and Jones during their employment.

8. Leonard delegated to Stroud the tasks of receipt of entrusted client funds, deposit of entrusted client funds, maintenance of account records for the trust account, and reconciliation of the trust account.

9. Stroud also had signature authority for the trust account.

10. Leonard also delegated to Stroud the responsibility of handling real estate closing transactions.

11. Stroud prepared trust account checks for real estate transaction disbursements and signed many of the checks she wrote that were drawn on the trust account.

12. Leonard paid Stroud 20% of his legal fee as a commission on all real estate closings she handled for his firm.

13. Stroud delegated tasks to Jones, including the task of reconciling the trust account.

14. Leonard did not provide any training for Stroud and Jones on trust account management or reconciliation.

15. On or about 22 November 2011, Leonard was notified that he had been selected for a random procedural audit.

16. The audit was scheduled to take place on 4 January 2012.

17. On 3 January 2012, the night before the scheduled audit, someone set fire to Leonard's office.

18. An insurance investigation ensued after the fire.

19. The results of the insurance investigation suggested that the fire was intentionally set.

20. An analysis of Leonard's trust account was conducted after the fire.

21. The trust account analysis showed that Leonard failed to perform three-way reconciliations of the trust account and failed to identify clients on checks drawn on the

trust account. The analysis further showed that these failures existed as early as 2010 and continued through the date of the fire.

22. The trust account analysis also showed that the balance of Leonard's trust account was less than the amount of entrusted funds Leonard was required to maintain in trust for his clients.

23. The shortage in Leonard's trust account was primarily caused by Stroud's and Jones's embezzlement from the trust account from February 2010 through December 2011.

24. Late fees assessed due to Leonard's failure to timely disburse loan payoffs also contributed to the shortage, because Leonard did not deposit into the trust account funds to pay the amounts by which the loan payoffs were increased by the fact that the payments were made late.

25. Leonard failed to routinely review bank statements or any other records for the trust account.

26. Leonard failed to supervise Stroud's handling of real estate closing transactions.

27. Because Leonard failed to supervise Stroud's handling of real estate closings, he did not become aware that mortgage payoffs were not being timely made and that late fees were being assessed until the State Bar audited his trust account.

Based upon the consent of the parties and 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, Wade H. Leonard, Jr., and over the subject matter.
2. Defendant's conduct, as set forth in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:
 - a. By failing to provide training to his non-lawyer assistants, failing to supervise their handling of entrusted client funds, and failing to review records for his trust account, Defendant failed to make reasonable efforts to ensure that his law firm had in effect measures that gave reasonable assurance that his non-lawyer assistants' conduct was compatible with Defendant's professional obligations in violation of Rule 5.3(a) and failed to supervise his non-lawyer assistants to the extent necessary to ensure that their

conduct was compatible with Defendant's professional obligations in violation of Rule 5.3(b);

- b. By failing to timely submit mortgage payoffs after closing, Defendant failed to diligently represent his clients' interests in violation of Rule 1.3 and failed to promptly pay to a third person as directed by the client entrusted property belonging to the client in violation of Rule 1.15-2(m);
- c. By failing to deposit into the trust account funds to cover the late fees and instead using entrusted funds belonging to other clients to pay such fees, Defendant used entrusted property for the personal benefit of someone other than the legal or beneficial owner of the property in violation of Rule 1.15-2(j);
- d. By failing to perform at least quarterly a three-way reconciliation of the trust account, Defendant failed to conduct the requisite reconciliations of his trust account in violation of Rule 1.15-3(d);
- e. By failing to identify clients on checks drawn on the trust account, Defendant failed to maintain the minimum records required for general trust accounts in violation of Rule 1.15-3(b); and
- f. By paying his assistant a percentage of his legal fee for performing real estate closings, Defendant shared his fee with a non-lawyer in violation of Rule 5.4(a).

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

ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE

1. Leonard cooperated with the State Bar's investigation into his handling of entrusted client funds.
2. Leonard deposited in excess of \$100,000 into his trust account to replenish the shortage in the account.
3. Leonard used his personal funds to pay the obligations of clients whose entrusted funds were frozen in his trust account after Leonard was enjoined from handling entrusted funds.
4. Leonard has expressed remorse for his misconduct.

5. Leonard'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. Clients are entitled to have their funds handled with the utmost care.
6. Leonard's failure to properly maintain a trust account places entrusted client funds at risk and has the potential to cause significant harm to the standing of the profession in the eyes of the public because it shows his disregard for his duties as an attorney. This tends to erode the public's confidence in attorneys. Confidence in the legal profession is a building block for public trust in the entire legal system.
7. Leonard's failure to reconcile his trust accounts and failure for at least two years to supervise his non-lawyer staff's management of his trust account demonstrates Leonard's intent to commit acts where the potential harm is foreseeable.

Based upon 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 OF LAW REGARDING DISCIPLINE

1. The Hearing Panel has considered all of the factors contained in 27 N.C. Admin. Code 1B § .0114(w)(1) and concludes that the following factors that warrant suspension or disbarment are present:
 - (a) Intent of the defendant to commit acts where the harm or potential harm is foreseeable; and
 - (b) Negative impact of defendant's actions on client's or public's perception of the profession.
2. The Hearing Panel has considered all of the factors contained in 27 N.C. Admin. Code 1B § .0114(w)(2) and concludes that no factors that warrant disbarment are present.
3. The Hearing Panel has considered all of the factors contained in 27 N.C. Admin. Code 1B § .0114(w)(3) and concludes that the following are applicable in this matter:
 - (a) Absence of dishonest or selfish motive;
 - (b) Multiple offenses;
 - (c) Defendant's cooperative attitude toward the proceedings;
 - (d) Timely good faith efforts to rectify consequences of misconduct;
 - (e) Defendant's remorse;
 - (f) Good character and reputation; and

(g) Defendant has been licensed to practice law for approximately forty-three years.

4. Defendant caused harm to his clients by using their entrusted funds to pay the obligations of other clients.
5. Defendant caused potential significant harm to his clients by failing to properly manage their entrusted funds.
6. The Hearing Panel has considered all lesser sanctions including: censure, reprimand, and admonition, and finds that discipline less than suspension would not adequately protect the public from Defendant's future misconduct because (i) of the gravity of potential significant harm to clients, and (ii) a period of reporting pursuant to a stayed suspension is necessary to ensure Defendant's proper handling of entrusted funds.

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

ORDER OF DISCIPLINE

1. Defendant, Wade H. Leonard, Jr., is hereby suspended from the practice of law for two years, effective 30 days from service of this order upon Leonard.
2. Defendant shall pay, within 30 days of service of the statement of fees and costs upon him by the Secretary of the State Bar, the administrative fees and costs of this proceeding.
3. The two year suspension is stayed for a period of two years as long as Defendant complies with the following conditions:
 - (a) Defendant shall pay the administrative fees and costs of this proceeding as assessed by the Secretary of the State Bar within 30 days of service of the statement of fees and costs upon him.
 - (b) Within thirty (30) days of this order's effective date, Defendant shall retain a certified public accountant ("CPA") approved in advance by the Office of Counsel who shall audit his trust accounts. Defendant will cooperate with the CPA to ensure that the audit is completed within sixty (60) days of the date the CPA is first retained. The CPA shall provide monthly written reports to the State Bar updating the State Bar on the audit's progress until the audit is complete. Upon completion of the audit, the CPA shall provide the State Bar with a written final audit report that identifies who owns the funds presently held in Defendant's trust account and which identifies any shortage in the trust account. It is Defendant's

sole responsibility to ensure that the CPA completes and submits the reports required herein.

- (c) Within fifteen (15) days of completion of the CPA's audit of Defendant's trust accounts, Defendant shall petition the court in Wake County Superior Court Case File No. 13 CVS 01050 (i) to replenish the trust account(s) for any shortfall that the CPA has found to exist in his trust account(s), and (ii) to disburse to the rightful owners the funds held in his trust account(s).
- (d) Defendant shall provide to the State Bar's Office of Counsel quarterly (April 15 for the quarter ending March 31, July 15 for the quarter ending June 30, October 15 for the quarter ending September 30 and January 15 for the quarter ending December 31) the written report of the three-way reconciliation of all attorney trust accounts to which he has access using the reconciliation method described and form found in the online State Bar Lawyer's Trust Account Handbook, rev. 12/2014, pages 33 - 42. In addition to the three-way reconciliation report, Leonard shall provide (i) client ledgers for each client whose funds are held in the trust account(s) during the quarter covered by the submitted report, (ii) the ledger for any personal funds Defendant maintained in the trust account(s) for bank or credit card fees, (iii) the general ledger(s) for each trust account to which Defendant has access, and (iv) the following bank documentation for the quarter covered by the submitted report: the bank statement, canceled checks and deposit slips or other bank documentation that identifies the source of all deposits into the account for each trust account to which Leonard has access.
- (e) Defendant shall provide any other records requested by the Office of Counsel within ten days of the request.
- (f) Defendant shall certify that he is not handling entrusted funds or maintaining an attorney trust account at the time he signed this consent order. Within fifteen (15) days of disbursement of entrusted funds pursuant to 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, Defendant shall, on a monthly basis, submit to the Office of Counsel an affidavit certifying that he 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 March would be executed March 31st and due to the Office of Counsel by April 5th). Such affidavit shall be in lieu of the three-way reconciliation report required in paragraph 3d. For as long as Defendant is not handling any entrusted or fiduciary funds and is not maintaining an

attorney trust account, the requirements of paragraph 3d above shall be tolled.

- (g) Within six months of the effective date of this order, Defendant shall complete the trust account continuing legal education (CLE) course taught by State Bar Trust Accounting Compliance Counsel Peter Bolac (usually titled "Trust Accounting Rules" or "Trust Accounting Rules: Avoid the Pitfalls.") This CLE requirement is in addition to the CLE requirements set out in 27 N.C. Admin. Code 1D § .1518.
 - (h) Defendant shall keep the State Bar Membership Department advised of his current business address. Defendant shall notify the State Bar of any change of address within ten (10) days of such change. His current business address must be a street address, not a post office box or drawer.
 - (i) Defendant shall respond to all communications from the State Bar, including communications from the Attorney Client Assistance Program, within thirty (30) days of receipt of such communication or by the deadline stated in the communication, whichever is sooner.
 - (j) Defendant shall participate in good faith in the State Bar's fee dispute resolution process for any petition of which he receives notice after the effective date of this order.
 - (k) Defendant shall timely comply with all State Bar continuing legal education requirements and will pay all fees and costs assessed by the applicable deadline.
 - (l) Defendant will pay all State Bar and judicial district membership dues, Client Security Fund assessments, and any other related dues, fees, and/or costs by the applicable deadline;
 - (m) Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or of any state or local government.
4. Unless Defendant's obligations under this Order are modified by further order of the DHC, Defendant's obligations under this Order end two years from the effective date of the Order provided there are no pending motions or show cause proceedings alleging lack of compliance with the conditions of the stay of the suspension. Pursuant to 27 N.C. Admin. Code 1B § .0114(x), the DHC retains jurisdiction until all conditions of the stay of the suspension have been met. If a motion or show cause 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 two 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 show cause proceeding.

5. If Defendant fails to comply with any one or more of the conditions set out above in this Order of Discipline, then the stay of the suspension may be lifted in accordance with 27 N.C. Admin. Code 1B § .0114(x).
6. If the stay of the suspension is lifted and the suspension is activated for any reason, the Disciplinary Hearing Commission may enter an order imposing such conditions as it deems proper for the reinstatement of Defendant's license at the end of the suspension. Additionally, Defendant must establish the following by clear, cogent and convincing evidence prior to being reinstated to the practice of law after any period of active suspension:
 - (a) Defendant submitted his law license and membership card to the Secretary of the State Bar within thirty (30) days of the date of the order lifting the stay and/or activating the suspension of his law license;
 - (b) Defendant complied with the provisions of 27 N.C. Admin. Code 1B § .0124 following entry of the order lifting the stay and/or activating the suspension of his law license;
 - (c) Defendant timely paid all administrative fees and costs assessed against him in this proceeding as reflected on the statement of costs served upon him by the Secretary of the State Bar;
 - (d) Defendant had his trust account(s) audited by a CPA.
 - (e) Defendant, upon completion of the CPA's audit of his trust account(s), petitioned the court in Wake County Superior Court Case File No. 13 CVS 01050 (i) to replenish the trust account(s) for any shortfall that the CPA has found to exist in his trust account(s), and (ii) to disburse the funds held in his trust account(s) to the rightful owners.
 - (f) That within fifteen (15) days of the effective date of the order activating the suspension Defendant provided the State Bar with an address and telephone number at which clients seeking return of files could communicate with Defendant and obtain such files;
 - (g) That Defendant provided within ten days client files to all clients who made a request for return of their files;
 - (h) Defendant kept the State Bar Membership Department advised of his current business street addresses (not post office box or drawer

addresses) and notified the State Bar of any change in address within ten days of such change;

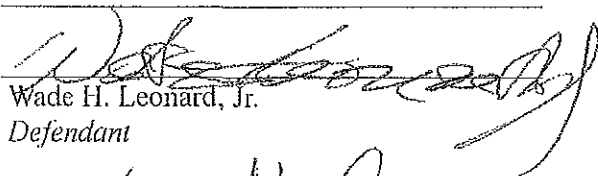
- (i) Defendant responded to all communications from the State Bar, including communications from the Attorney Client Assistance Program, within thirty (30) days of receipt or by the deadline stated in the communication, whichever is sooner;
 - (j) At the time of his petition for reinstatement, Defendant is current in payment of all membership dues, fees and costs, including all Client Security Fund assessments, and other charges or surcharges the State Bar is authorized to collect from him, including all judicial district dues and assessments;
 - (k) At the time of his petition for reinstatement, there is no deficit in Defendant's completion of mandatory CLE hours in reporting of such hours or in payment of any fees associated with attendance at CLE programs;
 - (l) At the time of his petition for reinstatement, Defendant has completed within the six months that immediately preceded his petition for reinstatement the trust account CLE course taught by NC State Bar Trust Accounting Compliance Counsel Peter Bolac (usually titled "Trust Accounting Rules" or "Trust Accounting Rules: Avoid the Pitfalls"); and
 - (m) Defendant did not violate the Rules of Professional Conduct or the laws of the United States, or the laws of any state or local government during his suspension.
7. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code 1B § .0114(x) until all conditions of the stay of suspension are satisfied.


Signed by the Chair with the consent of the other Hearing Panel members this
the 18 day of February, 2016.



Fred M. Morelock, Chair
Disciplinary Hearing Panel

WE CONSENT:


Wade H. Leonard, Jr.
Defendant


Eleanor Bailey Hodge, Deputy Counsel
Attorney for Plaintiff