

STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE  
 DISCIPLINARY HEARING COMMISSION  
 OF THE  
 NORTH CAROLINA STATE BAR  
 16 DHC 34

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

LENNARD D. TUCKER, Attorney,

Defendant

ORDER OF DISCIPLINE

THIS MATTER was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of the Chair, Donald C. Prentiss, and members David W. Long and Jane B. Weathers upon Plaintiff's Motion for Order of Discipline. Jennifer A. Porter represented Plaintiff, the North Carolina State Bar. Defendant Lennard D. Tucker (hereinafter Defendant or Tucker) was not represented, did not make an appearance in this matter, and did not file any written submissions in response to Plaintiff's Motion for Order of Discipline. After review of the pleadings herein and pursuant to 27 N.C. Admin. Code § 1B.0114(f), the Hearing Panel determines it is appropriate to grant Plaintiff's Motion for Order of Discipline.

THEREFORE, based on the pleadings and the admissions established by Defendant's default pursuant to 27 N.C. Admin. Code §1B.0114(f), 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, Lennard D. Tucker ("Tucker"), was admitted to the North Carolina State Bar in 1990, 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. The Complaint in this action was filed on 18 October 2016.

4. Defendant was served with the Alias and Pluries Summons and Complaint on 7 December 2016.

5. Defendant failed to file an answer or any responsive pleading by the deadline established by 27 N.C. Admin. Code 1B § .0114(e).

6. Upon Plaintiff's motion, default was entered against Defendant by the Secretary of the State Bar on 24 January 2017.

7. Plaintiff filed a Motion for Order of Discipline on 26 January 2017 and served the motion on that date by depositing a copy of the same in the U.S. Mail in a postage prepaid envelope addressed to the address at which Defendant was served with the Complaint.

8. During all or part of the relevant periods referred to herein, Tucker was engaged in the practice of law in the State of North Carolina and maintained a law office in Winston Salem, Forsyth County, North Carolina.

9. Tucker maintained an attorney trust account at BB&T, account number ending with 2261 ("BB&T 2261").

10. From January 2013 through December 2015, in certain personal injury cases, Tucker did not promptly disburse to himself in full his earned attorney's fee. Instead, he issued multiple checks to himself over time in various amounts, purporting to be attorney's fees in those personal injury cases.

11. In several of the above-described personal injury cases, the total amount that Tucker disbursed to himself exceeded the attorney fee to which he was entitled, including as follows:

- a. V. Martinez. Tucker deposited V. Martinez's personal injury settlement proceeds in the amount of \$22,000.00 into his trust account on or about 26 January 2015. Tucker's 1/3 attorney's fee was \$7,333.33. Tucker did not disburse to himself a trust account check for \$7,333.33 attributed as attorney's fees from V. Martinez. Instead, Tucker disbursed to himself a total of \$12,448.65 by the following checks attributed to V. Martinez:

DATE	SOURCE/PAYEE	CK NUMBER	CK AMOUNT
1/27/2015	Lennard D. Tucker (atty fees)	12540	1,000.00
1/29/2015	Lennard D. Tucker (atty fees)	12541	500.00
2/6/2015	Lennard D. Tucker (atty fees)	12552	500.00
2/23/2015	Lennard D. Tucker	12561	700.00
3/2/2015	Lennard D. Tucker	12562	3,633.33
3/17/2015	Lennard D. Tucker	12570	1,400.00
3/18/2015	Lennard D. Tucker	12571	250.00
2/20/2015	Lennard D. Tucker (atty fees)	12560	1,000.00

3/19/2015	Lennard D. Tucker	12572	150.00
3/20/2015	Lennard D. Tucker	12574	3,315.32
		<b>TOTAL:</b>	<b>12,448.65</b>

- b. O. Morales. Tucker deposited O. Morales' personal injury settlement proceeds in the amount of \$20,000.00 into his trust account on or about 26 January 2015. Tucker's 1/3 attorney's fee was \$6,666.67. Tucker did not disburse to himself a trust account check for \$6,666.67 attributed as attorney's fees from O. Morales. Instead, Tucker disbursed to himself a total of \$8,702.67 by the following checks attributed to O. Morales:

DATE	SOURCE/PAYEE	CK NUMBER	CK AMOUNT
4/8/2015	Lennard D. Tucker	12580	700.00
4/10/2015	Lennard D. Tucker (atty fees)	12582	750.00
4/13/2015	Lennard D. Tucker (atty fees)	12583	700.00
4/20/2015	Lennard D. Tucker	12585	450.00
4/24/2015	Lennard D. Tucker	12587	300.00
4/27/2015	Lennard D. Tucker	12588	500.00
5/1/2015	Lennard D. Tucker (atty fees)	12590	266.66
5/8/2015	Lennard D. Tucker	12592	750.00
5/11/2015	Lennard D. Tucker	12593	900.00
5/19/2015	Lennard D. Tucker	12595	3,386.01
		<b>TOTAL:</b>	<b>8,702.67</b>

- c. E. Shaw. Tucker deposited E. Shaw's personal injury settlement proceeds in the amount of \$3,412.09 into his trust account on or about 21 May 2014. Tucker's 1/3 attorney's fee was \$1,137.36. Tucker did not disburse to himself a trust account check for \$1,137.36 attributed as attorney's fees from E. Shaw. Instead, Tucker disbursed to himself a total of \$1,637.36 by the following checks attributed to E. Shaw:

DATE	SOURCE/PAYEE	CK NUMBER	CK AMOUNT
5/23/2014	Lennard D. Tucker	12439	500.00
6/19/2014	Lennard D. Tucker	12444	637.36
10/3/2014	Lennard D. Tucker	12500	500.00
		<b>TOTAL:</b>	<b>1,637.36</b>

- d. O. Vasquez. Tucker deposited O. Vasquez's personal injury settlement proceeds in the amount of \$3,000.00 into his trust account on or about 13 July 2015. Tucker's 1/3 attorney's fee was \$1,000.00. Tucker did not disburse to

himself a trust account check for \$1,000.00 attributed as attorney's fees from O. Vasquez. Instead, Tucker disbursed to himself a total of \$2,960.00 by the following checks attributed to O. Vasquez:

DATE	SOURCE/PAYEE	CK NUMBER	CK AMOUNT
7/24/2015	Lennard D. Tucker (PI Settlement)	12630	960.00
8/24/2015	Lennard D. Tucker	12639	2,000.00
		<b>TOTAL:</b>	<b>2,960.00</b>

- e. C. Tucker. Tucker deposited C. Tucker's personal injury settlement proceeds in the amount of \$19,000.00 into his trust account on or about 6 January 2014. Tucker's 1/3 attorney's fee was \$6,333.33. Tucker did not disburse to himself a trust account check for \$6,333.33 attributed as attorney's fees from C. Tucker. Instead, Tucker disbursed to himself a total of \$6,433.33 by the following checks attributed to C. Tucker:

DATE	SOURCE/PAYEE	CK NUMBER	CK AMOUNT
1/10/2014	Lennard D. Tucker	12412	2,333.33
1/17/2014	Lennard D. Tucker	12413	500.00
4/11/2014	Lennard D. Tucker	12426	700.00
4/15/2014	Lennard D. Tucker	12428	300.00
4/18/2014	Lennard D. Tucker	12430	200.00
4/21/2014	Lennard D. Tucker	12432	100.00
4/24/2014	Lennard D. Tucker	12433	200.00
5/13/2014	Lennard D. Tucker	12436	200.00
8/8/2014	Lennard D. Tucker	12456	100.00
8/18/2014	Lennard D. Tucker	12459	1,800.00
		<b>TOTAL:</b>	<b>6,433.33</b>

12. Tucker misappropriated funds from clients V. Martinez, O. Morales, E. Shaw, and O. Vasquez.

13. Tucker misappropriated \$100.00 of entrusted funds belonging to other clients when he disbursed \$100.00 more to himself attributed to client C. Tucker than the attorney's fees to which he was entitled in C. Tucker's case. The attorney fee disbursements Tucker attributed to C. Tucker exceeded the total amount of the funds he had in his trust account for this client at that time, and thus misappropriated other entrusted funds in the trust account.

14. From January 2013 through December 2015, Tucker misused entrusted funds in his trust account to pay monthly credit card processing fees, allowing these fees to be

electronically deducted from his trust account each month.

15. Tucker did not maintain personal or office funds in the trust account for payment of these monthly credit card processing fees.

16. Tucker misappropriated the entrusted funds used to pay his monthly credit card processing fees.

17. From January 2013 through December 2015, Tucker issued trust account checks to himself purportedly for attorney's fees without any identification on the checks of the client(s) from whose funds in the trust account he was making these disbursements.

18. Tucker misappropriated entrusted funds through these purported attorney fee disbursements lacking client identification.

19. As a result of Tucker's mishandling of entrusted funds, including as described above, Tucker failed to maintain in his trust account all funds he should have maintained in his trust account for clients, including as follows:

- a. As of 1 May 2013, Tucker should have held at least \$1,505.67 in his trust account for clients J. McRae and W. Lewis. Tucker's trust account balance fell below \$1,505.67, including on the following occasions:
  - i. balance of \$641.05 on 10 May 2013;
  - ii. balance of \$51.68 on 17 May 2013.
- b. From 12 August 2013 through 19 August 2014, Tucker should have held over \$6,000.00 in trust for clients J. McRae, W. Lewis, R. Marcial-Bustos, R. Marroquin, and M. Marroquin. During this time period, Tucker's trust account balance fell below \$6,000.00, including on the following occasions:
  - i. balance of \$5,779.23 on 15 November 2013;
  - ii. balance of \$4,501.45 on 29 November 2013;
  - iii. balance of \$3,997.92 on 6 December 2013;
  - iv. balance of \$3,243.82 on 13 December 2013;
  - v. balance of \$1,918.82 on 30 December 2013;
  - vi. balance of \$1,564.96 on 3 January 2014;
  - vii. balance of \$1,304.41 on 28 April 2014;

- viii. balance of \$1,228.70 on 16 May 2014.
- c. From 20 August 2014 through 26 January 2015, Tucker should have held at least \$7,700.00 in trust for clients J. McRae, W. Lewis, R. Marcial-Bustos, R. Marroquin, M. Marroquin, V. Martinez and O. Morales<sup>1</sup>. During this time period, Tucker's trust account balance fell below \$7,700.00, including on the following occasions:
- i. balance of \$5,806.27 on 21 August 2014;
  - ii. balance of \$5,454.49 on 29 August 2014;
  - iii. balance of \$3,860.10 on 9 September 2014;
  - iv. balance of \$3,712.77 on 15 September 2014;
  - v. balance of \$2,662.23 on 29 September 2014;
  - vi. balance of \$2,465.79 on 1 October 2014;
  - vii. balance of \$2,170.75 on 3 December 2014;
  - viii. balance of \$1,560.53 on 5 December 2014.
- d. From 21 May 2015 through 13 September 2015, Tucker should have held at least \$9,900.00 in trust for clients J. McRae, W. Lewis, R. Marcial-Bustos, R. Marroquin, M. Marroquin, V. Martinez, O. Morales, G. Marin, D. Bradley, and S. Bradley. During this time period, Tucker's trust account balance fell below \$9,900.00, including on the following occasions:
- i. balance of \$9,285.57 on 29 May 2015;
  - ii. balance of \$8,927.37 on 17 June 2015;
  - iii. balance of \$8,465.37 on 22 June 2015;
  - iv. balance of \$3,171.03 on 23 June 2015;
  - v. balance of \$1,711.17 on 30 June 2015;
  - vi. balance of \$1,642.10 on 3 July 2015;
  - vii. balance of \$1,440.21 on 2 September 2015;

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<sup>1</sup> The amounts included for V. Martinez and O. Morales in the subparagraphs of paragraph 19 do not include the funds Tucker misappropriated from V. Martinez and O. Morales as described in the preceding paragraphs.

viii. balance of \$1,231.61 on 11 September 2015.

- e. From 14 September 2015 through 7 December 2015 when Tucker was enjoined from handling entrusted funds, Tucker should have held at least \$8,700.00 in trust for clients J. McRae, W. Lewis, R. Marcial-Bustos, R. Marroquin, M. Marroquin, V. Martinez, O. Morales, and G. Marin. During this time period, Tucker's trust account balance fell below \$8,700.00, including on the following occasions:
  - i. balance of \$69.27 on 14 September 2015;
  - ii. balance of -\$50.07 on 17 September 2015;
  - iii. balance of - \$56.93 on 3 December 2015.

20. On 16 September 2015 Tucker's balance in his trust account was insufficient to support payment of a check for \$463.00 for client J. Neri presented for payment on that date.

21. Tucker made deposits into his trust account by cash and credit card without identification of the client for whom he was depositing the funds.

22. Tucker did not conduct the required monthly and quarterly reconciliations of his trust account.

23. By letter dated 30 March 2016, the State Bar asked Tucker to provide the State Bar with certain information and documents, including:

- a. His client ledgers for all clients for whom funds were deposited or disbursed or who otherwise had funds in his trust account for the period of 1 January 2013 to 31 December 2015<sup>2</sup>;
- b. Identification of the clients whose funds were disbursed by the unattributed attorney fee checks from 2013 to 2015, along with supporting documentation, including the client ledger, fee agreement, and any settlement or disbursement statement or accounting;
- c. Identification of the clients for whom cash and credit card deposits were made, along with supporting documentation including the client ledger, fee agreement, and any settlement statement or disbursement statement or accounting;
- d. Any and all documentation of a purported 7 September 2015 deposit of \$463.00 for client J. Neri identified on that previously provided client ledger, including deposit ticket, deposited item, and/or the credit card receipt/documentation, if

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<sup>2</sup> Tucker had previously provided the State Bar with client ledgers for 13 clients. The bank records showed deposits and disbursements attributed for many clients in addition to the 13 for whom Tucker provided client ledgers.

made by credit card; and

- e. Information and documents establishing the fees and costs to which Tucker was entitled for clients V. Martinez, S. Maya, O. Morales, E. Shaw, J. Sprinkle, and O. Vasquez, including the fee agreement, any disbursement summary or accounting, any cost receipts, and any other documentation justifying the amounts he collected from those client's funds.

24. Tucker failed to respond to the State Bar's 30 March 2016 letter, despite having requested and received an extension of time to respond.

25. By letter dated 22 June 2016, the State Bar notified Tucker of the allegation that he had misappropriated entrusted funds through the unidentified attorney fee checks as well as from clients V. Martinez, O. Morales, E. Shaw, and O. Vasquez. The letter noted Tucker had been given the opportunity to show these were appropriate client disbursements by providing the information and documents requested in the State Bar's 30 March 2016 letter but that he had failed to do so. Tucker was invited to provide anything additional he wished to have considered.

26. Tucker sent the State Bar some materials, received by the State Bar on 1 July 2016. Tucker provided no additional client ledgers and no supporting documentation. He provided the following new items:

- a. A list with names purporting to correspond with attorney fee checks from 2015 only, with no supporting documentation and with no information for the 2013 and 2014 checks;
- b. A list with names purporting to correspond with many of the cash deposits, with no supporting documentation; and
- c. A list of names and numbers purporting to identify credit card deposits into his trust account, with no supporting documentation.

27. In addition to lacking any supporting documentation, the information Tucker provided was inconsistent with the trust account bank records and other information Tucker provided, as illustrated by the following examples:

- a. The dates and amounts of credit card deposits listed by Tucker did not correspond to the dates and amounts of credit card deposits in the bank records;
- b. Tucker attributed check 12542 in part to attorney fees for client A. Tristan, but he had already disbursed her attorney fee to himself in check 12539;
- c. Tucker attributed check 12543 in the amount of \$245.55 as attorney fees for client C. Roseborough, but the most Tucker identified as deposited for C. Roseborough was \$100.00 and that purported deposit did not correspond to any deposit shown in the bank records;

- d. Tucker attributed a deposit by credit card as for client C. Smith but the date and amount he identified do not match any deposit on the bank statement, and no such deposit was included by Tucker on the client ledger Tucker had provided for C. Smith in the previously provided client ledgers.

28. In June and July 2016, the State Bar notified Tucker on multiple occasions of the allegation that that he had misappropriated entrusted funds through the unidentified attorney fee checks as well as from clients V. Martinez, O. Morales, E. Shaw, and O. Vasquez, and repeatedly requested documentation establishing his entitlement to those funds. Tucker failed to provide any such documentation.

Based upon the pleadings, Defendant's default, and the foregoing Findings of Fact, the Hearing Panel enters the following:

#### CONCLUSIONS OF LAW

1. 27 N.C. Admin. Code 1B § .0114(f) provides that, upon entry of the Defendant's default by the Secretary of the State Bar, counsel may apply to the hearing committee for a default order and the hearing committee will thereupon enter an order, making findings of fact and conclusions of law based on the allegations deemed admitted upon the entry of default.

2. All parties are properly before the Hearing Committee, and the Committee has jurisdiction over Defendant and the subject matter of this proceeding.

3. A proper entry of default has been entered by the Secretary of the State Bar and Defendant has failed to file any responsive pleading in this matter.

4. The allegations of the Plaintiff's complaint are deemed admitted by the entry of default.

5. Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2), for violation of the following Rules of Professional Conduct in effect at the time of the conduct:

- (a) By disbursing to himself entrusted funds from his trust account to which he was not entitled, and using entrusted funds for his benefit to pay credit card processing fees, Defendant failed to hold and maintain separate from his property the entrusted funds of his clients in violation of Rule 1.15-2(a), used entrusted funds for his personal benefit in violation of Rule 1.15-2(j), and failed to promptly pay or deliver entrusted funds in violation of Rule 1.15-2(m);
- (b) By knowingly disbursing to himself entrusted funds to which he was not entitled, and knowingly using entrusted funds for his benefit to pay credit card processing fees, Defendant committed criminal acts 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);

- (c) By issuing checks to himself labeled as for attorney's fees without identifying on the checks the clients whose funds in the trust account were being disbursed, Defendant improperly withdrew funds from his trust account in violation of Rule 1.15-2(h), failed to maintain requisite records for his trust account in violation of Rule 1.15-3(b)(2), and failed to properly disburse entrusted funds only in accordance with Rule 1.15 in violation of Rule 1.15-2(a);
- (d) By depositing funds by cash and credit card without identification of the client for whom he was depositing the funds, Defendant failed to maintain requisite records for his trust account in violation of Rule 1.15-3(b)(1) and failed to properly deposit entrusted funds only in accordance with Rule 1.15 in violation of Rule 1.15-2(a);
- (e) By failing to promptly disburse to himself in full his earned attorney's fees, Defendant failed to hold and maintain separate from his property the entrusted funds of his clients in violation of Rule 1.15-2(a);
- (f) By failing to reconcile his trust account, Defendant failed to conduct the requisite monthly and quarterly reconciliations of his trust account in violation of Rule 1.15-3(d);
- (g) By failing to respond to the State Bar's 30 March 2016 request for information and records issued in its grievance investigation, Defendant knowingly failed, in connection with a disciplinary matter, to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b).

6. Defendant's foregoing actions also constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(3), for failure to answer the formal inquiry issued by the North Carolina State Bar in a disciplinary matter.

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 – 28 above are reincorporated as if set forth herein.
2. Defendant diverted funds that should have been available for clients and converted them to his own use.

3. Defendant misappropriated entrusted funds over the course of several years for his benefit throughout that period of time.

4. Defendant failed to participate in the profession's self-regulation, by failing to respond to the State Bar's letter seeking information and documents concerning his handling of entrusted funds.

5. Defendant placed his own personal interests over those of his clients.

6. Defendant, by engaging in conduct involving misappropriation, misrepresentation and deceit for a substantial period of time, has shown himself to be untrustworthy.

7. The perception of the profession in the eyes of clients and the public is negatively affected by an attorney's misappropriation of entrusted funds belonging to clients.

8. Defendant was issued an admonition by the Disciplinary Hearing Commission (DHC) in 2005 in case 05 DHC 17. Defendant was admonished for failing to promptly disburse entrusted funds and failing to communicate with clients. The DHC also found that Tucker had failed to conduct the requisite quarterly reconciliations of his trust account, finding that "At least between the dates of July 2, 2003 and April 8, 2004, Tucker failed to reconcile the individual client balances shown on the ledgers of his trust account with the current bank balances for the trust account on at least a quarterly basis." (Paragraph 32 of Findings of Fact in Consent Findings of Fact, Conclusions of Law, and Order of Discipline, 05 DHC 17.)

9. Defendant has been licensed since 1990. With his degree of experience, Defendant should have known better than to engage in these acts that have led to the discipline imposed in this order.

10. The Hearing Panel finds by clear, cogent, and convincing evidence any additional facts that may be contained in the conclusions regarding discipline set out below.

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 carefully considered all of the different forms of discipline available to it.

2. The Hearing Panel considered all of the factors enumerated in 27 N.C. Admin. Code § 1B.0114(w)(1), (2) and (3) and determined that the following factors are applicable:

27 N.C. Admin. Code § 1B.0114(w)(1)

- a. Factor (B), Intent of Defendant to commit acts where the harm or potential harm is foreseeable;
- b. Factor (C), Circumstances reflecting Defendant's lack of honesty, trustworthiness, or integrity;
- c. Factor (D), Elevation of Defendant's own interest above those of his clients;
- d. Factor (E), Negative impact of Defendant's actions on client's or public's perception of the profession;
- e. Factor (I), Acts of dishonesty, misrepresentation, deceit or fabrication;

27 N.C. Admin. Code § 1B.0114(w)(2)

- f. Factor (A), Acts of dishonesty, misrepresentation, deceit or fabrication;
- g. Factor (C), Misappropriation or conversion of assets of any kind to which Defendant or recipient was not entitled, whether from a client or any other source;
- h. Factor (D), Commission of a felony;

27 N.C. Admin. Code § 1B.0114(w)(3)

- i. Factor (A), Prior record of disciplinary offenses, to wit: admonition issued in 05 DHC 17 in 2005;
- j. Factor (C), Dishonest or selfish motive;
- k. Factor (F), A pattern of misconduct;
- l. Factor (G), Multiple offenses;
- m. Factor (K), Absence of full and free disclosure to the Hearing Panel;
- n. Factor (R), Vulnerability of the victims; and
- o. Factor (S), Substantial degree of experience in the practice of law.

3. The factors present under 27 N.C. Admin. Code § 1B.0114(w)(1) and (2) support imposition of disbarment in this case.

4. Defendant caused significant harm to his clients by misappropriating their entrusted funds.

5. Proper maintenance and management of entrusted funds is a cornerstone of the public's trust in the legal profession. Embezzlement is one of the most serious offenses an attorney can commit, betraying the client's trust in the attorney and the public's trust in the legal profession. Defendant's misappropriation caused harm to the standing of the legal profession, undermining trust and confidence in lawyers and the legal system.

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

7. Defendant's failure to respond to the letter of notice from the State Bar and failure to participate in this disciplinary proceeding before the DHC results in potential significant harm to the profession and to the public. The legal profession is entrusted with the privilege of self-regulation. The State Bar can only regulate the profession if its members respond to inquiries of the State Bar and otherwise participate. Defendant's failure to respond to the State Bar and participate in this disciplinary proceeding before the DHC shows an unacceptable disregard for the regulatory authority of the State Bar. Defendant's failure to participate in the profession's self-regulation impedes effective self-regulation and jeopardizes the privilege of the profession to remain self-regulating.

8. Although the admonition to Defendant from the DHC in 05 DHC 17 was issued twelve years ago, it is still significant because in both the 2005 order and in this order it is found that Defendant failed to reconcile his trust account. Defendant's failure to cure a known violation of the Rules of Professional Conduct for which he had been disciplined indicates a disregard for this profession's self-regulation and the discipline imposed thereunder.

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

10. 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 repeatedly engaged in criminal acts reflecting adversely on his honesty, trustworthiness or fitness as a lawyer, and abused the trust placed in him by his clients. Misappropriation of entrusted funds is among the most serious misconduct in which an attorney can engage, and demonstrates the attorney is not trustworthy;

- b. 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; and
- c. 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, Lennard D. Tucker, is hereby DISBARRED from the practice of law.
2. Defendant shall surrender his North Carolina law 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 fees and the costs of this proceeding as assessed by the Secretary of the North Carolina State Bar. Defendant must pay the fees and costs within 30 days of service upon him of the statement of fees and costs 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 & Disability Rules.
5. Within 15 days of the effective date of this Order Defendant shall provide the State Bar with an address and telephone number at which clients seeking return of files can communicate with Defendant and obtain such files. This address must be a physical address at which Defendant maintains a consistent presence and receives mail. Defendant must keep this information current with the State Bar, providing updated information to the State Bar within 15 days of any change.
6. Defendant shall promptly return client files in his possession, custody, or control to clients upon request, within 5 days of receipt of such request. Defendant will be deemed to have received any such request 3 days after the date such request is sent to Defendant, if the request is sent to the address Defendant provided the State Bar pursuant to the preceding paragraph or to Defendant's address of record with the State Bar if Defendant fails to provide another address pursuant to the preceding paragraph.

Signed by the Chair with the consent of the other Hearing Panel members, this the  
1<sup>st</sup> day of March, 2017.



Donald C. Prentiss, Chair  
Disciplinary Hearing Panel