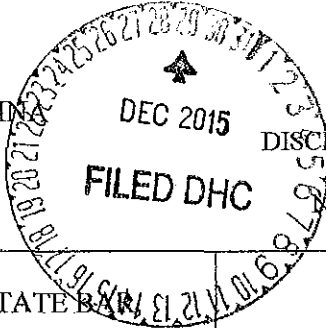


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
15 DHC 1

THE NORTH CAROLINA STATE BAR

Plaintiff

ORDER OF DISCIPLINE

v.

MELEISA RUSH-LANE, Attorney,

Defendant

THIS MATTER was heard on 19 and 20 November 2015 before a Hearing Panel of the Disciplinary Hearing Commission composed of Fred M. Morelock, Chair, and members Shirley L. Fulton and Patti Head. Jennifer A. Porter represented Plaintiff, the North Carolina State Bar. Defendant, Meleisa Rush-Lane, was present and represented by Albert D. Kirby, Jr.

Based upon the pleadings, the stipulated facts, and the evidence admitted at the hearing, the Hearing Panel hereby finds by clear, cogent, and convincing evidence 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, Meleisa Rush-Lane ("Lane"), was admitted to the North Carolina State Bar in 1995, 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, Lane was engaged in the practice of law in the State of North Carolina and maintained a law office in Fayetteville, Cumberland County, North Carolina.

4. Lane was properly served with process, a hearing in this matter was set, and the matter came before the hearing panel with due notice to all parties

5. At various times during the relevant periods referred to herein, Lane practiced law with her spouse, Freddie Lane, Jr. ("F. Lane"). Lane and F. Lane operated a law firm at various

times over the years, which was sometimes structured as an S corporation, sometimes as a partnership, and sometimes as a PLLC, including Lane and Lane, PLLC. Lane and F. Lane were the sole owners, shareholders, partners, and/or members, as applicable, of the firm.

6. Lane maintained an account called a "Public Service Trust Account" at Bank of America, account number ending with the digits 2247 ("BOA 2247"), which she used as a general trust account for her law practice. She deposited entrusted funds for clients into this account and she disbursed entrusted funds for clients from this account.

7. Lane and Lane, PLLC had an operating account, an account at Bank of America with an account number ending in the digits 6780. Both Lane and F. Lane used this operating account.

8. F. Lane maintained a separate attorney trust account which he utilized in his representation of clients.

9. Lane represented K.H. in a tort matter and received a \$400,000.00 settlement for the client. Lane deposited the \$400,000.00 into BOA 2247 on or about February 17, 2011.

10. From K.H.'s funds in BOA 2247, Lane disbursed her 40% contingency fee in the amount of \$160,000.00 to her law firm by check number 1091 on or about February 18, 2011.

11. From K.H.'s funds in BOA 2247, Lane disbursed \$120,000.00 to K.H. by check number 1093 on or about February 18, 2011.

12. Lane was required to hold K.H.'s remaining \$120,000.00 in trust on K.H.'s behalf. Lane was not entitled to this \$120,000.00.

13. On about April 26, 2011, \$120,000.00 was disbursed to Lane's firm from BOA 2247 by check number 1096 and deposited into Lane's firm's operating account.

14. After disbursement of \$120,000.00 to Lane's firm on April 26, 2011, the balance in her trust account dropped to \$7,967.67, which was below the \$120,000.00 amount she was required to hold in trust for K.H.

15. By check dated April 26, 2011, \$250,000.00 was disbursed from Lane's operating account to attorney J.D. Gilliam's trust account, to be used for the Lanes' benefit. One year prior, in April 2010, the Lanes had purchased a residence and executed a promissory note to Kenneth F. McDonald for seller financing of the purchase. In April 2011, Mr. McDonald and the Lanes signed a loan modification agreement which required payment of the \$250,000.00 to Mr. McDonald.

16. On April 25, 2011, the day prior to the deposit of K.H.'s \$120,000.00 into Lane's operating account, the balance of the operating account was \$10,206.81.

17. Without K.H.'s \$120,000.00, the Lanes would not have had sufficient funds in their operating account to make the necessary payment for their home loan.

18. The Lanes misappropriated K.H.'s money and used these funds to make the \$250,000.00 payment for their home loan modification.

19. Lane subsequently wrote check number 1108 from BOA 2247 to Medicare in the amount of \$24,788.48 to be disbursed on K.H.'s behalf. The check is dated November 1, 2011.

20. The balance in Lane's trust account was \$7,967.67 on November 1, 2011.

21. On about January 11, 2012, \$120,000.00 was deposited into Lane's trust account, BOA 2247.

22. On or about January 23, 2012, after the \$120,000.00 deposit into BOA 2247, check number 1108 cleared BOA 2247.

23. On about February 24, 2012, Lane disbursed the remaining \$95,211.52 to K.H.

24. Lane and F. Lane willfully failed to timely file and pay personal state and/or federal income taxes, including for the years 2000, 2001, 2002, 2003, 2004, 2006, 2007, 2008, 2009, 2010, 2011, and 2012 as required by applicable federal and state statutes, including 26 U.S.C. §§ 6012, 6072 and 6151 and N.C. Gen. Stat. §§ 105-153.8¹, 105-155, and 105-157.

25. During this same time period, Lane and F. Lane willfully failed to timely file and/or pay state and/or federal business income taxes as required by applicable federal and state statutes, including 26 U.S.C. §§ 6012, 6072 and 6151 and N.C. Gen. Stat. §§ 105-130.3, 105-130.16, 105-130.17, and 105-130.19.

26. During this same time period, Lane and F. Lane willfully failed to deduct and withhold taxes from the wages paid to employees pursuant to 26 U.S.C. § 3402 and N.C. Gen. Stat. § 105-163.2 and/or failed to hold such withheld taxes in trust for the United States and/or North Carolina pursuant to 26 U.S.C. § 7501 and N.C. Gen. Stat. § 105-163.2.

27. During this same time period, Lane and F. Lane willfully failed to timely file withheld tax and employment tax returns, and/or pay the corresponding taxes due to the Internal Revenue Service, North Carolina Department of Revenue, and/or North Carolina Department of Commerce Division of Employment Security as required by applicable federal and state statutes, including 26 U.S.C. §§ 3301 and 7501, and N.C. Gen. Stat. §§ 96-9.2, 96-9.15, and 105-163.6.

28. Willful failure to file a federal tax return or pay federal taxes is a misdemeanor pursuant to 26 U.S.C. § 7203.

29. Willful failure to file a North Carolina state tax return or pay North Carolina state taxes is a misdemeanor pursuant to N.C. Gen. Stat. § 105-236(9).

¹ Previously N.C. Gen. Stat. § 105-152, recodified as N.C. Gen. Stat. § 105-153.8 effective January 1, 2014.

30. Willful failure to file a tax return is a criminal offense showing professional unfitness pursuant to 27 N.C. Admin. Code 1B § .0103(17).

31. Willful failure to collect, account for, and pay over any tax imposed by the Internal Revenue Code is a felony pursuant to 26 U.S.C. § 7202.

32. A felony is a criminal offense showing professional unfitness pursuant to 27 N.C. Admin. Code 1B § .0103(17).

Based on the foregoing Findings of Fact, the Hearing Panel enters the following:

CONCLUSIONS OF LAW²

1. All the parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, Meleisa Rush-Lane, and the subject matter.

2. Defendant's conduct, as set forth in the 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 maintain K.H.'s \$120,000.00 in her trust account, Lane failed to hold and properly disburse entrusted funds in violation of Rule 1.15-2(a) and (m);
- b. By using K.H.'s \$120,000.00 to make a personal payment on her home loan, Lane used entrusted funds for her personal benefit in violation of Rule 1.15-2(j);
- c. By knowingly using K.H.'s \$120,000.00 for the benefit of herself and F. Lane, Lane misappropriated entrusted funds in violation of Rule 8.4(b) and 8.4(c);
- d. By failing to file federal and state income tax, business tax, withheld tax, and/or employment tax returns, Lane committed criminal acts that reflect adversely on her honesty, trustworthiness, or fitness 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); and
- e. By failing to deduct and withhold taxes from the wages paid to employees and/or failing to hold in trust and remit withheld taxes, Lane committed criminal acts that reflect adversely on her honesty, trustworthiness, or fitness 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).

3. The Hearing Panel found that the allegation made in the alternative in paragraph (d) of the First Claim for Relief of a violation of either Rule 1.15-2(m) or Rule 1.3,

² The conclusions regarding Defendant's violations of the Rules of Professional Conduct were made unanimously by the Hearing Panel members.

and the allegations of violations of Rules 1.15-2 and 8.4 in the Second Claim for Relief of the State Bar's complaint were not established by clear, cogent, and convincing evidence.

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Panel hereby finds by clear, cogent and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1 – 32 above are reincorporated as if set forth herein.
2. Defendant and F. Lane were each individually responsible for complying with their individual tax obligations and with the tax obligations of the business entity they operated.
3. The failure of Defendant to promptly provide employees with W-2 forms significantly harmed employee L.S., by hindering her ability to fully report her income, requiring her to amend her income tax return when the W-2 was finally provided, and causing her to incur payment obligations based upon the additional income reported in the amended return.
4. The failure of Defendant to properly collect and pay over withheld taxes, and to pay employment and unemployment taxes, caused significant potential harm to her employees, including creating the risk of hardship for employees should they have needed to apply for unemployment benefits.
5. Defendant's conduct involved failing to file and pay personal income tax returns and failing to comply with employer tax obligations over a period of many years.
6. Defendant's misappropriation of K.H.'s funds occurred at a time of demonstrated personal financial need.
7. Defendant's misappropriation of K.H.'s funds caused significant harm and potential harm, creating the foreseeable risk that Defendant would not have the necessary funds available when the appropriate time came to make the required disbursement to Medicare and disburse any balance to K.H.
8. Defendant's misappropriation of K.H.'s funds betrayed the trust placed in her by K.H. to properly maintain and disburse her entrusted client funds.
9. Defendant put her own personal interests ahead of the interests of her client K.H. and of her employees.
10. Defendant established a reputation for good character.
11. Defendant has received prior discipline, to wit:
 - a. Admonition in file 02G1678, issued at the October 23, 2003 Grievance Committee meeting, for failing to timely communicate with the client through his designated agent (his mother) and failing to either withdraw

from the representation or associate counsel competent in the legal practice area required; and

- b. Admonition in files 03G0505 and 03G0188, issued at the April 19, 2007 Grievance Committee meeting, for failure to properly monitor trust account transactions and failure to properly disburse entrusted funds.

12. Defendant has received a letter of warning within the immediately preceding three years, to wit: letter of warning, issued at the July 24, 2014 meeting of the Grievance Committee, for failing to diligently represent a client.

13. Defendant has been licensed since 1995. With her degree of experience, Defendant should have known better than to engage in these acts that have led to the discipline imposed in this order.

14. The Hearing Panel finds by clear, cogent, and convincing evidence the facts contained in the conclusions it makes, set out below, of the applicable factors regarding discipline from those listed in 27 N.C. Admin. Code 1B § .0114(w).

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

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel carefully considered all of the different forms of discipline available to it.

2. The Hearing Panel considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0114(w)(1), (2) and (3) of the Rules and Regulations of the State Bar and concluded that the following factors are applicable:

27 N.C. Admin. Code. 1B § .0114(w)(1)

- a. Factor (B), Intent of Defendant to commit acts where the harm or potential harm is foreseeable;
- b. Factor (C), Circumstances reflecting Defendant's lack of honesty, trustworthiness, or integrity;
- c. Factor (D), Elevation of Defendant's own interest above that of the client;
- d. Factor (E), Negative impact of Defendant's actions on client's or public's perception of the profession;
- e. Factor (H), Effect of Defendant's conduct on third parties;
- f. Factor (I), Acts of dishonesty, misrepresentation, deceit or fabrication.

27 N.C. Admin. Code 1B § .0114(w)(2)

- a. Factor (A), Acts of dishonesty, misrepresentation, deceit or fabrication;
- b. Factor (C), Misappropriation or conversion of assets of any kind to which Defendant or recipient was not entitled;
- c. Factor (D), Commission of a felony;

27 N.C.A.C. 1B § .0114(w)(3)

- a. Factor (A), Prior disciplinary offenses;
- b. Factor (B), Remoteness of the prior offenses.
- c. Factor (C), Dishonest or selfish motive;
- d. Factor (F), A pattern of misconduct, based upon the years of failing to file tax returns;
- e. Factor (G), Multiple offenses;
- f. Factor (Q), Good character and reputation;
- g. Factor (R), vulnerability of victims K.H. and the employees who were affected by the failure to comply with employer tax obligations, including properly collecting and paying over withheld taxes;
- h. Factor (S), Substantial degree of experience in the practice of law;
- i. Factor (T), Issuance of a letter of warning within the three years immediately preceding the filing of the complaint;
- j. Factor (U), Imposition of other penalties or sanctions, to wit: tax liens and levies;
- k. Factor (V) Other factors, to wit:
 - i. Defendant failing to reconcile her trust account at least quarterly, and
 - ii. Defendant allowing her husband to have access to her trust account.

3. Proper maintenance and management of entrusted funds is a cornerstone of the public's trust in 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. Defendant's misappropriation caused harm to the standing of the legal profession, undermining trust and confidence in lawyers and the legal system.

4. Defendant's failure to properly collect and pay over withheld taxes, designated by statute to be a special fund in trust for the United States and in a manner causing significant harm and potential harm to her employees, caused significant potential harm to the standing of the legal profession. Furthermore, Defendant's extended failure to comply with tax obligations, both as an individual and as an employer, for a period of many years, causes substantial harm to the standing of the legal profession.

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

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

- a. Defendant engaged in misconduct constituting felonies and violations of the trust of her clients, employees, and the public;
- 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 attorneys 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 resume the practice of law until she demonstrates the following: that she has reformed; that she understands her obligations to her clients, the public, the courts, and the legal profession; and that reinstatement will not be detrimental to the public or the integrity and standing of the legal profession. Disbarred lawyers are required to make such a showing before they may resume practicing law, whereas no such showing of reformation is required of attorneys whose licenses are suspended.

Based on the foregoing Findings of Fact, Conclusions of Law, and additional Findings of Fact and Conclusions of Law Regarding Discipline, the Hearing Panel hereby enters the following

ORDER OF DISCIPLINE³

1. Defendant, Meleisa Rush-Lane, is hereby DISBARRED.
2. Defendant shall surrender 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 Two of the three Hearing Panel members – Fred M. Morelock and Patti Head – voted for disbarment, and that is the order of the Hearing Panel. One of the three Hearing Panel members -- Shirley L. Fulton – voted for a five year suspension.

3. Defendant shall pay the administrative fees and costs of this proceeding, including the costs of all depositions, as assessed by the Secretary of the North Carolina State Bar. Defendant must pay the costs within 30 days of service upon her of the statement of costs by the Secretary.

4. Within 15 days of the effective date of this Order Lane shall provide the State Bar with an address and telephone number at which clients seeking return of files can communicate with Lane and obtain such files. This address must be a physical address at which Lane is present and receives mail. Lane must keep this information current with the State Bar, providing updated information to the State Bar within 15 days of any change.

5. Lane shall promptly return client files in her possession, custody, or control to clients upon request, within 5 days of receipt of such request. Lane will be deemed to have received any such request 3 days after the date such request is sent to Lane if the request is sent to the address Lane provided the State Bar pursuant to the preceding paragraph.

6. Lane shall comply with all provisions of 27 N.C. Admin. Code 1B § .0124 as set out therein.

Signed by the Chair with the consent of the other Hearing Panel members, this the 29th
day of December, 2015.


Fred M. Morelock
Chair, Disciplinary Hearing Panel