

STATE OF NORTH CAROLINA
WAKE COUNTY

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
15 CVS 3040

2015 MAY 18 P 12:56

THE NORTH CAROLINA STATE BAR, BY Petitioner	WAKE COUNTY C.S.C.
v. PETER C. CAPECE, Attorney, Respondent	CONSENT ORDER OF DISBARMENT

THIS MATTER came before the undersigned Judge of the Superior Court of Wake County upon the tender of surrender of the law license of Peter C. Capece. Petitioner, the North Carolina State Bar, was represented by Margaret Cloutier. Respondent, Peter C. Capece was represented by T. Richard Kane.

Based upon the Affidavit of Surrender of Law License submitted to the Court by Peter C. Capece and the consent of the parties, the court makes the following:

FINDINGS OF FACT

1. Capece was licensed to practice law on August 27, 2002.
2. During all periods relevant hereto, Capece was actively engaged in the practice of law in Lincolnton, Lincoln County, North Carolina.
3. Capece served as Executor of the Estate of Fritz E. Detmers, as Trustee of the Fritz E. Detmers Living Trust, and as the Guardian of the Estate of John Paul Tols Detmers. Capece also maintained a general trust account at BB&T Bank ending in digits 7156.
4. Between December 2009 and February 2015, Capece misappropriated at least \$1,584,904.51 from funds entrusted to him in his fiduciary capacities identified above, as follows:
 - (a) From the Detmers Guardianship, at least \$705,995.89;
 - (b) From the Detmers Trust, at least \$816,667.97; and
 - (c) From Capece's BB&T general trust account, at least \$62,240.65.

Based upon the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

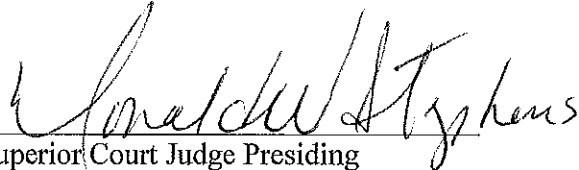
1. This court has jurisdiction over Capece and over the subject matter of this proceeding.
2. The courts of this State have the inherent authority to take disciplinary action against attorneys licensed to practice law in North Carolina.
3. By misappropriating funds entrusted to him in a fiduciary capacity, Capece used entrusted property for the benefit of one other than the legal or beneficial owner in violation of Rule of Professional Conduct 1.15-2(j), engaged in criminal acts that reflect adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rule of Professional Conduct 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule of Professional Conduct 8.4(c);
4. Capece's misconduct constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2).
5. Capece has engaged in professional misconduct warranting disbarment.

IT IS NOW, THEREFORE, **ORDERED**:

1. The surrender of the license of Peter C. Capece is hereby accepted.
2. Peter C. Capece is **DISBARRED** from the practice of law in North Carolina effective upon entry of this Order.
3. Capece shall comply with the provisions of 27 N.C. Admin. Code 1B §.0124 and shall surrender his law license and permanent membership card to the Secretary of the North Carolina State Bar along with the affidavit required by 27 N.C. Admin. Code 1B § .0124.
4. Capece shall not petition for reinstatement of his law license until the expiration of at least five years from the date of entry of this order.
5. Capece's law license shall not be reinstated until he has demonstrated to the satisfaction of the Disciplinary Hearing Commission and the Council of the North Carolina State Bar that he has complied with 27 N.C. Admin. Code 1B § .0125.

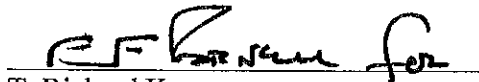
6. The costs of this action are taxed against Peter C. Capece.

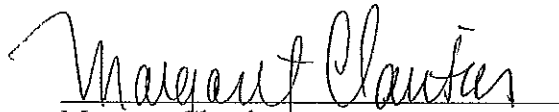
Done and Ordered this 15 day of May, 2015.


Superior Court Judge Presiding

Seen and consented to:


Peter C. Capece, Respondent


T. Richard Kane
Counsel for Respondent


Margaret Cloutier
Deputy Counsel, North Carolina State Bar
Counsel for Petitioner

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THE NORTH CAROLINA STATE BAR,

Petitioner

v.

PETER C. CAPECE, Attorney,

Respondent

AFFIDAVIT OF
SURRENDER OF LAW LICENSE

Peter C. Capece, being first duly sworn, deposes and says as follows:

1. I desire to resign and hereby tender my license to practice law in North Carolina.
2. My resignation is freely and voluntarily rendered. It is not the result of coercion or duress. I am fully aware of the implication of submitting my resignation.
3. I served as Executor of the Estate of Fritz E. Detmers, as Trustee of the Fritz E. Detmers Living Trust, and as the Guardian of the Estate of John Paul Tols Detmers. I also maintained a general trust account at BB&T Bank ending in digits 7156.
4. Between December 2009 and February 2015, I misappropriated at least \$1,584,904.51 from funds entrusted to him in his fiduciary capacities identified above, as follows:
 - (a) From the Detmers Guardianship, at least \$705,995.89;
 - (b) From the Detmers Trust, at least \$816,667.97; and
 - (c) From Capece's BB&T general trust account, at least \$62,240.65.

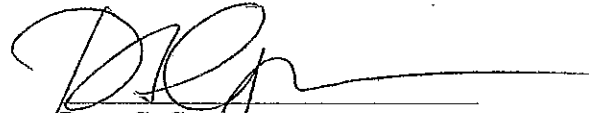
I utilized these entrusted client and trust funds for my own personal benefit or for the benefit of third parties without authorization to do so from the beneficial owners of the funds.

5. I am aware that there is presently pending an investigation with the North Carolina State Bar regarding my conduct as described above.

6. I acknowledge that the material facts upon which the investigation is predicated are true.

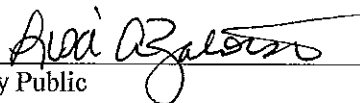
7. I am submitting my resignation because I know that if disciplinary charges were predicated upon the misconduct under investigation, I could not successfully defend against them.

This the 13th day of May, 2015.


Peter C. Capece

I, Lisa A. Zatorski, Notary Public of the County of Lincoln, State of North Carolina, certify that Peter C. Capece personally appeared before me this day and acknowledged the due execution of the foregoing Affidavit.

Sworn to and subscribed before me, this the 13 day of May, 2015.


Notary Public

My Commission Expires: 3-19-18

