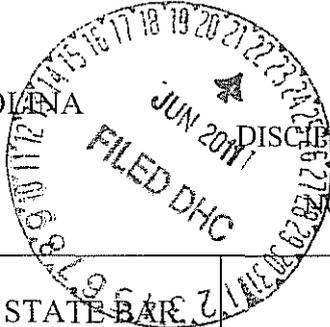


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
11 DHC 1

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

SAMUEL F. THOMAS, III, Attorney,

Defendant

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

This matter was heard on April 29, 2011 before a Hearing Panel of the Disciplinary Hearing Commission composed of the Chair, Steven D. Michael, and members J. Michael Booe and Dr. Charles L. Garrett, Jr. William N. Farrell, Jr. represented Plaintiff, the North Carolina State Bar. Defendant appeared *pro se*.

Based upon the pleadings, the stipulated facts, and the evidence introduced at 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 (hereinafter "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, Samuel F. Thomas, III (hereinafter "Defendant or Thomas"), was admitted to the North Carolina State Bar on August 29, 2008 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, Defendant actively engaged in the practice of law as an associate with the firm of Daryl G. Davidson, Sr., P.C. (hereinafter "the firm") which maintained a law office in the city of Statesville, Iredell County, North Carolina.

4. Defendant, as an associate, was a salaried employee of the firm and had no fee sharing arrangement with the firm. All fees, including those fees generated from

Defendant's court appointed clients or from clients developed by Defendant, belonged to the firm.

5. In or about February 2010, while employed with the firm, Defendant was contacted by Criscelda Boyd in regards to a criminal matter.

6. Ms. Boyd informed by letter Defendant that she would send a retainer payment to his attention in the form of a \$700.00 money order.

7. Ms. Boyd later sent a retainer payment in the form of a \$500.00 money order made payable to Defendant by letter addressed to Defendant at the office address of the firm. The money order was received on Monday, February 22, 2010 and was placed on the Defendant's desk by the firm's office manager.

8. Defendant cashed the \$500.00 money order on Tuesday, February 23, 2010.

9. Defendant retained the proceeds of the money order for his own personal use and benefit. The proceeds of the money order were not submitted to the firm as required by Defendant's employment agreement and the firm's office policy.

10. Defendant also failed to notify the firm that Ms. Boyd was a client of the firm as required by office policy.

11. Defendant's employment with the firm was terminated on Sunday, February 28, 2010 because of his misappropriation of the money order and the failure to show Ms. Boyd as client.

12. Defendant called Mr. Daryl G. Davidson after receiving the letter of termination by e-mail and stated that the reason he took the money order was that "I had to pay bills."

13. Defendant was an agent of the firm when he received the money order and cashed it.

14. The money order and the proceeds derived there from were the property of the firm.

15. Defendant took the money order, which belonged to the firm, and converted the proceeds to his own personal use and benefit.

Based upon the foregoing Findings of Fact, the Hearing Panel enters the following

CONCLUSIONS OF LAW

1. All the parties are properly before the Hearing Panel and the Panel has jurisdiction over the Defendant, Samuel F. Thomas, III, and the subject matter.

2. Defendant'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), for engaging in conduct in violation of the Rules of Professional Conduct in effect at the time of his actions as follows:

- a. By misappropriating funds belonging to the firm, Defendant 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); and
- b. By failing to notify the firm that he had received \$500.00 from Ms. Boyd, Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the evidence and arguments presented at the hearing concerning appropriate discipline, the Hearing Panel hereby finds by clear, cogent, and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. Defendant was deceptive in his response to the State Bar's Letter of Notice in this matter. The Defendant indicated to the Bar that he "attempted to repay the office by money order for the full amount of \$500.00 with a letter of apology and remorse" when in fact he only tendered \$200.00 to the firm.

2. Defendant advised the Bar in his response to the letter of notice that he would like to educate young attorneys "about the temptations that come about", clearly demonstrating his intent and knowledge of wrongdoing at the time of the misappropriation.

3. After Defendant was terminated for the misappropriation, rather than returning the \$500.00 to the firm, he used a portion of the money to get his own law office started.

4. The firm received notice of an initial claim for unemployment benefits from the Employment Security Commission by Defendant who was seeking unemployment benefits. The firm responded to this claim advising that Defendant was terminated for embezzlement from the firm. Defendant denied making a claim for unemployment benefits with the Employment Security Commission.

5. After Defendant was terminated from the firm, the firm received calls from various individuals looking for Defendant. One caller told the office manger she had retained Defendant to handle a traffic ticket for her husband and that she had paid

him at the courthouse. The office manager had neither recollection of this client nor any record of this client.

6. Members of the local bar and local judicial officers were aware of Defendant's termination from the firm and the circumstances surrounding the termination.

7. Defendant's misconduct had a negative impact on the operation of the firm.

8. Defendant refused to acknowledge the wrongful and intentional nature of his misconduct, characterizing his conduct at various times as "a poor decision", "a very unwise decision", and "a foolish mistake".

9. Defendant failed to appreciate the seriousness of his misconduct.

10. Defendant has sufficient life experiences and experience in the practice of law to understand that taking property that does not belong to you is wrongful and there are consequences for such misconduct.

Based upon the foregoing Findings of Fact, Conclusions of Law, additional Findings of Fact Regarding Discipline, and upon the evidence and arguments presented at the hearing concerning appropriate discipline, the Hearing Committee hereby 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.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. A dishonest or selfish motive;
- b. Refusal to acknowledge the wrongful nature of the conduct; and
- c. Sufficient experience in the practice of law to know that his conduct was wrongful and to understand the nature and consequences of it.

2. The Hearing Panel has also considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(1) and (2) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors warrant disbarment of Defendant:

- a. Circumstances reflecting the Defendant's lack of honesty, trustworthiness, or integrity in addition to the misappropriation;
- b. Negative impact of Defendant's actions on the public's perception of the profession;

- c. Effect of Defendant's conduct on third parties, specifically his employer;
- d. Acts of dishonesty, misrepresentation, deceit, or fabrication; and
- e. Misappropriation or conversion of assets to which the Defendant was not entitled.

3. The Hearing Panel has considered all lesser forms of sanctions available to it and finds that disbarment is the only appropriate discipline in this case, for the following reasons:

- a. Defendant committed misconduct involving theft and deceit. Misconduct involving theft and deceit is among the most serious that an attorney can commit. Such misconduct demonstrates that the offending attorney is not trustworthy. The public is entitled to have trustworthy attorneys and should be able to assume that all lawyers are trustworthy;
- b. Entry of an order imposing lesser discipline than disbarment would fail to acknowledge the seriousness of the offenses committed by Defendant, would be inconsistent with discipline issued in other cases involving similar misconduct, and would send the wrong message to attorneys and the public regarding the conduct expected of members of the North Carolina State Bar; and
- c. The protection of the public and the legal profession requires that Defendant not be permitted to resume the practice of law until he demonstrates the following: that he has reformed; that he understands his obligations to his clients, the public, and the legal profession; and that permitting him to practice law will not be detrimental to the public or the integrity and standing of the legal profession or the administration of justice. Disbarment requires an attorney to make such a showing before he or she may be reinstated.

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

ORDER OF DISCIPLINE

- 1. Defendant, Samuel F. Thomas, III, is hereby DISBARRED from the practice of law in North Carolina.
- 2. Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon Defendant.

3. Defendant shall comply with the wind down provisions contained in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124(b) of the North Carolina State Bar Discipline & Disability Rules. Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within 10 days of the effective date of this order, certifying he has complied with the wind down rule.

4. The costs and all administrative fees of this action are taxed to Defendant. Defendant must pay the costs and administrative fees within 30 days of service of the statement of costs upon him by the Secretary of the State Bar.

Signed by the Chair with the consent of the other hearing committee members,
this the 17th day of June 2011.

A handwritten signature in black ink, reading "Steven D. Michael". The signature is written in a cursive style with a large, sweeping initial "S".

Steven D. Michael, Chair
Disciplinary Hearing Panel