

STATE OF NORTH CAROLINA

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

WAKE COUNTY

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

CONSENT ORDER

WILBUR L. LINTON, JR., Attorney,

Defendant

Defendant, Wilbur L. Linton, Jr. ("Linton" or "Defendant"), was ordered to appear and show cause why the stay of the suspension imposed by the Order of Discipline entered in this case on 8 March 2013 should not be lifted and the suspension activated. 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(x). Plaintiff, the North Carolina State Bar ("State Bar" or "Plaintiff") was represented by Brian P.D. Oten. Defendant represented himself. Defendant waives a formal hearing in this matter and both parties stipulate and consent to the findings of fact and conclusions of law recited in this order and to the disposition imposed. By consenting to the entry of this order, Defendant waives any right to appeal this consent order or to challenge in any way the sufficiency of the findings.

Based upon the pleadings and the consent of the parties, the Hearing Panel hereby finds by the greater weight of the evidence the following

FINDINGS OF FACT

1. On 8 March 2013, a Consent Order of Discipline (hereinafter "the Order") was entered in this matter, with an effective date of 8 March 2013.
2. The Order imposed a two-year suspension, stayed for three years, on Defendant's license to practice law in this State. The stay of the suspension was conditioned upon Defendant's compliance with the conditions stated in the Order.
3. The Order, at paragraph 1(a) on page 5, required Defendant to reimburse his trust account for all improperly disbursed funds within thirty days of the Order's effective date. The Order also required Defendant to provide the Office of Counsel with documentary evidence demonstrating such reimbursement took place within the

timeframe allotted. Defendant failed to comply with this condition by failing to reimburse his trust account as required by the Order.

4. The Order, at paragraph 1(b) on page 5, required Defendant to disburse all identified funds deposited in his trust account to the funds' rightful owner(s) within sixty days of the effective date of the Order. Defendant failed to comply with this condition by failing to disburse the identified funds from his trust account to the funds' rightful owner(s) as required by the Order.

5. The Order, at paragraph 1(d) on page 6, required Defendant on a quarterly basis to provide the Office of Counsel with certain trust account documentation evidencing his compliance with the Rules of Professional Conduct. Defendant failed to comply with this condition by failing to provide the Office of Counsel with any of the required documentation described in paragraph 1(d) of the Order.

6. The Order, at paragraph 1(e) on page 6, required Defendant to retain a CPA to audit his trust account(s) and provide the Office of Counsel with quarterly reports attesting to Defendant's compliance or lack of compliance with Rules 1.15-2 & 1.15-3 of the Rules of Professional Conduct. Defendant failed to comply with this condition by failing to have a CPA audit his trust account and by failing to provide the Office of Counsel with any quarterly reports from any CPA concerning Defendant's compliance with the Rules of Professional Conduct as required by the Order.

7. After entry of the Order of Discipline in this matter, Linton was diagnosed with a mental health condition. This condition, while not disabling, has the potential to affect Linton's ability to practice law.

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, Wilbur L. Linton, Jr., and over the subject matter of this proceeding.

2. Linton failed to comply with the following conditions of the stay of his suspension contained in the Order of Discipline:

- a. That, within thirty days of the Order's effective date, Linton reimburse his trust account for all improperly disbursed funds and provide the Office of Counsel with documentary evidence demonstrating such reimbursement took place within the specified timeframe as required by paragraph 1(a) of the Order of Discipline;

- b. That, within sixty days of the Order's effective date, Linton disburse all identified funds deposited in his trust account to the funds' rightful owner(s) as required by paragraph 1(b) of the Order of Discipline;
- c. That Linton provide the Office of Counsel with certain trust account documentation evidencing his compliance with the Rules of Professional Conduct as required by paragraph 1(d) of the Order of Discipline; and
- d. That Linton retain a CPA to audit his trust account(s) and provide the Office of Counsel with quarterly reports attesting to Linton's compliance or lack of compliance with Rules 1.15-2 & 1.15-3 of the Rules of Professional Conduct as required by paragraph 1(e) of the Order of Discipline.

3. Such violations warrant activation of the suspension imposed by the Order of Discipline and warrant imposition of conditions upon Linton's reinstatement at the end of the period of active suspension.

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the consent of the parties, the Hearing Panel enters the following

#### ORDER

1. The stay of Defendant's two-year suspension is lifted and the suspension is activated. Pursuant to Rule .0124(c) of the North Carolina State Bar Discipline and Disability Rules, this order and the two-year suspension imposed herein are effective 30 days after service of this order upon Defendant.

2. All costs and administrative fees of this action are taxed to Defendant. Defendant must pay the costs of this action within 120 days of service upon him of the statement of costs by the Secretary.

3. Linton shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following the date that this Order is served upon him. Linton shall comply with the wind down provisions contained in Rule .0124 of the North Carolina State Bar Discipline and Disability Rules, located at 27 N.C. Admin. Code 1B § .0124.

4. At the end of the two-year active period of suspension, Linton may apply for reinstatement by filing a petition with the DHC in accordance with the North Carolina State Bar Discipline and Disability Rules and by showing by clear, cogent, and convincing evidence that he has complied with the following conditions for reinstatement:

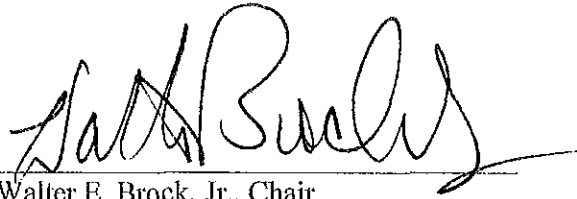
- (a) That he has complied with the general provisions for reinstatement listed in 27 N.C. Admin. Code 1B § .0125 of the North Carolina State Bar Discipline & Disability Rules;

- (b) That he refunded all paid legal fees to any client who is entitled to a refund of paid legal fees – in part or in whole as the representation warranted – within 120 days of the effective date of this order;
- (c) That, within 90 days prior to filing his petition for reinstatement, he has been evaluated by a licensed and qualified psychiatrist or psychologist who certifies under oath, based on his or her independent and comprehensive evaluation of Defendant, that in his or her professional opinion Defendant does not currently have any mental, psychological, behavioral, cognitive, or emotional condition or disorder that impairs Defendant's ability to practice law, that impacts Defendant's ability or willingness to comply with the Rules of Professional Conduct, and/or that poses a risk of harm to the public if he engages in the practice of law. Such psychiatrist/psychologist shall be approved in advance by the North Carolina State Bar Office of Counsel. Defendant shall sign an authorization form consenting to the release of all medical records and information related to Defendant's evaluation to the Office of Counsel, and Defendant will not revoke that release. Defendant shall simultaneously provide a copy of such signed authorization to the Office of Counsel and the psychiatrist/psychologist. Defendant shall direct the evaluating psychiatrist/psychologist described herein to provide a written report of such evaluation and recommended treatment, if any, to the Office of Counsel within thirty (30) days of the evaluation taking place. All expenses of such evaluation and report shall be borne by Defendant;
- (d) That he has complied with all treatment recommendations of the evaluating psychiatrist/psychologist described in paragraph (c) above. Defendant shall sign an authorization form consenting to the release of any medical records and information related to Defendant's treatment to the Office of Counsel, and Defendant will not revoke that release, and Defendant shall simultaneously provide a copy of such signed authorization to the Office of Counsel and his treatment provider. Defendant shall direct his treatment provider to provide the Office of Counsel with a written report detailing Defendant's treatment plan and Defendant's compliance or lack of compliance with such plan. All expenses of such treatment and reports shall be borne by Defendant;
- (e) That he has paid all outstanding membership dues and Client Security Fund assessments and that there is no deficit in his fulfillment of any obligation of membership;
- (f) That he has kept the North Carolina State Bar membership department advised of his current physical home and business addresses and telephone numbers, and that he has accepted all certified mail from the North Carolina State Bar and responded 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 of such communication, whichever is later;

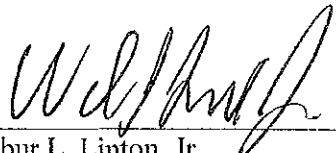
- (g) That he has not violated any state or federal laws or any provisions of the Rules of Professional Conduct; and
- (h) That he has paid all costs and administrative fees associated with this case as assessed by the Secretary.

2d Signed by the Chair with the consent of the other Hearing Panel members, this the day of October, 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