

STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
12 DHC 32

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

ALAN M. ROUGHTON, Attorney,

Defendant

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER OF DISCIPLINE

THIS MATTER was considered by a hearing panel of the Disciplinary Hearing Commission composed of Sharon Alexander, Chair, Renny Deese, and Joseph Barlow Herget pursuant to 27 N.C. Admin. Code 1B § .0114 of the Rules and Regulations of the North Carolina State Bar. Plaintiff, the North Carolina State Bar, was represented by Brian P.D. Oten. Defendant, Alan M. Roughton, has not participated in this matter and no counsel of record has appeared on his behalf.

On Plaintiff's motion, judgment by default was entered against Defendant. Based upon the pleadings, other filings, and admissions pursuant to 27 Admin. Code Chapter 1, Subchapter B, § .0114(f) and Rule 8(d) of the North Carolina Rules of Civil Procedure, the hearing panel hereby finds by clear, cogent, and convincing evidence the following

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("Plaintiff" or "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, Alan M. Roughton ("Defendant" or "Roughton"), was admitted to the North Carolina State Bar on 24 August 2007 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, Roughton actively engaged in the practice of law in the State of North Carolina and maintained a law office in Washington, Beaufort County, Bethel, Pitt County, and/or Greenville, Pitt County, North Carolina.
4. Defendant was properly served with process in this action.

5. In or around September 2010, Andrew Jobes ("Jobes") retained Roughton for representation in a traffic citation. Jobes paid Roughton \$295.00 for the representation.

6. Jobes's traffic citation was scheduled for hearing on 27 September 2010.

7. Roughton did not appear on Jobes's behalf at the 27 September 2010 hearing for Jobes's traffic citation, causing the court to enter a failure to appear against Jobes.

8. Roughton did not resolve Jobes's traffic citation for which he was retained.

9. Roughton did not inform Jobes of his failure to appear at the scheduled hearing for Jobes's traffic citation and did not respond to Jobes's multiple voicemail messages requesting an update on the status of his traffic citation.

10. In late 2010, after not hearing from Roughton regarding the status of his traffic citation, Jobes contacted the Martin County Clerk of Court and learned Roughton did not appear at the 27 September 2010 hearing date and the court entered a failure to appear against him.

11. Also in late 2010, Jobes contacted the North Carolina Division of Motor Vehicles ("NCDMV") and learned his driver's license had been suspended due to his failure to appear at the scheduled hearing date for his traffic citation.

12. Between late 2010 and November 2011, Roughton did not respond to Jobes's multiple voicemail messages requesting an update on the status of his traffic citation and requesting a refund of his paid fee.

13. Roughton did not refund any unearned portion of Jobes's paid fee.

14. In or around November 2011, Jobes retained another lawyer and resolved his traffic citation without Roughton's assistance.

15. In April 2011, Jobes filed a fee dispute petition with the State Bar against Roughton, file no. 11FD0184.

16. On 4 April 2011, the State Bar sent Roughton a Notice of Mandatory Fee Dispute Resolution in file no. 11FD0184 by certified mail to Roughton's address on record with the North Carolina State Bar. Roughton accepted service of the Notice of Mandatory Fee Dispute Resolution in file no. 11FD0184 on 11 April 2011.

17. By letter dated 29 April 2011, Roughton responded to the Notice of Mandatory Fee Dispute Resolution in file no. 11FD0184 admitting his failure to appear on Jobes's behalf at the 27 September 2010 hearing and agreeing to refund Jobes's \$295.00 paid legal fee.

18. Roughton never refunded Jobes's \$295.00 paid fee.

19. On or about 27 June 2011, Jobes filed a grievance against Roughton with the State Bar, grievance file no. 11G0773.

20. On 28 July 2011 and 29 August 2011, the State Bar sent a Letter of Notice regarding grievance file no. 11G0773 to Roughton via certified mail to Roughton's address on record with the North Carolina State Bar. The certified mailings were returned to the State Bar marked "unclaimed."

21. On 9 November 2011, a State Bar investigator located and personally served Roughton with the Letter of Notice in grievance file no. 11G0773. Roughton was required to respond to the Letter of Notice within fifteen days of receiving the letter.

22. Roughton did not respond to the Letter of Notice in grievance file no. 11G0773 as required.

23. In or around July 2010, James Doughtie, Jr. ("Doughtie") retained Roughton for representation in criminal and domestic cases. Doughtie paid Roughton \$4,750.00 for the representations.

24. In or around December 2010, Doughtie's criminal case was resolved.

25. After December 2010, Roughton did not respond to Doughtie's repeated e-mails and voicemail messages requesting information concerning the status of his pending domestic case.

26. After at least December 2010, Roughton did not pursue Doughtie's domestic case.

27. Roughton did not resolve Doughtie's domestic case for which he was retained.

28. Doughtie eventually terminated Roughton's representation in the pending domestic case and requested a refund of any unearned portion of Doughtie's paid fee.

29. Roughton did not respond to Doughtie's message terminating the representation and did not refund any unearned portion of Doughtie's paid fee.

30. In May 2011, Doughtie filed a fee dispute petition with the State Bar against Roughton, file no. 11FD0246.

31. On 11 May 2011, the State Bar sent Roughton a Notice of Mandatory Fee Dispute Resolution in file no. 11FD0246 by certified mail to Roughton's address on record with the North Carolina State Bar. The certified mailing was returned to the State Bar marked "unclaimed."

32. On 6 June 2011, a State Bar employee with the Attorney-Client Assistance Program left a voicemail message with Roughton informing him of the pending fee dispute petition in file no. 11FD0246 and his failure to respond to the petition, and requesting Roughton contact the State Bar immediately. Also on 6 June 2011, the State Bar re-sent Roughton the Notice of Mandatory Fee Dispute Resolution in file no. 11FD0246 as well as a follow-up letter to Roughton by regular U.S. mail requesting his response to the fee dispute petition by 13 June 2011.

33. Roughton did not respond to the State Bar's Notice in file no. 11FD0246, the State Bar's follow-up letter, or the State Bar's voicemail message as required.

34. On or about 15 June 2011, the State Bar opened a grievance file against Roughton based upon the content of Doughtie's fee dispute and Roughton's failure to participate in the fee dispute process, grievance file no. 11G0721.

35. On or about 28 July 2011 and 29 August 2011, the State Bar sent a Letter of Notice regarding grievance file no. 11G0721 to Roughton via certified mail to Roughton's address on record with the North Carolina State Bar. The certified mailings were returned to the State Bar marked "unclaimed."

36. On 9 November 2011, a State Bar investigator located and personally served Roughton with the Letter of Notice in grievance file no. 11G0721. Roughton was required to respond to the Letter of Notice within fifteen days of receiving the letter.

37. Roughton did not respond to the Letter of Notice in grievance file no. 11G0721 as required.

38. In or around August 2010, Loyce Freeman ("Freeman") retained Roughton for representation in a domestic case. Freeman paid Roughton \$750.00 for the representation.

39. In November 2010, Roughton suggested sending Freeman's husband a proposed separation agreement and a letter setting a deadline for the husband's response to the proposal. Freeman agreed but asked Roughton to send her a copy of the proposed letter prior to mailing.

40. Roughton never sent Freeman a copy of the proposed letter.

41. After November 2010, Roughton did not respond to Freeman's repeated e-mails and voicemail messages requesting information concerning the status of her pending domestic case.

42. After November 2010, Roughton did not pursue Freeman's domestic case.

43. Roughton did not resolve Freeman's domestic case for which he was retained.

44. Roughton did not refund any unearned portion of Freeman's paid legal fee.

45. In July 2011, Freeman filed a fee dispute petition with the State Bar against Roughton, file no. 11FD0349.

46. On 15 July 2011, the State Bar sent Roughton a Notice of Mandatory Fee Dispute Resolution in file no. 11FD0349 by certified mail to Roughton's address on record with the North Carolina State Bar. The certified mailing was returned to the State Bar marked "unclaimed."

47. On 16 August 2011, the State Bar opened a grievance file against Roughton based upon the content of Freeman's fee dispute, grievance file no. 11G0973.

48. On 9 November 2011, a State Bar investigator located and personally served Roughton with the Letter of Notice in grievance file no. 11G0973. Roughton was required to respond to the Letter of Notice within fifteen days of receiving the letter.

49. Roughton did not respond to the Letter of Notice in grievance file no. 11G0973 as required.

50. In or around September 2010, Lisa Spruill ("Spruill") retained Roughton for representation in a domestic case. Spruill paid Roughton \$2,500.00 for the representation.

51. Spruill provided Roughton with various original documents pertaining to her case, including but not limited to bank records and photographs.

52. After October 2010, Roughton did not respond to Spruill's repeated e-mails and voicemail messages requesting information concerning the status of her pending domestic case.

53. After October 2010, Roughton did not pursue Spruill's domestic case.

54. Roughton did not resolve Spruill's domestic case for which he was retained.

55. Around April 2011, Spruill located and spoke to Roughton about her pending domestic case. Roughton promised Spruill to refund her paid fee and return her original documents.

56. Roughton did not refund any unearned portion of Spruill's paid fee.

57. Roughton did not return Spruill's original documents.

58. In July 2011, Spruill filed a fee dispute petition with the State Bar against Roughton, file no. 11FD0363.

59. On 25 July 2011, the State Bar sent Roughton a Notice of Mandatory Fee Dispute Resolution in file no. 11FD0363 by certified mail to Roughton's address on record with the North Carolina State Bar. The certified mailing was returned to the State Bar marked "unclaimed."

60. On 8 August 2011, a State Bar employee with the Attorney-Client Assistance Program left a voicemail message with Roughton informing him of the pending fee dispute petition in file no. 11FD0363 and of Spruill's upcoming court date and need for the materials previously provided to Roughton. The State Bar requested Roughton contact the State Bar immediately.

61. Roughton did not respond to the State Bar's voicemail message as required.

62. On 17 August 2011, the State Bar opened a grievance file against Roughton based upon the content of Spruill's fee dispute and Roughton's failure to participate in the fee dispute process, grievance file no. 11G0988.

63. On 9 November 2011, a State Bar investigator located and personally served Roughton with the Letter of Notice in grievance file no. 11G0988. Roughton was required to respond to the Letter of Notice within fifteen days of receiving the letter.

64. Roughton did not respond to the Letter of Notice in grievance file no. 11G0988 as required.

65. In or around June 2010, Kenneth Osborne ("Osborne") retained Roughton for representation in a traffic citation. Osborne paid Roughton \$295.00 for the representation.

66. Osborne's paid fee included anticipated court costs and fines.

67. Roughton told Osborne he would resolve the traffic citation by having the speeding charge reduced to an improper equipment charge.

68. In or around 10 June 2010, Osborne contacted Roughton requesting a status update on his traffic citation. Roughton indicated to Osborne that he had resolved Osborne's citation.

69. Osborne requested a copy of the paperwork showing the disposition of his traffic citation. Roughton stated no paperwork existed and did not produce any paperwork as requested.

70. Roughton did not resolve Osborne's traffic citation in June 2010 as indicated.

71. In July 2011, Osborne received a notice from the NCDMV informing Osborne that his driver's license was to be suspended for failing to pay the fine associated with his traffic citation.

72. Osborne contacted the Martin County Clerk of Court and learned Roughton did not resolve the traffic citation until May 2011.

73. Roughton also did not resolve Osborne's traffic citation by having the speeding charge reduced to an improper equipment charge as previously promised.

74. Roughton also did not pay the court costs and fines associated with Osborne's traffic citation.

75. Roughton did not inform Osborne of the delay in resolving the traffic citation, of his failure to pay the court costs and fines associated with the traffic citation, of the ultimate resolution of Osborne's traffic citation, and otherwise did not communicate with Osborne after June 2010.

76. In July 2011, Osborne paid \$236.00 in court costs, fines, and a late payment fee associated with his traffic citation.

77. Roughton did not respond to Osborne's repeated voicemail messages in July 2011 requesting an update on his traffic citation and Roughton did not refund any portion of Osborne's paid fee.

78. In July 2011, Osborne filed a fee dispute petition with the State Bar against Roughton, file no. 11FD0362.

79. On 25 July 2011, the State Bar sent Roughton a Notice of Mandatory Fee Dispute Resolution in file no. 11FD0362 by certified mail to Roughton's address on record with the North Carolina State Bar. The certified mailing was returned to the State Bar marked "unclaimed."

80. On 17 August 2011, the State Bar opened a grievance file against Roughton based upon the content of Osborne's fee dispute, grievance file no. 11G0989.

81. On 9 November 2011, a State Bar investigator located and personally served Roughton with the Letter of Notice in grievance file no. 11G0989. Roughton was required to respond to the Letter of Notice within fifteen days of receiving the letter.

82. Roughton did not respond to the Letter of Notice in grievance file no. 11G0989 as required.

83. In or around October 2010, Kristina Howell ("Howell") retained Roughton for representation in a traffic citation. Howell paid Roughton \$295.00 for the representation.

84. Howell's paid fee included anticipated court costs and fines.

85. Howell's traffic citation was initially scheduled for hearing on 29 November 2010.

86. Roughton obtained at least one continuance of the hearing date for Howell's traffic citation.

87. After approximately 4 February 2011, Roughton did not respond to Howell's repeated requests for information concerning the status of her traffic citation.

88. Roughton did not appear on Howell's behalf at the scheduled hearing date for Howell's traffic citation, causing the court to enter a failure to appear against Howell.

89. Roughton did not pay the court costs and fines associated with Howell's traffic citation.

90. Roughton did not resolve Howell's traffic citation for which he was retained.

91. Roughton did not inform Howell of his failure to appear on her behalf at the scheduled hearing for her traffic citation.

92. In April 2011, Howell received a notice from the NCDMV informing Howell that her driver's license was to be suspended for failing to appear at the scheduled hearing for her traffic citation.

93. On or about 9 June 2011, Howell resolved her traffic citation without Roughton's assistance.

94. Howell paid \$356.00 in court costs and fines for her traffic citation as well as for her failure to appear at the scheduled hearing date for her traffic citation.

95. After receiving the April 2011 notice from the NCDMV, Howell left multiple voicemail messages for Roughton and left multiple hand-written notes at Roughton's office requesting an update on her traffic citation and requesting a refund of her paid fee.

96. Roughton did not respond to Howell's messages and notes.

97. Roughton did not refund any unearned portion of Howell's paid fee.

98. In August 2011, Howell filed a fee dispute petition with the State Bar against Roughton, file no. 11FD0374.

99. On 1 August 2011, the State Bar sent Roughton a Notice of Mandatory Fee Dispute Resolution in file no. 11FD0374 by certified mail to Roughton's address on record with the North Carolina State Bar. The certified mailing was returned to the State Bar marked "unclaimed."

100. On 1 September 2011, the State Bar opened a grievance file against Roughton based upon the content of Howell's fee dispute, grievance file no. 11G1057.

101. On 9 November 2011, a State Bar investigator located and personally served Roughton with the Letter of Notice in grievance file no. 11G1057. Roughton was required to respond to the Letter of Notice within fifteen days of receiving the letter.

102. Roughton did not respond to the Letter of Notice in grievance file no. 11G1057 as required.

103. In August 2010, Trisha Peel ("Peel") retained Roughton for representation in a civil litigation case. Peel paid Roughton a \$500.00 flat fee for representation on a pending motion to dismiss and a \$2,000.00 advance fee to be billed against at a rate of \$125.00 per hour for all other aspects of the representation.

104. Roughton represented Peel at a hearing on the pending motion to dismiss in Peel's case.

105. In or around February 2011, Roughton informed Peel that mediation in the case had been postponed and that opposing counsel would schedule Peel's deposition shortly.

106. After February 2011, Roughton did not respond to Peel's repeated voicemail messages requesting information concerning the status of her pending case.

107. Mediation was scheduled in Peel's case for May 2011.

108. Roughton did not notify Peel of the mediation scheduled for May 2011.

109. Roughton did not appear at the May 2011 mediation.

110. Roughton did not respond to the mediator's repeated communications regarding the May 2011 mediation.

111. After not hearing from Roughton regarding the status of her case, Peel contacted the Beaufort County Clerk of Court's office and learned that Roughton had failed to attend the scheduled mediation.

112. Peel subsequently left numerous voicemail messages for Roughton and wrote a letter to Roughton requesting an update on that status of her pending civil case and requesting a refund of her paid advanced legal fee.

113. Roughton did not respond to Peel's voicemail messages and letter.

114. After handling the motion to dismiss in Peel's case, Roughton did not take any further action in pursuit of Peel's case and did not resolve Peel's civil case for which he was retained.

115. Roughton did not refund any unearned portion of Peel's advanced legal fee.

116. In August 2011, Peel filed a fee dispute petition with the State Bar against Roughton, file no. 11FD0393.

117. On 15 August 2011, the State Bar sent Roughton a Notice of Mandatory Fee Dispute Resolution in file no. 11FD0393 by certified mail to Roughton's address on record with the North Carolina State Bar. The certified mailing was returned to the State Bar marked "unclaimed."

118. On 7 September 2011, the State Bar opened a grievance file against Roughton based upon the content of Peel's fee dispute, grievance file no. 11G1072.

119. On 9 November 2011, a State Bar investigator located and personally served Roughton with the Letter of Notice in grievance file no. 11G1072. Roughton was required to respond to the Letter of Notice within fifteen days of receiving the letter.

120. Roughton did not respond to the Letter of Notice in grievance file no. 11G1072 as required.

121. In or around April 2010, Kendall Hankins ("Hankins") retained Roughton for representation in a traffic citation. Hankins paid Roughton \$275.00 for the representation.

122. Hankins's paid fee included anticipated court costs and fines.

123. Hankins's traffic citation was initially scheduled for hearing on 21 July 2010.

124. Roughton obtained at least three continuances of the hearing date for Hankins's traffic citation.

125. Roughton did not inform Hankins of the multiple continuances he obtained regarding Hankins's traffic citation.

126. Roughton appeared at the scheduled hearing for Hankins's traffic citation but failed to pay the court costs and fines associated with Hankins's traffic citation.

127. Roughton did not inform Hankins of his failure to pay the court costs and fines associated with the traffic citation.

128. In August 2011, Hankins received a notice from the NCDMV informing Hankins that her driver's license was to be suspended for failing to pay the fine associated with her traffic citation.

129. In September 2011, Hankins paid \$236.00 in court costs, fines, and a late payment fee associated with her traffic citation.

130. Roughton subsequently did not respond to Hankins's repeated voicemail messages and messages via internet social media requesting information concerning the status of her traffic citation and requesting a refund of her paid fee.

131. Roughton did not refund any portion of Hankins's paid fee.

132. On or about 27 September 2011, Hankins filed a grievance with the State Bar, grievance file no. 11G1157.

133. On 9 November 2011, a State Bar investigator located and personally served Roughton with the Letter of Notice in grievance file no. 11G1157. Roughton was required to respond to the Letter of Notice within fifteen days of receiving the letter.

134. Roughton did not respond to the Letter of Notice in grievance file no. 11G1157 as required.

135. From at least January 2010 to January 2012, Roughton maintained an attorney trust account at Bank of America bearing account number ending in 8037 (hereinafter "trust account") into which Roughton deposited entrusted client funds.

136. Between January 2010 and January 2012, Roughton made numerous disbursements from his trust account that were unattributed to any client, including checks drawn on the account made payable to third parties, checks drawn on the account made payable to himself or his law office, and transfers of funds into unidentified Bank of America checking accounts.

137. On or about 4 June 2010, Roughton deposited into his trust account \$295.00 belonging to Osborne as identified in paragraphs 65 & 66 above.

138. Roughton did not disburse any entrusted funds from his trust account for the benefit of Osborne.

139. On or about 13 October 2010, Roughton deposited into his trust account \$295.00 belonging to Howell as identified in paragraphs 83 & 84 above.

140. Roughton did not disburse any entrusted funds from his trust account for the benefit of Howell.

141. On or about 1 October 2010 and 4 October 2010, Roughton deposited into his trust account \$400.00 and \$260.00, respectively, belonging to Peel as a partial deposit of Peel's \$2,000.00 advance fee as identified in paragraph 103 above.

142. On or about 28 January 2011, Peel paid Roughton the remainder of her \$2,000.00 advance fee by check in the amount of \$1,340.00.

143. Roughton did not deposit Peel's \$1,340.00 advance fee in his trust account.

144. Roughton did not disburse any entrusted funds from his trust account for the benefit of Peel.

145. Roughton did not deposit into his trust account the \$275.00 paid by Hankins as identified in paragraphs 121 & 122 above.

146. Roughton never delivered any portion of the funds entrusted to him by Osborne, Howell, Peel, or Hankins to a third party at his client's direction and never used the funds for his client's benefit.

147. Roughton never refunded any portion of the unused or unearned funds entrusted to him by Osborne, Howell, Peel, or Hankins.

148. Because Roughton never disbursed the entrusted funds deposited in his trust account belonging to Osborne, Howell, and Peel, Roughton's trust account should contain a total of at least \$1,250.00 belonging to Osborne, Howell, and Peel, collectively.

149. As of 18 January 2012, Roughton's trust account contained a zero balance.

150. Roughton used the entrusted funds paid to him by Osborne, Howell, Peel, and Hankins for the benefit of someone other than the rightful owner(s) of those funds without the permission of the beneficial owner(s) of the entrusted funds.

As previously found in the Default Judgment and now recited herein, based upon the foregoing Findings of Fact, the panel enters the following

CONCLUSIONS OF LAW

1. All parties are properly before the hearing panel and the panel has jurisdiction over Defendant, Alan M. Roughton, and the subject matter of this proceeding.

2. Roughton's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-28(b)(2) & (b)(3) as follows:

- (a) By failing to appear on Jobes's behalf at his scheduled hearing, Roughton failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;
- (b) By failing to inform Jobes of his failure to appear at his scheduled hearing and by failing to respond to Jobes's communications, Roughton failed to keep his client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3) and failed to comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- (c) By collecting a fee and failing to perform the work for which he was retained, Roughton collected a clearly excessive fee in violation of Rule 1.5(a);
- (d) By failing to refund Jobes's paid fee, Roughton failed to take steps to the extent reasonably practicable to protect his client's interests upon termination of representation in violation of Rule 1.16(d);
- (e) By failing to refund Jobes's paid fee as agreed through the State Bar's fee dispute process regarding file no. 11FD0184, Roughton failed to participate in good faith in the State Bar's fee dispute process in violation of Rule 1.5(f);
- (f) By failing to respond to the State Bar's Letter of Notice in grievance file no. 11G0773, Roughton failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b);
- (g) By failing to pursue Doughtie's case after December 2010, Roughton failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;
- (h) By failing to respond to Doughtie's communications, Roughton failed to keep his client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3) and failed to comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- (i) By collecting a fee and failing to perform the work for which he was retained, Roughton collected a clearly excessive fee in violation of Rule 1.5(a);
- (j) By failing to refund any unearned portion of Doughtie's paid fee, Roughton failed to take steps to the extent reasonably practicable to protect his client's interests upon termination of representation in violation of Rule 1.16(d);
- (k) By failing to respond to the State Bar's Notice of Mandatory Fee Dispute Resolution in file no. 11FD0246, Roughton failed to participate in good faith in the State Bar's fee dispute process in violation of Rule 1.5(f);
- (l) By failing to respond to the State Bar's Letter of Notice in grievance file no. 11G0721, Roughton failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b);

- (m) By failing to pursue Freeman's case after November 2010, Roughton failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;
- (n) By failing to respond to Freeman's communications, Roughton failed to keep his client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3) and failed to comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- (o) By collecting a fee and failing to perform the work for which he was retained, Roughton collected a clearly excessive fee in violation of Rule 1.5(a);
- (p) By failing to refund any unearned portion of Freeman's paid fee, Roughton failed to take steps to the extent reasonably practicable to protect his client's interests upon termination of representation in violation of Rule 1.16(d);
- (q) By failing to respond to the State Bar's Letter of Notice in grievance file no. 11G0973, Roughton failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b);
- (r) By failing to pursue Spruill's case after October 2010, Roughton failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;
- (s) By failing to respond to Spruill's communications, Roughton failed to keep his client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3) and failed to comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- (t) By collecting a fee and failing to perform the work for which he was retained, Roughton collected a clearly excessive fee in violation of Rule 1.5(a);
- (u) By failing to refund any unearned portion of Spruill's paid fee and by failing to return Spruill's documentation, Roughton failed to take steps to the extent reasonably practicable to protect his client's interests upon termination of representation in violation of Rule 1.16(d);
- (v) By failing to respond to the State Bar's State Bar's August 2011 voicemail message regarding fee dispute file no. 11FD0363, Roughton failed to participate in good faith in the State Bar's fee dispute process in violation of Rule 1.5(f);
- (w) By failing to respond to the Letter of Notice in grievance file no. 11G0988, Roughton failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b);
- (x) By failing to resolve Osborne's traffic citation for eleven months after being retained, Roughton failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;

- (y) By failing to inform Osborne of the delay in resolving the traffic citation and by failing to respond to Osborne's communications, Roughton failed to keep his client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3) and failed to comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- (z) By falsely informing Osborne that his traffic citation had been resolved in June 2010 when it had not, Roughton engaged in conduct involving dishonesty, deceit, or misrepresentation in violation of Rule 8.4(c);
- (aa) By promising a particular result in resolving Osborne's traffic citation, Roughton made a false or misleading statement about his services by creating an unjustified expectation about the results he could achieve in violation of Rule 7.1(a);
- (bb) By failing to pay the court costs and fines associated with Osborne's traffic citation, Roughton failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 and failed to promptly pay entrusted property belonging to the client to a third party as directed by the client in violation of Rule 1.15-2(m);
- (cc) By failing to refund any unearned portion of Osborne's paid fee, Roughton failed to take steps to the extent reasonably practicable to protect his client's interests upon termination of representation in violation of Rule 1.16(d);
- (dd) By failing to respond to the State Bar's Letter of Notice in grievance file no. 11G0989, Roughton failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b);
- (ee) By failing to appear on Howell's behalf at her scheduled hearing, Roughton failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;
- (ff) By failing to pay the court costs and fines associated with Howell's traffic citation, Roughton failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 and failed to promptly pay entrusted property belonging to the client to a third party as directed by the client in violation of Rule 1.15-2(m);
- (gg) By failing to inform Howell of his failure to appear at her scheduled hearing and by failing to respond to Howell's communications, Roughton failed to keep his client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3) and failed to comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- (hh) By collecting a fee and failing to perform the work for which he was retained, Roughton collected a clearly excessive fee in violation of Rule 1.5(a);

- (ii) By failing to refund any unearned portion of Howell's paid fee, Roughton failed to take steps to the extent reasonably practicable to protect his client's interests upon termination of representation in violation of Rule 1.16(d);
- (jj) By failing to respond to the State Bar's Letter of Notice in grievance file no. 11G1057, Roughton failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b);
- (kk) By failing to pursue Peel's case after February 2011 and by failing to respond to the mediator's communications, Roughton failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 and engaged in conduct that was prejudicial to the administration of justice in violation of Rule 8.4(d);
- (ll) By failing to respond to Peel's communications and by failing to inform Peel of the scheduled mediation date, Roughton failed to keep his client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3) and failed to comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- (mm) By collecting a fee and failing to perform the work for which he was retained, Roughton collected a clearly excessive fee in violation of Rule 1.5(a);
- (nn) By failing to refund any unearned portion of Peel's paid fee, Roughton failed to take steps to the extent reasonably practicable to protect his client's interests upon termination of representation in violation of Rule 1.16(d) and failed to promptly pay to his client any entrusted property belonging to the client to which the client was entitled in violation of Rule 1.15-2(m);
- (oo) By failing to respond to the State Bar's Letter of Notice in grievance file no. 11G1072, Roughton failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b);
- (pp) By failing to pay the court costs and fines associated with Hankins's traffic citation, Roughton failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 and failed to promptly pay entrusted property belonging to the client to a third party as directed by the client in violation of Rule 1.15-2(m);
- (qq) By failing to respond to Hankins's communications and by failing to inform Hankins of his failure to pay the court costs and fines associated with her traffic citation, Roughton failed to keep his client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3) and failed to comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- (rr) By failing to refund any unearned portion of Hankins's paid fee, Roughton failed to take steps to the extent reasonably practicable to protect his client's interests upon termination of representation in violation of Rule 1.16(d);

- (ss) By failing to respond to the State Bar's Letter of Notice in grievance file no. 11G1157, Roughton failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b);
- (tt) By failing to deposit Hankins's \$275.00 payment into his trust account, Roughton failed to preserve entrusted funds in violation of Rules 1.15-2(a) & (b) and failed to deposit into his trust account mixed funds belonging to both the lawyer and the client in violation of Rule 1.15-2(g);
- (uu) By failing to deposit \$1,340.00 of Peel's advance fee into his trust account, Roughton failed to preserve entrusted funds in violation of Rules 1.15-2(a) & (b);
- (vv) By misappropriating entrusted funds belonging to Osborne, Howell, Peel, and Hankins, Roughton failed to preserve entrusted funds provided to him in violation of Rules 1.15-2(a) and (b), committed a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b), and engaged in dishonest conduct in violation of Rule 8.4(c);
- (ww) By drawing checks on the trust account made payable to himself or to his law office without indicating on the checks the client balance on which the check was drawn, Roughton withdrew entrusted funds in violation of Rule 1.15-2(h); and
- (xx) By drawing checks on the trust account and by transferring funds from his trust account to unidentified checking accounts without indicating on the item the client balance against which the item was drawn, Roughton failed to maintain records in violation of Rule 1.15-3(b)(2).

Based upon the foregoing Findings of Fact and Conclusions of Law, the hearing panel finds by clear, cogent, and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings in paragraphs 1 through 150 above are reincorporated as if fully set forth herein.
2. Roughton's conduct -- to wit: widespread and severe neglect of client matters, failure to adequately communicate with his clients, failure to resolve the matters for which he was retained, and misappropriation of entrusted client funds -- impaired his clients' ability to achieve the goals of the representation, deprived his clients of the use of the funds entrusted to Roughton's care, and unnecessarily delayed resolution of his clients' pending cases.
3. Roughton's known and willful misapplication and conversion to his personal use of entrusted client funds constitutes embezzlement pursuant to N.C. Gen. Stat. § 14-90, a felony criminal offense.

4. Clients are entitled to attorneys they can trust. Roughton, by engaging in widespread neglect and dishonest conduct, has shown himself to be not trustworthy.

5. Roughton has abandoned his law practice without making any efforts toward restitution for his clients. Roughton's repeated conduct demonstrates his intent to cause the resulting harm or potential harm and demonstrates Roughton's intent to commit acts where the harm or potential harm is foreseeable.

6. Self-regulation of the legal profession relies upon the cooperation and participation of lawyers in the self-regulatory process. When a lawyer refuses to respond to a lawful inquiry from a disciplinary authority, as Roughton repeatedly did here, it undermines the system of self-regulation.

7. The hearing panel has carefully considered all of the different forms of discipline available to it in considering the appropriate discipline to impose in this case.

Based upon the foregoing Findings of Fact, Conclusions of Law, and additional Findings of Fact Regarding Discipline, and upon consideration of the factors set forth in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(w), the hearing panel hereby enters the following additional

CONCLUSIONS OF LAW REGARDING DISCIPLINE

1. The hearing panel has carefully considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0114(w)(3) of the Rules and Regulations of the North Carolina State Bar and finds evidence of the following factors:

- a. Defendant's dishonest or selfish motive;
- b. Defendant's pattern of misconduct;
- c. Defendant's multiple offenses; and
- d. Defendant's bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency.

2. The hearing panel has carefully considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0114(w)(2) of the Rules and Regulations of the North Carolina State Bar and finds Defendant has engaged in the following conduct that compels consideration of and warrants disbarment of Defendant's license:

- a. Acts of dishonesty, misrepresentation, deceit, or fabrication;
- b. Misappropriation or conversion of assets entrusted by clients to Defendant to which Defendant was not entitled; and
- c. Commission of a felony.

3. The hearing panel has carefully considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and finds the following factors warrant disbarment or suspension of Defendant's license:

- a. Defendant's intent to cause the resulting harm or potential harm;
- b. Defendant's intent to commit acts where the harm or potential harm was foreseeable;
- c. Circumstances reflecting Defendant's lack of honesty, trustworthiness, or integrity;
- d. Defendant's actions had a potential negative impact on his clients' and the public's perception of the legal profession;
- e. Negative impact of Defendant's actions on the administration of justice;
- f. Impairment of the client's ability to achieve the goals of the representation;
- g. Acts of dishonesty, misrepresentation, deceit, or fabrication; and
- h. Multiple instances of failure to participate in the legal profession's self-regulation process.

4. Roughton's neglect, failure to communicate, failure to resolve the matters for which he was retained, and misappropriation of entrusted client funds caused significant harm to his clients.

5. Roughton's conduct caused significant harm to the public and the administration of justice by unnecessarily delaying resolution of his clients' pending cases.

6. Roughton's habitual neglect of his clients' matters has the potential to cause significant harm to the standing of the legal profession in the eyes of the public because it shows his disregard for his duties as an attorney. Roughton's commission of criminal acts reflecting adversely on his honesty, trustworthiness or fitness as a lawyer also caused significant potential harm to the profession in that criminal conduct by attorneys tends to bring the legal profession into disrepute. 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. Roughton caused significant potential harm to the profession in that Roughton's continued failure to respond to inquiries from the State Bar demonstrates a refusal to participate in the self-regulation process. Such conduct interferes with the State Bar's ability to regulate its members and undermines the profession's privilege to remain self-regulating.

8. The hearing panel has considered all other forms of discipline available and concludes that any sanction less than disbarment would fail to acknowledge the seriousness of the offenses committed by Defendant and would send the wrong message to attorneys and the

public regarding the conduct expected of members of the Bar. The hearing panel further concludes that any sanction less than disbarment would not adequately protect clients, the public, the administration of justice, and the profession.

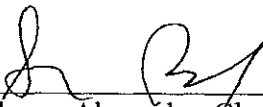
9. Due to the nature and extent of Defendant's conduct, the significant actual harm and potential harm caused by Defendant's conduct, and in the interest of protecting clients, the public, the administration of justice and the profession, this panel concludes that disbarment is the only discipline that will adequately protect clients, the public, the administration of justice, and the profession from future transgressions by Defendant.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Findings Regarding Discipline, the hearing panel enters the following

ORDER OF DISCIPLINE

1. Defendant, Alan M. Roughton, is hereby DISBARRED from the practice of law.
2. Defendant shall surrender his 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 pay the costs and administrative fees of this proceeding as assessed by the Secretary of the North Carolina State Bar. Defendant must pay these costs and fees within 30 days of service upon him of the statement of costs and fees by the Secretary.
4. Defendant shall comply with all provisions of 27 N.C. Admin. Code 1B § .0124 of the North Carolina State Bar Discipline and Disability Rules.

Signed by the Chair with the consent of the other hearing panel members, this the 02 day of July, 2013.



Sharon Alexander, Chair
Disciplinary Hearing Panel