

STATE OF NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
13 DHC 17

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

ROBERT W. ADAMS, Attorney,

Defendant

ORDER OF DISCIPLINE

This matter was heard on January 10, 2014 before a Hearing Panel of the Disciplinary Hearing Commission (“DHC”) composed of Steven D. Michael, Chair, and members Donald C. Prentiss and Percy L. Taylor. Plaintiff was represented by G. Patrick Murphy. Defendant, Robert W. Adams (“Adams” or “Defendant”), was represented by Jason White. On December 10, 2013, the Hearing Panel entered a default judgment against Defendant leaving as the sole issue what, if any, discipline was appropriate for the violations established by the default judgment. Based on Plaintiff’s complaint, the default judgment, stipulations, exhibits and evidence admitted during the 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, Robert W. Adams, (“Adams” or “Defendant”), was admitted to the North Carolina State Bar on August 12, 1972, 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, Adams was engaged in the practice of law in the State of North Carolina and maintained a law office in Hickory, Catawba County, North Carolina.

4. Defendant maintained a trust account for his law practice with Bank of Granite, account number ending 6177 ("TA 6177"). Between January 1, 2012 and July 1, 2012, Defendant held entrusted funds for his clients in TA 6177.

5. Defendant represented clients in Social Security Administration (SSA) cases and received checks for attorney's fees from SSA which he deposited into TA 6177. Defendant left his earned fees in TA 6177.

6. Defendant represented DWN in a SSA case. On or about December 1, 2011, Defendant received a check in the amount of \$3,883.00 from SSA made payable to Defendant for his attorney's fee in DWN's case which he deposited to TA 6177.

7. Between December 5, 2011 and December 15, 2011, Defendant wrote the following checks on TA 6177 drawn against the \$3,883.00 SSA check Defendant received as his fee in DWN's case:

	DATE	CHECK NO.	PAYEE	AMOUNT
1.	12/14/11	1151	Robert Adams	\$660.00
2.	12/15/11	1152	Robert Adams	\$1,500.00

8. Defendant represented MLH in a SSA case. On or about December 13, 2011, Defendant received a check in the amount of \$4,477.85 from SSA made payable to Defendant for his attorney's fee in MLH's case which he deposited to TA 6177.

9. Between December 16, 2011 and January 6, 2012, Defendant wrote the following checks on TA 6177 drawn against the \$4,477.85 SSA check Defendant received as his fee in MLH's case:

	DATE	CHECK NO.	PAYEE	AMOUNT
1.	12/16/11	1154	Robert Adams	\$500.00
2.	12/19/11	1155	Robert Adams	\$1,000.00
3.	12/23/11	1156	Robert Adams	\$1,000.00
4	12/30/11	1157	Oakwood Company	\$550.00

5.	12/30/11	1158	Robert Adams	\$1,000.00
6.	1/6/12	1161	Robert Adams	\$427.85

10. Defendant represented LHM in a SSA case. On or about December 15, 2011, Defendant received a check in the amount of \$7,767.00 from SSA made payable to Defendant for his attorney's fee in LHM's case which he deposited to TA 6177.

11. Between January 5, 2012 and February 1, 2012, Defendant wrote the following checks on TA 6177 drawn against the \$7,767.00 SSA check Defendant received as his fee in LHM's case:

	DATE	CHECK NO.	PAYEE	AMOUNT
1.	1/5/12	1159	Lakea Cromwell	\$1,500.00
2.	1/5/12	1160	Robert Adams	\$400.00
3.	1/9/12	1162	Robert Adams	\$1,300.00
4.	1/13/12	1164	Robert Adams	\$1,500.00
5.	1/19/12	1165	Robert Adams	\$500.00
6.	1/20/2012	1166	Robert Adams	\$400.00
7.	1/24/12	1167	Robert Adams	\$200.00
8.	1/27/12	1169	Robert Adams	\$400.00
9.	2/1/12	1170	Oakwood Company	\$550.00
10.	2/1/12	1171	Robert Adams	\$758.40

12. The following checks made payable to Defendant, or to an entity, and drawn on TA 6177 failed to indicate on the item the client balance on which the item was drawn:

- a. Check no. 1172 for \$300.00
- b. Check no. 1173 for \$1,100.00
- c. Check no. 1175 for \$650.00
- d. Check no. 1176 for \$300.00
- e. Check no. 1179 for \$400.00
- f. Check no. 1183 for \$100.00
- g. Check no. 1185 for \$550.00
- h. Check no. 1187 for \$200.00
- i. Check no. 1188 for \$200.00.
- j. Check no. 1190 for \$550.00
- k. Check no. 1192 for \$200.00

13. The bank records for TA 6177 show electronic transfers drawn on the trust account. With respect to the following electronic debits drawn on TA 6177, Defendant's records fail to show the client or other person to whom the disbursed funds belong:

DATE	PAYEE	AMOUNT
1/30/12	Alltel Wireless	\$358.00
2/16/12	Alltel Wireless	\$351.40
3/13/12	Alltel Wireless	\$169.37
4/2/12	Alltel Wireless	\$169.37
5/25/12	Alltel Wireless	\$213.98

14. On May 24, 2012, Alltel attempted to draft approximately \$1,458.98 from TA 6177. At that time, TA 6177 had insufficient funds to cover the Alltel draft and a notice of non-sufficient funds was issued by Bank of Granite.

15. Between December 31, 2011 and July 30, 2012, Defendant did not conduct quarterly reconciliations of TA 6177.

16. Defendant did not maintain a ledger containing a record of receipts and disbursements for each person or entity from whom and for who funds were received and showing the current balance of entrusted funds held in TA 6177 for each such person or entity.

17. The State Bar is unaware of any evidence that client funds were misappropriated by the Defendant.

Based on the foregoing Findings of Fact, the Hearing Panel concludes as a matter of law, the following:

#### CONCLUSIONS OF LAW

Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- a. By depositing SSA checks in payment of his attorney's fee into TA 6177, Defendant failed to maintain entrusted property separate from the property of the lawyer in violation of Rule 1.15-2(a) and Rule 1.15-2(f);
- b. By failing to promptly disburse his earned fees from TA 6177, instead leaving them commingled with client funds, Defendant failed to maintain entrusted funds separate from the property of the lawyer in violation of Rule 1.15-2(a) and Rule 1.15-2(f);
- c. By failing to ensure the checks drawn on TA 6177 noted in paragraph 12 above showed the client balance against which the check was drawn, Defendant violated Rule 1.15-2(h) and Rule 1.15-3(b)(2);
- d. By failing to maintain a record related to the electronic transfers from TA 6177 listed in paragraph 13 above showing the name of the client or other person to whom the funds belong, Defendant violated Rule 1.15-3(b)(3);
- e. By failing to reconcile TA 6177 quarterly, the Defendant violated Rule 1.15-3(d)(1); and
- f. By failing to maintain a ledger containing a record of receipts and disbursements for each person or entity from whom and for who funds were received and showing the current balance of funds held in TA 6177 for each such person or entity, Defendant violated Rule 1.15-3(b)(5).

#### FINDINGS OF FACT REGARDING DISCIPLINE

1. The State Bar conducted two prior random audits of TA 6177, one in 1996 and the second in 2008. Both audits disclosed deficiencies in Defendant's trust account management practices.

2. Among other deficiencies, both random audits disclosed that at the time of the audits Defendant: 1) did not maintain ledgers for each person or entity from whom or for who trust money was received; and 2) did not conduct quarterly reconciliations.

3. After the 1996 random audit, Defendant wrote to the State Bar agreeing to correct the deficiencies in his trust account management practices including maintaining a ledger and conducting quarterly audits; however, those same deficiencies, as well as the others noted above, continued in the present proceeding.

4. Defendant's mismanagement of his trust account resulted in numerous violations of the Rules of Professional Conduct.

5. Alltel Wireless drafts appear on the January 2012 through May 2012 bank statements of TA 6177. Although Defendant maintains the Alltel drafts were not authorized by him, he had several months to take action with Bank of Granite to block the drafts but failed to do so.

6. The attempt by Alltel to draft \$1,458.98 from TA 6177 on May 24, 2012 failed because TA 6177, though containing entrusted funds, had insufficient funds to cover the Alltel draft.

7. The Alltel draft on TA 6177 created the potential for significant harm to clients of Defendant with entrusted funds in TA 6177.

8. Defendant's failure to comply with the State Bar's regulations related to his trust account has the potential to cause significant harm to clients of Defendant and to the public's perception of the legal profession.

9. Defendant has received prior discipline by the Grievance Committee and the DHC, as follows: 90G0044 – Reprimand (noting deficiencies in handling entrusted funds); 93G0814 and 93G0904 – Admonition; 96G0320 – Reprimand; 96G1329 and 96G1345 – Censure; 97DHC27 – Stayed suspension (2 years); 00DHC1 – Suspension (3 years with all but nine months stayed).

10. Defendant has substantial experience, approximately 40 years, in the practice of law.

11. The Hearing Panel has carefully considered all of the different forms of discipline available to it, including an 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 makes the following:

#### CONCLUSIONS WITH RESPECT TO 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 warrant suspension of Defendants' license:

- a. Intent of Defendant to commit acts where the harm or potential harm is foreseeable;
- b. Circumstances reflecting the Defendant's lack of honesty, trustworthiness, or integrity;
- c. Negative impact of Defendant's actions on client's or public's perception of the legal profession; and
- d. Multiple instances of failure to participate in the legal profession's self-regulation process.

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 that the factors present in this case do not require disbarment.

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. Prior disciplinary offenses;
- b. Remoteness of some prior offenses;
- c. A pattern of misconduct;
- d. Multiple offenses;
- e. Cooperative attitude with the State Bar investigation;
- f. Defendant has good character and reputation as a professional attorney in the 25<sup>th</sup> District;
- g. Defendant did not contest the entry of default or the findings of the violations by the Hearing Panel; and
- h. Substantial experience, approximately 40 years, in the practice of law.

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

5. 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.

6. The Hearing Panel has considered issuing an admonition, reprimand or censure but concludes that such discipline would not be sufficient discipline because of the factors noted in paragraphs 1 and 3 of this section and the gravity of the potential significant harm to the clients. The Panel further concludes that such discipline would fail to acknowledge the seriousness of the offenses committed by Defendant and send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

7. This Hearing Panel has considered lesser alternatives and concludes that a suspension is appropriate under the facts and circumstances of this case to address the potential for significant harm to Defendant's clients, and for the protection of Defendant's clients and the public.

8. For these reasons, this Hearing Panel finds that an order imposing discipline less than a suspension of Defendant's law license would not be appropriate.

Based upon the foregoing findings of fact and conclusions of law and the findings of fact and conclusion regarding discipline, the Hearing Panel enters the following:

#### ORDER OF DISCIPLINE

1. Defendant's license to practice law in the State of North Carolina is hereby suspended for four (4) years.

2. Defendant shall submit his license and membership card to the Secretary of the State Bar within 30 days of the effective date of this order.

3. Defendant shall comply with the wind down provisions of 27 N.C.A.C. 1B § .0124 of the State Bar Discipline and Disability Rules.

4. Within 15 days of the effective date of this Order, Defendant shall provide the State Bar Office of Counsel with an address and telephone number at which clients seeking return of files can communicate with Defendant and obtain such files, and Defendant shall promptly return all files to his clients upon request. Defendant shall promptly provide client files to all clients who request return of their files.

5. Defendant is taxed with the costs and administrative fees of this action as assessed by the Secretary. Defendant shall be served with a statement of costs and fees. Defendant shall pay the amount assessed within thirty days of service of the statement of costs and fees upon him.

6. Two years after the effective date of this Order, Defendant may seek a stay of the remaining period of suspension by filing a motion seeking a stay and



demonstrating by clear, cogent and convincing evidence that Defendant has met all requirements for reinstatement set out in 27 N.C.A.C 1B § .0125, and has complied with paragraphs 2-5 of this section of the Order of Discipline and with the following conditions:

- a. Defendant shall, at his own expense, retain a certified public accountant ("CPA"), approved in advance by the Office of Counsel of the State Bar, who shall audit TA 6177 to assess compliance with the Rules of Professional Conduct and to identify the client(s) to whom the funds in his trust accounts belong. Upon completion of the audit, the CPA shall provide the State Bar with a written final audit report. 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 State Bar or the CPA to ensure the audit is completed in a timely fashion but in any event the audit shall be completed and the CPA's written final audit report delivered to the State Bar' Office of Counsel within 90 days of the effective date of this Order. It is Defendant's sole responsibility to ensure the CPA completes and submits the report as required herein;
- b. After completion of the CPA's audit, submission of the audit report to the Office of Counsel, the Office of Counsel's determination that the owners of funds have been identified and Defendant's trust account is in compliance with the Rules of Professional Conduct, and the superior court's lifting of the injunction on TA 6177, Defendant shall disburse all identified client funds in his trust account to the rightful owner consistent with the Rules of Professional Conduct;
- c. After the superior court lifts the injunction on TA 6177, Defendant shall comply with Rule 1.15-2(q) regarding all unidentified funds existing in his trust account and comply with Chapter 116B of the General Statutes within forty-five (45) days of being statutorily permitted to escheat funds to the State;
- d. That Defendant has kept the North Carolina State Bar Membership Department advised of his current physical home address;
- e. That Defendant has responded to all communications from the North Carolina State Bar received after the effective date of this Order within 30 days of receipt or by the deadline stated in the communication, whichever is sooner;
- f. That Defendant paid all outstanding membership fees, Client Security Fund assessments and fees or costs assessed by the DHC or the State Bar and complied with and satisfied any outstanding continuing legal education requirements imposed by the State Bar, and

- g. That during the term of suspension he has not violated the Rules of Professional Conduct or the laws of the United States or any state.
7. If Defendant complies with the above conditions and is granted a stay of his suspension, the stay will remain in effect only if Defendant complies, and continues to comply, with the following conditions:
- a. If at any time during the period of the stayed suspension Defendant operates his practice without a trust account (“trustless”), Defendant will provide bank statements or similar documentation from Bank of Granite to establish that his trust account has been closed or is inactive. Documentation of the closure or inactivity of Defendant’s trust account shall be provided to the Office of Counsel within 15 days of the date of Defendant’s going trustless;
  - b. While operating his practice as trustless, Defendant shall certify the fact he is not handling entrusted funds to the State Bar on a quarterly basis during the period of the suspension. Defendant’s certifications 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);
  - c. If at any time during the period of the stayed suspension Defendant handles or resumes handling entrusted funds, Defendant will notify the Office of Counsel within 15 days of the date he resumed handling entrusted funds, and Defendant shall immediately comply with the trust account monitoring provisions contained herein;
  - d. If at any time during the period of the stayed suspension Defendant handles entrusted funds, Defendant shall maintain a trust account. Defendant shall, at his own expense, retain a CPA to audit Defendant’s trust account on a quarterly basis to ensure Defendant’s continued compliance with the Rules of Professional Conduct. This audit shall assess whether Defendant has in his trust accounts the client funds he should be holding for his clients, as well as Defendant’s compliance with Rule 1.15-2 and Rule 1.15-3. The CPA must report quarterly to the Office of Counsel concerning the compliance of Defendant’s account 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. It is Defendant’s sole responsibility to ensure the CPA completes and submits the reports as required herein;
  - e. If at any time during the period of the stayed suspension Defendant maintains a trust account, Defendant shall, on a monthly basis, 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 during that month, a ledger for any personal funds maintained in the trust account for bank or credit card fees, his trust account ledger, and the bank statements, cancelled checks, and deposit slips for each month. These documents shall be provided to the Office of Counsel by the 15<sup>th</sup> of the following month. For example, the three-way reconciliation for the month of January is due on February 15;

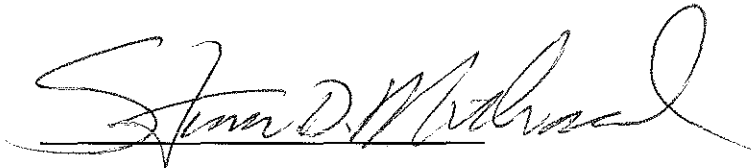
- f. If either the monthly three-way reconciliation report or the CPA's report reveals any irregularities or deficiencies from Defendant's obligations under Rule 1.15-2 and Rule 1.15-3, Defendant shall take remedial action necessary to bring the trust account into compliance with the Rules of Professional Conduct within 10 days of the date of the three-way reconciliation report or the CPA audit/report and shall provide proof of the remedial action and compliance to the Office of Counsel within 5 days of the date of the remedial action;
- g. Defendant shall comply with any requests from the Office of Counsel to provide any information regarding his trust account 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 maintained or maintains a trust account, by the deadline stated in the request;
- h. If at any time during the period of stayed suspension Defendant handles entrusted funds, Defendant shall complete two hours of continuing legal education in the area of trust account management approved by the Office of Counsel. At least one such hour shall be taken before the end of the next calendar quarter during which Defendant handles entrusted funds, and the second within 12 months of completing the first CLE hour. At least one such session shall be the Trust Accounting Rules Continuing Legal Education Program taught by the Trust Account Compliance Counsel for The North Carolina State Bar. Defendant shall provide written proof of successful completion of the CLE courses to the State Bar within 10 days of completing each CLE hour(s). These two CLE hours are in addition to the continuing legal education requirements set out in 27 N.C.A.C. 1D § .1518;
- 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 email address and shall notify the Bar of any changes in 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 requests for information or communications from the North Carolina State Bar by the deadline stated in the communication;

- k. Defendant shall respond to all letters of notice and requests for information from the North Carolina State Bar by the deadline stated therein with full and complete responses and all requested documentation;
- l. Defendant shall pay all Membership dues and Client Security Fund assessments and comply with all Continuing Legal Education requirements on a timely basis; and
- m. Defendant shall not violate any state or federal laws or any provisions of the Rules of Professional Conduct during the period of the stay.

8. If during the stay of the suspension authorized by this Order 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' license at the end of the suspension.

9. If Defendant does not obtain a stay of the suspension imposed by this Order, to be reinstated at the end of the 4 year term of suspension Defendant must demonstrate by clear, cogent and convincing evidence that Defendant has met all requirements for reinstatement set out in 27 N.C.A.C 1B § .0125, and has complied with all applicable provisions of this Order, particularly the trust account analysis and trust account disbursement provisions of paragraphs 6 a-c of this section of the Order of Discipline.

Signed by the Chair with the consent of the other hearing panel members, this the 21<sup>st</sup> day of January 2014.



Steven D. Michael, Chair  
Disciplinary Hearing Panel