

STATE OF NORTH CAROLINA
WAKE COUNTY

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
17 CRS 3902 & 17 CRS 3903

STATE OF NORTH CAROLINA

2011 NOV -2 P 4:11

v. WAKE CO., C.S.C. CONSENT ORDER OF DISBARMENT

JOHNNY S. GASKINS, Defendant

THIS MATTER came before the undersigned Judge of the Superior Court of Wake County upon the tender of surrender of the law license of Johnny S Gaskins. Defendant, Johnny S. Gaskins was represented by R. Daniel Boyce.

Based upon the Affidavit of Surrender of Law License submitted to the Court by Johnny S. Gaskins and the consent of the parties, the court makes the following:

FINDINGS OF FACT

1. Gaskins was licensed to practice law on 19 August 1979.
2. During all periods relevant hereto, Gaskins was actively engaged in the practice of law in Raleigh, Wake County, North Carolina.
3. Gaskins failed to inform his client, R. Sullivan, that he settled Sullivan's personal injury claim and of Gaskins' receipt of the MetLife settlement proceeds check.
4. After Gaskins had settled Sullivan's claim, Gaskins falsely represented to Sullivan that it may take up to two years before any funds were received as payment for injuries Sullivan sustained from the automobile accident.
5. Gaskins failed to deposit the proceeds of Sullivan's MetLife settlement check into a trust account.
6. Gaskins forged Sullivan and his late wife's signatures on the back of the MetLife settlement check with the intent to defraud the bank into believing the check had been endorsed by the Sullivans and uttered the check containing the forged endorsements.
7. Gaskins embezzled the proceeds of the MetLife settlement check.

CONCLUSIONS OF LAW

1. This court has jurisdiction over Respondent and over the subject matter of this proceeding.

2. The courts of this State have the inherent authority to take disciplinary action against attorneys licensed to practice law in North Carolina.
3. Respondent has engaged in attorney misconduct including violating the North Carolina Rules of Professional Conduct as stated below.
4. By failing to inform Sullivan that he settled Sullivan's personal injury claim and of his receipt of the settlement proceeds check, Gaskins failed to promptly inform the client of any decisions or circumstance with respect to which the client's informed consent is required in violation of Rule of Professional Conduct 1.4(a)(1), failed to reasonably consult with the client about the means by which the client's objectives are to be accomplished in violation of Rule of Professional Conduct 1.4(a)(2), and failed to keep the client reasonably informed about the status of the matter in violation of Rule of Professional Conduct 1.4(a)(3).
5. By falsely representing to Sullivan that it may take up to two years before any funds were received as payment for injuries Sullivan sustained from the automobile accident, Gaskins engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule of Professional Conduct 8.4(c).
6. By failing to deposit the MetLife check into a trust account, Gaskins failed to maintain entrusted property in accordance with Rule 1.15 in violation of Rule of Professional Conduct 1.15-2(a) and failed to deposit trust funds he received into a trust account in violation of Rule of Professional Conduct 1.15-2(b).
7. By forging the Sullivans' signatures on the back of the MetLife check with the intent to defraud the bank into believing the check had been endorsed by the Sullivans and uttering the check containing forged endorsements, Gaskins committed criminal acts (forgery and uttering an instrument containing forged endorsements) that reflect adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule of Professional Conduct 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule of Professional Conduct 8.4(c).
8. By failing to disburse the proceeds of the MetLife check to or on behalf of Sullivan and instead using them for his personal benefit, Gaskins used entrusted property for his personal benefit in violation of Rule of Professional Conduct 1.15-2(j)¹, committed a criminal act (embezzlement) that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule of Professional Conduct 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule of Professional Conduct 8.4(c).
9. Gaskins' misconduct constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) and warrants discipline by this court.

¹ Now codified as Rule 1.15-2(k).

10. Gaskins has engaged in professional misconduct warranting disbarment.

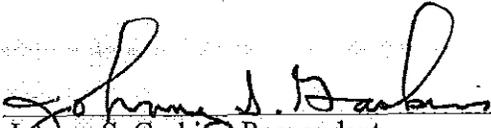
ORDER

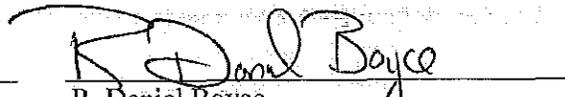
1. The surrender of the license of Johnny S. Gaskins is hereby accepted.
2. Johnny S. Gaskins is DISBARRED from the practice of law in North Carolina effective upon entry of this Order.
3. Gaskins shall wind-down his law practice within 30 days of entry of this order in accordance with 27 N.C. Admin. Code 1B.0121 (e).
4. Gaskins shall comply with the provisions of 27 N.C. Admin. Code 1B.0128 and shall surrender his law license and permanent membership card to the Secretary of the North Carolina State Bar along with the affidavit required by 27 N.C. Admin. Code 1B.0128.
5. Within 15 days of the effective date of this Order, Gaskins shall provide the State Bar with a physical address and telephone number at which clients seeking return of files can communicate with Gaskins and obtain such files.
6. Gaskins shall promptly return client files to clients upon request, within 5 days of receipt of such request. Gaskins will be deemed to have received any such request 3 days after the date such request is sent to Gaskins if the request is sent to the address Gaskins provided the State Bar pursuant to the preceding paragraph.
7. Gaskins shall not petition for reinstatement of his law license until the expiration of at least five years from the date of entry of this order.
8. Gaskins' law license shall not be reinstated until he has demonstrated to the satisfaction of the Disciplinary Hearing Commission and the Council of the North Carolina State Bar that he has complied with 27 N.C. Admin. Code 1B.0129.
9. The costs of this action, including the costs of deposition of Robert Sullivan and Robin Casey, and administrative fees assessed by the State Bar are taxed against Gaskins.

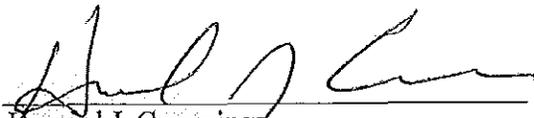
Done and Ordered this the 2nd day of November, 2017.


Superior Court Judge Presiding

CONSENTED TO BY:


Johnny S. Gaskins, Respondent


R. Daniel Boyce
Attorney for Respondent


Howard J. Cummings
Wake Co. First Assistant District Attorney
10th Judicial District Attorneys' Office

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WAKE COUNTY

7011 139V -2 P 1: 11
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WAKE CO., C.S.C.

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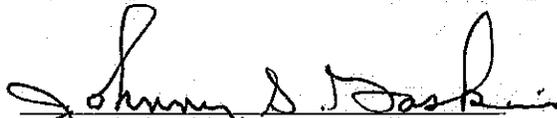
JOHNNY S. GASKINS, Defendant

AFFIDAVIT OF SURRENDER
OF LAW LICENSE

Johnny S. Gaskins, being first duly sworn, deposes and says:

1. I desire to resign and hereby tender my license to practice law in North Carolina pursuant to the provisions of 27 N.C. Admin. Code 1B.0121.
2. My resignation is freely and voluntarily rendered. It is not the result of coercion or duress. I am fully aware of the implications of submitting my resignation.
3. I am aware that there is a pending disciplinary complaint against me, a copy of which is attached hereto as Exhibit A, regarding the following allegations:
 - a. I failed to inform my client, R. Sullivan, that I settled his personal injury claim and of my receipt of the MetLife settlement proceeds check.
 - b. After I had settled the claim, I falsely represented to Sullivan that it may take up to two years before any funds were received as payment for injuries Sullivan sustained from the automobile accident.
 - c. I failed to deposit the proceeds of Sullivan's MetLife settlement check into a trust account.
 - d. I forged Sullivan and his late wife's signatures on the back of the MetLife settlement check with the intent to defraud the bank into believing the check had been endorsed by the Sullivans and uttered the check containing forged endorsements.
 - e. I embezzled the proceeds of the MetLife settlement check.
4. I acknowledge that the material facts upon which the disciplinary complaint is predicated are true.
5. I am submitting my resignation because I know that if disciplinary charges were predicated upon the alleged misconduct, I could not successfully defend against them.

This the 2nd day of November, 2017.


Johnny S. Gaskins

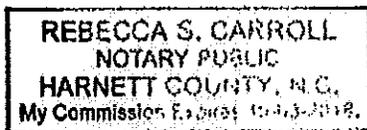
I, Rebecca S. Carroll, Notary Public of the County of Harnett, State of North Carolina, certify that Johnny S. Gaskins personally appeared before me this day, was sworn, and acknowledged the due execution of the foregoing Affidavit.

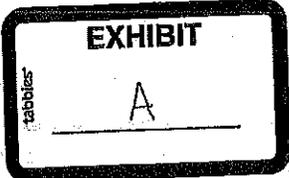
Sworn to and subscribed before me

This the 2nd day of November, 2017.

Rebecca S. Carroll
Notary Public

My Commission Expires: 10/3/2018





STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
17 DHC 14

THE NORTH CAROLINA STATE BAR,
Plaintiff
v.
JOHNNY S. GASKINS, Attorney,
Defendant

COMPLAINT

Plaintiff, complaining of Defendant, alleges and says:

1. Plaintiff, the North Carolina State Bar ("Plaintiff" or "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, Johnny S. Gaskins ("Defendant" or "Gaskins"), was admitted to the North Carolina State Bar on 19 August 1979 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 relevant period referred to herein, Gaskins actively engaged in the practice of law in the State of North Carolina and maintained a law office in Raleigh, Wake County, North Carolina.
4. In or around May 2015, R. Sullivan, Jr. ("Sullivan") retained Gaskins to represent him after an automobile accident.
5. Gaskins undertook representation of Sullivan on a contingent fee basis.
6. In or about October 2015, MetLife agreed to settle Sullivan's personal injury claim.
7. Accordingly, on or about 30 October 2015, MetLife Auto & Home Insurance issued check no. 008451324 payable to Sullivan and his late wife, Mrs. Sullivan, Individually and as Husband and Wife and Johnny S. Gaskins, Attorney in the amount of \$23,000.
8. Gaskins did not inform Sullivan that Gaskins had settled Sullivan's personal injury claim.

9. Gaskins did not inform Sullivan of his receipt of the MetLife Check.
10. Instead, Gaskins falsely represented to Sullivan that it may take up to two years before any funds were received as payment for injuries Sullivan sustained from the automobile accident.
11. Sullivan did not sign the MetLife check.
12. Sullivan did not give Gaskins authority to endorse the MetLife check on his behalf.
13. Upon information and belief, Gaskins signed Sullivan's name on the MetLife check with the intent to defraud the bank into believing the check had been endorsed by Sullivan.
14. Gaskins forged Sullivan's endorsement of the MetLife check in order to negotiate the check.
15. Mrs. Sullivan did not sign the MetLife Check.
16. Mrs. Sullivan did not give Gaskins authority to endorse the MetLife check on her behalf.
17. Upon information and belief, Gaskins signed Mrs. Sullivan's name on the MetLife check with the intent to defraud the bank into believing the check had been endorsed by her.
18. Gaskins forged Mrs. Sullivan's endorsement of the MetLife check in order to negotiate the check.
19. On or about 17 November 2015, Gaskins presented the MetLife check with the forged endorsements to the bank for deposit into his personal bank account, BB&T Bright Banking account ending in no. 1999.
20. The bank credited \$23,000 to Gaskins personal account as a result of Gaskins' presentment of the forged MetLife check.
21. The BB&T Bright Banking account was not a trust account.
22. Gaskins did not disburse any portion of the proceeds of the MetLife Check to or on behalf of Sullivan.
23. Instead, Gaskins disbursed the funds for his own personal benefit.

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

- (a) By failing to inform Sullivan that he settled Sullivan's personal injury claim and of his receipt of the settlement proceeds check, Gaskins failed to promptly inform the client of any decisions or circumstance with respect to which the client's informed consent is required in violation of Rule 1.4(a)(1), failed to reasonably consult with the client about the means by which the client's objectives are to be accomplished in violation of Rule 1.4(a)(2), and failed to keep the client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3);
- (b) By falsely representing to Sullivan that it may take up to two years before any funds were received as payment for injuries Sullivan sustained from the automobile accident, Gaskins engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);
- (c) By failing to deposit the MetLife check into a trust account, Gaskins failed to maintain entrusted property in accordance with Rule 1.15 in violation of Rule 1.15-2(a) and failed to deposit trust funds he received into a trust account in violation of Rule 1.15-2(b);
- (d) By forging the Sullivans' signatures on the back of the MetLife check with the intent to defraud the bank into believing the check had been endorsed by the Sullivans and uttering the check containing forged endorsements, Gaskins committed criminal acts (forgery and uttering an instrument containing forged endorsements) that reflect 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 disburse the proceeds of the MetLife check to or on behalf of Sullivan and instead using them for his personal benefit, Gaskins used entrusted property for his personal benefit in violation of Rule 1.15-2(j)¹, committed a criminal act (embezzlement) 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).

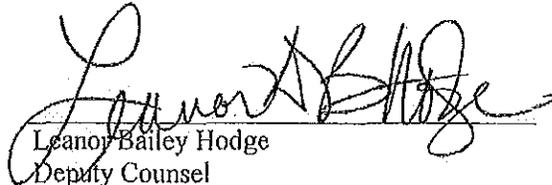
WHEREFORE, Plaintiff prays that:

- (1) Disciplinary action be taken against Defendant in accordance with N.C. Gen. Stat. § 84-28 (a) and 27 N.C. Admin. Code 1B § .0114 as the evidence on hearing may warrant;

¹ Now codified as Rule 1.15-2(k).

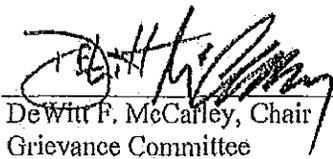
- (2) Defendant be taxed with the administrative fees and costs permitted by law in connection with this proceeding; and
- (3) For such other and further relief as is appropriate.

THIS the 12th day of June, 2017.



Leonor Bailey Hodge
Deputy Counsel
State Bar No. 27253
Attorney for Plaintiff
The North Carolina State Bar
P.O. Box 25908
Raleigh, NC 27611
919-828-4620

Signed pursuant to 27 N.C. Admin. Code 1B § .0113(n) and §.0105(a)(10).



DeWitt F. McCafley, Chair
Grievance Committee