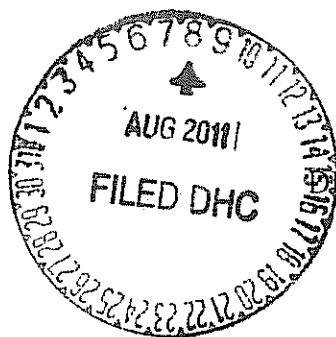


NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
11 DHC 5

THE NORTH CAROLINA STATE BAR,)
Plaintiff,)
v.)
BRIAN C. DANIELS , Attorney,)
Defendant.)

ORDER OF DISCIPLINE

THIS MATTER was considered on July 22, 2011 by a Hearing Panel of the Disciplinary Hearing Commission composed of C. Colon Willoughby, Jr., Chair, and members Ronald R. Davis and David L. Williams. William N. Farrell represented Plaintiff, the North Carolina State Bar. Defendant filed an Answer to the Complaint but did not otherwise appear in person or by counsel.

PROCEDURAL HISTORY

The Complaint in this action was filed on February 25, 2011. Defendant filed an Answer to the Complaint on March 16, 2011. The Defendant's Answer admitted all of his actions set forth in the Complaint's Third Claim for Relief. The Defendant's Answer to the Complaint's Fourth Claim for Relief did not admit or deny the allegations of the Fourth Claim and the allegations were therefore deemed admitted pursuant to 27 N.C.A.C. 1B § .0114(f) of the Rules of the North Carolina State Bar.

Plaintiff filed a Motion for Judgment on the Pleadings as to the Third and Fourth Claims for Relief. The Hearing Panel granted this Motion and found as facts the allegations set forth in paragraphs 19 through 34 and paragraphs 36 through 43 of the Complaint. Based upon these findings, the Hearing Panel concluded as a matter of law that Defendant violated the Rules of Professional Conduct as alleged in the Third and Fourth Claims for Relief.

The Hearing Panel heard evidence as to the First and Second Claims for Relief on July 22, 2011. Based upon the pleadings and the evidence introduced, the Hearing Panel finds, as to the First and Second Claims for Relief, 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, Brian C. Daniels ("Daniels" or "Defendant"), was admitted to the North Carolina State Bar on March 18, 2000 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 part of the relevant periods referred to herein, Daniels was engaged in the practice of law in the State of North Carolina with the law firm of Brantley, Jenkins, Riddle, Hardee & Hardee, LLP, a law firm in Eastern North Carolina (hereinafter "the Brantley firm") and at other times in his own law practice, the Chris Daniels Law Firm, PLLC.

4. Daniels was employed as an associate attorney with the Brantley firm from the spring of 2003 until on or about August 29, 2006.

5. Pursuant to his employment with the firm, all fees that Daniels received were the property of the Brantley firm and were to be deposited in the firm's bank account or submitted to the firm.

6. In 2006, while employed with the Brantley firm, Daniels was appointed Guardian Ad Litem for Kson Shyheim Williams, a minor, in Pitt County, North Carolina.

7. In 2006, while employed with the Brantley firm, Daniels was appointed Guardian Ad Litem for Travis Wilson and Leroy Wilson, both minors, in Granville County, North Carolina.

8. In 2006, while employed with the Brantley firm, Daniels was appointed Guardian Ad Litem for Jonathan Cavanaugh and Matthew Green, both minors, in Franklin County, North Carolina.

9. For legal services rendered as a Guardian Ad Litem for the above named minors, Daniels received a total of \$1,250.00 paid by checks made payable to "Chris Daniels" from the Kessler Law Firm, PLLC.

10. Daniels received, accepted and cashed the checks referred to in Paragraph 9 without the Brantley firm's knowledge or consent.

11. Daniels did not deposit the \$1,250.00 in fees into the Brantley firm's bank account or submit the fees to the firm as required by his employment arrangement with the firm.

12. Daniels misappropriated the \$1,250.00 belonging to the Brantley firm to his own use.

13. While he was an associate with the Brantley firm, Daniels was retained by several individuals, including the following, to represent them in traffic matters:

Nicholas Hodak

Earnest McDonald

Brittany Carter

April Heath

Matthew Talinkton

Corey Sangster

Gerald Brusaw

Shane Penland

KeJuan Hill

14. Daniels received, accepted and retained fees in these cases which were the property of the Brantley firm.

15. Daniels did not deposit the fees into the Brantley firm's bank account as required by his employment arrangement with the firm or submit the fees to the firm.

16. Daniels misappropriated the fees in these cases, totaling over \$1,000.00 belonging to the Brantley firm, to his own use.

Based on the foregoing Findings of Fact, as to the First and Second Claims for Relief, 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, Brian C. Daniels, 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) for engaging in conduct in violation of the Rules of Professional Conduct in effect at the time of his actions as follows:

- a. By misappropriating the fees earned from the representation of the minors to his own use while an associate attorney and employee of the Brantley firm, instead of remitting the fees to the firm, Defendant engaged in conduct involving dishonesty, fraud, deceit or misappropriation in violation of Rule 8.4 (b) and(c).
- b. By misappropriating the fees earned from the representation of the traffic case clients to his own use while an associate with the Brantley firm, instead of remitting the fees to the firm, Daniels engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule. 8.4(b) and (c).

The Hearing Panel hereby sets forth the following Findings of Fact as to the Third and Fourth Claims for Relief, pursuant to the previously entered Judgment on the Pleadings:

1. After leaving the Brantley firm on or about August 29, 2006 Daniels set up his own practice under the name, The Chris Daniels Law Firm, PLLC.
2. Between September 2006 and March 31, 2010 Daniels maintained a trust account with First Citizens Bank under the name, The Chris Daniels Law Firm PLLC Trust Account, account number ending in the digits 7316 (hereinafter "the trust account").
3. Daniels used the trust account as a general trust account in which he deposited and from which he disbursed client funds.
4. Until on or about September 1, 2009 Daniels consistently marked each trust account check with the identification of the client fund from which the disbursement was made.
5. During the period beginning September 1, 2009 through December 2, 2009, Daniels wrote 20 trust account checks payable to himself without marking the checks with the identification of a client or client fund from which the disbursements were made.
6. Many of the checks described in Paragraph 23 above were for \$1,500.00, \$2,000.00, \$3,000.00, \$4,000.00 and had no apparent relationship to the balances being held on behalf of his clients.
7. On August 18, 2010 Daniels was specifically asked, in writing by the North Carolina State Bar, to explain the circumstances surrounding the checks written to himself, between, September 1, 2009 and December 1, 2009 from the trust account.
8. Daniels was also specifically advised on August 18, 2010 that the Bar would be compelled to conclude that he misappropriated the funds to his own use if he did not provide an adequate explanation for these distributions.
9. Daniels provided no explanation or response to the Bar's requests described in paragraphs 25 & 26 above.
10. The balance in the trust account dropped to \$33.39 on December 2, 2009 and had no further activity through March 31, 2010.
11. Daniels' deposits into the trust account and disbursements from the trust account indicate that the following persons should have the following funds in the trust account on March 31, 2010:

So-Tay Allen - \$842.97

Brian Bacon - \$250.00

Zelenea Bailey - \$10.00

Timothy Boyette – \$165.00

Ursula Kuhno Buchner – \$276.00

Joseph Burden - \$5.00
Amy Caldwell – \$594.54
Karen Carver – \$145.00
Kathy Cole - \$25.00
Antoinette Damroth - \$32.58
Christy Dixon – \$963.70
Davon Edwards – \$521.30
Carlos Encamacion – \$2,566.67
Jonathan Espinoza - \$5.00
Tanazau Fernandez – \$85.00
Billy Gentry – \$135.00
Jessica Griffin – \$412.20
Kathy Guerrero – \$3,000.00
Lelani Guss – \$696.52
Dashawna Hatch – \$449.20
Diane Hatsell - \$7,890.00
Heather Haytaian - \$25.00
Brittany Hefner - \$58.00
Julie Hewitt – \$100.00
Vernon Honie – \$146.00
Virgil Jackson - \$25.00
Matthew Johnson – \$100.00
Melissa Jones – \$10,000.00
Steve Krasnipol – \$135.00
Pauline Lindo – \$787.33

Carlos Luciano – \$200.00
Retha Regina Melvin – \$146.00
Anthony Miller – \$120.00
Linda Morton – \$333.33
Patrick Murphy – \$430.38
Christopher Northern – \$410.00
Jonathan Parker – \$400.00
Leonard Pendleton – \$1,000.00
Karla Pierce – \$6,366.06
Christopher Premo – \$682.76
Trevor Roberts – \$135.00
William Roberts – \$125.00
B.A. Shields – \$146.00
Mario Singletary – \$635.00
Lamanda Sulton – \$3,720.04
Michael Sweeny – \$181.28
Mary Tilghman – \$3,097.83
Sara Trombley - \$4.00
Robert Tucker – \$350.00
Joshua Watson – \$145.00
Crystal White - \$22.91
Jennifer Wilkerson – \$200.00

12. Daniels was also specifically asked, in writing, on August 18, 2010 to provide detailed information regarding the distribution of funds that he deposited into his trust account on behalf of the following clients:

Carlos Encarnacion

Estate of Lauren French

Kathy Guerrero

Lelani Guss

Diane Hatsell

Melissa Jones

Pauline Lindo

Leonard Pendleton

Karla Pierce

Christopher Primo

Roberts Rans

Mario Singletary

Lamanda Sutton

Mary Tilghman

13. Daniels was provided a spreadsheet for the clients listed above and asked to provide distribution summaries, medical bills and correspondence to support any explanation of the distributions for these clients.

14. Daniels was further specifically advised, in writing, that if he did not provide adequate explanations regarding the funds noted above showing legitimate and proper distributions on behalf of his clients, the Bar would be compelled to conclude there was not adequate explanations for the information contained in the bank records and that he misappropriated the funds to his own use and benefit.

15. Daniels provided neither documents nor explanation in response to these requests sent to him by the Bar on August 18, 2010.

16. Daniels misappropriated client funds from his trust account to his own use as set forth above.

17. Daniels was retained to represent Leonard Pendleton (hereinafter "Pendleton") in or about January 2008 regarding a personal injury matter.

18. In December 2008, Daniels received a \$1,000.00 check from Montgomery Insurance representing medical payment due to Pendleton.

19. Daniels deposited the \$1,000.00 check into the trust account with First Citizens Bank on about February 2009.

20. Daniels did not disburse the \$1,000.00 to Pendleton nor did he retain the \$1,000.00 in his trust account for the use and benefit of Pendleton.

21. As of January 2010 there was approximately \$33.00 in the trust account.

22. Defendant has not accounted for the \$1,000.00 that he received on behalf of Pendleton and has not disbursed the \$1,000.00 to Pendleton.

23. Defendant misappropriated the \$1,000.00 belonging to Pendleton to his own use.

24. The North Carolina State Bar Client Security Fund Board of Trustees awarded \$1,000.00 to Pendleton for his loss suffered as a result of Daniel's misconduct.

The Hearing Panel hereby sets forth the following conclusions of law, as to the Third and Fourth Claims for Relief, pursuant to the previously entered Judgment on the Pleadings:

1. By misappropriating client funds from his trust account to his own use, Daniels engaged in conduct involving dishonesty, fraud, deceit or misappropriation in violation of Rule 8.4 (b) and(c) and Rule 1.15-2(j);

2. By misappropriating client funds to his own use, Daniels failed to identify, hold and maintain the entrusted property of his clients in violation of Rule 1.15-2(a);

3. By withdrawing funds from the trust account by checks made payable to himself without indicating the client balance on which the check was drawn, Daniels failed to document trust checks made payable to himself and improperly withdrew trust funds from the account in violation of Rule 1.15-2(h);

4. By failing to identify on the trust account checks the client balance against which the checks were drawn, Daniels failed to maintain records in violation of Rule 1.15-3(b)(2);

5. By failing to respond to respond to the North Carolina State Bar's demand for information of August 18, 2010 in this matter, Daniels failed to respond to the disciplinary authority in violation of Rule 8.1 (b); and

6. By misappropriating the medical payment belonging to Pendleton to his own use, Daniels engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4 (b) and (c), Rule 1-15-2(a) and Rule 1-15-2(j).

Based on the foregoing Findings of Fact and Conclusions of Law and upon the evidence presented at hearing concerning the appropriate discipline, the Hearing Panel hereby finds by clear, cogent and convincing evidence the following additional:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Defendant's conduct involved misappropriation, misrepresentation and deceit.
2. Defendant, by engaging in conduct involving misappropriation, misrepresentation and deceit has shown himself to be untrustworthy.
3. Defendant put his own personal interests ahead of his clients' interest.
4. Defendant's conduct caused harm to his clients and the Brantley firm.
5. Defendant's conduct can only have a negative impact on his client's and the public's perceptions of the legal profession.

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 has carefully considered all of the different forms of discipline available to it.
2. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and determines the following factors are applicable:
 - (a) Intent of the defendant to cause the resulting harm or potential harm;
 - (b) Intent of the defendant to commit acts where the harm or potential harm is foreseeable;
 - (c) Circumstances reflecting the defendant's lack of honesty, trustworthiness, or integrity;
 - (d) Elevation of the defendant's own interest above that of the client;
 - (e) Negative impact of defendant's actions on client's or public's perception of the profession;
 - (f) Negative impact of the defendant's actions on the administration of justice;
 - (g) Impairment of the client's ability to achieve the goals of the representation;

- (h) Effect of defendant's conduct on third parties; and
- (i) Acts of dishonesty, misrepresentation, deceit, or fabrication.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(2) of the Rules and Regulations of the North Carolina State Bar and determines the following factors are applicable:

- (a) Acts of dishonesty, misrepresentation, deceit, or fabrication; and
- (b) Misappropriation or conversion of assets of any kind to which the defendant or recipient is not entitled, whether from a client or any other source.

4. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(3) of the Rules and Regulations of the North Carolina State Bar and determines the following factors are applicable:

- (a) Dishonest or selfish motive, or the absence thereof;
- (b) Pattern of misconduct; and
- (c) Multiple offenses.

5. Defendant caused significant harm to the Brantley firm and to his client Leonard Pendleton and other clients by misappropriation of trust funds.

6. Defendant's repeated acts of misappropriation reflect adversely on his honesty, trustworthiness or fitness as a lawyer and caused significant potential harm to the legal profession, in that such conduct tends to bring the legal profession into disrepute.

7. The Hearing Panel has considered lesser alternatives and finds that suspension of Defendant's license, censure, reprimand, or admonition would not be sufficient discipline, because of the gravity of the actual and potential harm to clients, the public, and the legal profession caused by Defendant's conduct, and the threat of significant potential harm to the public.

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

- a. Defendant committed misconduct involving violations of his clients' trust. Misconduct involving misappropriation and dishonesty is among the most serious misconduct that an attorney can commit. Such misconduct demonstrates that the offending attorney is not trustworthy. Clients are entitled to have trustworthy attorneys.

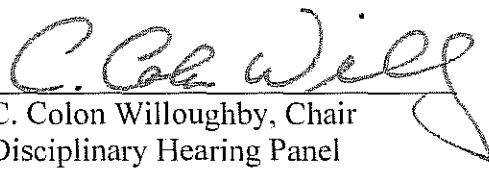
- b. Defendant repeatedly engaged in abuses of trust by misappropriating funds entrusted to him.
- c. Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses Defendant committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar of this State.
- d. The protection of the public and the legal profession requires that Defendant not be permitted to resume the practice of law until he demonstrates the following: that he has reformed; that he understands his obligations to his clients, the public, and the legal profession; and that permitting him to practice law will not be detrimental to the public or the integrity and standing of the legal profession or the administration of justice. Disbarred lawyers are required to make such a showing before they may resume practicing law.

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, Brian C. Daniels, 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 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.
- 4. Defendant shall comply with all provisions of 27 N.C.A.C. 1B § .0124 of the North Carolina State Bar Discipline & Disability Rules.

Signed by the Chair with the consent of the other Hearing Panel members, this the 8 day of August, 2011.


C. Colon Willoughby, Chair
Disciplinary Hearing Panel