

STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING
COMMISSION
OF THE
NORTH CAROLINA STATE BAR
18 DHC 44

THE NORTH CAROLINA STATE BAR,
Plaintiff
v.
JOHN F. HANZEL, Attorney,
Defendant

ORDER OF DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Richard V. Bennett, Chair, and members R. Lee Farmer and Brandon Gosey pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B.

Pursuant to Plaintiff's motion for summary judgment and based upon Defendant's admissions in his Answer and the affidavit provided by Plaintiff, the Hearing Panel concludes there is no genuine issue of material fact and that Plaintiff is entitled to judgment as a matter of law concluding that Defendant has violated the Rules of Professional Conduct as alleged in the complaint.

Based on the record, there is no genuine issue related to the following material facts:

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, John F. Hanzel (hereafter "Defendant" or "Hanzel"), was admitted to the North Carolina State Bar on September 1, 1974, 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. Hanzel was actively engaged in the practice of law in Mecklenburg County, North Carolina; during the relevant period referred to herein.
4. Hanzel maintained two trust accounts for his clients' entrusted funds. One trust account was at First Citizens Bank, account number ending in 5623, ("First Citizens 5623") and the other was at Regions Bank, account number ending in 3107, ("Regions 3107").

5. On March 31, 2015, Hanzel closed M. & J. Siegel's purchase of real property in Huntersville, NC from J. and S. Versaggi ("Siegel closing"). The sellers' settlement charges on line 1400 of the HUD-1 Hanzel prepared for the Siegel closing overstated the total of the sellers' actual charges by \$2,000.00. Thus, Hanzel received, and deposited into First Citizens 5623, \$2,000.00 more than was necessary to make all disbursements for the obligations listed on the HUD-1 for the Siegel closing.

6. Hanzel, or an employee under his supervision, prepared a disbursement statement for the Siegel closing that characterized the \$2,000.00 that was collected in excess of the disbursements listed on that statement as "overage."

7. In addition, Hanzel listed a lender's title insurance premium of \$883.20 on the HUD-1 for the Siegel closing and a separate \$74.80 premium for owner's title insurance.

8. On April 1, 2015, check number 2575 payable to Hanzel cleared the First Citizens 5623 account. That check disbursed all of the funds Hanzel was entitled to receive from the Siegel closing proceeds on deposit in First Citizens 5623.

9. On June 30, 2015, check number 2596 payable to Investors Title cleared the First Citizens 5623 account in the amount of \$883.20. No separate payment was made to Investors Title for owner's title insurance.

10. Both the \$2,000.00 in excess funds collected at the Siegel closing and the \$74.80 collected as owner's title insurance premium that was not paid to Investors Title were entrusted funds that Hanzel was not entitled to.

11. On August 1, 2015, Hanzel wrote check number 2635 made payable to Hanzel in the amount of \$2,074.80 that cleared the First Citizens 5623 account on September 1, 2015.

12. Hanzel appropriated the \$2,074.80 in entrusted funds he had collected for the Siegel closing to his own use in violation of N.C.G.S. § 14-90.

13. From September 1, 2015 to November 19, 2015, the balance in Hanzel's Regions 3107 account was \$1,200.00. On November 19, 2015, Hanzel deposited an "Official Check" purportedly drawn on Citibank in the amount of \$554,651.01 that he had received from a client into his Regions 3107 account.

14. On November 23, 2015, Hanzel debited \$10,000.00 from his Regions 3107 account as his fee for the client that he had deposited the Citibank check on behalf of and had that amount credited to another account in his name.

15. On November 25, 2015, Hanzel's November 19, 2015 Regions 3107 account deposit was reversed because the Citibank check Hanzel had deposited was dishonored, leaving Hanzel's Regions 3107 account with a deficit of \$8,800.00.

16. On December 8, 2015, rather than using funds from an account of his own, Hanzel covered the deficit in his Regions 3107 account by writing check number 2697 to himself for

\$10,250.00 from his First Citizens 5623 account and depositing that into his Regions 3107 account. Check number 2697 cleared the First Citizens 5623 account on December 9, 2015.

17. Hanzel did not attribute the \$10,250.00 withdrawal from the First Citizens 5623 account to any client.

18. When Hanzel wrote check number 2697 to himself, he did not have any funds in the First Citizens 5623 account to which he was presently entitled.

19. By writing check number 2697 to himself, Hanzel appropriated \$10,250.00 of his clients' entrusted funds from his First Citizens 5623 account to his own use in violation of N.C.G.S. § 14-90.

20. On December 22, 2015, Hanzel wrote check number 2705 to himself for \$10,000.00 from the First Citizens 5623 account. Hanzel did not name a client from whose balance the \$10,000.00 was drawn, but instead attributed the withdrawal to himself. Check number 27057 cleared the First Citizens 5623 account on December 23, 2015.

21. At the time Hanzel withdrew the \$10,000.00 from his First Citizens 5623 account in December 2015, he had no funds in the account to which he was presently entitled.

22. By writing check number 2705 to himself, Hanzel appropriated \$10,000.00 of his clients' entrusted funds from his First Citizens 5623 account to his own use in violation of N.C.G.S. § 14-90.

23. On November 9, 2004, Thomas Marion Hampton executed a Last Will and Testament that had been prepared by Hanzel that named Hanzel as co-executor.

24. On November 11, 2004, Thomas Marion Hampton died.

25. On December 3, 2004, Hanzel and Susan E. Hampton, the decedent's daughter, were named by the Mecklenburg County Clerk of Superior Court ("Clerk") as co-executors of the Thomas Marion Hampton Estate ("Hampton Estate").

26. In September 2006, Susan E. Hampton resigned as co-executor of the Hampton Estate leaving Hanzel as the sole personal representative.

27. In March 2007, Hanzel distributed the assets of the Hampton Estate to the trustee of a trust created by the Thomas Marion Hampton's will ("the Hampton Trust").

28. On April 28, 2007, the Clerk approved Hanzel's final accounting for the Hampton Estate, discharged Hanzel, and closed the estate.

29. On May 7, 2014, a lawsuit against Thomas Marion Hampton's former business partner and the partner's company settled with the former business partner promising to pay to the Hampton Estate five percent of any future income generated in competition with one of Thomas Marion Hampton's businesses ("settlement agreement").

30. On August 11, 2014, prior to receiving any funds generated by the settlement agreement, Hanzel filed a Petition and Order to Reopen the Hampton Estate because "assets from settlement of lawsuit need to come back into estate for distribution to trust."

31. Thereafter, Hanzel directed the trustee of the Hampton Trust to deliver the trust's assets to him as Executor of the Hampton Estate.

32. After Thomas Marion Hampton's wife remarried in June 2014, the beneficiaries of the Hampton Trust and the heirs of the Hampton Estate were Thomas Marion Hampton's three children, Susan E. Hampton, Bryan G. Hampton and Justin Y. Hampton.

33. On October 14, 2014, Hanzel received \$422,993.49 from the trustee of the Hampton Trust that he deposited into an estate account for the Hampton Estate at Fifth Third Bank, account number ending in 6068 ("estate account"). The trustee also delivered other non-cash assets to Hanzel.

34. On October 17, 2014, without approval from the Clerk and without the knowledge and consent of any of the Hampton Estate's heirs, Hanzel wrote himself starter check number 2 for \$50,000.00 from the estate account. That check cleared the estate account on October 17, 2014.

35. By writing starter check number 2 to himself, Hanzel appropriated \$50,000.00 of funds he held in a fiduciary capacity for the Hampton Estate in the estate account to his own use in violation of N.C.G.S. § 14-90.

36. On or before January 14, 2015, without approval from the Clerk and without the knowledge and consent of any of the Hampton Estate's heirs, Hanzel wrote himself check number 251 for \$5,000.00 from the estate account that cleared on January 14, 2015.

37. By writing check 251 to himself, Hanzel appropriated \$5,000.00 of funds he held in a fiduciary capacity for the Hampton Estate in the estate account to his own use in violation of N.C.G.S. § 14-90.

38. On February 10, 2015, Hanzel, as Executor of the Hampton Estate, assigned the May 7, 2014 settlement agreement to Thomas Marion Hampton's three children.

39. On April 17, 2015, Hanzel presented a final accounting for the Hampton Estate to the Clerk that falsely listed no assets received and no distributions made on the accounting. The accounting only referenced the assignment of the settlement agreement.

40. Because Hanzel's accounting falsely showed no assets to account for, on April 17, 2015 the Clerk again closed the Hampton Estate and discharged Hanzel as personal representative.

41. On October 2, 2015, Bryan G. Hampton filed a petition in the Hampton Estate in opposition to Hanzel's final accounting and to the fees Hanzel had taken from the estate. The petition asked the Clerk to order Hanzel to file a full, fair and accurate accounting of all assets that had come into his possession and control as well as a report of all receipts and disbursements since the Hampton Estate had been reopened.

42. On March 24, 2016, a consent order was entered by the Clerk that reopened the Hampton Estate and reappointed Hanzel as executor for the limited purpose of providing a final accounting. The consent order gave Hanzel 30 days to file a proper final accounting with the Clerk.

43. Hanzel filed a proposed final accounting on April 26, 2016 and an amended proposed final accounting on June 4, 2016.

44. On June 15, 2016, Assistant Clerk Jennifer M. Scott held a hearing on Bryan G. Hampton's petition at which Hanzel had an opportunity to present arguments and evidence in support of his proposed accountings and for the disbursements he had made to himself and others.

45. On June 30, 2016, Jennifer M. Scott entered an Order finding that Hanzel's accountings were not approved on the grounds that the accountings reflected payments to Hanzel and others that were not approved by the Clerk and otherwise lacked sufficient substantiation for approval by the Clerk.

46. The June 30, 2016 Order ordered Hanzel to reimburse the Hampton Estate for all unapproved disbursements in the amount of \$91,010.96.

47. Hanzel did not appeal the June 30, 2016 Order.

48. Hanzel has made no reimbursement to the Hampton Estate.

49. In May 2016, J. Ervi retained Hanzel to represent him in defending a business franchise dispute.

50. On July 14, 2016, Hanzel was enjoined from receiving or disbursing entrusted funds by Consent Order of Preliminary Injunction entered against Hanzel in Wake County Superior Court, file number 16 CVS 9112.

51. Ervi's dispute went to arbitration with the American Arbitration Association ("the association").

52. Ervi paid the arbitration fee to the association.

53. Prior to the arbitration hearing, the dispute was resolved.

54. Ervi needed the expected refund of the arbitration fee to pay the amount he owed to the other party in the resolved dispute.

55. On August 29, 2017, the association sent Hanzel its check in the amount of \$5,427.33 as the refundable portion of Ervi's arbitration fee. The association's check constituted entrusted funds belonging to Ervi.

56. On September 8, 2017, Hanzel deposited the associations check constituting Ervi's entrusted funds into his office's operating account at Capital Bank, account number ending in 9544 ("operating account").

57. By October 3, 2017, the balance in Hanzel's operating account had dropped below \$5,427.33.

58. On October 5, 2017, Hanzel wrote Ervi a check in the amount of \$5,427.33 from his operating account. The check to Ervi didn't clear until October 18, 2017.

59. On October 16, 2017, two days before the check to Ervi cleared, Hanzel's operating account had a negative balance.

60. Hanzel appropriated the \$5,427.33 of Ervi's entrusted funds he had received from the association to his own use in violation of N.C.G.S. § 14-90.

BASED UPON the material facts about which there is no genuine issue, the Hearing Panel concludes as follows:

1. All parties are properly before the Hearing Panel and the Disciplinary Hearing Commission has jurisdiction over Defendant, John F. Hanzel, and over the subject matter of this proceeding.

2. Plaintiff is entitled to judgment as a matter of law.

3. Hanzel'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) in that Hanzel violated the Rules of Professional Conduct as follows:

(a) By appropriating to his own use \$2,074.80 in entrusted funds from the Siegel closing, Hanzel failed to properly maintain and disburse entrusted funds in violation of Rule 1.15-2(a); used entrusted funds for his personal benefit in violation of Rule 1.15-2(j); engaged in a criminal act that reflects adversely on his honesty and trustworthiness in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);

(b) By writing check number 2697 to himself for \$10,250.00 from his First Citizens 5623 account without attributing the withdrawal to a client, Hanzel drew an

- item on a trust account for payment to himself without indicating a client name from whose balance the item was drawn in violation of Rule 1.15-2(h);
- (c) By appropriating to his own use \$10,250.00 of his clients' entrusted funds from his First Citizens 5623 account to cover the deficit in his Regions 3107 account, Hanzel failed to properly maintain and disburse entrusted funds in violation of Rule 1.15-2(a); used entrusted funds for his personal benefit in violation of Rule 1.15-2(j); engaged in a criminal act that reflects adversely on his honesty and trustworthiness 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 writing check number 2705 to himself for \$10,000.00 from his First Citizens 5623 account without attributing the withdrawal to a client, Hanzel drew an item on a trust account for payment to himself without indicating a client name from whose balance the item was drawn in violation of Rule 1.15-2(h);
 - (e) By appropriating to his own use \$10,000.00 of his clients' entrusted funds from his First Citizens 5623 account, Hanzel failed to properly maintain and disburse entrusted funds in violation of Rule 1.15-2(a); used entrusted funds for his personal benefit in violation of Rule 1.15-2(j); engaged in a criminal act that reflects adversely on his honesty and trustworthiness in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);
 - (f) By appropriating to his own use \$50,000.00 of the funds he held in a fiduciary capacity for the Hampton Estate from the estate account on October 17, 2014, Hanzel failed to properly maintain and disburse fiduciary funds in violation of Rule 1.15-2(a) & (c); used entrusted funds for his personal benefit in violation of Rule 1.15-2(j); engaged in a criminal act that reflects adversely on his honesty and trustworthiness in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);
 - (g) By appropriating to his own use \$5,000.00 of the funds he held in a fiduciary capacity for the Hampton Estate from the estate account on January 14, 2015, Hanzel failed to properly maintain and disburse fiduciary funds in violation of Rule 1.15-2(a) & (c); used entrusted funds for his personal benefit in violation of Rule 1.15-2(j); engaged in a criminal act that reflects adversely on his honesty and trustworthiness in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);
 - (h) By filing a false final accounting for the Hampton Estate with the Clerk on April 17, 2015 that did not accurately account for the assets he had received from the Hampton Trust or the disbursements to himself and others, Hanzel

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

- (i) By depositing Ervi's entrusted funds into his operating account while he was enjoined by the court from handling or possessing entrusted funds, Hanzel knowingly disobeyed an obligation under the rules of a tribunal in violation of Rule 3.4(c) and engaged in conduct that is prejudicial to the administration of justice in violation of Rule 8.4(d);
- (j) By using Ervi's \$5,427.33 that was deposited into his operating account for purposes other than disbursing the funds to Ervi, Hanzel failed to properly maintain and disburse entrusted funds in violation of Rule 1.15-2(a) and used entrusted funds for his personal benefit in violation of Rule 1.15-2(k)¹;
- (k) By appropriating Ervi's \$5,427.33 refund from the association to his own use, Hanzel engaged in a criminal act that reflects adversely on his honesty and trustworthiness in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c).
- (l) Hanzel's misappropriation of entrusted funds constituted embezzlement under N.C.G.S. § 14-90, which were felony criminal offenses.

3. In its motion for summary judgment, the Plaintiff asked the Hearing Panel to enter this order of discipline unless the Defendant requested a hearing on what discipline is appropriate within the same time period the Defendant had to respond to the motion for summary judgment. The Defendant did not request such a hearing. Given that the Defendant has not requested an opportunity to present additional evidence of what discipline is appropriate and given the seriousness of the misconduct found herein and that the material facts establish grounds for disbarment, the Hearing Panel concludes that the record is sufficient to allow it to make findings of fact and conclusions of law regarding discipline without a hearing and that entry of this order without a hearing is appropriate.

Based on the record before it, the Hearing Panel finds by clear, cogent, and convincing evidence the following:

FINDINGS OF FACT REGARDING DISCIPLINE

- 1. Hanzel engaged in multiple instances of misappropriation of entrusted funds.
- 2. Hanzel caused significant harm to the clients and the estate whose funds he failed to safeguard and whose funds he misappropriated.

¹ Rule 1.15-2(j) became Rule 1.15-2(k) after the September 30, 2016 publication of the Supreme Court's June 9, 2016 approval of amendments to the Rules of Professional Conduct.

3. Proper maintenance and management of entrusted funds is a cornerstone of the public's trust of the legal profession. Embezzlement is one of the most serious offenses an attorney can commit, betraying the client's trust in the attorney and the public's trust in the legal profession. Hanzel's misappropriation caused significant harm to the standing of the legal profession, undermining trust and confidence in lawyers and the legal profession.

4. Hanzel's filing of a false accounting in the Hampton Estate that the Clerk relied on in closing the estate without all of the estate's assets being accounted for caused significant harm to the Hampton Estate and to the administration of justice.

5. Hanzel caused significant financial harm to the Hampton Estate which he has not reimbursed even after having been ordered to do so by the Clerk.

6. Hanzel previously received a Reprimand by the Grievance Committee in 12G0713.

Based upon the material facts that support the granting of Summary Judgment, Conclusions of Law, and the additional Findings of Fact Regarding Discipline, the hearing panel enters the following:

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f)(1), (2) and (3) of the Rules and Regulations of the North Carolina State Bar and concluded that the following factors are applicable:

§.0116(f)(1) Factors Supporting Suspension or Disbarment

- (a) Factor (A) intent of the defendant to cause the resulting harm or potential harm;
- (b) Factor (B) intent of the defendant to commit acts where the harm or potential harm was foreseeable;
- (c) Factor (C) circumstances reflecting the defendant's lack of honesty, trustworthiness, or integrity;
- (d) Factor (D) elevation of the defendant's own interest above that of the client;
- (e) Factor (E) negative impact of defendant's actions on the client's or the public's perception of the profession;
- (f) Factor (F) negative impact of the defendant's actions on the administration of justice; and
- (g) Factor (I) acts of dishonesty, misrepresentation, deceit, or fabrication.

§.0116(f)(2) Factors Supporting Consideration of Disbarment

- (a) Factor (A) acts of dishonesty, misrepresentation, deceit, or fabrication;
- (b) Factor (C) 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) Factor (D) commission of a felony.

§.0116(f)(3) Factors to be Considered in All Cases

- (a) Factor (A) a prior disciplinary offense in this state;
- (b) Factor (C) dishonest or selfish motive;
- (c) Factor (E) indifference to making restitution to the Hampton Estate;
- (d) Factor (F) a pattern of misconduct;
- (e) Factor (G) multiple offenses; and
- (f) Factor (S) degree of experience in the practice of law.

2. The Hearing Panel considered all of the disciplinary options available to it and determined that disbarment is appropriate.

3. The Hearing Panel considered all lesser sanctions and concludes that discipline short of disbarment would not adequately protect the public for the following reasons:

- (a) Hanzel committed multiple criminal acts, specifically embezzlement, that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in other respects;
- (b) Hanzel caused significant harm to his clients, the Hampton Estate, the administration of justice and the legal profession;
- (c) Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses that Hanzel committed and would send the wrong message to lawyers and the public regarding the conduct expected of members of the Bar in this State; and
- (d) The protection of the public and the legal profession requires that Hanzel not be permitted to return to the practice of law until he demonstrates the following by clear, cogent and convincing evidence:
 - (1) That he has reformed;

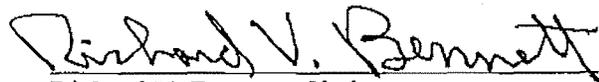
- (2) That he possesses the moral qualifications required for admission to the practice of law in North Carolina, taking into account the misconduct that is the subject of this order;
 - (3) That he understands his obligations to his clients, the public, the administration of justice and the legal profession; and
 - (4) That permitting him return to the practice of law will not be detrimental to the public, to the administration of justice or the integrity and standing of the legal profession.
- (e) Disbarment is the only discipline that will require Hanzel to make such a showing before returning to the practice of law and is thus the only sanction that can adequately serve to protect the public from future transgressions by this attorney.

Based upon the foregoing, the hearing panel enters the following

ORDER OF DISCIPLINE

1. John H. Hanzel is hereby DISBARRED from the practice of law, effective 30 days from the date of service of this order upon him.
2. Hanzel shall surrender his law license and bar membership card within 30 days after service of this order upon him.
3. Hanzel shall comply with all provisions of 27 N.C.A.C. 1B §.0128 of the North Carolina State Bar Discipline and Disability Rules.
4. Hanzel is taxed with the costs and administrative fees of this action as assessed by the Secretary which shall be paid within thirty (30) days of service of the notice of costs upon him.

Signed by the undersigned Chair of the Hearing panel with the full knowledge and consent of the other panel members, this the 30th day of July 2019.



Richard V. Bennett, Chair
Disciplinary Hearing Panel