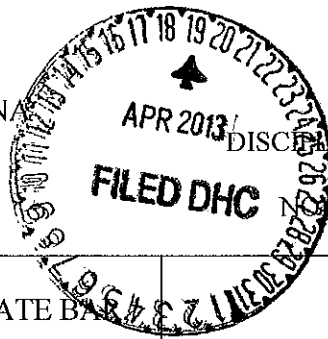


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE  
 DISCIPLINARY HEARING COMMISSION  
 OF THE  
 NORTH CAROLINA STATE BAR  
 12 DHC 38

THE NORTH CAROLINA STATE BAR

Plaintiff

v.

GEOFFREY H. SIMMONS, Attorney,

Defendant

ORDER OF DISCIPLINE

THIS MATTER was heard on March 15, 2013 before a Hearing Panel of the Disciplinary Hearing Commission composed of Steven D. Michael, Chair, and members Joshua W. Willey, Jr. and Karen B. Ray. Jennifer A. Porter represented Plaintiff, the North Carolina State Bar. Defendant, Geoffrey H. Simmons, was present and represented by Abraham P. Jones.

Based upon the pleadings, the stipulated facts, and the evidence introduced at the hearing, the Hearing Panel hereby finds by clear, cogent, and convincing evidence the following

FINDINGS OF FACT

1. Plaintiff, the North Carolina 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, Geoffrey H. Simmons ("Simmons"), was admitted to the North Carolina State Bar in 1977, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Rules of Professional Conduct.

3. During all or part of the relevant periods referred to herein, Simmons was engaged in the practice of law in the State of North Carolina and maintained a law office in Raleigh, Wake County, North Carolina.

4. Simmons was properly served with process, a hearing in this matter was set, and the matter came before the hearing panel with due notice to all parties.

5. During the course of his law practice, and from at least on or about January 1, 2010 through April 30, 2012, Simmons maintained a general attorney trust account at North State Bank, account number ending with digits 1373 (hereinafter "trust account").

6. Simmons represented Kenya Whittiker in a personal injury case.

7. Simmons settled Whittiker's case for \$18,500.00 and on or about January 26, 2010 deposited this amount into his trust account for Whittiker.

8. On or about January 26, 2010, Simmons disbursed \$6,167.00 to himself for attorney's fees from the funds in his trust account for Whittiker.

9. On or about January 27, 2010, Simmons disbursed \$6,168.00 to Whittiker from the funds in his trust account for Whittiker.

10. The remaining \$6,165.00 of funds in his trust account for Whittiker was to pay Whittiker's medical bills.

11. On or about March 12, 2010, Simmons disbursed \$500.00 to himself from the trust account, designated by Simmons as coming from the funds held for Whittiker.

12. Simmons was not entitled to this additional \$500.00. Simmons misappropriated these funds.

13. On or about March 12, 2010, Simmons disbursed \$250.00 to himself from the trust account, designated by Simmons as coming from the funds held for Whittiker.

14. Simmons was not entitled to this additional \$250.00. Simmons misappropriated these funds.

15. Simmons represented Rodney Winston in a personal injury case.

16. Simmons settled Winston's case for \$5,800.00 and on or about December 16, 2010 deposited this amount into his trust account for Winston.

17. On or about December 17, 2010, Simmons disbursed \$1,933.00 to himself for attorney's fees from the funds in his trust account for Winston.

18. On or about December 16, 2010, Simmons disbursed \$1,933.00 to Winston from the funds in his trust account for Winston.

19. The remaining \$1,933.67 of funds in his trust account for Winston was to pay the medical bills.

20. On or about January 14, 2011, Simmons disbursed \$250.00 to himself from the trust account, designated by Simmons as coming from the funds held for Winston.

21. Simmons was not entitled to this additional \$250.00. Simmons misappropriated these funds.

22. On or about January 19, 2011, Simmons disbursed \$200.00 to his assistant from the trust account, designated by Simmons as coming from the funds held for Winston.

23. Neither Simmons nor his assistant was entitled to this \$200.00. Simmons misappropriated these funds.

24. Simmons represented William Fonville in a personal injury case.

25. Simmons settled Fonville's case for \$11,000.00. The insurance company paid \$894.00 to Medicare directly to satisfy Medicare's claim and sent Simmons a check for the remaining \$10,106.00, which Simmons deposited into his trust account on or about March 14, 2011.

26. On or about March 14, 2011, Simmons disbursed \$3,866.66 to himself from the funds in his trust account for Fonville, consisting of \$3,666.66 for his attorney's fee and \$200.00 for reimbursement of costs.

27. On or about March 14, 2011, Simmons disbursed \$5,735.34 to Fonville from the funds in his trust account for Fonville.

28. The remaining \$504.00 of funds in his trust account for Fonville was to pay the remaining medical bills.

29. Simmons did not pay any medical bills for Fonville from that \$504.00.

30. Instead, on or about June 20, 2011, Simmons disbursed \$500.00 to himself from the trust account, designated by Simmons as coming from the funds held for Fonville.

31. Simmons was not entitled to this additional \$500.00. Simmons misappropriated these funds.

32. Simmons represented Aubrey Miller-Billips in a personal injury case.

33. Simmons settled Miller-Billips' case, and, on or about August 23, 2011, deposited the settlement funds in the amount of \$5,150.00 into his trust account.

34. Simmons' attorney's fee in Miller-Billips' personal injury case was 1/3 of the settlement proceeds, which was \$1,716.66.

35. Medical providers had statutory liens on the compensation received by Miller-Billips' for his injuries, and the amount of the settlement was not sufficient to allow payment of the medical providers in full. Accordingly, after deduction of Simmons' attorney fee, Simmons was required by law to disburse half of the remaining settlement proceeds to the medical providers pursuant to the statutory liens.

36. On or about August 25, 2011, Simmons caused \$2,400.00 to be transferred by debit memo from his trust account to his operating account. Simmons identified these funds as being disbursed from the funds in his trust account for Miller-Billips.

37. The amount of \$2,400.00 consisted of a \$1,700.00 attorney fee to Simmons in the personal injury case, plus \$700.00 of funds otherwise due to Miller-Billips from the client's share of the personal injury proceeds.

38. The additional \$700.00 was intended to go towards Simmons' fee for representing Miller-Billips in an appeal in a district court criminal case.

39. On or about August 26, 2011, Simmons disbursed \$1,000.00 to Miller-Billips from the personal injury proceeds held for Miller-Billips in his trust account.

40. Simmons was required by law to disburse \$1,716.66 of the \$1,750.00 remaining of Miller-Billips' funds in his trust account to the medical providers who had statutory liens.

41. Subsequently, Miller-Billips asked Simmons for the \$700.00 previously paid to Simmons from Miller-Billips' share.

42. Instead of refunding the \$700.00 to Miller-Billips from Simmons' own funds, Simmons disbursed an additional \$700.00 from his trust account to Miller-Billips.

43. Simmons attributed the additional \$700.00 he disbursed from the trust account as coming from the funds Simmons held for Miller-Billips in his trust account.

44. Simmons misappropriated that additional \$700.00 from funds he was required by law to disburse to Miller-Billips' medical providers.

45. On or about October 20, 2011, Simmons disbursed \$400.00 to himself from the trust account, designated by Simmons as coming from the funds held for Miller-Billips.

46. Simmons misappropriated that \$400.00 from funds he was required by law to disburse to Miller-Billips' medical providers.

47. On or about October 25, 2011, Simmons disbursed \$500.00 to himself from the trust account, designated by Simmons as coming from the funds held for Miller-Billips.

48. Simmons misappropriated that \$500.00 from funds he was required by law to disburse to Miller-Billips' medical providers.

49. In March 2012, one of Miller-Billips' medical providers notified the State Bar that it had not received any payment from Miller-Billips' personal injury proceeds.

50. The State Bar contacted Simmons about the failure to pay Miller-Billips' medical providers.

51. Simmons subsequently disbursed from the trust account \$309.00 to one of Miller-Billips' medical providers and \$1,207.00 to another, totaling \$1,516.00.

52. At the time of these disbursements to Miller-Billips' medical providers, however, Simmons only had \$150.00 remaining in his trust account for Miller-Billips. Simmons

misappropriated the additional \$1,366.00 from entrusted funds held for other clients in his trust account.

53. Simmons represented Candice Terrell in a personal injury case.

54. Simmons settled Terrell's case for \$30,000.00, and, on or about July 13, 2010, deposited this amount into his trust account for Terrell.

55. On or about July 14, 2010, Simmons disbursed \$10,000.00 to himself for his attorney's fee from the funds in his trust account for Terrell.

56. On or about July 14, 2010, Simmons disbursed \$10,000.00 to Terrell from the funds in his trust account for Terrell.

57. The remaining \$10,000.00 was for payment of Terrell's medical bills. Any amount of these funds not needed for payment of medical bills belonged to Terrell.

58. On or about February 11, 2011, Simmons disbursed \$500.00 of this remaining \$10,000.00 to himself from the trust account, designated by Simmons as coming from the funds held for Terrell.

59. Simmons was not entitled to this additional \$500.00. Simmons misappropriated these funds.

60. On or about April 5, 2011, Simmons disbursed \$500.00 to his assistant from the trust account, designated by Simmons as coming from the funds held for Terrell.

61. Neither Simmons nor his assistant was entitled to this \$500.00 of Terrell's funds. Simmons misappropriated these funds.

62. Simmons represented Monique Gabriel in a personal injury case.

63. Simmons' attorney's fee in Gabriel's case was 1/3 of the personal injury proceeds.

64. Simmons settled Gabriel's case for \$1,000.00, and, on or about March 19, 2012, deposited this amount into his trust account for Gabriel.

65. Gabriel's medical provider had a statutory lien on the compensation received by Gabriel for her injuries, as well as a contractual lien from Gabriel. The amount of the settlement was not sufficient to allow payment of the medical provider in full. Accordingly, after deduction of Simmons' attorney fee, Simmons was required to disburse half of the remaining settlement proceeds to the medical provider pursuant to the statutory lien.

66. Simmons did not disburse any funds to Gabriel or Gabriel's medical provider from the \$1,000.00 settlement.

67. On or about March 19, 2012, Simmons disbursed the entire \$1,000.00 of Gabriel's personal injury proceeds to himself. Simmons was not entitled to \$1,000.00 of Gabriel's personal injury proceeds.

68. Simmons submitted medical bills on behalf of Gabriel to Gabriel's insurance company to collect medical payment benefits under Gabriel's insurance policy.

69. On or about February 27, 2012, Gabriel's insurance company issued checks totaling \$1,939.00 from the medical payment benefits available to Gabriel under her policy. The insurer sent those checks to Simmons.

70. On or about April 5, 2012, Simmons deposited the medical payment checks totaling \$1,939.00 into his trust account for Gabriel.

71. On or about April 5, 2012, Simmons disbursed \$1,000.00 to Gabriel and \$1,000.00 to Gabriel's medical provider from his trust account.

72. At the time of these disbursements to Gabriel and Gabriel's medical provider, however, Simmons only had \$1,939.00 in his trust account for Gabriel. Simmons misappropriated the additional \$61.00 from entrusted funds held for other clients in his trust account.

73. Simmons represented Christopher Castosa and Eric Fairfax in their personal injury cases arising from an automobile accident in which they were the driver and passenger in the same car.

74. Simmons' attorney's fee in each case was 1/3 of the personal injury proceeds.

75. Simmons settled Castosa's case for \$5,500.00 and settled Fairfax's case for \$5,200.00. Simmons deposited checks for these amounts into his trust account for these clients on or about September 16, 2010.

76. Raleigh Urgent Care had statutory liens on the compensation received by Castosa and Fairfax for their injuries and the amounts of the settlements were not sufficient to allow payment of the medical provider in full. Accordingly, after deduction of Simmons' attorney fee, Simmons was required by law to disburse half of the remaining settlement proceeds to the medical provider pursuant to the statutory lien.

77. In September 2010, Simmons disbursed his 1/3 attorney's fees to himself for the Castosa and Fairfax cases and disbursed the amounts due to the clients to Castosa and Fairfax.

78. Simmons was required by law to disburse the remaining 1/3 of the settlement from each case, \$1,833.33 for Castosa and \$1,733.33 for Fairfax, to Raleigh Urgent Care pursuant to its statutory liens.

79. Simmons did not disburse these funds to Raleigh Urgent Care for either client at that time.

80. On or about October 12, 2010, Simmons disbursed \$600.00 to his assistant from the trust account, designated by Simmons as coming from the funds held for Castosa and Fairfax.

81. Simmons misappropriated that \$600.00 from funds he was required by law to disburse to Raleigh Urgent Care.

82. On or about November 5, 2010, Simmons disbursed \$2,000.00 to Fairfax from the trust account, designated by Simmons as coming from the funds held for Fairfax.

83. At the time of the \$2,000.00 disbursement to Fairfax, Simmons only had \$1,433.67 in his trust account for Fairfax. Simmons misappropriated that \$1,433.67 from funds he was required by law to disburse to Raleigh Urgent Care. Simmons misappropriated the additional \$566.33 from entrusted funds held for other clients in his trust account.

84. On or about November 22, 2010, Simmons disbursed \$1,000.00 to Castosa from the trust account, designated by Simmons as coming from the funds held for Castosa.

85. Simmons misappropriated that \$1,000.00 from funds he was required by law to disburse to Raleigh Urgent Care.

86. On or about December 20, 2010, Simmons disbursed \$400.00 to himself from the trust account, designated by Simmons as coming from the funds held for Fairfax.

87. At the time of the \$400.00 disbursement to Simmons, Simmons did not have any money remaining in his trust account for Fairfax. Simmons misappropriated the \$400.00 from entrusted funds held for other clients in his trust account.

88. On or about December 20, 2010, Simmons disbursed \$3,566.66.00 to Raleigh Urgent Care from the trust account, designated by Simmons as coming from the funds held for Castosa and Fairfax. This \$3,566.66 amount was purportedly comprised of \$1,833.33 due from Castosa's settlement proceeds and \$1,733.33 due from Fairfax's settlement proceeds.

89. At the time of the \$3,566.66 disbursement to Raleigh Urgent Care, Simmons did not have any money remaining in his trust account for Fairfax and had only \$533.67 remaining in his trust account for Castosa.

90. Simmons misappropriated the \$1,733.33 paid to Raleigh Urgent Care for Fairfax and \$1,299.66 of the \$1,833.33 paid to Raleigh Urgent Care for Castosa from entrusted funds held for other clients in his trust account. The beneficial owners of the funds did not authorize Simmons to take or utilize the \$1,733.33 or the \$1,299.66.

91. The misappropriations described above were committed knowingly and willfully.

92. The misappropriations described above were not authorized by the parties for whom Simmons was holding the funds in trust.

93. The Hearing Panel specifically finds that Simmons' testimony at this hearing was not credible. Simmons' testimony was inconsistent with other testimony of his at the hearing

and at his deposition. Simmons' testimony was also inconsistent with the documentation and with the testimony given by the other witnesses at the hearing.

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

#### CONCLUSIONS OF LAW

1. All the parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, Geoffrey H. Simmons, and the subject matter.

2. Simmons was a fiduciary for each of the persons whose entrusted funds he misappropriated.

3. Knowing and willful misappropriation of money by a fiduciary constitutes the crime of embezzlement under N.C. Gen. Stat. § 14-90. Embezzlement is a felony.

4. Simmons committed the crime of embezzlement.

5. The crime of embezzlement reflects adversely on Simmons' honesty, trustworthiness, or fitness as a lawyer.

6. Defendant's conduct, as set forth in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

- a. By disbursing a total of \$750.00 to himself from Whittaker's funds to which he was not entitled, Simmons failed to properly maintain entrusted funds in violation of Rule 1.15-2(a), benefitted from entrusted funds in violation of Rule 1.15-2(j), failed to properly disburse entrusted funds in violation of Rule 1.15-2(m), and misappropriated entrusted funds and thereby engaged in criminal conduct reflecting adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);
- b. By disbursing \$250.00 to himself from Winston's funds to which he was not entitled to himself and disbursing \$200.00 to his assistant from Winston's funds to which neither he nor his assistant were entitled, Simmons failed to properly maintain entrusted funds in violation of Rule 1.15-2(a), benefitted from entrusted funds in violation of Rule 1.15-2(j), failed to properly disburse entrusted funds in violation of Rule 1.15-2(m), and misappropriated entrusted funds and thereby engaged in criminal conduct reflecting adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);
- c. By disbursing \$500.00 to himself from Fonville's funds to which he was not entitled, Simmons failed to properly maintain entrusted funds in violation of Rule 1.15-2(a), benefitted from entrusted funds in violation of Rule 1.15-2(j),

failed to properly disburse entrusted funds in violation of Rule 1.15-2(m), and misappropriated entrusted funds and thereby engaged in criminal conduct reflecting adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);

- d. By transferring \$2,400.00 from his trust account to his operating account by debit memo, Simmons used an improper method to disburse funds from his trust account in violation of Rule 1.15-2(i);
- e. By disbursing \$700.00 to Miller-Billips from funds subject to medical liens and thus not available for other disbursement, Simmons misappropriated entrusted funds for the benefit of himself and another and thereby engaged in criminal conduct reflecting adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);
- f. By disbursing \$400.00 to himself from Miller-Billips' funds to which he was not entitled, Simmons misappropriated entrusted funds and thereby engaged in criminal conduct reflecting adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);
- g. By disbursing \$500.00 to himself from Miller-Billips' funds to which he was not entitled, Simmons misappropriated entrusted funds and thereby engaged in criminal conduct reflecting adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);
- h. By disbursing funds reserved by statute for Miller-Billips' medical providers to himself and Miller-Billips, Simmons failed to properly maintain entrusted funds in violation of Rule 1.15-2(a), benefitted from entrusted funds in violation of Rule 1.15-2(j), and failed to properly disburse entrusted funds in violation of Rule 1.15-2(m);
- i. By disbursing funds to Miller-Billips' medical providers when he did not have sufficient funds in his trust account for Miller-Billips to support those disbursements and thereby misappropriating and misusing other clients' funds, Simmons failed to properly maintain entrusted funds in violation of Rule 1.15-2(a), failed to properly disburse client funds in violation of Rule 1.15-2(m), engaged in criminal conduct reflecting adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);

- j. By disbursing \$500.00 to himself from Terrell's funds to which he was not entitled, Simmons misappropriated entrusted funds and thereby engaged in criminal conduct reflecting adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);
- k. By disbursing \$500.00 to his assistant from Terrell's funds to which neither he nor his assistant was entitled, Simmons misappropriated entrusted funds and thereby engaged in criminal conduct reflecting adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);
- l. By disbursing Gabriel's entire \$1,000.00 settlement to himself, Simmons misappropriated entrusted funds and thereby engaged in criminal conduct reflecting adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);
- m. By disbursing funds reserved by statute for Gabriel's medical provider to himself and by disbursing funds due to his client from her settlement to himself, Simmons failed to properly maintain entrusted funds in violation of Rule 1.15-2(a), benefitted from entrusted funds in violation of Rule 1.15-2(j), and failed to properly disburse entrusted funds in violation of Rule 1.15-2(m);
- n. By disbursing funds to Gabriel and her medical provider from his trust account when he did not have sufficient funds in his trust account for Gabriel to support those disbursements and thereby misappropriating and misusing other clients' funds, Simmons failed to properly maintain entrusted funds in violation of Rule 1.15-2(a), failed to properly disburse client funds in violation of Rule 1.15-2(m), engaged in criminal conduct reflecting adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);
- o. By disbursing funds reserved by statute for Castosa's and Fairfax's medical provider to himself and others, Simmons misappropriated entrusted funds and thereby engaged in criminal conduct reflecting adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c), failed to properly maintain entrusted funds in violation of Rule 1.15-2(a), benefitted from entrusted funds in violation of Rule 1.15-2(j), and failed to properly disburse entrusted funds in violation of Rule 1.15-2(m); and
- p. By disbursing funds for Castosa and Fairfax from his trust account when he did not have sufficient funds in his trust account for Castosa and Fairfax to support

those disbursements and thereby misappropriating and misusing other clients' funds, Simmons failed to properly maintain entrusted funds in violation of Rule 1.15-2(a), failed to properly disburse client funds in violation of Rule 1.15-2(m), engaged in criminal conduct reflecting adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c).

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Panel hereby finds by clear, cogent and convincing evidence the following additional

#### FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1 – 93 above are reincorporated as if set forth herein.
2. Defendant put his own personal interests ahead of his clients' interests.
3. Defendant's misappropriations occurred at times of demonstrated personal financial need.
4. Defendant put false information in the memo lines of the checks by which he misappropriated entrusted funds to disguise the misappropriation.
5. Defendant made false statements about the payments by which he misappropriated entrusted funds during the disciplinary process, both at his deposition and at the hearing.
6. Defendant's conduct involved misappropriation, misrepresentation and deceit over a period of years.
7. Defendant, by engaging in conduct involving misappropriation, misrepresentation and deceit over a number of years and by making false statements about his conduct, has shown himself to be untrustworthy.
8. Defendant, through his misappropriation, misrepresentation, and deceit, has caused harm to the standing of the legal profession, by undermining trust and confidence in lawyers and the legal system.
9. Defendant's misappropriation has caused significant harm to his clients and to third parties, namely the medical providers of his clients.
10. Defendant misappropriated funds for his own benefit that should have been used for the benefit of his clients, either by payment to the client or payment to the client's medical provider(s).

11. Defendant's misappropriations of Miller-Billips' funds resulted in Defendant having insufficient funds to pay outstanding medical bills for Miller-Billips. Consequently, Defendant's subsequent disbursements to medical providers for Miller-Billips utilized other clients' entrusted funds in his trust account.

12. The State Bar examined trust account records of Simmons for the period of January 1, 2010 through April 30, 2012. There was no activity in the account after April 16, 2012. As of April 16, 2012, the amount of money Simmons should have been holding in trust for clients exceeded the amount of money Simmons had in his trust account. This is an additional significant harm to clients caused by Simmons' misconduct.

13. Simmons paid \$700.00 to Fonville. Simmons wrote this check on February 8, 2013, 3 days after being notified by e-mail that the State Bar intended to notice and take Fonville's deposition. Simmons did not make any restitution to Fonville in the intervening year and a half after he misappropriated Fonville's funds or in the intervening 3 months after the State Bar alleged he misappropriated Fonville's entrusted funds in its complaint. Simmons made his payment to Fonville immediately after learning the State Bar would take Fonville's deposition. Under these circumstances, Simmons' payment to Fonville does not constitute a timely good faith effort to make restitution. Simmons has not otherwise made any restitution for amounts misappropriated from clients. Simmons has not rectified the deficit in his trust account.

14. Defendant has prior discipline in the form of a stayed suspension imposed by the DHC in 1994. Even though the prior conduct is remote, the finding in the 1994 disciplinary order concerning Defendant's presentation of false or misleading or deceptive evidence is relevant to this disciplinary hearing.

15. Defendant has failed to acknowledge that he misappropriated client funds. Defendant has provided explanations that are not consistent with the evidence received at the hearing in this matter.

16. Defendant has engaged in significant pro bono work in the course of his practice.

17. Defendant has established a reputation for good character, veracity, and truthfulness in social and legal communities.

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.A.C. 1B § .0114(w)(1), (2) and (3) of the Rules and Regulations of the State Bar and concluded that the following factors are applicable:

27 N.C.A.C. 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, in the testimony presented at the hearing and in the deposition evidence that conflicted with the credible evidence received by the Panel during the hearing;
- 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 (G), Impairment of the client's ability to achieve the goals of the representation, namely the expectation that some or all of their medical expenses would be paid with the funds retained in Simmons' trust account for that purpose from their settlements;
- f. Factor (H), Effect of Defendant's conduct on third parties, namely the medical providers who did not get paid money they might have otherwise been paid;
- g. Factor (I), Acts of dishonesty, misrepresentation, deceit or fabrication by making false entries on the memo lines of the checks by which Simmons misappropriated entrusted funds from his trust account to disguise the misappropriations.

27 N.C.A.C. 1B § .0114(w)(2)

- h. Factor (A), Acts of dishonesty, misrepresentation, deceit or fabrication;
- i. Factor (C), Misappropriation or conversion of assets of any kind to which Defendant or recipient was not entitled, from his clients;
- j. Factor (D), Commission of a felony;

27 N.C.A.C. 1B § .0114(w)(3)

- k. Factor (A), Prior disciplinary offense;
- l. Factor (B), Remoteness of the prior offense. However, although the prior conduct is remote, the finding in the prior disciplinary order concerning

presentation of false or misleading or deceptive evidence remains relevant to this proceeding;

- m. Factor (C), Dishonest or selfish motive;
- n. Factor (F), A pattern of misconduct;
- o. Factor (G), Multiple offenses;
- p. Factor (N), Submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- q. Factor (O), Refusal to acknowledge wrongful nature of the conduct;
- r. Factor (Q), Good character and reputation in the community, and a reputation for truthfulness and veracity in the community; and
- s. Factor (S), Substantial degree of experience in the practice of law.

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

4. Defendant caused significant harm to medical providers who should have received payments from funds Defendant misappropriated.

5. Defendant has caused significant harm and potential harm to clients whose funds he should have in his trust account but for whom he has insufficient funds in his trust account.

6. Defendant's repeated commission of criminal acts reflecting adversely on his honesty, trustworthiness or fitness as a lawyer, his dishonest and deceitful conduct in placing false information on trust account checks to disguise his misappropriation, and the presentation of testimony that conflicted with the credible evidence received in the case caused significant harm to the legal profession by undermining trust and confidence in lawyers and the legal system.

7. The Hearing Panel has considered lesser alternatives and finds that disbarment is the only sanction that can adequately protect the public. An attorney's duty to preserve funds entrusted to the attorney is one of the most sacred that an attorney undertakes. The attorney should never violate that duty of trust.

8. 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, and the legal profession caused by Defendant's conduct, and the threat of potential significant harm Defendant poses to the public. The Hearing Panel has considered the evidence of Defendant's good character and pro bono service. However, given the repeated acts of dishonesty, misrepresentation, and deceit by Simmons established by the evidence presented at hearing and

the significant harm and potential harm caused by Simmons established by the evidence and as itemized above, the evidence concerning Defendant's good character and pro bono service does not warrant imposition of lesser discipline.

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


- a. Defendant engaged in misconduct constituting felonies and violations of the trust of his clients and the public;
- 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, the courts, and the legal profession; and that reinstatement will not be detrimental to the public or the integrity and standing of the legal profession. Disbarred lawyers are required to make such a showing before they may resume practicing law, whereas no such showing of reformation is required of attorneys whose licenses are suspended.

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, Geoffrey H. Simmons, 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, including the costs of all depositions, 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 15th  
day of April, 2013.

  
Steven D. Michael, Chair  
Disciplinary Hearing Panel