

STATE OF NORTH CAROLINA  
WAKE COUNTY

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
16 DHC 39

THE NORTH CAROLINA STATE BAR,  
Plaintiff  
v.  
MICHAEL C. CASEY, Attorney,  
Defendant

CONSENT ORDER  
OF  
DISCIPLINE

This matter was considered by a hearing panel of the Disciplinary Hearing Commission composed of Beverly T. Beal, Chair, N. Hunter Wyche, Jr., and Randy Moreau. Leonor Bailey Hodge represented Plaintiff, the North Carolina State Bar. Defendant, Michael C. Casey was represented by Deanna Brocker. Defendant waives a formal hearing in the above referenced matter. The parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order. The parties consent to the discipline imposed by this order. By consenting to this order, Defendant knowingly, freely, and voluntarily waives his right to appeal this consent order or to challenge in any way the sufficiency of the findings.

Based on the foregoing and on the consent of the parties, the Hearing Panel hereby makes 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 North Carolina General Statutes, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.
2. Defendant, Michael C. Casey (hereafter "Defendant" or "Casey"), was admitted to the North Carolina State Bar on 29 August 1998 and is an Attorney at Law 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, Casey was actively engaged in the practice of law as a partner in the law firm of Casey & Ragaller, PLLC in Nags Head, Dare County, North Carolina.
4. Casey practiced primarily real estate law.

BTB

5. The law firm of Casey & Ragaller maintained a general attorney trust account with RBC Bank ending in number 8897. In March 2012, RBC Bank changed ownership to PNC Bank. The RBC trust account ending in 8897 became PNC Bank trust account ending in number 4601 (hereinafter collectively known as "trust account").

6. On average, Casey would process approximately 6,000 transactions a year through the trust account.

7. In 2008, the trust account was the subject of a random procedural audit. The procedural audit showed various deficiencies in Casey's trust account management.

8. After the 2008 procedural audit, Casey represented to the State Bar that he would correct the deficiencies in his trust account management.

9. In November 2012, an investigative audit of the trust account was conducted.

10. The investigative audit showed various deficiencies in Casey's trust account management, including failure to always perform quarterly three-way reconciliations of the trust account, failure to promptly disburse client funds, and using entrusted funds held for the benefit of one client to make disbursements for the benefit of other clients.

11. The 2012 investigative audit of the trust account revealed similar deficiencies to those found during the 2008 procedural audit.

12. It further showed that Casey failed to correct the deficiencies in his trust account management found during the 2008 procedural audit.

13. On 7 November 2005, funds in the amount of \$405,451.43 were wired into the trust account from an unknown source (hereinafter "unknown wire funds").

14. Casey could not identify the source of the unknown wire funds.

15. As of November 2012, Casey had not escheated in accordance with N.C. Gen. Stat. §116B-53 the unknown wire funds that had been in the account since November 2005.

16. In or about November 2011, Casey determined that thirteen clients maintained a balance of entrusted funds in *de minimis* amounts: amounts less than \$10.00.

17. Casey failed to promptly disburse on behalf of those thirteen clients the funds he maintained in *de minimis* amounts on their behalf.

18. On or about 4 November 2011, Casey wrote trust account check number 31999 for \$866.20 to his firm as (a) payment of attorney fees and cost reimbursements for seven clients and (b) disbursement to his firm of the *de minimis* amounts of entrusted

funds held in the account for the benefit of the thirteen clients as described in paragraph 16 above.

19. Casey failed to indicate on the \$866.20 check the names of the clients from whose trust account balances the funds were drawn.

20. Casey had not been given authorization from his clients to transfer to his firm the *de minimis* amounts he held in the trust account on their behalf.

21. In December 2011, an unknown third party breached the computer security for the trust account and wired \$319,811.00 out of the trust account without Casey's knowledge or authorization.

22. Casey became aware of this transaction in January 2012 upon receipt of his December 2011 bank statement.

23. Casey informed the State Bar of this unauthorized transaction in January 2012. Casey further informed the State Bar that the bank indicated it would provide provisional coverage and replenish the funds once it finalized its fraud investigation and determined that the withdrawal was theft.

24. The bank did not replenish the stolen funds though it ultimately determined that the withdrawal was theft.

25. Casey did not replenish the stolen funds until on or about 10 December 2012.

26. Casey continued to use the trust account after the funds as described above were withdrawn from the trust account, thereby utilizing entrusted funds deposited since December 2011 to satisfy the claims of other clients whose funds were among those stolen by the unknown third party.

27. From 30 July 2009 through 10 January 2012, Casey disbursed funds from the trust account on fourteen occasions for the benefit of clients who did not have sufficient funds in the trust account to cover such disbursements.

28. The excess disbursements Casey made were paid using other clients' entrusted funds and/or the unknown wire funds.

29. Casey reimbursed the trust account for the disbursements described, but did not do so on a timely basis.

Based upon the consent of the parties and the foregoing 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, Michael C. Casey, and over 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 always reconcile the trust account quarterly, Casey failed to perform quarterly reconciliations of his trust account in violation of Rule 1.15-3(d);
- (b) By failing as of November 2012 to escheat the unknown wire funds, Casey failed to escheat unclaimed property in accord with N.C. Gen. Stat. §116-B53 in violation of Rule 1.15-2(q);
- (c) By failing to promptly disburse on behalf of his clients entrusted funds that he held in *de minimis* amounts, Casey failed to promptly pay or deliver to the client, or third parties as directed by the client, entrusted property belonging to the client and to which the client is currently entitled in violation of Rule 1.15-2(m);
- (d) By disbursing to his firm entrusted funds held on behalf of clients in *de minimis* amounts, Casey failed to properly maintain entrusted funds in violation of Rule 1.15-2(a) and used entrusted property for the personal benefit of persons other than the legal or beneficial owners of that property in violation of Rule 1.15-2(j);
- (e) By failing to indicate on the check disbursing \$866.20 in legal fees and *de minimis* client balances the client balances from which the payment was drawn, Casey failed to indicate on an item payable to the lawyer the client balance(s) from which the item was drawn in violation of Rule 1.15-2(h);
- (f) By using entrusted funds of other clients to satisfy the claims of clients whose funds were stolen from the trust account in December 2011, Casey failed to properly maintain entrusted funds in violation of Rule 1.15-2(a) and used entrusted property for the personal benefit of persons other than the legal or beneficial owners of that property in violation of Rule 1.15-2(j); and
- (g) By making disbursements on behalf of clients in excess of the funds such clients had on deposit in the trust account, Casey failed to properly maintain entrusted funds in violation of Rule 1.15-2(a) and used entrusted property for the personal benefit of persons other than the legal or beneficial owners of that property in violation of Rule 1.15-2(j).

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

#### ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE

1. Casey cooperated with the State Bar's investigation into his handling of entrusted client funds.
2. Casey has no prior discipline.
3. Casey deposited \$10,000 of his own funds into the trust account to replenish the shortage created by the December 2011 unauthorized withdrawal. Casey's insurance provider provided the additional \$309,811.00 needed to replenish the trust account for the unauthorized withdrawal.
4. On or about 7 January 2014, Casey escheated the unknown wire funds to the State of North Carolina.
5. Casey disbursed to his firm the client funds he maintained in *de minimis* amounts based upon his incorrect interpretation of an Ethics Advisory opinion that concluded that the Rules of Professional Conduct do not appear to prohibit an attorney from requesting that clients, on occasion, agree to waive the return of certain insubstantial or *de minimis* amounts.
6. Although Casey failed to discover the instances in which he misapplied clients' entrusted funds until the investigative audit was underway, Casey promptly replenished the trust account upon his discovery of the improper disbursements.
7. Casey likely would have discovered his misuse of entrusted property if he had been reconciling his trust account in accordance with the Rules of Professional Conduct.
8. Casey has been performing monthly 3-way reconciliations of his trust account at least since December 2015.
9. Casey's failure to properly maintain, manage, and handle entrusted funds betrays a vital trust clients and the public place in attorneys and the legal profession. Clients are entitled to have their funds handled with the utmost care.
10. Casey's failure to properly maintain a trust account placed entrusted client funds at risk and has the potential to cause significant harm to the standing of the profession in the eyes of the public because it shows his disregard for his duties as an attorney. This tends to erode the public's confidence in attorneys. Confidence in the legal profession is a building block for public trust in the entire legal system.

11. Casey's failure to always perform quarterly reconciliations of his trust account after indicating after the 2008 procedural audit that he would do so demonstrates his intent to commit acts where the potential harm is foreseeable.

Based upon the Findings of Fact and Conclusions of Law above and the Additional Findings of Fact Regarding Discipline, and with the consent of the parties, the Hearing Panel makes 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) and concludes that the following factors that warrant suspension or disbarment are present:

- (a) Intent of the defendant to commit acts where the harm or potential harm is foreseeable; and
- (b) Negative impact of defendant's actions on client's or public's perception of the profession.

2. The Hearing Panel has considered all of the factors contained in 27 N.C. Admin. Code 1B § .0114(w)(2) and concludes that no factors that warrant disbarment are present.

3. The Hearing Panel has considered all of the factors contained in 27 N.C. Admin. Code 1B § .0114(w)(3) and concludes that the following are applicable in this matter:

- (a) Absence of prior disciplinary offenses;
- (b) Multiple offenses;
- (c) Defendant's cooperative attitude toward the proceedings;
- (d) Good character and reputation; and
- (e) Defendant has been licensed to practice law for approximately eighteen years.

4. Defendant caused harm to his clients by using their entrusted funds to pay the obligations of other clients and by disbursing their *de minimis* funds to his firm without authorization to do so.

5. Defendant caused potential significant harm to his clients by failing to properly manage their entrusted funds.

6. Defendant's conduct placed entrusted funds at risk and has the potential to cause significant harm to the standing of the profession in the eyes of the public because it shows his disregard for his duties as an attorney. Such erosion of public confidence in attorneys tends to sully the reputation of, and fosters disrespect for, the profession as a whole. Confidence in the legal profession is a building block for public trust in the entire legal system.

7. The Hearing Panel has considered all lesser sanctions including: censure, reprimand, and admonition, and finds that discipline less than suspension would not adequately protect the public from Defendant's future misconduct because (i) of the gravity of the harm and potential significant harm to clients, and (ii) a period of reporting pursuant to a stayed suspension is necessary to ensure Defendant's proper handling of entrusted funds.

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

#### ORDER OF DISCIPLINE

1. Defendant, Michael C. Casey, is hereby suspended from the practice of law for two years, effective 30 days from service of this order upon Casey.
2. Defendant shall pay, within 30 days of service of the statement of fees and costs upon him by the Secretary of the State Bar, the administrative fees and costs of this proceeding.
3. The two year suspension is stayed for a period of two years as long as Defendant complies with all of the following conditions:
  - (a) Defendant shall pay the administrative fees and costs of this proceeding as assessed by the Secretary of the State Bar within 30 days of service of the statement of fees and costs upon him.
  - (b) Each month Defendant shall provide the Office of Counsel of the State Bar with the three-way reconciliation described in the State Bar Lawyer's Trust Account Handbook, using the Trust Account Reconciliation sheet provided in the Handbook, for all trust accounts he maintains. Defendant shall provide the three-way reconciliation report, client ledgers for all clients with funds in the trust account(s) during that month as may be requested by the Office of Counsel, ledger for any personal funds maintained in the trust account(s) for bank or credit card fees, his trust account ledger, and the bank statements, cancelled checks, and as may be requested by the Office of Counsel, deposit slips for each month. These documents are due on the 15<sup>th</sup> day of the following month – for example,

the three-way reconciliation for the month of January is due on February 15;

- (c) Each quarter, Defendant shall have a CPA audit all trust accounts maintained by Defendant. This audit shall assess whether Defendant has in his trust account the client funds he should be maintaining for his clients at that time, as well as Defendant's compliance with all requirements of Rule 1.15-2 and Rule 1.15-3. The CPA's audit shall include addressing the items on the CPA Report Template which will be provided by the State Bar to Defendant. The quarterly audit reports from the CPA are due no later than 30 days after the end of the quarter – for example, the CPA audit for the first quarter of the calendar year (January, February, and March) is due on April 30. It is Defendant's sole responsibility to ensure that the CPA completes and submits the reports required herein;
- (d) If either the monthly three-way reconciliation report or the CPA audit reveals any deviation from Defendant's obligations under Rule 1.15-2 or Rule 1.15-3, Defendant shall take remedial action within 10 days of the date of the three-way reconciliation report or the CPA audit and shall provide documentation showing the remedial action to the State Bar within 2 days of the date of the remedial action;
- (e) Defendant shall provide any other records requested by the Office of Counsel within ten days of the request;
- (f) By the deadline stated in the request, Defendant shall comply with any requests from the Office of Counsel to provide any information regarding his trust account(s) or to sign and provide any release or authorization to allow the Office of Counsel to obtain information directly from any bank in which Defendant maintains a trust account;
- (g) Within six months of the effective date of this order, Defendant shall complete the trust account continuing legal education (CLE) course taught by State Bar Trust Accounting Compliance Counsel (usually titled "Trust Accounting Rules" or "Trust Accounting Rules: Avoid the Pitfalls.") This CLE requirement is in addition to the CLE requirements set out in 27 N.C. Admin. Code 1D § .1518;
- (h) Defendant shall keep the State Bar Membership Department advised of his current business address, office telephone number, and office e-mail address. Defendant shall notify the State Bar of any change of address within ten (10) days of such change. His current business address must be a street address, not a post office box or drawer;

- (i) Defendant shall accept all certified mail from the State Bar sent to the address on record with the Membership Department of the State Bar;
- (j) Defendant shall respond to all communications from the State Bar, including communications from the Attorney Client Assistance Program, within thirty (30) days of receipt of such communication or by the deadline stated in the communication, whichever is sooner;
- (k) Defendant shall participate in good faith in the State Bar's fee dispute resolution process for any petition that is pending at the time of entry of this order or of which he receives notice after the effective date of this order;
- (l) Defendant shall timely comply with all State Bar continuing legal education requirements and will pay all fees and costs assessed therefor by the applicable deadline;
- (m) Defendant will pay all State Bar and judicial district membership dues, Client Security Fund assessments, and any other related dues, fees, assessments and/or costs by the applicable deadline; and
- (n) Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or of any state or local government.

4. Unless Defendant's obligations under this Order are modified by further order of the DHC, Defendant's obligations under this Order end two years from the effective date of the Order provided there are no pending motions or show cause proceedings alleging lack of compliance with the conditions of the stay of the suspension. Pursuant to 27 N.C. Admin. Code 1B § .0114(x), the DHC retains jurisdiction until all conditions of the stay of the suspension have been met. If a motion or show cause proceeding alleging lack of compliance with the conditions for the stay of the suspension is pending when the period of the stay of the suspension would otherwise have terminated, the DHC retains the jurisdiction and ability to lift the stay of the suspension and activate the two year suspension in whole or in part if it finds that any of the conditions of the stay have not been met. The stay of the suspension and Defendant's obligation to comply with the conditions for the stay will continue until resolution of any such pending motion or show cause proceeding.

5. If Defendant fails to comply with any one or more of the conditions set out above in this Order of Discipline, then the stay of the suspension may be lifted in accordance with 27 N.C. Admin. Code 1B § .0114(x).

6. If the stay of the suspension is lifted and the suspension is activated for any reason, the Disciplinary Hearing Commission may enter an order imposing such conditions as it deems proper for the reinstatement of Defendant's license at the end of the suspension. Additionally, Defendant must establish the following by clear, cogent

and convincing evidence prior to being reinstated to the practice of law after any period of active suspension:

- (a) Defendant submitted his law license and membership card to the Secretary of the State Bar within thirty (30) days of the date of the order lifting the stay and/or activating the suspension of his law license;
- (b) Defendant complied with the provisions of 27 N.C. Admin. Code 1B § .0124 following entry of the order lifting the stay and/or activating the suspension of his law license;
- (c) Defendant timely paid all administrative fees and costs assessed against him in this proceeding as reflected on the statement of costs served upon him by the Secretary of the State Bar;
- (d) That within fifteen (15) days of the effective date of the order activating the suspension Defendant provided the State Bar with an address and telephone number at which clients seeking return of files could communicate with Defendant and obtain such files;
- (e) That Defendant provided within ten days client files to all clients who made a request for return of their files;
- (f) Defendant kept the State Bar Membership Department advised of his current business street addresses (not post office box or drawer addresses) and notified the State Bar of any change in address within ten days of such change;
- (g) Defendant responded to all communications from the State Bar, including communications from the Attorney Client Assistance Program, within thirty (30) days of receipt or by the deadline stated in the communication, whichever is sooner;
- (h) At the time of his petition for reinstatement, Defendant is current in payment of all membership dues, fees and costs, including all Client Security Fund assessments, and other assessments, charges or surcharges the State Bar is authorized to collect from him, including all judicial district dues and assessments;
- (i) At the time of his petition for reinstatement, there is no deficit in Defendant's completion of mandatory CLE hours in reporting of such hours or in payment of any fees associated with attendance at CLE programs;
- (j) At the time of his petition for reinstatement, Defendant has completed within the six months that immediately preceded his petition for

reinstatement the trust account CLE course taught by NC State Bar Trust Accounting Compliance Counsel Peter Bolac (usually titled "Trust Accounting Rules" or "Trust Accounting Rules: Avoid the Pitfalls");

- (k) Defendant did not violate the Rules of Professional Conduct or the laws of the United States, or the laws of any state or local government during his suspension; and
- (l) Defendant participated in good faith in the State Bar's fee dispute resolution process for any petition that was pending at the time of entry of this order or of which he received notice after the effective date of this order.

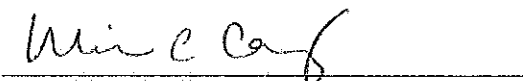
7. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code 1B § .0114(x) until all conditions of the stay of suspension are satisfied.

Signed by the Chair with the consent of the other Hearing Panel members this the 8<sup>th</sup> day of December, 2016.




Beverly T. Beal, Chair  
Disciplinary Hearing Panel

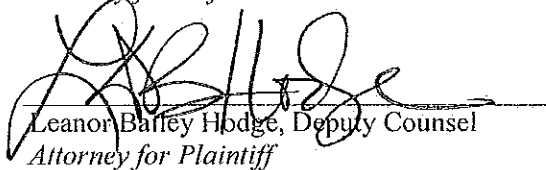
WE CONSENT:



Michael C. Casey  
Defendant



Deanna Brocker  
Attorney for Defendant



Leonor Barbery Hodge, Deputy Counsel  
Attorney for Plaintiff