

STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
12 DHC 39

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

WILBUR L. LINTON, JR., Attorney,

Defendant

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
CONSENT ORDER OF DISCIPLINE

THIS MATTER was considered by a hearing panel of the Disciplinary Hearing Commission composed of Walter E. Brock, Jr., Chair, Harriett T. Smalls, and Scott A. Sutton pursuant to 27 N.C. Admin. Code 1B § .0114 of the Rules and Regulations of the North Carolina State Bar. Plaintiff, the North Carolina State Bar, was represented by Brian P.D. Oten. Defendant, Wilbur L. Linton, Jr., represented himself. Defendant waives a formal hearing in this matter and both parties stipulate and consent to the entry of this Order and to the discipline imposed. Defendant waives any right to appeal this consent Order or to challenge in any way the sufficiency of the findings.

Based upon the pleadings in this matter, the parties' stipulations of facts, and with the consent of the parties, the hearing panel enters by clear, cogent, and convincing evidence the following

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("Plaintiff" or "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, Wilbur L. Linton, Jr. ("Defendant" or "Linton"), was admitted to the North Carolina State Bar on 29 August 1998 and is, and was at all times referred to herein, 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 times relevant herein, Linton actively engaged in the practice of law in the State of North Carolina and maintained a law office in High Point, Guilford County, North Carolina.

4. From at least January 2009 to the present, Linton maintained an attorney trust account at Bank of America bearing account number ending in 2261 (hereinafter "trust account") into which Linton deposited entrusted client funds.

5. Linton did not perform quarterly or monthly reconciliations of his trust account.

6. Linton did not consistently maintain a general ledger or specific client ledgers which accurately tracked the deposit and withdrawal of clients' funds in his trust account.

7. On at least two occasions, Linton withdrew funds from his trust account for his fees using items that did not capture the client balance against which the disbursement was made.

8. On or about 2 December 2009, Linton's employee mistakenly wrote a check in the amount of \$530.89 from Linton's trust account to herself for wages due to her at that time.

9. Linton failed to notice his employee drafted her payroll check using a trust account check instead of an operating account check.

10. Linton signed the check and disbursed \$530.89 from his trust account to his employee.

11. Linton used client funds placed in his trust account to cover the \$530.89 disbursement to his employee.

12. At the time Linton's employee mistakenly wrote the check as described in paragraph 8 above, Linton's operating account had sufficient funds to cover the check.

13. In or around April 2006, Linton was retained by Mohammad Qureshi ("Qureshi") for representation in personal injury and property damage cases.

14. In or around October 2009, Linton settled Qureshi's property damage claim for a sum of \$5,500.00. Linton deposited the \$5,500.00 of Qureshi's settlement proceeds in his trust account.

15. In or around January 2010, Linton settled Qureshi's personal injury claim for a sum of \$18,500.00. Linton deposited the \$18,500.00 of Qureshi's settlement proceeds in his trust account.

16. Although Linton collected and deposited a total of \$24,000.00 in his trust account attributed to Qureshi's case, Linton disbursed a total of \$27,107.50 from his trust account attributed to Qureshi as follows:

- a. \$4,500.00 in December 2009 and \$14,407.50 in March 2010 to Qureshi;
- b. \$1,000.00 in December 2009 and \$5,500.00 in March 2010 to Linton in attorney's fees; and
- c. \$1,700.00 in May 2010 to Dr. Tyler Earnst for chiropractic services.

17. Linton failed to accurately track the amounts disbursed to his client, resulting in Linton providing Qureshi with \$3,107.50 beyond the sum Qureshi was entitled to receive from the settlement and more than Linton retained on deposit in the trust account for the benefit of Qureshi.

18. Linton used other clients' funds on deposit in his trust account to cover the \$3,107.50 over-disbursement to Qureshi.

19. As a result of the improper disbursement to his employee noted in paragraphs 8 – 11 above and the over-disbursement to Qureshi noted in paragraphs 12 – 17 above, Linton overdrew his trust account in May 2010.

20. In March 2010, Linton failed to promptly withdraw earned fees from his trust account. These fees remained in Linton's trust account for over twelve months and were insufficient to cover Linton's over-disbursement to Qureshi noted above.

Based upon the foregoing Findings of Fact, the panel enters the following

CONCLUSIONS OF LAW

1. All parties are properly before the hearing panel and the panel has jurisdiction over Defendant, Wilbur L. Linton, Jr., and the subject matter of this proceeding.

2. Linton'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 maintain a proper general ledger or proper client ledgers, by failing to perform monthly and quarterly reconciliations of his trust account, and by otherwise failing to monitor the activity in his trust account, Linton failed to protect entrusted client funds in violation of Rule 1.15-2(a) and failed to adequately monitor and maintain his attorney trust account in violation of Rule 1.15-3(b)(5), Rules 1.15-3(d)(1) & (2), and Rule 1.15-3(e);
- (b) By failing to identify the client(s) associated with at least two disbursements of earned fees from his trust account to himself, Linton failed to properly identify and maintain entrusted funds in his attorney trust account in violation of Rules 1.15-2(h) and 1.15-3(b)(2);
- (c) By failing to withdraw legal fees from the trust account when earned, Linton commingled earned fees with entrusted client funds and failed to properly segregate his fees from entrusted client funds in violation of Rule 1.15-2(f);
- (d) By disbursing funds from his trust account to third parties who were not the legal or beneficial owners of the funds, Linton failed to protect entrusted client funds and misappropriated entrusted client funds in violation of Rules 1.15-2(a) & (j); and

- (e) By failing to properly supervise his non-lawyer assistant's drafting of a payroll check on his trust account, Linton failed to ensure a non-lawyer's conduct was compatible with his professional obligations in violation of Rule 5.3(a).

Based upon the consent of the parties, the hearing panel also finds by clear, cogent, and convincing evidence the following

ADDITIONAL FINDINGS REGARDING DISCIPLINE

1. Defendant has substantial experience in the practice of law.
2. Conducting quarterly reconciliations of the trust account is the lynchpin of proper maintenance and protection of entrusted funds. Defendant's continued failure to reconcile his trust account, failure to maintain proper trust account records, and failure to supervise his staff's drafting of checks on his trust account in accordance with the Rules of Professional Conduct demonstrates a pattern of misconduct and demonstrates Defendant's intent to commit acts where the potential harm is foreseeable.
3. 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 his disregard for his duties as an attorney. Such erosion of public confidence in attorneys tends to sully the reputation of, and fosters disrespect for, the profession as a whole. Confidence in the legal profession is a building block for public trust in the entire legal system.
4. There is no evidence of any dishonest or selfish motive on the part of Defendant.
5. Defendant has no prior disciplinary offenses.

Based upon the Findings of Fact, Conclusions of Law, and Additional Findings Regarding Discipline, the hearing panel also 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. Admin. Code 1B § .0114(w)(3) of the Rules and Regulations of the North Carolina State Bar and finds the following factors are applicable in this matter:
 - a. Defendant's lack of prior disciplinary offenses;
 - b. Defendant's lack of a dishonest or selfish motive;
 - c. Defendant pattern of misconduct; and
 - d. Defendant's substantial experience in the practice of law.
2. The hearing panel has carefully considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and finds the following factors warrant suspension of Defendant's license:

- a. Defendant's intent to commit acts where the harm or potential harm was foreseeable; and
- b. Defendant's actions had a potential negative impact on his clients' and the public's perception of the legal profession.

3. The hearing panel has considered all other forms of discipline available and concludes that any sanction less than suspension would fail to acknowledge the seriousness of the offenses committed by Defendant, would not adequately protect the public, and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar.

4. The hearing panel finds and concludes that the public will be adequately protected by imposing a period of active suspension which is stayed upon Defendant's compliance with conditions designed to ensure protection of the public and to ensure Defendant's compliance with the Rules of Professional Conduct.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Findings Regarding Discipline, the hearing panel enters the following

ORDER OF DISCIPLINE

1. The license of Defendant, Wilbur L. Linton, Jr., is hereby suspended for two years. This period of active suspension is stayed for three years upon Defendant's compliance with the following conditions:

- a. Within thirty days of the effective date of this order, Defendant shall reimburse his trust account for all improperly disbursed funds. Prior to reimbursement, Defendant shall confirm the amount to be reimbursed with the State Bar's Office of Counsel. Defendant shall also provide the Office of Counsel with documentary evidence demonstrating such reimbursement took place within the timeframe allotted;

- b. Within sixty days of the effective date of this order, Defendant shall disburse all identified funds presently deposited in his trust account to the funds' rightful owner(s). Defendant shall comply with Rule 1.15-2(q) regarding all unidentified funds existing in Defendant's 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;

- c. Within six months of the effective date of this order, Defendant shall complete: six hours of continuing legal education focused on trust account practices and methods and compliance with the requirements of the Rules of Professional Conduct related to entrusted funds, and six hours of continuing legal education focused on law office management. Such courses must be approved in advance by the Office of Counsel of the State Bar, and the hours shall be in addition to Defendant's continuing legal education requirements set out in 27 N.C. Admin. Code 1D § .1518. Defendant must provide the Office of Counsel with proof of completion

within ten days of completion of the course. Any costs associated with these additional hours of continuing legal education shall be at Defendant's sole expense;

d. Each quarter Defendant shall provide the Office of Counsel of the State Bar with the three-way reconciliation described in the State Bar Lawyer's Trust Account Handbook for all trust accounts maintained by him. Defendant shall provide the three-way reconciliation report, client ledgers for all clients with funds in the trust account(s) during that quarter, ledger for any personal funds maintained in the trust account(s) for bank or credit card fees, his trust account ledger, and the bank statements, cancelled checks, and deposit slips for each quarter. These documents are due no later than 15 days after the end of the quarter – for example, the three-way reconciliation report for the first quarter of the calendar year (January, February, and March) is due on April 15;

e. Each quarter, Defendant shall have a CPA audit his trust accounts. This audit shall assess whether Defendant has in his trust account the client funds he should be maintaining for his clients at that time, as well as Defendant's compliance with Rule 1.15-2 and Rule 1.15-3. The CPA's audit shall include addressing the items on the Accountant Checklist for Probation Cases which will be provided by the State Bar to Defendant's counsel. The quarterly audit reports from the CPA are due no later than 30 days after the end of the quarter – for example, the CPA audit for the first quarter of the calendar year (January, February, and March) is due on April 30. Defendant shall ensure the CPA timely submits the quarterly audit reports as described herein;

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

g. All evaluations, reports, and services of the CPA will be completed and submitted at Defendant's sole expense;

h. Defendant shall comply with any requests from the Office of Counsel to provide any information regarding his trust accounts or to sign and provide any release or authorization to allow the Office of Counsel to obtain information directly from any bank in which Defendant maintains a trust account, by the deadline stated in the request;

i. 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 e-mail address and shall notify the Bar of any change in address, telephone number, or e-mail address within ten (10) days of such change;

j. Defendant shall accept all certified mail from the North Carolina State Bar and respond to all letters of notice and requests for information from the North

Carolina State Bar by the deadlines stated in the communication or within fifteen (15) days of receipt, whichever is later;

k. Defendant shall pay all Membership dues and Client Security Fund assessments and comply with all Continuing Legal Education requirements on a timely basis;

l. Defendant shall participate fully and timely in the fee dispute program when notified of any petitions for resolution of disputed fees;

m. Defendant must pay the costs and administrative fees of this action as described in paragraph 5 below;

n. Defendant shall not violate the laws of any state or of the United States; and

o. Defendant shall not violate any provision of the Rules of Professional Conduct.

2. If Defendant fails to comply with any one or more of the conditions stated in Paragraph 1 above, then the stay of the suspension of his law license may be lifted as provided in 27 N.C. Admin. Code 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules. If the stay granted herein is lifted or the suspension of Defendant's license is activated for any reason, before a subsequent stay of the suspension can be entered Defendant must show by clear, cogent, and convincing evidence that he has complied with the general provisions for reinstatement listed in 27 N.C. Admin. Code 1B § .0125 of the North Carolina State Bar Discipline & Disability Rules and the conditions set out in Paragraphs 1 (a) – (c) & (h) – (o) above for any subsequent stay of the suspension. The conditions set out in Paragraph 1 shall apply during any subsequent stay of Defendant's suspension.

3. If Defendant does not seek a stay of any active period of suspension, Defendant must provide in his application for reinstatement clear, cogent, and convincing evidence of the following:

a. Compliance with the general provisions for reinstatement listed in 27 N.C. Admin. Code 1B § .0125 of the North Carolina State Bar Discipline & Disability Rules; and

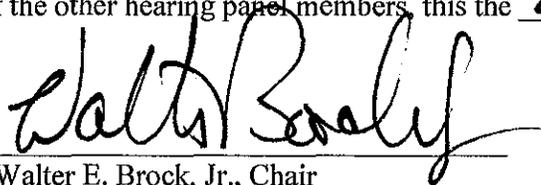
b. Compliance with the conditions set out in Paragraphs 1 (a) – (c) and (h) – (o) above.

4. Nothing in this Order shall prohibit the State Bar from investigating and, if necessary, pursuing disciplinary action against Defendant for additional misconduct discovered or reported which occurred during the same time period as the conduct addressed in this Order.

5. All costs and administrative fees of this action are taxed to Defendant. Defendant must pay the costs of this action within 60 days of service upon him of the statement of costs by the Secretary.

6. This Order shall be effective upon filing. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout any period of stayed suspension.

Signed by the Chair with the consent of the other hearing panel members, this the 8th day of March 2013.



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

CONSENTED TO BY:



Brian P.D. Oten
Deputy Counsel
North Carolina State Bar
Counsel for Plaintiff



Wilbur L. Linton, Jr.
Defendant