

STATE OF NORTH CAROLINA

WAKE COUNTY

THE NORTH CAROLINA STATE BAR



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

Plaintiff

v.

DAVID A. LLOYD, Attorney,

Defendant

ORDER OF DISCIPLINE

This matter was heard on January 16, 2015 before a Hearing Panel of the Disciplinary Hearing Commission composed of Walter E. Brock, Jr., Chair, and members R. Lee Farmer and Michael S. Edwards pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff was represented by G. Patrick Murphy. Defendant, David A. Lloyd ("Lloyd" or "Defendant"), appeared *pro se*.

Based upon the pleadings in this matter, the parties' stipulations of fact, and the evidence presented at 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 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. 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 Rutherford County, North Carolina.

4. Defendant was properly served with process and the matter came before the Hearing Panel with due notice to all parties.

5. From 2000 through May 31, 2010, Defendant practiced law with the firm Hamrick, Bowen, Mebane & Lloyd, LLP ("HBML") in Rutherfordton, North Carolina. Defendant left HBML effective May 31, 2010.

6. During the time Defendant was a member of HBML, Robert L. Mebane ("Mebane") was also a member of the law firm. Beginning in 2008 through May 31, 2010, Defendant and Mebane were the only members of HBML.

7. In 2008 through May 31, 2010, HBML had two trust accounts: a) a real estate trust account with RBC Centura, account number ending 1230 ("RBC 1230"); and b) a general trust account with BB&T, account number ending 1837 ("BB&T 1837"). Both Defendant and Mebane had signature authority to write checks on BB&T 1837 and entrusted funds were held in the account.

8. During the period 2008 through May 31, 2010, Defendant did not conduct monthly or quarterly reconciliations of BB&T 1837.

9. Between October 1, 2008 and May 31, 2010, Defendant signed and issued checks on BB&T 1837 without identifying on the checks the client balance against which the checks were drawn.

10. In or about 2008, HBML's business operations account used for firm operational transactions was closed.

11. Defendant became aware in 2008 that trust account BB&T 1837 was being used for operational expenses. Defendant's personal funds were commingled with trust account funds in BB&T 1837 in order to cover usage of the trust account for operational expenses.

12. Beginning in or about 2008 and continuing until the time Defendant left the firm, a ledger was maintained to track HBML operational transactions through BB&T 1837. Ledger cards for clients with entrusted funds in BB&T 1837 were also maintained.

13. In the fall of 2008, Defendant learned HBML had not met its obligations to pay federal income tax withholding for its employees for the first three quarters of 2008.

14. On or about November 10, 2008, Defendant signed and issued check no. 21176 in the amount of \$13,437.03 drawn against BB&T 1837 and made payable to the Internal Revenue Service (hereinafter "IRS") for overdue income tax withholding.

15. On November 18, 2008, when check no. 21176 cleared BB&T 1837, HBML did not have sufficient funds belonging to HBML in the account to cover the check.

16. On November 26, 2008, Defendant deposited \$13,437.03 of his personal funds into BB&T 1837 to cover check no. 21176. Defendant commingled personal funds with trust account funds to replenish the trust account for the check written to the IRS.

17. Defendant used entrusted client funds to cover check no. 21176 and pay HBML's withholding tax obligation.

18. On December 17, 2009, check no. 21565, signed by Mebane, was drawn on BB&T 1837 in the amount of \$173.10 and paid through BB&T 1837. The check was made payable to a restaurant to pay for a staff holiday luncheon.

19. At the time check no. 21565 was drawn against BB&T 1837, HBML did not have sufficient funds belonging to HBML in the account to cover the amount of the check. Entrusted funds were used to pay for the staff luncheon.

20. On December 21, 2009, Defendant's personal check in the amount of \$86.55 was deposited to BB&T 1837 to cover Defendant's portion of the luncheon expense. Defendant commingled personal funds with trust account funds to replenish the trust account for his part of the check written for the luncheon.

21. On or about June 2, 2009, Defendant deposited \$95,270.69 to BB&T 1837. These were entrusted funds of the K.N. Estate held on behalf of Defendant's client RH which had been named administrator of the K.N. Estate.

22. After Defendant deposited the entrusted funds of the K.N. Estate to BB&T 1837, he withdrew attorney fees from the estate funds on two occasions so that as of August 17, 2009, \$94,070.69 of the K.N. Estate entrusted funds remained to be disbursed.

23. In or about March or April 2010, an employee of HMBL told Defendant she suspected Mebane had misappropriated money from BB&T 1837.

24. As a result of the employee's information, Defendant looked into Mebane's disbursements from BB&T 1837. After examining BB&T 1837, Defendant confronted Mebane about checks drawn on the trust account by Mebane that Defendant deemed suspicious.

25. Between the time Defendant confronted Mebane and May 31, 2010, Mebane told Defendant he (Mebane) had replenished BB&T 1837 for everything Mebane had taken out of the trust account.

26. By late May 2010, Defendant knew and had information to reasonably believe that Mebane had misappropriated or misapplied entrusted funds from BB&T 1837.

27. With information to know and reasonably believe that Mebane had misappropriated or misapplied entrusted funds from BB&T 1837, Defendant did not inform the North Carolina State Bar about Mebane's conduct.

28. For extended periods of time between June 2, 2009 and the time Defendant confronted Mebane about Mebane's misappropriation from BB&T 1837, the balance of BB&T 1837 dropped well below \$94,070.69, the balance of the K.N. Estate funds that should have been in the account.

29. After Defendant separated from HBML on May 31, 2010, Defendant left the K.N. Estate funds for which RH was Administrator in BB&T 1837 even though Defendant had information to reasonably believe that Mebane had misappropriated or misapplied entrusted funds from BB&T 1837 and that Mebane had signature authority on BB&T 1837.

30. On October 21, 2010, Defendant wrote the following checks against BB&T 1837 to disburse K.N. Estate funds as follows:

Date	Check No.	Payee	Amount
10/21/10	21729	R Radiology	\$1,570.73
10/21/10	21730	BB&T	\$5,955.28
10/21/10	21731	R Internal Med.	\$3,678.75
10/21/10	21732	B Center	\$365.27
10/21/10	21733	RH	\$71,340.32
10/21/10	21734	Clerk/Court	\$10,610.22
10/21/10	21735	Clerk/Court	\$550.12

31 Defendant later sent the checks listed in paragraph 30 to the entities named on the checks.

32. Check no. 21733 to RH in the amount of \$71,340.32 was returned for insufficient funds.

33. Mebane was later disbarred.

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 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) as follows:

- a. By failing to conduct quarterly and monthly reconciliations of BB&T 1837, Defendant violated Rule 1.15-3(d)(1) and Rule 1.15-3(d)(2);
- b. By depositing funds belonging to Defendant into BB&T 1837 to cover check no. 21565 written on BB&T 1837 for the staff luncheon, Defendant commingled personal and entrusted funds in violation of Rule 1.15-2(f);
- c. By issuing checks on BB&T 1837 without identifying on the checks the client balance against which the checks were drawn, Defendant violated Rule 1.15-3(b)(2);
- d. By using entrusted funds to pay HBML's withholding tax obligation, Defendant used entrusted funds for his own benefit and for the benefit of third parties other than the beneficial owners of that property in violation of Rule 1.15-2(j);
- e. By depositing funds belonging to Defendant into BB&T 1837 to cover check no. 21176 and pay HBML's withholding tax obligation, Defendant commingled personal and entrusted funds in BB&T 1837 in violation of Rule 1.15-2(f);
- f. By failing to inform the North Carolina State Bar or a court having jurisdiction that Defendant knew Mebane had misappropriated entrusted funds thereby committing a violation of the Rules of Professional Conduct that raised substantial questions as to Mebane's honesty, trustworthiness or fitness as a lawyer, Defendant violated Rule 8.3;
- h. By failing to promptly report Mebane's conduct to the North Carolina State Bar after Defendant discovered or had grounds to reasonably believe Mebane had misappropriated or misapplied entrusted property, Defendant violated Rule 1.15-2(o); and
- i. By leaving the K.N. Estate entrusted funds in BB&T 1837 after Defendant separated from HBML knowing or having grounds to reasonably believe Mebane had misappropriated or misapplied entrusted property, and that Mebane had signature authority on the account, Defendant fail to act with reasonable diligence to protect the K.N. Estate's interests in violation of Rule 1.3.

3. The evidence was not sufficient to find by clear, cogent and convincing evidence that Defendant used entrusted property of his own use and the benefit of third parties with respect to check no. 21565 in violation of Rule 1.12-2(j), or that Defendant violated Rule 8.4(b) or 8.4(c) with respect to check nos. 21565 or 21176, or that he failed to safeguard the K.N. Estate funds in violation of Rule 1.15-2(a).

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

### ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE

1. Defendant's failure to properly maintain, manage and handle entrusted funds betrays a vital trust that clients and the public place in attorneys and the legal profession.

2. Defendant's mismanagement of BB&T 1837 resulted in numerous violations of the Rules of Professional Conduct.

3. Defendant's client notified Defendant that its check in the amount of \$71,340.32 drawn on his trust account was returned for non-sufficient funds. Defendant explained to RH that he had left the K.N. Estate funds in a trust account that Mebane had access to and that Mebane had misappropriated K.N. Estate funds.

4. Defendant's handling of the K.N. Estate funds resulted in significant harm to Defendant's client which has been without the use of \$71,340.32 for more than four years.

5. Defendant's failure to notify the State Bar of Mebane's misappropriation of client funds demonstrates a lack of trustworthiness on the part of Defendant in dealing with difficult circumstances.

6. By failing to report Mebane's conduct to the State Bar and leaving entrusted funds of the K.N Estate in the untrustworthy hands of Mebane, Defendant elevated his own interests above those of his client RH.

7. Defendant's handling of the withholding tax payment was a misappropriation of client funds and assets even though he intended, and had made arrangements, to reimburse the trust account for the check he wrote to the IRS.

8. Defendant had significant experience in the practice of law and should have demonstrated greater responsibility for the trust account.

9. On January 11, 2012, Defendant consented to the entry of an order in Wake County Superior Court enjoining him from accepting, receiving or having custody or control of any fiduciary funds until further order of the court.

10. Defendant enjoys a good reputation for integrity and high moral character among several members of his local Bar.

11. Defendant candidly admitted his failure to supervise the firm's trust account and is remorseful for his conduct.

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 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)(1) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are present:

- a. Circumstances reflecting Defendant's lack of trustworthiness;
- b. Elevation of the Defendant's own interest above that of his client;
- c. Negative impact of Defendant's actions on client's or public's perception of the profession; and
- d. Impairment of the client's ability to achieve the goals of the representation.

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 the following factor is present:

- a. Misappropriation of client assets to which Defendant was not entitled.

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. Defendant's selfish motive;
- b. Defendant's conduct resulted in multiple offenses;
- c. Defendant's full and free disclosure to the Hearing Panel and cooperative attitude toward the proceedings;
- d. Defendant's good general character and reputation;
- e. Defendant's experience in the practice of law; and
- f. Other penalties or sanctions in the form of a court order enjoining Defendant from handling fiduciary funds.

4. The Hearing Panel has considered issuing an admonition, reprimand or censure but concludes that such discipline would not be sufficient discipline. The Panel concludes that such discipline would fail to acknowledge the seriousness of the violations committed by

Defendant and send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar in this State.

5. The Hearing Panel considered disbarment but concludes that considering all the circumstances of this case disbarment is not necessary to protect the public or the profession in this matter.

6. The Hearing Panel has considered all alternatives and concludes that a suspension is necessary to adequately protect the public. The Hearing Panel finds that an order imposing discipline short of suspension would not be appropriate.

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

#### ORDER OF DISCIPLINE

1. Defendant is hereby suspended from the practice of law in the State of North Carolina for three (3) years, effective 30 days from service of this order upon Defendant.

2. The three year suspension is stayed for three (3) years as long as Defendant complies with the following conditions:

- a. 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;
- b. Defendant shall keep the North Carolina State Bar membership department advised of his current physical business address (not a Post Office box), telephone number, and email address and shall notify the Bar of any changes in address within ten (10) days of such change;
- c. Defendant will timely comply with State Bar continuing legal education ("CLE") requirements and will pay all fees and costs assessed by the applicable deadline;
- d. Defendant will not violate the laws of any state or the United States;
- e. Defendant will not violate any provision of the Rules of Professional Conduct;
- f. Defendant shall open an IOLTA trust account within 30 days of entry of this order and shall maintain a trust account for the duration of the stayed suspension. Defendant shall provide the account name, number and location to the Office of Counsel within 10 days of opening the trust account;
- g. Defendant shall cooperate with the Office of Counsel in petitioning the Superior Court to terminate the injunction presently in place enjoining defendant from serving in any fiduciary capacity and from accepting or receiving entrusted funds.



Any filing expenses associated with terminating the injunction shall be the sole responsibility of Defendant;

- h. Defendant shall complete three hours of CLE in the area of trust account management each of the three years of the stayed suspension and shall provide written proof of the successful completion of those courses to the Office of Counsel within 10 days of completing each course. These CLE requirements are in addition to the CLE requirements set out in 27 N.C.A.C. 1D § .1518;
  - i. Defendant shall complete a course of training in law office management approved by the State Bar within six months of the date of this order and shall provide written proof of the successful completion of the course to the Office of Counsel within 10 days of its completion. This requirement is in addition to the CLE requirements set out in 27 N.C.A.C. 1D § .1518;
  - j. Defendant shall, at his own expense, retain a certified public accountant ("CPA") who shall audit Defendant's trust account semi-annually and provide written reports to the State Bar confirming that Defendant's trust account is in compliance with all applicable provisions of the Rules of Professional Conduct. The report of the CPA shall be provided to the Office of Counsel no later than July 1 and January 1 throughout the period of the stayed suspension. 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 CPA to ensure the audit is completed in a timely fashion. It is Defendant's sole responsibility to ensure the CPA completes and submits the report as required herein;
  - k. Defendant shall permit the State Bar to conduct random audits of all accounts over which he has signatory authority and to which any fiduciary funds are deposited. Defendant shall promptly comply with any requests from the State Bar to provide any information regarding his trust accounts or to sign and provide any release or authorization to allow the State Bar to obtain information directly from any bank at which Defendant maintained or maintains a trust account;
  - l. Defendant shall pay to his client, RH, the sum of \$71,340.32 as restitution. This amount shall be paid within the three-year period of the stayed suspension. Proof of payment shall be provided in writing to the Office of Counsel; and
  - m. Defendant shall pay the administrative fees and costs of this disciplinary proceeding within 30 days of service of the statement of fees and costs upon him by the Secretary of the State Bar.
3. If 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 & Disability Rules, and the DHC may enter an order imposing such conditions as it deems proper for the reinstatement of Defendant's license at the end of the suspension.

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 show cause proceedings pending alleging lack of compliance with the conditions of the stay of the suspension and Defendant has provided an affidavit with supporting documentation to the Office of Counsel not less than 60 days prior to the expiration of this suspension demonstrating that he has complied with all of the conditions 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 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 jurisdiction and the 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 show cause proceeding.

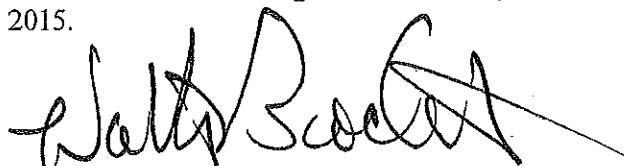
5. If the stay of the suspension is lifted and the suspension is activated for any reason, the DHC may enter an order imposing such conditions as it deems proper for the reinstatement of Defendant's license at the end of the suspension. Additionally, Defendant must establish the following by clear, cogent 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 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.A.C. 1B § .0124 of the State Bar Discipline and Disability Rules 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. That within 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 can communicate with Defendant and obtain such files;
- e. That Defendant promptly provided client files to all clients who made a request for return of their files;
- f. Defendant has kept the State Bar Membership Department advised of his current business and home 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;

- g. Defendant has responded to all communications from the State Bar, including communications from the Attorney Client Assistance Program, within thirty days of receipt or by the deadline stated in the communication, whichever is sooner;
- h. 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;
- i. 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;
- j. At the time of his petition for reinstatement, Defendant has completed the additional 3 hours per year of trust account CLE and law office management CLE required in paragraph 2 (h) and (i) above;
- k. At the time of his petition for reinstatement, Defendant has paid his client, R.H., the sum of \$71,340.32 as restitution; and
- l. Defendant has not violated the Rules of Professional Conduct or the laws of the United States, or the laws of any state or local government during his suspension.

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 until all conditions of the stay of the suspension are satisfied.

10<sup>th</sup> Signed by the Chair with the consent of the other Hearing Panel members, this the March day of March, 2015.

  
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Walter E. Brock, Jr., Chair  
Disciplinary Hearing Panel