

NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
08 DHC 20

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THE NORTH CAROLINA STATE BAR, )  
Plaintiff )  
v. )  
SCOTT D. ZIMMERMAN, Attorney, )  
Defendant )

CONSENT ORDER OF  
DISCIPLINE

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This matter came before a Hearing Committee of the Disciplinary Hearing Commission composed of Donna R. Rascoe, Chair, T. Richard Kane, and R. Mitchell Tyler. Leanor Bailey Hodge represented Plaintiff. Defendant was represented by Alan Schneider. Defendant has agreed to waive a formal hearing in the above referenced matter. The parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order. The parties consent to the discipline imposed by this order. Defendant also stipulates that he waives his right to appeal the consent order or to challenge in any way the sufficiency of the findings by consenting to the entry of this order.

Based on the foregoing and on the consent of the parties, the Hearing Committee hereby makes 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, Scott D. Zimmerman ("Defendant"), was admitted to the North Carolina State Bar on August 18, 1989 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 Revised Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During the times relevant to this complaint, Defendant actively engaged in the practice of law in the State of North Carolina and maintained a law office in Orange County, North Carolina.

4. Defendant was a partner in the law firm of Brown & Bunch ("the Firm").

5. Defendant had a fiduciary duty to the partnership to deliver to the Firm all legal fees Defendant earned while a partner at the Firm.

6. During his tenure as partner at the Firm, Defendant represented Gilbert Macon Thomason, Jr. ("Thomason") and David Allen ("Allen") in an action against the founder of Burch Company (the "Burch Company lawsuit").

7. Defendant's representation of Thomason and Allen in the Burch Company lawsuit continued for approximately three (3) years with no payment of legal fees by Thomason and Allen.

8. In August 2007, Thomason informed Defendant that he was in a position to make a payment toward the balance of the legal fees he owed to the Firm.

9. Defendant asked that Thomason make his payment for legal fees directly to Defendant as opposed to making payment to the Firm.

10. Thomason paid Defendant a total of \$5,300 that should have been paid to the Firm so that the Firm could account for it before it was paid to Defendant.

13. Defendant did not inform the Firm about the payments Thomason made directly to Defendant.

12. Defendant failed to forward to the Firm the funds Thomason paid directly to Defendant so that the Firm could account for Defendant's receipt of said funds.

13. By failing to fulfill his duty to forward to the Firm the funds that he received directly from Thomason, Defendant prevented the Firm from accounting for these funds before they were paid to Defendant.

14. In or about June 2005 Defendant began to represent Robin Thompson ("Thompson") in a matter referenced herein as the Security Integrators matter.

15. In or about September 2005 Defendant also began to advise Thompson on various other legal matters ("General Corporate matters").

16. At Defendant's request, Thompson made two cash payments totaling \$3,000 directly to Defendant.

17. Defendant did not inform the Firm that he received \$3,000 from Thompson as payment of legal fees to be credited toward the outstanding invoices for the Security Integrators and/or General Corporate matters accounts at the Firm.

18. Defendant promised to write off the balance owed to the Firm on the General Corporate matters Firm account in exchange for the payments Thompson made directly to Defendant.

19. Defendant did not inform the Firm of the arrangements he made with Thompson regarding the fees owed to the Firm for the Security Integrators and General Corporate matters accounts.

20. Defendant did not have authority to clear Thompson's account for the Security Integrators and General Corporate matters accounts in exchange for the \$3,000 that Thompson paid to Defendant without consent of the Firm.

21. Defendant failed to forward to the Firm the funds Thompson paid directly to Defendant so that the Firm could account for Defendant's receipt of said funds.

22. By failing to fulfill his duty to forward to the Firm the funds that he received directly from Thompson, Defendant prevented the Firm from accounting for these funds before they were paid to Defendant.

23. Defendant represented David Reid ("Reid") in a case before the Business Court.

24. In early 2007, Defendant borrowed \$5,000 from Reid.

25. Defendant did not advise Reid in writing of the desirability of seeking the advice of independent legal counsel on the transaction.

26. Defendant did not give Reid a reasonable opportunity to seek the advice of independent legal counsel about the loan.

27. Reid did not give informed consent, in a writing signed by him, to the essential terms of the loan.

28. On September 25, 2007, Defendant was arrested for cocaine possession.

29. Defendant tendered a plea of no contest to the criminal charges instituted following his arrest.

### CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Committee and the Committee has jurisdiction over Defendant and over the subject matter of this proceeding.

2. Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. §84-28(b)(1) in that he tendered a plea of no contest to the charge of cocaine possession, a criminal offense showing professional unfitness.

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

- a. By possessing cocaine in violation of the laws of the State of North Carolina, 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).
- b. By accepting from Thomason and Thompson direct payments of fees rather than remitting them to the Firm, Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).
- c. By accepting a \$5,000 loan from Reid without advising Reid in writing of the desirability of seeking the advice of independent legal counsel on the transaction and without obtaining informed consent in writing from Reid to the essential terms of the transaction and the lawyer's role in the transaction, Defendant entered into a prohibited business transaction with a client in violation of Rule 1.8(a).

Based upon the foregoing Findings of Fact and the consent of the parties, the Hearing Committee makes by clear, cogent, and convincing evidence the following:

### FINDINGS REGARDING DISCIPLINE

1. Defendant's misconduct is aggravated by:

- (a) dishonest or selfish motive;
- (b) a pattern of misconduct; and
- (c) multiple offenses.

2. Defendant's misconduct is mitigated by the following factors:

- (a) absence of a prior disciplinary record;
- (b) personal or emotional problems in that at the time of Defendant's misconduct, Defendant's wife had become totally disabled by mental illness;
- (c) full and free disclosure to the hearing committee and cooperative attitude toward proceedings;
- (d) character or reputation in that Defendant's former managing partner and other lawyers in his community describe Defendant as a man of honorable character who when clean and sober will not lie, cheat or steal or tolerate anyone who does;
- (e) interim rehabilitation in that Defendant successfully completed a 90 day in-patient drug treatment program, completed 16 months in an out-patient addictions recovery group, is a regular participant in Alcoholics Anonymous, continues to prove free of drugs according to random drug screenings, and continues monthly sessions with a therapist; and
- (f) remorse in that Defendant reported his misconduct to his firm in the early days of his treatment program with concern for his firm and the embarrassment his misconduct must have caused them; Defendant also made efforts to do whatever he could to mitigate the effects of his misconduct.

3. Defendant's conduct is also mitigated by the fact that he voluntarily ceased the practice of law to become focused on his recovery.

4. The mitigating factors outweigh the aggravating factors.

5. Defendant's misconduct caused significant harm to the profession, potential significant harm to the public and violated one or more Revised Rules of Professional Conduct.

6. The fees Defendant collected directly as opposed to having paid to the Firm were required to be paid to the Firm for accounting purposes only. After the funds were accounted for by the Firm Defendant was entitled to payment of the

full amount of the fees that were directly paid to him. Therefore, Defendant did not receive or retain any funds that were the property of the Firm.

7. Stayed suspension of Defendant's license is required for the protection of the public. The public will not be adequately protected from future misconduct by Defendant if the Committee imposes lesser discipline.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Findings Regarding Discipline, and by consent of the parties, the Hearing Committee hereby enters the following:

#### ORDER OF DISCIPLINE

1. The license of Defendant, Scott D. Zimmerman, is hereby suspended for three (3) years from the date this Order of Discipline is served upon him. The period of suspension is stayed for three years upon conditions.

2. Defendant's suspension is stayed on the following conditions:

- a. Defendant will provide to the Office of Counsel a current working street address (not a post office box) and will advise the Bar in writing of any changes to his address within 10 days of all changes.
- b. Defendant shall respond to all State Bar requests for information by the earlier of the deadline stated in the communication or within 30 days.
- c. Defendant shall timely comply with all State Bar membership and Continuing Legal Education requirements.
- d. Defendant shall timely pay all State Bar membership dues and Client Security Fund assessments.
- e. Defendant shall timely pay all costs of this action as assessed by the Secretary.
- f. Defendant shall not violate any law of the United States or the laws of any state.
- g. Defendant shall not violate any provision of the Rules of Professional Conduct.
- h. Defendant shall not use, consume, or possess any controlled substances in violation of the laws of the State of North Carolina or the laws of the United States of America.

- i. Defendant shall submit to random drug testing and urinalysis through First Lab at the expense of Defendant. Defendant shall provide all consents necessary to have the results of the drug testing communicated to the State Bar.
- j. Defendant shall participate in group or individual therapy with Bohdan Hrynewych, LCSW or other substance abuse counselor approved by the Office of Counsel of the State Bar. Such treatments or participation shall be solely at Defendant's expense.
- k. Defendant shall ensure that the Office of Counsel receives quarterly written reports in January, April, July, and October of each year from the director of his therapy certifying that he is complying with all requirements of therapy.

3. Defendant is taxed with the costs of this action as assessed by the Secretary and shall be paid within thirty (30) days of service upon the Defendant of the notice of costs.

4. If the stay granted herein is revoked or the suspension of Defendant's license is activated for any reason, before seeking reinstatement of his license to practice law, Defendant must show by clear, cogent and convincing evidence that he has complied with the following conditions:

- a. Defendant has submitted his license and membership card to the Secretary of the N. C. State Bar within thirty (30) days after the effective date of the order suspending his law license.
- b. Defendant has on a timely basis complied with all of the provisions of the State Bar Discipline and Disability Rules, 27 N. C. Admin. Code Chapter 1, Subchapter B, Section .0124.
- c. Defendant is not presently suffering from any addiction, disability, or condition that would impair his ability to competently engage in the practice of law.
- d. Defendant has abstained from all alcohol use or consumption and has not taken any prescription drugs or controlled substances other than as authorized by his treating physician for at least one year next preceding the filing of his petition for reinstatement. This requirement will apply regardless of when the stay is lifted and regardless of whether enforcement of this provision would extend the period of

suspension of Defendant's law license beyond the three year stay period set out herein.

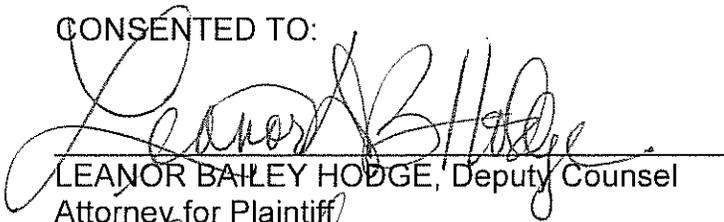
- e. Defendant has provided the Office of Counsel with releases and consents necessary to obtain and review his medical records, including psychological and mental health evaluations and interview his medical care providers.
- f. Defendant has paid all due and owing membership fees, Client Security Fund assessments and costs assessed by the Disciplinary Hearing Commission or the State Bar.
- g. Defendant has complied with all continuing legal education requirements imposed by the North Carolina State Bar.

Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Committee, this the 29<sup>th</sup> day of June, 2009.

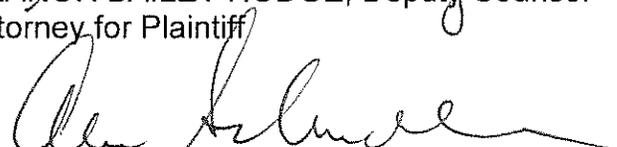


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DONNA R. RASCOE, Chair Hearing Committee

CONSENTED TO:



\_\_\_\_\_  
LEANOR BAILEY HODGE, Deputy Counsel  
Attorney for Plaintiff



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ALAN SCHNEIDER

Attorney for Defendant



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SCOTT D. ZIMMERMAN, Defendant