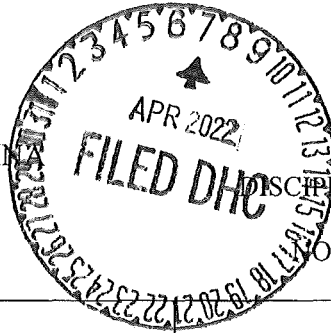


STATE OF NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
21 DHC 29

THE NORTH CAROLINA STATE BAR,  
Plaintiff

v.

RYAN ALAN SPENCER, Attorney,  
Defendant

ORDER OF DISCIPLINE

THIS MATTER was heard on March 8, 2022, before a Hearing Panel of the Disciplinary Hearing Commission composed of Margit Monaco Hicks, Chair, and members Margaret M. Hunt and Jane B. Weathers. Thomas L. Crosby and J. Cameron Lee represented Plaintiff, the North Carolina State Bar. Defendant, Ryan Alan Spencer, was present and represented by Alan M. Schneider.

Based upon the pleadings, the stipulated facts, the evidence introduced at the hearing, and the arguments of counsel, 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, Ryan Alan Spencer, was admitted to the North Carolina State Bar in 2012, 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, Defendant was engaged in the practice of law in the State of North Carolina and maintained a law office in Raleigh, Wake County, North Carolina.

4. Defendant 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. Defendant is an attorney at the Marcari, Russotto, Spencer & Balaban Law Firm (“the Firm”).

6. Defendant is not a partner; he is a salaried employee of the Firm.

7. Defendant’s employment arrangement with the Firm does not authorize Defendant to directly receive direct payments of fees from clients of the Firm.

8. When Defendant performs legal services for clients or reaches settlements on behalf of his clients, the fees paid by the clients are the property of the Firm and are paid to the Firm.

9. While employed at the Firm, Defendant is primarily engaged in representing clients in veterans’ benefits claims.

10. Defendant represented D. Cutler (“Cutler”) in a veterans’ benefits claim on a contingent fee basis.

11. Cutler was awarded benefits from the Department of Veterans Affairs. Pursuant to their contingency fee contract, the Firm was entitled to \$5,200 in legal fees.

12. Defendant discussed the fees with Cutler and agreed to reduce the amount owed to \$5,000.

13. Defendant directed Cutler to issue a check payable to Defendant, and to mail the check to Defendant’s home address.

14. On April 23, 2020, Cutler mailed a cashier’s check for \$5,000 made out to Defendant (“the Cutler funds”) to Defendant’s home address.

15. The Cutler funds were the property of the Firm.

16. Defendant deposited the Cutler funds into his personal bank account on April 24, 2020.

17. Defendant confirmed with Cutler that he received Cutler’s payment.

18. Defendant did not correct Cutler’s belief that Cutler had paid the balance Cutler owed to the Firm.

19. In taking the actions described in paragraphs 11-13 and 15-17, Defendant acted with deceit and the intent to defraud the Firm.

20. The felony of Larceny by Employee, a violation of the North Carolina General Statutes § 14-74, occurs when “any ... employee, to whom any money ... [entrusted] by his [employer which] shall [go to] his [employer], shall ... go away with such money ... with intent to steal the same and defraud his [employer] thereof.”

21. The felony of Obtaining Property by False Pretenses, a violation of North

Carolina General Statutes § 14-100, occurs when "... any person [who] knowingly and designedly by means of any kind of false pretense whatsoever ... obtain[s] ... from any person in this State any money ... with intent to cheat or defraud any person of such money."

22. Cutler made multiple inquiries with the Firm regarding payment, and was told by other employees of the Firm that the Firm had not received payment from Cutler.

23. On April 15, 2021, Donald Marcari ("Marcari") and David Russotto ("Russotto"), partners of the Firm, met with Defendant to inquire about Cutler's payment of fees.

24. Defendant admitted to Marcari and Russotto that he deposited the Cutler check into a personal account for his own benefit.

25. Defendant apologized to the partners and on Marcari's direction obtained a cashier's check of \$5,000 in Cutler's name from his personal account and mailed it to the Firm.

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

#### CONCLUSIONS OF LAW

1. All the parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, Ryan Alan Spencer, 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 converting the Firm's property, the Cutler check, for his own purposes, Defendant committed criminal acts (namely, Larceny by Employee and Obtain Property by False Pretenses) that reflect adversely on his honesty, trustworthiness, or fitness 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) By confirming with Cutler he had received payment and failing to correct Cutler's belief that he satisfied his balance with the Firm, Defendant failed to keep his client reasonably informed about the status of his case in violation of Rule 1.4(a), failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in violation of Rule 1.4(b), and engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation in violation of Rule 8.4(c);

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 – 25 above are reincorporated as if set forth herein.

2. Defendant took money owed to the Firm to which he knew he was not entitled. In order to do so, he deceived and misled his client, a disabled veteran, by instructing his client to mail him a check to his home address instead of to the Firm.

3. Defendant has been an actively licensed attorney in North Carolina since 2012 and has never been disciplined by the State Bar or any other regulatory agency during that time.

4. Defendant has established a reputation for good character, veracity, and truthfulness.

5. Defendant has been open and honest with Plaintiff at all stages of this disciplinary proceeding against him.

6. Defendant has admitted to all the violations and expressed sincere remorse for his actions.

7. During the time of the activities described herein, Defendant was experiencing severe emotional trauma.

8. Defendant's family circumstances were uniquely tragic during the period described herein. In addition to the uncertainty and stress brought on by the COVID-19 pandemic:

- a. Defendant's father, a partner at his law firm and manager of the Raleigh office where Defendant worked, and mother were involved in a bitter divorce action;
- b. In the midst of Defendant's parents' divorce, a separate awful family issue led to a protracted, contentious child custody dispute between Defendant and his ex-wife; this family issue caused extreme emotional distress and required mental health counseling for his children, his stepchild, his ex-wife, his wife, and himself.

9. Defendant's practice is in the highly specialized area of veterans' benefits claims before the Board of Veterans Affairs. He argued cases on behalf of veterans across the United States and abroad, including the Philippines. During the COVID-19 pandemic, and amid domestic unrest that engulfed the District of Columbia during the Spring and Summer of 2020,

Defendant was among the first attorneys to go to Washington, D.C. to attend hearings on his clients' behalf and continued to travel as needed.

10. Defendant has an excellent reputation in the legal community and with the Board of Veterans Affairs.

11. The Hearing Panel has carefully considered all the different forms of discipline available, including admonition, reprimand, censure, suspension, and disbarment, in considering the appropriate discipline to impose in this case.

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 considered all the factors warranting suspension or disbarment enumerated in 27 N.C.A.C. 1B § .0116(f)(1) and concludes that suspension or disbarment is not warranted in this case.

2. The Hearing Panel considered all the factors warranting disbarment enumerated in 27 N.C.A.C. 1B § .0116(f)(2) and concludes that disbarment is not warranted in this case.

3. The Hearing Panel considered all of the factors to be considered when imposing discipline in all cases enumerated in 27 N.C.A.C. 1B § .0116(f)(3) and concludes that the following factors under § .0116(f)(3) are applicable:

- a. Factor (A), No history of prior disciplinary offenses;
- b. Factor (D), Timely good faith efforts to rectify the consequences of Defendant's misconduct;
- c. Factor (K), Full and free disclosure to the hearing panel and a cooperative attitude toward the proceedings;
- d. Factor (P), Remorse;
- e. Factor (Q), Defendant's excellent reputation in the legal community, and particularly with the Board of Veterans Affairs before which he appears;
- f. Factor (S), Defendant's degree of experience in a specialized area of law; and
- g. Factor (V), Other factors not specifically listed:
  - 1) Little or no likelihood that this misconduct will be repeated; and

2) The very disruptive and numerous family issues in which Defendant was embroiled at the time.

4. The Hearing Panel considered all the disciplinary options available to it. In light of all the evidence and giving particular weight to the matters ongoing in Defendant's personal life at the time as well as the additional factors itemized above under .0116(f)(3)(V), the Hearing Panel concluded a censure is the appropriate discipline.

5. The Hearing Panel considered all lesser sanctions and concluded that discipline short of censure would not adequately protect the public. Imposition of a lesser discipline would fail to acknowledge the seriousness of the offenses Defendant committed and would send the wrong message to members of the Bar and the public regarding the conduct expected of members of the Bar of this State.

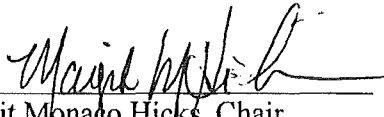
Based on the foregoing Findings of Fact, Conclusions of Law, and additional Findings of Fact and Conclusions of Law Regarding Discipline, the Hearing Panel hereby enters the following

ORDER OF DISCIPLINE

1. Defendant, Ryan Alan Spencer, is hereby CENSURED.

2. Defendant shall pay the administrative fees and costs of this proceeding as assessed by the Secretary of the North Carolina State Bar. Defendant must pay the costs within 30 days of service upon him of the statement of costs by the Secretary.

Signed by the Chair with the consent of the other Hearing Panel members, this the 7 day of April, 2022.

  
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Margit Monago Hicks, Chair  
Disciplinary Hearing Panel