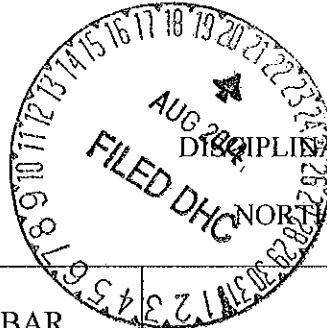


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
14 DHC 19

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

LYNNE HICKS, Attorney,

Defendant

CONSENT ORDER OF DISCIPLINE

This matter was considered by a hearing panel of the Disciplinary Hearing Commission composed of Ronald R. Davis, Chair, Shirley L. Fulton, and Patti Head. Leonor Bailey Hodge represented Plaintiff, the North Carolina State Bar. Defendant, Lynne Hicks, 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 her 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, Lynne Hicks (hereafter "Defendant" or "Hicks"), was admitted to the State Bar on 21 August 1983 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, Hicks 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. Hicks maintained two attorney trust accounts, BB&T bank trust account ending in no. 7803 (hereinafter "BB&T trust account") and SunTrust bank trust account ending in no. 9413 (hereinafter "SunTrust trust account").

5. In January 2012, Hicks was the subject of a random audit of her trust accounts.

6. The random audit showed deficiencies in Hicks's management of her trust accounts.

7. Hicks had previously been the subject of a random audit in 2000 which showed similar deficiencies.

8. Hicks was disciplined for improper trust account management in 2006.

9. As a result of the findings of the January 2012 random audit and Hicks's prior disciplinary history, an investigative audit of Hicks's trust account was conducted. The investigative audit showed deficiencies in Hicks's management of her clients' entrusted funds as detailed below.

10. Hicks failed to provide accountings at least annually to clients for whom she held funds in trust for more than twelve months.

11. Hicks failed to always maintain accurate client ledgers.

12. Hicks failed to always identify clients on deposit slips.

13. Hicks failed on several occasions to indicate on the face of checks made payable to her the client balance from which the items were drawn.

14. Hicks disbursed from her trust accounts more funds for each of the following clients than she held in the trust accounts on each client's behalf:

(a) J. Anderson – on or about 28 October 2009 \$600.00 from the BB&T trust account;

(b) J. Pereira – on or about 2 June 2010 \$50.00 from the BB&T trust account;

(c) N. Cherry – on or about 18 January 2012 \$99.92 from the SunTrust trust account.

15. Hicks failed to promptly reimburse the trust account for these excess disbursements.

16. On 8 August 2011, Hicks disbursed \$163.00 to Clerk of Court for V. Taylor before making any deposit into the BB&T trust account on Taylor's behalf.

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, Lynne Hicks, 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 each client with a written accounting of his or her trust account balance at least annually, Hicks failed to provide written accountings of the receipt and disbursement of all trust funds to clients in violation of Rule 1.15-3(e);
- (b) By failing to always list client names on deposit slips and failing to always maintain accurate client ledgers, Hicks failed to maintain the minimum records required for general trust accounts in violation of Rule 1.15-3(b);
- (c) By failing to always identify on trust account checks payable to Hicks the client balance from which the funds were drawn, Hicks failed to indicate on an item payable to the lawyer the client balance from which the item was drawn in violation of Rule 1.15-2(h);
- (d) By disbursing funds from the BB&T trust account and SunTrust trust account for clients who did not have funds in the trust accounts, Hicks used entrusted property for the personal benefit of persons other than the legal or beneficial owners of that property in violation of Rule 1.15-2(j).

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. Hicks was previously disciplined for her failure to supervise her non-lawyer assistant's management of her trust accounts and for her failure to personally reconcile her trust account and to personally maintain client ledgers.

2. For her prior misconduct as described in the foregoing paragraph, the Disciplinary Hearing Commission imposed a three-year suspension of Hicks's law license that was stayed for three-years upon her compliance with certain conditions. The conditions of the stay of Hicks's prior suspension are set out in the written Consent Order of Discipline entered in case number 06 DHC 3 and dated 6 June 2006.

3. Hicks complied with the terms of the stay of her 2006 suspension and successfully served the full term of this suspension without it being activated.

4. Since the suspension, Hicks has addressed the primary two issues that gave rise to her prior discipline: Hicks now works with a CPA to ensure that a three-way reconciliation of her general trust accounts is conducted at least quarterly, and Hicks has limited employee access to her trust accounts.

5. Also, at the recommendation of her CPA, Hicks changed the software that she uses to maintain the general and individual client ledgers for her trust accounts. Hicks obtained training on the use of this software at a local community college.

6. Hicks replenished the trust account for the over-disbursements of client funds referenced in the Findings of Fact above.

7. Hicks cooperated with the State Bar's investigation into her handling of entrusted client funds by timely providing all requested documentation to include client ledgers, receipt books and canceled checks. The documentation that Hicks provided was sufficient to allow State Bar investigators to determine how each client's entrusted funds were processed through Hicks's trust account.

8. Hicks is remorseful for her misconduct.

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.A.C. 1B § .0114(w)(1), the Rules and Regulations of the State Bar, and concludes that the following factors that warrant suspension or disbarment are present:

(a) Negative impact of defendant's actions on client's or public's perception of the profession; and

(b) Effect of defendant's conduct on third parties.

2. The Hearing Panel has considered all of the factors contained in 27 N.C.A.C. 1B § .0114(w)(2), the Rules and Regulations of the State Bar, 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.A.C. 1B § .0114(w)(3), the Rules and Regulations of the State Bar, and concludes that the following are applicable in this matter:

- (a) Prior disciplinary offense in North Carolina;
- (b) Absence of dishonest or selfish motive;
- (c) Timely good faith efforts to make restitution;
- (d) Pattern of misconduct;
- (e) Multiple offenses;
- (f) Defendant's cooperative attitude toward the proceedings;
- (g) Defendant's remorse;
- (h) Good character and reputation; and
- (i) Defendant has been licensed to practice law for approximately thirty years.

4. Defendant's continued 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.

5. Defendant caused potential significant harm to her 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) lesser discipline would fail to acknowledge the seriousness of the violations committed by Defendant and would send the wrong message to attorneys regarding the conduct expected of members of the Bar of this state.

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, Lynne Hicks, is hereby suspended from the practice of law for 2 years, effective 30 days from service of this order upon Hicks.

2. Defendant shall pay, within 30 days of service of the statement of fees and costs upon her by the Secretary of the State Bar, the administrative fees and costs of this proceeding.

3. The 2 year suspension is stayed for a period of 3 years as long as Defendant complies with the following conditions:

- (a) Hicks pays 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 her.
- (b) Hicks shall provide to the State Bar's Office of Counsel monthly the written report of the three-way reconciliation of all attorney trust accounts to which she has access using the reconciliation method described in the State Bar Lawyer's Trust Account Handbook, rev. 05/2011, pages 34 - 43. In addition to the three-way reconciliation report, Hicks shall provide (i) client ledgers for each client whose funds are held in the trust account(s) during the month covered by the submitted report, (ii) ledger for any personal funds Hicks maintained in the trust account(s) for bank or credit card fees, (iii) the general ledger(s) for each trust account to which Hicks has access, and (iv) the following bank documentation for the month 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 Hicks has access.
- (c) Hicks shall provide any other records requested by the Office of Counsel within ten days of the request.
- (d) Within six months of the effective date of this order, Hicks 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.A.C. 1D § .1518.
- (e) Hicks shall keep the State Bar Membership Department advised of her current business and home addresses. Hicks shall notify the State Bar of any change of address within ten days of such change. Her current business address must be a street address, not a post office box or drawer.
- (f) Hicks shall respond to all communications from the State Bar, including communications from the Attorney Client Assistance Program, within thirty days of receipt of such communication or by the deadline stated in the communication, whichever is sooner.
- (g) Hicks shall participate in good faith in the State Bar's fee dispute resolution process for any petition of which she receives notice after the effective date of this order.
- (h) Hicks shall timely comply with all State Bar Membership and CLE requirements.
- (i) Hicks 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 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. 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 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 Hicks 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.A.C. 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 Hicks's license at the end of the suspension. Additionally, Hicks 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) Hicks submitted her law license and membership card to the Secretary of the State Bar within thirty days of the date the order lifting the stay and/or activating the suspension of her law license;
- (b) Hicks 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 her law license;
- (c) Hicks timely paid all administrative fees and costs assessed against her in this proceeding as reflected on the statement of costs served upon her by the Secretary of the State Bar;
- (d) That within 15 days of the effective date of the order activating the suspension Hicks provided the State Bar with an address and telephone number at which clients seeking return of files can communicate with Hicks and obtain such files;
- (e) That Hicks promptly provided client files to all clients who made a request for return of their files;
- (f) Hicks has kept the State Bar Membership Department advised of her 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) Hicks 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 her petition for reinstatement, Hicks 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 her, including all judicial district dues and assessments;
- (i) At the time of her petition for reinstatement, there is no deficit in Hicks'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 her petition for reinstatement, Hicks has completed 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
- (k) Hicks 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 her suspension.

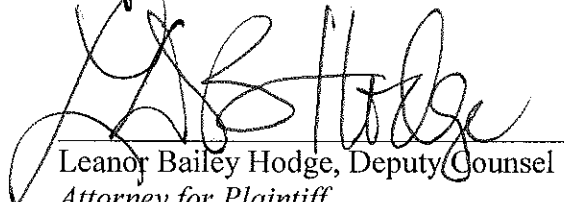
7. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C.A.C. 1B § .0114(x) until all conditions of the stay of suspension are satisfied.

Signed by the Chair with the consent of the other Hearing Panel members this the 21st day of AUGUST, 2014.


Ronald R. Davis, Chair
Disciplinary Hearing Panel

WE CONSENT:


Lynne Hicks
Defendant


Leonor Bailey Hodge, Deputy Counsel
Attorney for Plaintiff