

STATE OF NORTH CAROLINA

WAKE COUNTY

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

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

HUGH F. McMANUS, IV, Attorney,

Defendant

DEFAULT ORDER IMPOSING
DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of R. Lee Farner, Chair, Irvin W. Hankins, III, and Michael S. Edwards, pursuant to Plaintiff's Motion for Default Order Imposing Discipline under 27 N.C. Admin. Code 1B §§ .0109(5), (7) and .0114(f) of the North Carolina State Bar Discipline and Disability Rules. Plaintiff was represented by Barry S. McNeill, Deputy Counsel. Defendant, Hugh F. McManus, IV ("Defendant" or "McManus"), was represented by Dudley A. Witt of Crumpler, Freedman, Parker & Witt, Winston-Salem, North Carolina. Pursuant to 27 N.C. Admin. Code 1B §§ .0114(f) and (j), the Hearing Panel decided this matter based upon the written submissions of the parties, including Plaintiff's Motion for Default Order Imposing Discipline filed on March 16, 2016 and Defendant's March 11, 2016 Response to Plaintiff's Motion for Default Judgment.

Pursuant to the February 26, 2016 Entry of Default against Defendant, all allegations in Plaintiff's Complaint are deemed admitted by Defendant and, therefore, the established facts are 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, Hugh F. McManus, IV ("McManus" or "Defendant"), was admitted to the North Carolina State Bar on August 25, 2011, 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, McManus was engaged in the practice of law in Wilmington, New Hanover County, North Carolina.

4. McManus maintained an attorney trust account at BB&T Bank, account number ending in -5507 ("trust account"), in which he deposited and disbursed entrusted clients' funds.

5. Robert Bennett Byrd ("Byrd") died on August 22, 2013 from injuries suffered in an accident when the bicycle he was riding was struck by a vehicle being driven at the time by Christina Maria Marcotte ("Marcotte").

6. On September 6, 2013, Kenneth Ray Byrd ("Byrd's uncle"), as Administrator for Byrd's estate, retained McManus to provide representation for a wrongful death claim against Marcotte.

7. McManus agreed to represent Byrd's uncle for 33⅓% of any settlement negotiated on behalf of Byrd's estate for the wrongful death claim against Marcotte.

8. On September 12, 2013, McManus notified Marcotte's insurance carrier, Hartford Accident and Indemnity Company ("Hartford"), of his representation of Byrd's estate for the wrongful death claim.

9. On September 19, 2013, McManus forwarded to Hartford's claim adjuster various records, including the accident report, Byrd's death certificate, and Byrd's medical bills.

10. On September 26, 2013, Hartford acknowledged liability to Marcotte's policy limit of \$100,000 and notified McManus that a check was being forwarded to him for that amount, made payable to both McManus and Byrd's uncle.

11. As a condition of the settlement, Hartford instructed McManus to make a disbursement of \$17,360.56 to the New Hanover Regional Medical Center ("NHRMC"), noting that NHRMC had a lien in that amount for the emergency medical services rendered to Byrd.

12. Hartford also requested that Byrd's uncle execute a release in settlement of the estate's wrongful death claim.

13. On October 8, 2013, McManus received the \$100,000 check from Hartford (check no. 1079886338 dated September 26, 2013), Byrd's uncle endorsed the check and signed the release, and McManus deposited the \$100,000 entrusted funds into his trust account.

14. McManus made the following disbursements to himself from his trust account: \$1,000 on October 10, 2013 (check no. 1001) as his fee and reimbursement for expenses advanced to Byrd's estate; \$1,000 on October 11, 2013 (check no. 1003) as his fee; and, \$31,333.33 on October 16, 2013 (check no. 1004) as the remainder of his attorney fee for Byrd's estate's wrongful death claim.

15. On December 23, 2013, McManus also made a disbursement from his trust account to the Star News in the amount of \$145.03 (check no. 1010) for the notice to creditors of Byrd's estate.

16. Following the December 23, 2013 disbursement to the Star News, a total of \$66,521.64 should have remained in McManus's trust account for the Byrd matter, including \$17,360.56 for NHRMC's medical lien, \$4,383.41 for the Wilmington Funeral & Crematory's lien, attorney William Mason's fee in the amount of \$396.48, \$251.60 in costs owed to McManus, and \$44,129.59 due to Byrd's estate.

17. Between December 23, 2013 and June 5, 2014, McManus did not make any disbursements of the entrusted funds which McManus should have made to or on behalf of the Byrd estate, as indicated in Paragraph 16 above.

18. Beginning December 16, 2013 and continuing until October 8, 2014, McManus made numerous unattributed transfers from his trust account to his business operating account at BB&T Bank, account number ending in -5515 ("operating account").

19. As of December 31, 2013, McManus's trust account balance was \$63,572.58, approximately \$3,000 less than what should have remained in his trust account for the Byrd matter.

20. By March 24, 2014, McManus's trust account balance fell to \$40,825.91, approximately \$26,000 short of what should have been in his trust account for the Byrd matter.

21. On May 28, 2014, McManus's trust account balance was only \$5,471.15, an approximate \$60,000 deficiency of the funds which should have been in his trust account for the Byrd matter.

22. McManus delayed making disbursements to Byrd's uncle on behalf of Byrd's estate claiming he was negotiating with NHRMC to attempt to lower its lien.

23. McManus's representations to Byrd's uncle that he was negotiating with NHRMC to lower its lien were false.

24. By June 5, 2014, McManus's trust account balance had dropped to \$1,706.15 in the absence of any disbursements of the entrusted funds which McManus should have made to or on behalf of the Byrd estate; as indicated in Paragraph 16 above.

25. On or about June 9, 2014, McManus received a \$75,000 settlement check of entrusted funds from Continental Casualty Company ("CNA") in connection with a personal injury claim by another client, Charlotte Yarbro ("Yarbro").

26. McManus deposited the \$75,000 settlement check from CNA into his trust account on June 9, 2014.

27. On June 20, 2014, utilizing the entrusted funds for Yarbrow without her knowledge or consent, McManus disbursed trust account check no. 1012 in the amount of \$30,000 to Byrd's uncle, with the notation "Partial Disbursement PI Byrd."

28. McManus erroneously made the check referenced in Paragraph 27 above payable to Byrd's uncle, instead of to Byrd's estate.

29. McManus never paid the lien to NHRMC in the amount of \$17,360.56, the lien to the Wilmington Funeral & Crematory in the amount of \$4,383.41, or the fee due to attorney William Mason in the amount of \$396.48.

30. McManus never made a disbursement of the balance due to Byrd's estate.

31. McManus misappropriated to his own personal use at least \$36,500.00 of the funds entrusted to him for disbursement to or on behalf of Byrd's estate.

32. On April 20, 2013, Yarbrow was injured when she slipped and fell at a Hardee's fast food restaurant owned by Bay Foods, Inc ("Bay Foods").

33. In early June 2013, Yarbrow retained McManus to represent her in a personal injury claim against Bay Foods.

34. McManus agreed to represent Yarbrow for 33 1/3% of any settlement negotiated in the personal injury claim.

35. On June 4, 2013, McManus notified Bay Foods' insurance company, Continental Casualty Company ("CNA"), that he represented Yarbrow.

36. On or about May 12, 2014, McManus negotiated a settlement with CNA of Yarbrow's personal injury claim.

37. Medicare had paid Yarbrow's medical providers and had a lien on Yarbrow's settlement.

38. On May 12, 2014, CNA issued and forwarded to McManus a settlement check payable to Yarbrow and McManus in the amount of \$75,000, along with a release for Yarbrow to sign.

39. Yarbrow endorsed the check from CNA and signed the release for McManus to return to CNA.

40. On June 9, 2014, McManus deposited the \$75,000 in entrusted funds into his trust account on behalf of Yarbrow.

41. From June 9, 2014 to October 8, 2014, McManus made numerous unattributed transfers from his trust account to his operating account at BB&T Bank.

42. As noted above in Paragraph 27, McManus utilized entrusted funds from Yarbro's settlement to make the June 20, 2014 \$30,000 disbursement to Byrd's uncle in the Byrd estate matter.

43. On June 24, 2014, McManus issued a check payable to "Cash" from his trust account in the amount of \$5,395 with no attribution of the client whose entrusted funds were being utilized; the check posted the same date.

44. The unattributed transfers referenced in Paragraph 41 above, the \$30,000 disbursement to Byrd's uncle referenced in Paragraphs 27 and 42 above, and the \$5,395.00 check made payable to cash referenced in Paragraph 43 above caused McManus's trust account balance to fall to \$253,15 on October 31, 2014, whereas at least \$50,000 (\$75,000 minus \$25,000 for McManus's 33⅓% attorney fee) should have remained in the trust account as of that date on behalf of Yarbro.

45. McManus never made disbursements to Yarbro or to Medicare of the remaining entrusted funds to which they were entitled.

46. McManus misappropriated at least \$50,000 of Yarbro's entrusted funds.

47. Asef Quader ("Quader") of Aliso Viejo, California was injured in an automobile accident on August 31, 2012.

48. Quader's father-in-law worked for McManus, and on June 12, 2013 Quader retained McManus to represent him on his personal injury claim for damages against the responsible party.

49. The retainer agreement between Quader and McManus provided that McManus would receive 50% of any medical payment recovery from Quader's insurance company, USAA Casualty Insurance Company ("USAA"), and that McManus's normal contingency fee of 33⅓% of any settlement proceeds would be reduced to 19%.

50. In mid-September 2013, McManus received a medical payment check from USAA (check no. 0006145578 dated September 11, 2013) in the amount of \$1,000 made payable to both McManus and Quader.

51. McManus forwarded the USAA medical payment check to Quader for his endorsement and, upon receiving the endorsed check from Quader, McManus deposited the \$1,000 check into his trust account on October 15, 2013, but with no client attribution notation.

52. McManus made no disbursement to himself of the \$500 fee for recovering the medical payment from USAA for Quader, although on October 17, 2013 McManus issued a check payable to "Cash" from his trust account, with the notation on the memo line of "Dad loan repay" but no attribution of the client whose entrusted funds were being utilized; the check posted the same date.

53. On or about January 27, 2014, McManus and the responsible party's insurance company, Interinsurance Exchange of the Automobile Club ("Interinsurance"), reached a settlement agreement to settle Quader's personal injury claim in the amount of \$13,000.

54. Interinsurance sent McManus a release for Quader to sign, and Quader did so on February 10, 2014.

55. Once McManus returned Quader's signed release to Interinsurance, on or about February 21, 2014 Interinsurance forwarded to McManus the settlement check (check no. 2629422 dated February 21, 2014) in the amount of \$13,000.

56. The \$13,000 settlement check from Interinsurance was made payable to both McManus and Quader.

57. On March 6, 2014, McManus's paralegal (Quader's father-in-law) forwarded the \$13,000 settlement check to Quader for Quader to endorse and return.

58. The forwarding letter from McManus's paralegal referenced in Paragraph 57 represented that the \$13,000 check would be deposited into McManus's trust account, and once the check cleared a disbursement would be made to Quader of the funds to which he was entitled.

59. Quader returned the endorsed \$13,000 check to McManus on March 17, 2014.

60. McManus deposited the Interinsurance \$13,000 settlement check into his trust account on March 25, 2014 with an attribution notation to client Quader.

61. On April 23, 2014, McManus made two disbursements from his trust account on behalf of Quader, check no. 1016 to Meridian Resource Company, LLC in the amount of \$1,057.96, and check no. 1017 to Discover Health Chiropractic in the amount of \$4,360.

62. Following the disbursements referenced in Paragraph 61 above, a total of \$8,582.04 should have remained in McManus's trust account on behalf of Quader, including McManus's attorney fee in the amount of \$2,470 and insurance proceeds due and payable to Quader in the amount of \$5,612.04.

63. Following the disbursements referenced in Paragraph 61 above, from April 23, 2014 to October 8, 2014 McManus made numerous unattributed transfers from his trust account to his operating account at BB&T Bank.

64. On August 13, 2014, McManus forwarded to Quader a preliminary settlement statement indicating that Quader was entitled to the sum of \$5,612.04 from the entrusted medical payment and insurance settlement proceeds.

65. In messages to Quader's wife beginning on August 13, 2014 and continuing through August 29, 2014, McManus represented that he would mail to Quader the final settlement statement along with a check to Quader of the entrusted funds to which Quader was entitled.

66. McManus never made the disbursement to Quader of the entrusted funds to which Quader was entitled.

67. Due to McManus's continuing unattributed transfers from his trust account to his operating account at BB&T Bank, the balance in McManus's trust account fell to only \$253.15 on October 31, 2014.

68. McManus misappropriated at least \$5,600 of the \$14,000 in entrusted funds for Quader.

69. On September 5, 2014, Ian Padrick ("Padrick") was cited for a speeding in a school zone infraction in New Hanover County.

70. On or about October 21, 2014, Padrick retained McManus to represent him on the traffic ticket referenced above in Paragraph 69.

71. Padrick paid McManus the sum of \$365 in cash, including \$263 as entrusted funds for Padrick's court costs and fine, and \$102 for McManus's fee.

72. McManus never deposited Padrick's entrusted funds into his trust account.

73. McManus never paid the entrusted funds for the court costs and fine to the New Hanover County Clerk of Court.

74. McManus misappropriated Padrick's \$263 in entrusted funds.

75. On October 17, 2013, McManus issued a check payable to "Cash" from his trust account, with the notation on the memo line of "Dad loan repay" but no attribution of the client whose entrusted funds were being utilized; the check posted the same date.

76. On June 24, 2014, McManus issued a check payable to "Cash" from his trust account with no attribution of the client whose entrusted funds were being utilized; the check posted the same date.

77. McManus failed to conduct monthly and quarterly reconciliations of his trust account.

78. McManus failed to maintain client ledger cards for the funds entrusted in his trust account.

79. McManus failed to include client attributions on receipts as well as deposits to and disbursements from his trust account.

80. McManus failed to provide his clients a written accounting of receipts and disbursements of their trust funds.

ADDITIONAL PROCEDURAL FINDINGS OF FACT

81. Plaintiff filed the disciplinary complaint in this action against Defendant on February 1, 2016.

82. Plaintiff served Defendant with the Summons and Complaint on February 3, 2016.

83. Defendant failed to file an answer or any responsive pleading by the deadline established by Rule 4 of the North Carolina Rules of Civil Procedure and 27 N.C. Admin. Code 1B § .0114(e).

84. On February 26, 2016, Plaintiff moved for entry of default against Defendant and, that same date, default was entered against Defendant by the Secretary of the State Bar pursuant to Rule 55 of the North Carolina Rules of Civil Procedure and 27 N.C. Admin. Code 1B §§ .0110(4) and .0114(f).

81. On February 29, 2016, Plaintiff filed a motion for a default judgment against Defendant to deem the allegations of the State Bar's Complaint admitted.

82. On March 11, 2016, Mr. Witt filed a response on behalf of Defendant to Plaintiff's motion for default judgment stating that Defendant did "not wish to be heard in opposition to this motion."

Based on the foregoing established 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, Hugh F. McManus, IV.

2. Entry of Default by the Secretary of the State Bar was proper.

3. Pursuant to N.C. Admin. Code 1B §§ .0114(f) and (j) Plaintiff's Motion for Default Order Imposing Discipline may be decided based on the parties' written submissions.

4. Defendant's conduct, as set forth in the established Findings of Fact and Additional Procedural Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

- a) By failing to make disbursements to or on behalf of Byrd's estate, Yarbro, and Quader from his trust account of the funds to which his clients and others were entitled under the settlement negotiated on behalf of these clients, Defendant failed to promptly pay or deliver to his clients, or to

third persons as directed by the client, the entrusted property belonging to the clients and to which the clients were entitled, in violation of Rule 1.15-2(m);

- b) By making the disbursements to himself or others of the entrusted funds of Byrd's estate, Yarbrow, and Quader to which he or others were not entitled, Defendant used entrusted property for his own personal benefit or for the personal benefit of another when neither Defendant nor the other were the legal or beneficial owner of that property, in violation of Rule 1.15-2(j);
- c) By misappropriating the entrusted funds of Byrd's estate, Yarbrow, Quader, and Padrick to which he was not entitled, Defendant committed criminal acts that reflect adversely on his 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);
- d) By falsely representing to Byrd's uncle that he was delaying disbursements to Byrd's estate because he was negotiating with NHRMC to lower its lien, Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);
- e) By failing to deposit Padrick's entrusted funds into his trust account, Defendant failed to promptly deposit entrusted property belonging to the client, in violation of Rule 1.15-2(b);
- f) By issuing and drawing checks on his trust account made payable to cash, Defendant drew checks on his trust account made payable to cash in violation of Rule 1.15-2(i);
- g) By failing to conduct monthly or quarterly reconciliations of his trust account, Defendant failed to perform monthly and quarterly reconciliations of his trust account in violation of Rule 1.15-3(d);
- h) By failing to maintain client ledgers for the entrusted funds of his clients, Defendant failed to maintain a ledger containing a record of the receipts and disbursements for each person from whom and for whom funds are received and showing the current balance of funds held in the trust account for each such person in violation of Rule 1.15-3(b)(5);
- i) By failing to include client attributions on checks, receipts, and on line transfers, Defendant failed to maintain records listing the source and date of receipt of any entrusted funds deposited or entrusted funds disbursed, and also listing the name of the client or other person to whom the funds belonged in violation of Rule 1.15-3(b)(1); and,
- j) By failing to provide his clients a written accounting of all receipts and disbursements of their entrusted funds, Defendant violated Rule 1.15-2(l) and Rule 1.15-3(e).

Based upon the foregoing established Findings of Fact and Conclusions of Law, the Hearing Panel enters the following:

CONCLUSIONS OF LAW REGARDING DISCIPLINE

1. The Hearing Panel has considered all of the factors contained in 27 N.C. Admin. Code 1B § .0114(w)(1), of the Rules and Regulations of the State Bar, and concludes that the presence of the following factors that warrant suspension or disbarment:

- a. intent of the defendant to cause the resulting harm or potential harm;
- b. intent of the defendant to commit acts where the harm of potential harm is foreseeable;
- c. circumstances reflecting the defendant's lack of honesty, trustworthiness, or integrity;
- d. elevation of the defendant's own interest above that of the client;
- e. negative impact of the defendant's actions on clients' or public's perception of the profession;
- f. negative impact of the defendant's actions on the administration of justice;
- g. impairment of clients' ability to achieve the goals of the representation, specifically, Byrd's estate, Yarbrow, Quader, and Padrick; and,
- h. acts of dishonesty, misrepresentation, deceit or fabrication.

2. The Hearing Panel has considered all of the factors contained in 27 N.C. Admin. Code 1B § .0114(w)(2), of the Rules and Regulations of the State Bar, and concludes the presence of the following factors that warrant disbarment:

- a. acts of dishonesty, misrepresentation, deceit or fabrication;
- b. misappropriation or conversion of assets of any kind to which the defendant or recipient is not entitled, whether from a client or any other source; and,
- c. commission of a felony.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0114(w)(3), of the Rules and Regulations of the State Bar, and concludes the presence of the following factors are applicable in this matter:

- a. dishonest or selfish motive;

- b. pattern of misconduct;
- c. multiple offenses; and,
- d. nearly five years of experience in the practice of law.

4. By misappropriating entrusted client funds, Defendant has caused significant harm to the standing of the legal profession in that his conduct undermines the trust and confidence that the public has in lawyers and the legal system.

5. Defendant caused significant harm to his clients, Byrd's estate, Yarbrow, Quader, and Padrick, by misappropriating their entrusted funds.

6. Defendant caused significant harm to the profession by reinforcing the negative stereotype that lawyers are selfish and out for personal gain.

7. Defendant caused significant harm to the administration of justice in the matters of his clients, Byrd's estate, Yarbrow, Quader, and Padrick.

8. The Hearing Panel has considered all lesser sanctions including: suspension, censure, reprimand and admonition and finds that discipline less than disbarment would not adequately protect the public from Defendant's future misconduct for the following reasons:

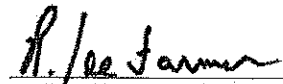
- a. Defendant committed a criminal act, specifically embezzlement, that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in other respects and violated the trust of his clients, Byrd's estate, Yarbrow, Quader, and Padrick;
- b. entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses Defendant committed and would send the wrong message to lawyers and the public regarding the conduct expected of members of the Bar of this State; and,
- c. the protection of the public and the legal profession requires that Defendant not be permitted to return to the practice of law until he demonstrates the following by clear, cogent and convincing evidence: (i) that he has reformed, (ii) that he possesses the moral qualifications required for admission to practice law in North Carolina, taking into account the misconduct that is the subject of this order, (iii) that he understands the current Rules of Professional Conduct, including but not limited to those Rules relating to "Safekeeping Property" as set forth in Rule 1.15 *et seq.*; and (iv) that reinstatement will not be detrimental to the public or the integrity and standing of the legal profession. Disbarment is the only discipline that will require Defendant to make such a showing before returning to the practice of law.

Based upon the foregoing established Findings of Fact, Conclusions of Law, and Conclusions of Law Regarding Discipline, the Hearing Panel hereby enters the following:

ORDER OF DISCIPLINE

1. Defendant, Hugh F. McManus, IV, is hereby DISBARRED from the practice of law.
2. Defendant shall surrender his law 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 pay the administrative fees and costs of this proceeding within 30 days of service of the statement of costs upon him by the Secretary of the State Bar.
4. Defendant shall comply with all provisions of 27 N.C. Admin. Code 1B § .0124.

Signed by the Chair with the consent of the other Hearing Panel members,
this the 12 day of April, 2016.



R. Lee Farmer, Chair
Disciplinary Hearing Panel