STATE OF NORTH CAROLINA WAKE COUNTY	BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR 11 DHC 31
THE NORTH CAROLINA STATE BAR, Plaintiff v. DAVID A. VESEL, Attorney, Defendant	AMENDED COMPLAINT

AUG 2012
FILED DHC

Plaintiff, complaining of Defendant, alleges and says:

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, David A. Vesel (hereafter "Defendant" or "Vesel"), was admitted to the North Carolina State Bar on 11 November 1994 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, Vesel was actively engaged in the practice of law and maintained a law office in Creedmoor, Granville County, North Carolina.

FIRST CLAIM FOR RELIEF

4. Paragraphs 1 through 3 are re-alleged and incorporated herein.

5. On or about 15 April 2005, Vesel employed Cynthia Driscoll ("Driscoll") as an independent contract paralegal for his law practice.

6. Vesel's practice consisted of family, real estate, personal injury, medical malpractice and disability law.

7. Driscoll worked with Vesel to conduct real estate closings out of Vesel's law office.

8. Driscoll's duties included conducting title searches; preparing title abstracts, title commitments and real estate closing documents; scheduling real estate closings; preparing for real estate closings; and conducting real estate closings.

9. Vesel had 3 trust accounts. Wachovia Bank trust account ending in no. 0908 ("Wachovia Account No. 1"), Wachovia Bank trust account ending in no. 4520 ("Wachovia Account No. 2") and Wachovia Bank trust account no. ending in no. 3026 ("Wachovia Account No. 3").

10. Vesel failed to reconcile Wachovia Account No. 1 from January 2005 through July 2008.

11. Vesel failed to reconcile Wachovia Account No. 2 from December 2006 through July 2008.

12. Vesel failed to reconcile Wachovia Account No. 3 April 2006 through June 2008.

13. Vesel closed real estate transactions using Wachovia Account No. 2.

14. For each real estate transaction Vesel closed using Wachovia Account No. 2, Vesel collected a legal fee that he split with Driscoll.

15. For several of the real estate closings Vesel conducted using Wachovia Account No. 2, Vesel did not disburse his portion of the legal fee at the time of closing by instrument identifying the client on whose account the fee was drawn.

16. Instead, Vesel made several withdrawals from Wachovia Account No. 2 without identifying on which client account these withdrawals were made ("Unidentified Vesel Withdrawals") purporting to use these withdrawals as payment of the fees he failed to collect at the time of closing.

17. Many Unidentified Vesel Withdrawals were not Vesel's fees or any other funds to which Vesel was entitled.

18. Vesel embezzled entrusted client funds from Wachovia Account No. 2.

19. For several of the real estate closings Vesel conducted using Wachovia Account No. 2, Vesel failed to disburse Driscoll's purported portion of the legal fee.

20. Vesel failed to supervise Driscoll. Thus, Driscoll was able to make several withdrawals from Wachovia Account No. 2 that failed to identify the client on whose account these withdrawals were purportedly made.

21. Many of the withdrawals Driscoll made from Wachovia Account No. 2 were not Driscoll's fees, were not funds to which Driscoll was entitled and were not used for the benefit any client who had funds in the trust account.

22. Driscoll embezzled entrusted client funds from Wachovia Account No. 2.

23. The HUD-1 Settlement Statements prepared for each closing conducted using Wachovia Account No. 2 identified an amount for Vesel to disburse from funds Vesel collected at closing as payment of the title insurance premium.

24. For each of the closing transactions listed below, Vesel failed to timely disburse payment for the title insurance premium:

a. T. A. closing on or about 31 August 2007;

b. G.B. closing on or about 24 December 2007;

c. G.D. closing on or about 21 December 2007;

d. R.G. closing conducted on or about 14 December 2007;

e. R.G. closing conducted on or about 21 December 2007;

f. J.H. closing conducted on or about 28 September 2007;

g. A.J. closing conducted on or about 31 August 2007;

h. P.L. closing conducted on or about 17 September 2007;

i. S.M. closing conducted on or about 28 September 2007;

j. S.M. closing conducted on or about 24 September 2007;

k. A.M. closing conducted on or about 28 August 2007;

l. D.N. closing conducted on or about 6 September 2007;

m. C.P. closing conducted on or about 28 September 2007;

n. J.S. closing conducted on or about 26 November 2007;

o. C.S. closing conducted on or about 3 October 2007;

p. G.T. closing conducted on or about 31 August 2007;

q. W.&C. closing conducted on or about 31 October 2007;

r. F.Y. closing conducted on or about 5 September 2007.

25. For several closing transactions Vesel conducted using Wachovia Account No. 2, Vesel disbursed from the trust account more funds on behalf of the client than he held for said client in Wachovia Account No. 2.

26. For other closing transactions Vesel conducted using Wachovia Account No. 2, Vesel failed to timely disburse or return to the client funds that remained in his trust account from said transactions.

27. Although Driscoll had access to Vesel's trust accounts, only Vesel had the authority to wire funds from his trust accounts.

28. Vesel wired entrusted funds from each of his trust accounts to make mortgage payments on Driscoll's behalf to U.S. Bank.

29. Vesel made the following payments to U.S. Bank on Driscoll's behalf:

a. $267.50 on or about 27 February 2006 from Wachovia Account No. 1;

b. $4,722.80 on or about 27 February 2006 from Wachovia Account No. 1;

c. $1,700 on or about 31 October 2006 from Wachovia Account No. 1;

d. $1,900 on or about 21 September 2007 from Wachovia Account No. 2;

e. $2,251 on or about 28 August 2007 from Wachovia Account No. 2;

f. $500 on or about 27 September 2007 from Wachovia Account No. 2;

g. $2,251.72 on or about 30 October 2007 from Wachovia Account No. 2;

h. $4,100 on or about 27 February 2007 from Wachovia Account No. 3;

i. $2,100 on or about 30 March 2007 from Wachovia Account No. 3.

30. Driscoll was not entitled to the funds that Vesel wired to U.S. Bank on her behalf.

31. On or about 29 August 2007, Countrywide Home Loan wired $42,347.10 into Wachovia Account No. 3 in furtherance of the J.W. real estate closing transaction.

32. Countrywide Home Loan directed Vesel to use a portion of the J.W. closing funds to pay off other J.W. creditors.

33. To date, Vesel has failed to pay seven J.W. creditors in accordance with Countrywide Home Loan's instructions.

34. On or about 24 August 2008, Vesel deposited $342,000 into Wachovia Account No. 2 in furtherance of the R.P. real estate closing transaction.

35. Vesel made the following disbursements in furtherance of the R.P closing:

a. On or about 30 April 2008, $5,162.17 to R.P. and A.P.;

b. On or about 1 May 2008, $15,136.97 to Bank of America;

c. On or about 8 May 2008, two payments to State Employees Credit Union: (i) $6,264.52 and (ii) $66,460.80;

d. On or about 25 June 2008, $637.20 to Colonial Title.

36. On or about 26 April 2008, Vesel prepared in furtherance of the R.P. closing two checks made payable to his firm for a total of $268.00. These checks were never negotiated.

37. On or about 26 April 2008, Vesel prepared in furtherance of the R.P. closing a $68.00 check made payable to Granville County Register of Deeds. This check was never negotiated.

38. On or about 29 April 2008, Vesel prepared in furtherance of the R.P. closing a $248,002.34 check made payable to Citi Mortgage to payoff the first mortgage of the property that was the subject of the R.P. closing.

39. The check to Citi Mortgage remains outstanding and there are insufficient funds in Vesel's trust accounts to cover the check to Citi Mortgage.

40. Vesel has failed to pay the Granville County Register of Deeds and Citi Mortgage in accordance with the client's directive at the R.P. closing.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. § 84-28(b)(2) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of his actions as follows:

a) By failing to reconcile his trust accounts, Vesel failed to reconcile client balances with the current bank statement balance for the trust account as a whole in violation of Rule 1.15-3(d);

b) By splitting his legal fees with Driscoll, Vesel shared legal fees with a nonlawyer in violation of Rule 5.4(a);

c) By failing to promptly withdraw his legal fee from the trust account, Vesel failed to maintain entrusted property separate from the property of the lawyer in violation of Rule 1.15-2(a);

d) By withdrawing funds from the trust account which were not legal fees or other funds to which Vesel was entitled, Vesel 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), committed a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects in

violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);

e) By failing to supervise Driscoll's disbursement of entrusted client funds from Wachovia Account No. 2, Vesel failed to make reasonable efforts to ensure that the nonlawyer's conduct was compatible with Vesel's professional obligations in violation of Rule 5.3;

f) By failing to timely disburse payment for title insurance premiums, Vesel failed to promptly pay to third persons as directed by the client entrusted property belonging to the client and to which the client is currently entitled in violation of Rule 1.15-2(m) and failed to act with reasonable diligence and promptness in representing clients in violation of Rule 1.3;

g) By disbursing from Wachovia Account No. 2 more funds for clients than that which he held on said clients' behalf, Vesel 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);

h) By failing to fully and timely disburse or return to the client funds collected at closing and held in Wachovia Account No. 2, Vesel failed to promptly pay to third persons as directed by the client entrusted property belonging to the client and to which the client is currently entitled in violation of Rule 1.15-2(m) and failed to act with reasonable diligence and promptness in representing clients in violation of Rule 1.3;

i) By using entrusted funds from Wachovia Account No. 2 to make payments to U.S. Bank for Driscoll's mortgage, Vesel 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);

j) By failing to pay seven of J.W.'s creditors, the Granville County Register of Deeds and Citi Mortgage, Vesel failed to promptly pay to third persons as directed by the client entrusted property belonging to the client and to which the client is currently entitled in violation of Rule 1.15-2(m) and failed to act with reasonable diligence and promptness in representing clients in violation of Rule 1.3; and

k) By using funds that he was required to hold in trust for the R.P. closing to make disbursements for the benefit of others, Vesel 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), committed a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

SECOND CLAIM FOR RELIEF

41. Paragraphs 1 through 40 are re-alleged and incorporated herein.

42. Vesel made the following disbursements to himself from Wachovia Account No. 1 without identifying on the face of the item the client balance from which the payment was purportedly drawn:

a. On or about 15 November 2005 wire for $1,000;

b. On or about 6 December 2005 check no. 1319 for $6,000;

c. On or about 5 January 2006 check no. 1324 for $2,000;

d. On or about 13 January 2006 check no. 1325 for $1,500;

e. On or about 3 February 2006 wire for $4,000;

f. On or about 8 February 2006 wire for $1,000;

g. On or about 13 February 2006 wire for $1,000;

h. On or about 23 February 2006 wire for $1,000.

43. On or about 5 September 2005, Vesel wrote check no. 1310 drawn on Wachovia Account No. 1 and made payable to Cynthia Driscoll for $1,200 without identifying on the face of the item the client account on which this item was purportedly drawn.

44. At the time that Vesel made these unidentified disbursements to himself and Driscoll he had collected his legal fee from each transaction for every client who had money deposited into the trust account.

45. Vesel did not earn and was not otherwise entitled to the money he disbursed to himself as described in paragraph 42 and to Driscoll as described in paragraph 43.

46. Driscoll did not earn and was not otherwise entitled to the money Vesel disbursed to her as described in paragraph 43.

47. Vesel embezzled the funds he disbursed to himself and Driscoll as described in paragraphs 42 and 43.

48. On or about 1 February 2006 Vesel made a $600 counter withdrawal from Wachovia Account No. 1.

49. Upon information and belief Vesel did not use these funds for the benefit of any client who had money in the trust account at the time of this withdrawal.

50. Vesel did not earn and was not otherwise entitled to the $600 he withdrew from Wachovia Account No. 1.

51. Vesel embezzled these funds.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. § 84-28(b)(2) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of his actions as follows:

a) By failing to indicate on the trust account checks listed in paragraphs 42 and 43 above the client balance on which these items were drawn, Vesel failed to indicate on the item the client balance on which the item was drawn in violation of Rule 1.15-2(h);

b) By making a counter withdrawal from Wachovia Account No. 1, Vesel drew an item on a trust account made payable to cash or bearer in violation of Rule 1.15-2(i);

c) By disbursing to himself and Driscoll from Wachovia Account No. 1 funds that were not legal fees or other funds to which Vesel or Driscoll was entitled, Vesel 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), committed a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

WHEREFORE, Plaintiff prays that

1. Disciplinary action be taken against Defendant in accordance with N.C.G.S. § 84-28 (c) and 27 N.C.A.C. 1B § .0114 as the evidence on hearing may warrant;

2. Defendant be taxed with the administrative fees and with actual costs permitted by law in connection with the proceeding; and

3. For such other and further relief as the Hearing Panel deems appropriate.

This the 20th day of August, 2012.

Margaret M. Hunt

Margaret Hunt, Chair
Grievance Committee

Leanor Bailey Hodge, Deputy Counsel
State Bar #27253

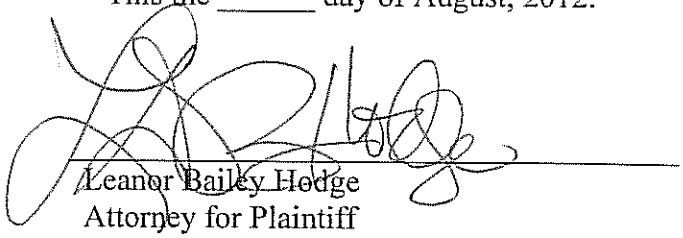
Margaret C. Cloutier, Deputy Counsel
State Bar #19878
Attorneys for Plaintiff
The North Carolina State Bar
P. O. Box 25908
Raleigh, NC 27611
(919) 828-4620

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Plaintiff's Amended Complaint was served upon Defendant via hand delivery addressed to Defendant's counsel as follows:

F. Hill Allen
Tharrington Smith, L.L.P.
209 Fayetteville Street
Raleigh, North Carolina 27602

This the 20th day of August, 2012.



Leanor Bailey Hodge
Attorney for Plaintiff
The North Carolina State Bar