

STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
11 DHC 18

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

LAURA G. JOHNSON, Attorney,

Defendant

CONSENT ORDER OF DISCIPLINE

This matter came before a hearing panel of the Disciplinary Hearing Commission composed of Fred M. Morelock, Chair, Joshua W. Willey and Patti Head. Leonor Bailey Hodge represented Plaintiff. Defendant was represented by Garris Neil Yarborough. Defendant waives a formal hearing. 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. By consenting to entry of 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.

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, Laura G. Johnson (hereafter "Defendant" or "Johnson"), was admitted to the North Carolina State Bar on 4 September 1998 and is an Attorney at Law 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, Johnson was actively engaged in the practice of law and maintained a law office in Fayetteville, Cumberland County, North Carolina.

4. On or about 26 January 2007, Defendant opened BB&T trust account ending in no. 8660 ("Trust Account") by depositing \$100 of her personal funds into this account.

5. On or about 12 December 2007, BB&T improperly charged Defendant's Trust Account \$145.39 for checks. This charge caused Defendant's Trust Account to be overdrawn.

6. Defendant did not hold any client funds in the Trust Account when this charge was incurred.

7. On or about 4 January 2008, Defendant deposited \$250 into the Trust Account to cover the shortage in the Trust Account caused when BB&T improperly charged the account for checks.

8. On or about 16 January 2008, BB&T credited Defendant's Trust Account \$145.39 as reimbursement for the check charge it improperly deducted on 12 December 2007. As of 26 January 2008, Defendant had \$350 of her personal funds in the Trust Account.

9. On 26 February 2008, Defendant used a portion of these personal funds to pay \$101.10 to her credit card. After making this payment, Defendant had \$248.90 in personal funds remaining in the Trust Account.

10. During the ordinary course of her law practice, Defendant deposited into her Trust Account entrusted funds held for the benefit of several clients.

11. On or about 26 June 2008, Defendant paid to the Clerk of Court from the Trust Account court costs for clients Sanderson and Morning in the amounts of \$135 and \$145.

12. Although Defendant had personal funds in the Trust Account when she paid these costs, she did not have enough to pay the full amount of Sanderson and Morning's court costs. Neither Sanderson nor Morning had funds in the Trust Account. Defendant paid a portion of Sanderson and Morning's court costs using entrusted client funds that did not belong to Sanderson, Morning or Defendant.

13. On or about 10 July 2008, Defendant paid to the Clerk of Court from the Trust Account court costs in the amount of \$120 for Scott.

14. Neither Defendant nor Scott had \$120 in the Trust Account. Defendant paid Scott's court costs using entrusted client funds that did not belong to Defendant or Scott.

15. On or about 30 July 2008, Defendant transferred \$450 from her operating account to the Trust Account.

16. On or about 5 August 2008, Defendant paid to the Clerk of Court from the Trust Account court costs of clients Collins and Sibaja in the amounts of \$206 and \$120. Neither Collins nor Sibaja had funds in the Trust Account. Defendant used her personal funds to pay Collins' and Sibaja's court costs thereby reducing the amount of personal funds she held in the Trust Account to \$124.

17. On or about 14 January 2008, a lender wired loan proceeds totaling \$29,146.49 into Defendant's Trust Account for S. McGrath's refinance transaction ("McGrath Closing").

18. Defendant delegated disbursement of the McGrath Closing funds to Tri-Accounting, an outside accounting company.

19. On or about 17 January 2008, Tri-Accounting transferred McGrath's closing funds to Defendant's operating account. Tri-Accounting disbursed these funds from Defendant's operating account on McGrath's behalf.

20. Defendant failed to properly supervise Tri-Accounting's disbursement of the McGrath closing funds.

21. Defendant failed to reconcile her Trust Account. Thus, Defendant failed to discover that the McGrath closing was conducted through her operating account and that \$437.50 of her operating account funds were used to pay disbursements made on McGrath's behalf.

22. In March 2008, Defendant conducted the closing of a real estate transaction for D. Valles ("Valles Closing").

23. Defendant inaccurately represented on the Valles Closing client ledger that the buyer brought \$5,795.42 to closing. The buyer actually brought \$5,805.56 to closing; \$10.14 more than what Defendant showed on the Valles Closing client ledger.

24. Defendant also inaccurately represented on the Valles Closing client ledger that she disbursed \$95,524.48 to payoff the seller's first mortgage. Defendant actually disbursed \$95,354.66 to payoff the seller's first mortgage; \$169.82 less than what Defendant showed on the Valles Closing client ledger.

25. Therefore, after the Valles Closing Defendant was required to hold \$179.96 in her Trust Account for Valles.

26. Defendant failed to reconcile her Trust Account and client ledgers and thus failed to discover that she had funds left over from the Valles Closing.

27. Defendant failed to disburse these excess funds to Valles.

28. After Defendant made the last disbursement for the Valles Closing on 23 July 2008 her Trust Account balance fell below \$179.96 because of disbursements Defendant made on behalf of clients who did not have funds in the Trust Account.

Defendant's Trust Account balance fell below the amount she was required to hold for Valles six times between 23 July 2008 and May 2009.

29. In September 2008, Defendant conducted a refinance closing for M. Hunt ("Hunt Closing").

30. Defendant failed to pay the full amount of the recording fees for the Hunt Closing – the recording fees were \$50 and Defendant paid \$20.

31. Defendant failed to reconcile her Trust Account and client ledgers. Thus, Defendant failed to discover that she had funds left over from the Hunt Closing because she failed to pay the correct amount for recording fees.

32. Defendant was required to hold \$30 in her Trust Account for Hunt after the Hunt Closing.

33. After Defendant made the last disbursement for the Hunt Closing on 24 October 2008, Defendant was required to hold a combined amount of \$209.96 for the benefit of Hunt and Valles.

34. However, after the last disbursement for the Hunt Closing, Defendant's Trust Account balance fell below \$209.96 because of disbursements Defendant made on behalf of clients who did not have funds in the Trust Account. Defendant's Trust Account balance fell below this amount three times between 24 October 2008 and May 2009.

35. On or about 24 September 2008, Defendant represented M. Beatty in a real estate closing ("Beatty Closing").

36. Defendant believed that the seller in the Beatty Closing agreed to pay all of the real estate taxes due at closing (both from the buyer and seller).

37. On or about 7 October 2008, Defendant disbursed \$81,007.40 to the seller. However, Defendant failed to deduct \$1,923.00 from the seller's proceeds for payment of the seller's pro rata share of real estate taxes and also failed to deduct any funds for the real estate taxes due from the buyer.

38. Defendant overdisbursed to the seller at the Beatty Closing.

39. When the seller was informed that it had been overpaid, it refused to return the overpayment and informed Defendant that it was not willing to pay the buyer's share of the real estate taxes.

40. In addition to overdisbursing to the seller and failing to collect funds for payment of real estate taxes, Defendant also failed to collect sufficient funds from the buyer or seller for other costs attendant to the closing.

41. In October 2008, Defendant deposited \$1,465 of her personal funds into the Trust Account in an effort to correct the shortage created by her accounting errors in the Beatty Closing.

42. Defendant's deposits were not enough to cure the shortfall created by her accounting errors and overdisbursement to the seller.

43. After making all other disbursements for the Beatty Closing, Defendant did not have enough money in her Trust Account to pay the title insurance premium and real estate taxes.

44. Defendant failed to pay the title insurance premium and real estate taxes for the Beatty Closing.

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, Laura Johnson, 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. § 84-24(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

- a. By maintaining a balance of personal funds in the trust account and then using these funds to pay her personal bills and client expenses, Defendant failed to maintain entrusted property separate from the property of the lawyer in violation of Rule 1.15-2(a);
- b. By using entrusted funds held for the benefit of others to pay court costs for Sanderson, Morning, and Scott, Defendant used entrusted property for the personal benefit of one other than the legal or beneficial owner without authorization to do so in violation of Rule 1.15-2(j);
- c. By failing to supervise Tri-Accounting's handling of the McGrath Closing funds, resulting in over-disbursement of these funds through Defendant's operating account, Defendant failed to make reasonable efforts to ensure that a non-lawyer's conduct was compatible with the professional obligations of a lawyer in violation of Rule 5.3(a) and (b);
- d. By failing to reconcile the McGrath Closing client ledger with the balance of her Trust Account, Defendant failed to reconcile an individual client balance with the current bank statement balance for the trust account as a whole in violation of Rule 1.15-3(d);

- e. By failing to reconcile the Valles Closing ledger with the balance of her Trust Account, Defendant failed to reconcile an individual client balance with the current bank statement balance for the trust account as a whole in violation of Rule 1.15-3(d);
- f. By failing to refund the excess funds she collected during the Valles Closing, Defendant failed to promptly pay to the client entrusted property belonging to the client and to which the client was currently entitled in violation of Rule 1.15-2(m);
- g. By using funds that she was required to hold in trust for Valles to make disbursements for the benefit of other clients, Defendant used entrusted property for the benefit of one other than the legal or beneficial owner of that property in violation of Rule 1.15-2(j);
- h. By failing to pay the proper amount of the recording fees for the Hunt Closing, Defendant failed to promptly pay to a third person as directed by the client entrusted property belonging to the client and to which the client was currently entitled in violation of Rule 1.15-2(m);
- i. By failing to reconcile the Hunt Closing ledger with the balance of her Trust Account, Defendant failed to reconcile an individual client balance with the current bank statement balance for the trust account as a whole in violation of Rule 1.15-3(d);
- j. By using funds that she was required to hold in trust for Hunt to make disbursements for the benefit of other clients, Defendant used entrusted property for the benefit of one other than the legal or beneficial owner of that property in violation of Rule 1.15-2(j); and
- k. By failing to pay the property taxes and title insurance premium for the Beatty Closing, Defendant failed to promptly pay to third persons as directed by the client entrusted property belonging to the client to which the client was currently entitled in violation of Rule 1.15-2(m).

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Panel enters the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Defendant has substantial experience in the practice of law as a government attorney. Defendant entered the private practice of law in 2007 and first opened a trust account in January 2007.

2. Defendant's failure to reconcile her trust account caused harm to her clients Valles and Hunt because funds that Defendant was required to maintain for Valles and Hunt were used for the benefit of Defendant's other clients.

3. Defendant's failure to reconcile her trust account caused harm to her clients Valles and Hunt in that they were deprived of the benefit of their funds held in Defendant's trust account for a lengthy period of time.

4. Defendant's conduct has the potential to cause significant harm to the standing of the profession in the eyes of the public because it shows her disregard for her duties as an attorney. Defendant's conduct undermines the public's confidence in lawyers' ability to safely maintain entrusted client funds.

5. Defendant's failure to properly handle the proceeds of the Beatty closing impeded the goal of Defendant's representation of Beatty: to obtain clear title to the property that was the subject of the closing.

6. Defendant has no prior discipline.

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

8. Defendant cooperated with the State Bar during its investigation and prosecution of this case.

Based on the foregoing Findings of Fact, Conclusions of Law and 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, including admonition, reprimand, censure and suspension. In addition, the Hearing Panel has considered all of the factors contained in 27 N.C.A.C. 1B § .0114(w)(1) of the Rules and Regulations of the State Bar and finds that the following factors warrant suspension of Defendant's license:

- a. negative impact of the defendant's actions on clients' and public's perception of the profession; and
- b. impairment of the client's ability to achieve the goals of the representation.

2. The Hearing Panel has also 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 also 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 dishonest or selfish motive;
- b. multiple offenses;
- c. experience in the practice of law;
- d. the absence of prior disciplinary offenses;
- e. full and free disclosure to the Hearing Panel and cooperative attitude toward the proceedings; and
- f. vulnerability of victims.

4. Defendant's misconduct resulted in potential significant harm to her clients by placing entrusted client funds at risk of misapplication and misappropriation.

6. Defendant's conduct caused significant harm to the legal profession in that her actions bring the legal profession into disrepute.

7. The Hearing Panel has considered lesser alternatives and finds that a censure, reprimand or admonition would be insufficient discipline because of the harm and potential significant harm to Defendant's clients and the significant harm to the legal profession caused by Defendant's conduct.

8. The Hearing Panel finds that discipline short of suspension would not adequately protect the public for the following reasons:

- a. Defendant's conduct caused potential significant harm to her clients by placing entrusted client funds at risk of misapplication and misappropriation; and
- b. Entry of an order imposing less severe discipline would fail to acknowledge the seriousness of the misconduct and would send the wrong message to attorneys and the public about the conduct expected of members of the Bar of this State.

9. The Hearing Panel finds and concludes that the public will be adequately protected by suspension of Defendant's law license, stayed with conditions imposed upon

Defendant designed to ensure protection of the public and Defendant's continued compliance with the Rules of Professional Conduct.

Based on the foregoing Findings of Fact, Conclusions of Law, Findings of Fact Regarding Discipline and Conclusions of Law Regarding Discipline, the Hearing Panel hereby enters the following:

ORDER OF DISCIPLINE

1. The law license of Defendant, Laura G. Johnson, is hereby suspended for two (2) years effective from the date this Order of Discipline is served upon her. The period of suspension is stayed for three (3) years as long as Defendant complies and continues to comply with the following conditions:

- a. Within the first year of the stayed period of suspension, Defendant shall complete twelve (12) hours of continuing legal education in the area of trust account management approved by the Office of Counsel of the State Bar to include in part attendance at the Trust Accounting Rules Continuing Legal Education Program taught by Peter Bolac, Trust Account Compliance Counsel and/or Bruno DeMolli, State Bar Auditor. These twelve hours are in addition to the continuing legal education requirements set out in 27 N.C.A.C. 1D § .1518;
- b. Within ninety (90) 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 her BB&T trust account. Defendant will cooperate with the CPA to ensure the audit is completed in a timely fashion. 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 confirming that Defendant's trust account complies with the Rules of Professional Conduct. It is Defendant's sole responsibility to ensure that the CPA completes and submits the reports required herein;
- c. Within ninety (90) days of completion of the CPA's audit of Defendant's trust account, Defendant shall disburse all identified client funds in Defendant's BB&T trust account to their rightful owner(s);
- d. Defendant shall comply with Rule 1.15-2(q) regarding all unidentified funds in Defendant's BB&T trust account and comply with Chapter 116B of the General Statutes within sixty (60) days of being statutorily permitted to escheat funds to the State;

- e. Defendant shall provide the Office of Counsel with copies of the following trust account records quarterly (January, April, July and October):
 - (i) Monthly reconciliations of the balance of the trust account as shown on Defendant's records and the current bank balance for the trust account;
 - (ii) Reconciliations of the individual client balances shown on the ledger of a general trust account (totaled) and the current bank statement balance for the trust account as a whole.
- f. Defendant shall provide any other records requested by the Office of Counsel within ten (10) days of the request.
- g. During the period of the stay, Defendant will permit random audits of her trust account(s) by the Office of Counsel upon ten (10) days advance written notice. Such audit will be conducted at Defendant's expense.
- h. Beginning within ninety (90) days of entry of this order, Defendant shall have the CPA audit Defendant's trust account on a quarterly basis to ensure Defendant's compliance with the Rules of Professional Conduct. The CPA must report quarterly to the Office of Counsel concerning the compliance of Defendant's account(s) with the Rules of Professional Conduct, including but not limited to any accounting irregularities and any deviance from the requirements of the Rules of Professional Conduct, with a copy of the report sent simultaneously to Defendant. The CPA's reports are due no later than 30 days after the end of each quarter (first quarter's report due April 30, second quarter's report due July 30, third quarter's report due October 30, and fourth quarter's report due January 30). Defendant shall be solely responsible for ensuring that the CPA completes and submits the reports as required herein and Defendant shall be solely responsible for all costs associated with preparation of the CPA's reports.
- i. If any of the CPA's reports note any irregularities or deficiencies, Defendant shall take all remedial action necessary to bring the trust account into compliance with the Rules of Professional Conduct and shall provide proof of the remedial action and compliance to the Office of Counsel of the State Bar and to the CPA within thirty (30) days of the date of the CPA's report.
- j. Defendant shall keep the North Carolina State Bar Membership Department advised of her current business and home addresses;

Defendant shall notify the Bar of any change in address within ten (10) days of such change. Her current business address must be a street address, not a P.O. Box or drawer.

- k. Defendant shall respond to all communications from the North Carolina 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, and 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. This provision applies to all communications from the State Bar except requests from the Office of Counsel for records which is governed by paragraph f above.
- l. Defendant shall timely comply with all State Bar membership and Continuing Legal Education requirements.
- m. Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or of any state or local government during his suspension.
- n. Defendant shall pay all administrative fees and costs assessed against her in this disciplinary proceeding within thirty (30) days of service of this order upon her.

2. If Defendant fails to comply with any of the conditions of the stayed suspension provided in paragraph 1(a) – (n) above, the stay of the suspension may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

3. If the stay granted herein is lifted or the suspension of Defendant's license is activated for any reason, before seeking reinstatement of her license to practice law, Defendant must show by clear, cogent and convincing evidence that she has complied with each of the following conditions:

- a. Defendant submitted her license and membership card to the Secretary of the North Carolina State Bar within thirty (30) days after the date of the order lifting the stay and/or activating the suspension of her law license;
- b. Defendant complied with all provisions of 27 N.C.A.C. 1B § .0124 of the State Bar Discipline and Disability Rules following the order lifting the stay and/or activating the suspension of her law license;

- c. That Defendant timely paid all administrative fees and costs assessed against her in this proceeding;
- d. That within thirty (30) days of entry of the order lifting the stay and/or activating the suspension of Defendant's law license, Defendant disbursed all identified client funds in Defendant's BB&T trust account to their rightful owner(s) account as shown on bank records and complied with Rule 1.15-2(q) regarding all unidentified funds in Defendant's BB&T trust account;
- e. That within sixty (60) days of being statutorily permitted to escheat funds to the State, Defendant complied with Chapter 116B of the General Statutes;
- f. Defendant has kept the North Carolina State Bar Membership Department advised of her current business and home street addresses (not P.O. box or drawer addresses) and notified the Bar of any change in address within ten (10) days of such change;
- g. Defendant has responded to all communications from the North Carolina 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, and has participated 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. That at the time of her petition for stay, 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 her, and including all judicial district dues, fees and assessments;
- i. That at the time of her petition for stay, there is no deficit in Defendant's completion of mandatory Continuing Legal Education (CLE) hours, in reporting of such hours or in payment of any fees associated with attendance at CLE programs;
- j. Defendant has not violated the Rules of Professional Conduct or the laws of the United States or of any state or local government during her suspension; and

k. Defendant has paid the fees and costs of this proceeding as reflected on the statement of costs served upon her by the Secretary of the State Bar.

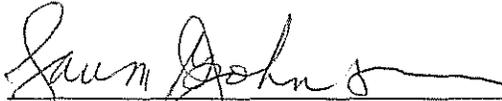
4. Defendant is taxed with the administrative fees and costs of this action as assessed by the Secretary which Defendant pay within one hundred eighty (180) days of service of the notice of costs upon the Defendant.

Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Panel, this is the 12 day of December, 2011.

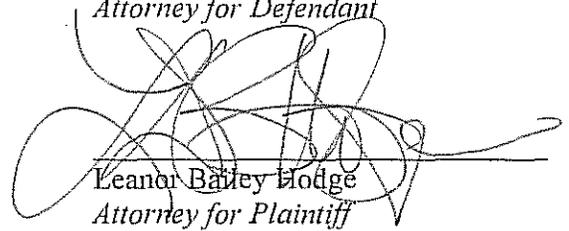


Fred M. Morelock, Chair
Hearing Panel

CONSENTED TO BY:



Laura G. Johnson
Defendant


Garris Neil Yarborough
Attorney for Defendant
Leann Bailey Hodge
Attorney for Plaintiff