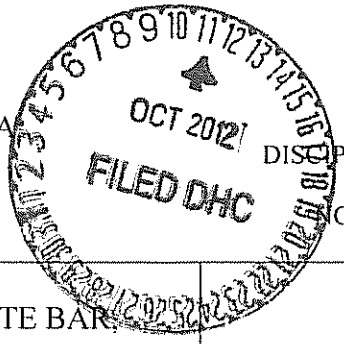

STATE OF NORTH CAROLINA WAKE COUNTY	BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR 12 DHC 11
THE NORTH CAROLINA STATE BAR, Plaintiff v. LINDA A. CLARK, Attorney, Defendant	ORDER OF DISBARMENT

This matter was heard on August 24, 2012, before a Hearing Panel of the Disciplinary Hearing Commission composed of Fred M. Morelock, Chair, William M. Claytor, and Joseph Barlow Herget. Mary D. Winstead represented Plaintiff, the North Carolina State Bar. Defendant, Linda A. Clark, represented herself.

Based upon the pleadings and the evidence presented at the hearing, the Hearing Panel 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, Linda A. Clark ("Clark" or "Defendant"), was admitted to the North Carolina State Bar on September 12, 1997 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, Clark was actively engaged in the practice of law in the State of North Carolina and maintained a law office in Wilmington, New Hanover County, North Carolina.

4. Clark was properly served with process, a hearing in this matter was set, and the matter came before the Hearing Panel with due notice to the parties.

5. During the times relevant herein, Clark had a real estate practice and also represented clients on tax issues.

6. During the times relevant herein, Clark's real estate practice and her personal finances were suffering as a result of the downturn in the economy.

7. On August 7, 2009, Defendant presented three counterfeit Albertsons MoneyGrams, each in the amount of $875.00 to First Federal Bank, Military Cutoff branch, Wilmington, N.C. for which she received cash in the amount of $2,625.00.

8. In August 2009, Clark's trust account and operating account were with First Federal Bank.

9. On August 10, 2009, Defendant presented five counterfeit Albertsons MoneyGrams, each in the amount of $935.00 to First Bank, Eastwood Road branch, Wilmington, N.C. for which she received cash in the amount of $4,675.00.

10. On August 11, 2009, Defendant presented seven counterfeit Albertsons MoneyGrams, each in the amount of $935.00 to First Bank, Eastwood Road branch, Wilmington, N.C. for which she received cash in the amount of $6,545.00.

11. On August 12, 2009, Defendant presented ten counterfeit U.S. Postal Service Money Orders at the drive-thru at First Federal Bank, Pine Valley branch, Wilmington, N.C. and attempted to cash the money orders.

12. The teller at the drive-thru informed Ms. Clark that the bank could not handle the transaction at the drive-thru and asked Ms. Clark to come into the bank.

13. Inside the bank, another teller examined the money orders.

14. The teller consulted with another bank employee at her window and that employee suggested that the teller speak with the branch manager about the money orders.

15. The teller told Ms. Clark that she was going to speak with her manager, left her teller window, and went into the manager's office.

16. The teller spoke with the branch manager who advised her that the money orders could not be cashed but could be deposited in Ms. Clark's account at the bank.

17. The teller returned to her window and informed Ms. Clark that the manager said that the bank could not cash the money orders because the bank had so many problems with fraudulent money orders.

18. The teller offered Defendant the option of depositing the money orders into her bank account.

19. Defendant declined to deposit the money orders and left the bank with the money orders.

20. Defendant has consistently maintained throughout the disciplinary process that the bank employees would not cash the money orders because they did not know her.

21. The branch manager at the Pine Valley branch had previously worked at the Military Cutoff branch and did, in fact, recognize Ms. Clark from that branch and knew that she was an attorney.

22. At no time did anyone at the bank tell Ms. Clark that the bank could not cash the money orders because they did not know her.

23. The Pine Valley Branch was over seven miles from Defendant's office where she claimed to have received a Fed Ex envelope containing the money orders yet she failed to definitively explain why she went there rather than to a bank closer to her office.

23. Later on August 12, 2009, Defendant presented the ten counterfeit U.S. Postal Service Money Orders that First Federal Bank had declined to cash to First Bank, Eastwood Road branch, Wilmington, N.C., cashed these money orders, and received $9,902.00.

24. Ms. Clark was aware that the aggregate amount of the money orders she cashed on August 12, 2009 was just under $10,000 and that a transaction involving over $10,000 in cash must be reported to the IRS.

25. On August 13, 2009, Defendant presented ten counterfeit Albertsons MoneyGrams each in the amount of $935.00 to First Federal Bank, Military Cutoff branch, Wilmington, N. C. and deposited these MoneyGrams into her operating account.

26. Defendant was charged with Obtaining Property by False Pretenses as a result of these transactions with the money orders, entered a deferred prosecution program, and made full restitution to the banks.

27. Defendant knew or reasonably should have known that the money orders she negotiated were counterfeit.

28. In an interview with the State Bar, Defendant maintained that she had not derived any financial benefit from the proceeds of the money orders.

29. In her deposition on July 12, 2012, Defendant testified that she had received ten per cent of the proceeds from each transaction.

30. In an interview with the State Bar, Defendant asserted that she had received the money orders at her office via Federal Express from a client who had contacted her by e-mail after seeing her law firm website.

31. Defendant further maintained that at the purported client's behest, she had cashed the money orders and sent the proceeds via Western Union to the client's business partner in England.

32. Defendant did not produce to the State Bar or the Hearing Panel any e-mails, Western Union receipts, telephone records, Federal Express envelopes, or any document whatsoever to corroborate her story about how she came into possession of the counterfeit money orders or that she wired the money to England.

33. Defendant failed to provide the State Bar or the Hearing Panel with the full name and contact information for the individual from whom she claimed to have received the counterfeit money orders or the individual to whom she claimed to have wired the cash from the money orders.

34. In June 2008, Defendant was the settlement agent in a real estate transaction in which H.C. Ledbetter was the seller.

35. Defendant prepared the deed for the seller and represented both buyer and seller in the closing.

36. At the closing, Defendant escrowed for possible repairs $100.00 from the funds due Mr. Ledbetter.

37. In August, Mr. Ledbetter began trying to contact Defendant to request the $100.00.

38. On or about January 8, 2009, Defendant remitted to Mr. Ledbetter a check for $40.00 and retained $60.00 as an administrative charge for maintaining the funds in escrow.

39. With the check was a handwritten notation which stated "$100.00 escrow on June 2008 less acct. fees $10.00 per month or $40.00."

40. Although Defendant claimed otherwise, she had not told Mr. Ledbetter prior to the closing that there would be an administrative fee for holding the funds in escrow.

41. In a letter to the local bar grievance committee, dated March 20, 2009, which was well after she had disbursed the funds from escrow, Defendant stated that she had contacted the buyers' real estate agent, but he had not "gotten back" to her.

42. Defendant did not have approval to disburse the escrowed funds from the buyers or their real estate agent prior to making the disbursement to Mr. Ledbetter.

43. Mr. Ledbetter's experience in dealing with Defendant left him with a negative view of attorneys and the legal profession.

Based on the record and the foregoing Findings of Fact, the Hearing Panel makes the following:

CONCLUSIONS OF LAW

1. All parties are before this Hearing Panel of the Disciplinary Hearing Commission and the Hearing Panel has jurisdiction over Defendant and over the subject matter.

2. Defendant's conduct, as set out above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:

(a) Defendant, by presenting for payment and cashing counterfeit money orders, committed criminal acts that reflect adversely on her 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, and misrepresentation in violation of Rule 8.4(c).

(b) Defendant, by presenting for payment and depositing into her bank account counterfeit MoneyGrams, committed criminal acts that reflect adversely on her 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, and misrepresentation in violation of Rule 8.4(c).

(c) Defendant, by charging and collecting an administrative fee of $10 per month for escrowing $100, charged and collected a clearly excessive fee in violation of Rule 1.5(a).

(d) Defendant, by failing to inform Mr. Ledbetter about the administrative fee on escrowed funds, failed to, before or within a reasonable time after commencing the representation, inform the client of the expenses for which he would be responsible, in violation of Rule 1.5(b).

(e) Defendant, by disbursing escrowed funds without the agreement of both buyer and seller, violated her fiduciary duty as escrow agent in violation of Rule 1.15-2.

Based upon the foregoing Findings of Fact and Conclusions of Law and the evidence presented at the hearing, the Hearing Panel hereby makes by clear, cogent, and convincing evidence the following:

ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE

1. Defendant committed multiple criminal acts of dishonesty.

2. Defendant violated her fiduciary duty to her client.

3. Defendant made contradictory and false statements during the disciplinary process.

Based on the foregoing Findings of Fact, Conclusions of Law and Additional Findings of Fact Regarding Discipline, 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.A.C. 1B § .0114(w)(1), the Rules and Regulations of the State Bar and concludes that the following factors that warrant disbarment are present:

(A) Intent of Defendant to cause the resulting or potential harm

(C) Circumstances reflecting the Defendant's lack of honesty, trustworthiness, or integrity;

(D) Elevation of Defendant's own interest above that of the client;

(E) Negative impact of Defendant's actions on client's or public's perception of the profession;

(H) Effect of Defendant's conduct on third parties; and

(I) Acts of dishonesty, misrepresentation, deceit, or fabrication.

The remaining factors enumerated in 27 N.C.A.C. 1B § .0114(w)(1) are not applicable.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(2), the Rules and Regulations of the State Bar and concludes that that the following factors indicating that disbarment should be considered, are present:

(A) Acts of dishonesty, misrepresentation, deceit, or fabrication; and

(C) Misappropriation or conversion of assets of any kind to which Defendant is not entitled.

The remaining factors enumerated in 27 N.C.A.C. 1B § .0114(w)(2) are not applicable.

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

(A) Absence of prior disciplinary offense;

(B) Dishonest or selfish motive;

(C) Timely good faith efforts to make restitution to the bank;

(E) Indifference to making restitution to Mr. Ledbetter;

(F) A pattern of misconduct;

(G) Multiple offenses;

(N) Submission of false statements during the disciplinary process;

(O) Refusal to acknowledge wrongful nature of conduct; and

(U) Imposition of other penalties or sanctions.

The remaining factors enumerated in 27 N.C.A.C. 1B § .0114(w)(3) are not applicable.

4. Defendant, by committing multiple acts of dishonesty and being untruthful during the grievance process, has demonstrated that she does not possess the character necessary to practice law.

5. Self-regulation of the legal profession depends on its members' honesty and full disclosure during the disciplinary process. The State Bar's ability to regulate its members is undermined when attorneys are untruthful during the process as was this Defendant.

6. Defendant's conduct in disbursing escrowed funds without the consent of the buyers caused potential significant harm to her clients and potential significant harm to the public.

7. Defendant's conduct in charging Mr. Ledbetter an excessive fee, failing to inform him of the fee prior to closing, and failing to secure the buyers' consent for the escrowed funds to be disbursed caused significant harm to the legal profession by undermining her client's trust and confidence in lawyers and the legal system.

8. Defendant's dishonest conduct in negotiating the counterfeit money orders caused significant harm to the legal profession.

9. The Hearing Panel has considered lesser alternatives and finds that suspension, censure, reprimand, or admonition would be insufficient discipline because of the harm to the profession and the public caused by Defendant's conduct.

10. The Hearing Panel finds disbarment is the only appropriate discipline in this case for the following reasons:

a) The factors under Rule .0114(w) that are established by the evidence in this case are of a nature that supports imposition of disbarment as the appropriate discipline.

b) Entry of an order imposing lesser discipline than disbarment would fail to acknowledge the seriousness of the offenses committed by Clark, would not adequately protect the public, and would send the wrong message to attorneys and the public regarding the conduct expected of members of the North Carolina State Bar;

c) A primary purpose of discipline is to protect the public. Throughout the disciplinary process, Clark has attempted to shift blame to the bank rather than acknowledge her own misdeeds. Her failure to acknowledge her own wrongful conduct significantly contributes to the conclusion that only disbarment will adequately protect the public; and

d) The protection of the public and the legal profession require that Clark not be permitted to resume the practice of law until she demonstrates the following: that she understands her obligations to her clients, the public, and the legal profession, and that permitting her to practice law will not be detrimental to the public or the integrity and standing of the legal profession. Disbarment is the only discipline available that makes such a showing a prerequisite to reinstatement.

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

ORDER OF DISCIPLINE

1. Defendant, Linda A. Clark, is hereby DISBARRED effective thirty (30) days from the date this Order of Discipline is served upon her.

2. Defendant shall submit her 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 she has complied with the wind down rule.

4. Defendant is taxed with the administrative fees and the costs of this action. As allowed by statute, these costs include the depositions costs, which are found to be reasonable and necessary expenses in this case. Defendant shall pay the administrative fees and costs within thirty days of service of the statement of administrative fees and costs upon her.

Signed by the Chair with the full knowledge and consent of the other Hearing Panel members, this the 11th day of ~~September~~ October, 2012.

Fred M. Morelock, Chair
Disciplinary Hearing Panel