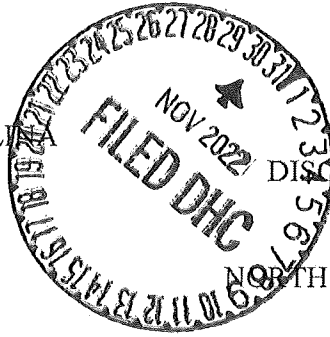


STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING
COMMISSION
OF THE
NORTH CAROLINA STATE BAR
21 DHC 24

THE NORTH CAROLINA STATE BAR,
Plaintiff
v.
KELLY R. ROUTH, Attorney,
Defendant

ORDER
OF DISCIPLINE

This matter was heard on September 7 and September 21, 2022, by a Hearing Panel of the Disciplinary Hearing Commission composed of Shannon R. Joseph, Chair, members Jaye P. Meyer, and Kimberly W. Strach. Plaintiff, the North Carolina State Bar, was represented by Leonor Bailey Hodge and Savannah B. Perry. Defendant, Kelly R. Routh, appeared at the hearing and was represented by Alan M. Schneider.

Based on the evidence presented at the hearing, a majority of the Hearing Panel hereby makes by clear, cogent, and convincing evidence the findings of fact set forth below.

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, Kelly R. Routh, was admitted to the North Carolina State Bar on 25 August 2011, 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 of the relevant periods referred to herein, Defendant was engaged in the practice of law in Charlotte, Mecklenburg County, North Carolina.

4. Defendant was properly served with process, a hearing in this matter was scheduled, and the matter came before the Hearing Panel with due notice to all parties.

5. Defendant was an associate attorney at Dozier Miller Law Group ("DMLG").
6. As an associate attorney, Defendant was required to deliver any funds received from clients to the billing administrator at DMLG.
7. DMLG represented D.Z. in a domestic case.
8. On 5 June 2019, Defendant attended mediation in D.Z.'s case.
9. At the time of mediation, D.Z. owed DMLG several thousand dollars in fees and expenses.
10. On the day of mediation D.Z. gave Defendant a cash payment of \$535.00 for payment toward the balance of fees and expenses D.Z. owed DMLG.
11. The \$535.00 D.Z. gave to Defendant was entrusted property.
12. Defendant did not deposit the funds in a place suitable for their safekeeping.
13. Defendant did not deliver to DMLG the funds she received from D.Z.
14. A majority of the Panel finds that instead, Defendant used the funds she received from D.Z. for her own benefit or for the benefit of someone other than D.Z. and/or DMLG.
15. On 9 July 2019, the billing administrator emailed D.Z. a copy of the bill showing the activity on her account for June 2019.
16. The bill did not show the \$535.00 payment that D.Z. provided to Defendant on 5 June 2019.
17. After receipt of the bill, D.Z. contacted DMLG's billing administrator and inquired about the \$535.00 she gave to Defendant on the day of mediation.
18. Upon receipt of D.Z.'s inquiry, the billing administrator searched her files for any record of a \$535.00 payment from D.Z.
19. The billing administrator did not find any record of D.Z.'s payment as a result of her search.
20. On 10 July 2019, the billing administrator asked Defendant about D.Z.'s \$535.00 payment.

21. Defendant told the billing administrator, in part, that D.Z. "just forgot that payment wasn't to [DMLG]."

22. Defendant's statement to the billing administrator was false.

23. Defendant knew at the time she made it that her statement to the billing administrator was false.

24. The \$535.00 payment had not been applied to D.Z.'s account because Defendant did not remit it to DMLG.

25. That same day, after the billing administrator contacted Defendant to inquire about D.Z.'s payment, Defendant contacted a friend and fellow lawyer and asked to borrow \$535.00 in cash.

26. The friend loaned Defendant the cash she requested.

27. Defendant delivered the cash she borrowed to the billing administrator at DMLG and indicated the funds should be applied to the balance D.Z. owed DMLG.

28. Defendant borrowed the cash from her friend instead of withdrawing it from her bank account so her records would not show that she was the source of the cash she gave to DMLG in an effort to conceal her misconduct.

29. Defendant did not inform the billing administrator or anyone else at DMLG that the \$535.00 she remitted to the firm was not the money she received from D.Z., but rather had been borrowed from Defendant's friend.

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

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, Kelly R. Routh, and the subject matter of this proceeding.

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) in that Defendant violated the Rules of Professional Conduct as follows:

- a) The Panel unanimously concludes that by failing to properly maintain and disburse the \$535.00 cash payment she received from D.Z., Defendant failed to properly maintain and disburse entrusted funds in violation of Rule 1.15-2(a) and (n);
- b) A majority of the Panel concludes that by knowingly and willingly using the \$535.00 cash payment she received from D.Z. for her own benefit or for the benefit of someone other than D.Z. and/or DMLG, Defendant

failed to properly maintain and disburse entrusted funds in violation of xRule 1.15-2(k) and committed a criminal act, embezzlement, that reflects adversely on her honesty, trustworthiness, or fitness as a lawyer in other respects in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c); and

- c) The Panel unanimously concludes that by knowingly making a false statement to the billing administrator at DMLG, Defendant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c).

FINDINGS OF FACT REGARDING DISCIPLINE

Based on the foregoing Findings of Fact and Conclusions of Law, by clear, cogent and convincing evidence, the Hearing Panel unanimously finds:

1. The findings of fact in paragraphs 1 through 29 above are reincorporated as if fully set forth herein.
2. Defendant is a relatively young lawyer, having been licensed to practice law in North Carolina in 2011.
3. Defendant has no prior discipline.
4. Defendant expressed remorse for her misconduct, which the Hearing Panel finds to be genuine.
5. Defendant testified that, at the time of her conduct, she was suffering from certain medical conditions. Defendant testified further that these conditions required her to make and attend medical appointments which adversely affected her attentiveness. The Hearing Panel finds this portion of Defendant's testimony credible.
6. Defendant testified that she suffered physical and emotional abuse and neglect as a child.
7. Defendant also testified that the work environment and leadership at DMLG was hostile. The Hearing Panel finds as credible Defendant's contention that she perceived her work environment as hostile.

Based on the foregoing Findings of Fact and Conclusions of Law, by clear, cogent and convincing evidence, a majority of the Hearing Panel finds:

8. Defendant's assertions that she searched her client file and mediation materials multiple times before contacting her friend and that she found the funds she received from D.Z. in the pocket of a binder within those same materials days later were not credible.

9. Defendant's dishonest conduct toward the billing administrator at DMLG and other actions specifically designed to cover up her embezzlement caused significant harm to the public and the profession, in that it showed Defendant to be untrustworthy as a lawyer. Courts, other lawyers, clients, and the public must be able to rely upon the trustworthiness of lawyers.

Based on the foregoing Findings of Fact, Conclusions of Law, Findings of Fact 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, including admonition, reprimand, censure, suspension and disbarment.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f)(1) and determined the following factors are applicable:

- (a) A majority of the Panel finds Factor (B), Intent of Defendant to commit acts where the harm or potential harm was foreseeable;
- (b) Factor (C), Circumstances reflecting the defendant's lack of honesty, trustworthiness, or integrity;
- (c) Factor (E), Negative impact of Defendant's actions on the client's or public's perception of the profession;
- (d) Factor (H), Effect of Defendant's conduct on third parties; and
- (e) Factor (I), Acts of dishonesty, misrepresentation, deceit, or fabrication, including engaging in acts to cover up her conduct.

3. The Hearing Panel has considered the factors enumerated in 27 N.C. Admin. Code 1B.0116(f)(2) of the Rules and Regulations of the North Carolina State Bar and determines that the following factors are applicable:

- (a) The Panel unanimously finds Factor (A), Acts of dishonesty, misrepresentation, deceit, or fabrication;
- (b) A majority of the Panel finds Factor (C), 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; and
- (c) A majority of the Panel finds Factor (D), Commission of a felony.

4. The Hearing Panel has considered disbarment and has determined that disbarment is not warranted in this case given the unique facts and circumstances of this

case including Defendant's personal and emotional problems and their effect on her perception of her work environment and the lack of actual harm to D.Z.

5. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f)(3) of the Rules and Regulations of the North Carolina State Bar and determines that the following factors are applicable in this matter:

- (a) Factor (A), Absence of prior disciplinary offenses in this state or any other jurisdiction;
- (b) Factor (C), Dishonest or selfish motive;
- (c) Factor (H), Effect of any personal or emotional problems on the conduct in question;
- (d) Factor (I), Effect of any physical or mental disability or impairment on the conduct in question;
- (e) Factor (P), Remorse;
- (f) Factor (Q), Good character and reputation;
- (g) Factor (S), Degree of experience in the practice of law; and
 - i. Defendant was a relatively young lawyer at the time of her misconduct.
- (h) Factor (V), Other factors not specifically listed:
 - i. Lack of financial harm to client or law firm in that the funds at issue were restored.

5. A censure, reprimand, or admonition would be insufficient discipline because of the gravity of the potential harm to the profession and the public.

6. A majority of the Hearing Panel determines that discipline short of suspension would not be sufficient to adequately protect the public from future misconduct by Defendant for the following reasons:

- a. The factors under 27 N.C. Admin. Code 1B.0116(f)(1) support imposition of suspension as the appropriate discipline; and
- 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 to the public regarding the conduct expected of members of the Bar of this state.

7. The public will be adequately protected by suspension of Defendant's license, which may be stayed upon completion of one year of active suspension and upon

Defendant's compliance with conditions designed to ensure protection of the public and continued compliance with the Rules of Professional Conduct.

Based on the foregoing Findings of Fact, Conclusions of Law, Findings of Fact Regarding Discipline, and Conclusions of Law Regarding Discipline, the Hearing Panel hereby enters the following:

ORDER OF DISCIPLINE

1. The law license of Defendant, Kelly R. Routh, is hereby suspended for five years, effective thirty days from the date this Order of Discipline is served upon her.

2. Defendant shall submit her license and membership card to the Secretary of the North Carolina State Bar no later than thirty days following the effective date of this Order.

3. Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within ten days of the effective date of this Order showing that she has fully complied with the provisions of this Order of Discipline, with the provisions of 27 N.C. Admin. Code 1B.0128, and with the provisions of all other state, federal, and administrative jurisdictions to which she is admitted to practice. Defendant's affidavit must also set forth the residence or other address to which communication from the State Bar may be directed.

4. Defendant is taxed with the administrative fees and costs of this action as assessed by the Secretary, including, but not limited to, all deposition costs and the court reporters' appearance fees, which Defendant shall pay within thirty days of service of the notice of costs upon Defendant at her address of record.

5. After serving no less than one year of the five-year suspension, Defendant may apply for a stay of the remaining period of suspension imposed by this Order by filing a motion in the cause with the Disciplinary Hearing Commission as provided in 27 N.C. Admin. Code 1B.0118(c). Defendant may apply for a stay up to thirty days prior to the end of the one-year period but no stay of the suspension shall be entered prior to the expiration of at least one year of this suspension. In order to be eligible for a stay of the remaining period of suspension, Defendant must demonstrate by clear, cogent, and convincing evidence the following:

- (a) That Defendant paid the administrative fees and costs of this proceeding, including, but not limited to, all deposition costs and the court reporters' appearance fees, within thirty days of service of the notice of costs upon Defendant at her address of record;
- (b) That Defendant surrendered her law license and membership card to the Secretary of the North Carolina State Bar no later than thirty days following service of this Order upon her;

- (c) That Defendant complied with the wind down provisions of 27 N.C. Admin. Code 1B.0128;
- (d) That, in connection with the wind down of her law practice, Defendant made a motion in Wake County Superior Court Case No. 21 CVS 5749 to disburse all funds presently maintained in her trust account to the rightful recipients.
- (e) That Defendant completed by 1 August 2023 a course on law office management training approved in advance by the North Carolina State Bar Office Counsel (“Office of Counsel”) and also provided written proof of such course completion to the Office of Counsel on or before 1 August 2023.
- (f) That Defendant kept the North Carolina State Bar Membership Department advised of her current physical business and home addresses (not post-office box or drawer addresses), telephone number(s), and email address(es) and notified the State Bar Membership Department of any changes within ten days of such change;
- (g) That Defendant accepted all certified mail from the North Carolina State Bar sent to the address on record with the State Bar Membership Department;
- (h) That Defendant provided full and complete responses to all communications from the North Carolina State Bar, including letters of notice, requests for information, and communications from the Attorney Client Assistance Program (“ACAP”), within fifteen days of Defendant’s receipt of the communication or by the deadline stated in the communication, whichever is sooner, and participated in good faith in the State Bar’s fee dispute resolution process for any petition filed with ACAP;
- (i) That Defendant remained current in payment of all North Carolina State Bar membership dues, fees, and costs, including all Client Security Fund assessments and other charges or surcharges the State Bar is authorized to collect from her, including all judicial district dues, fees, and assessments incurred during the length of Defendant’s suspension to the date of her filing a motion in the cause; and
- (j) That Defendant did not violate the Rules of Professional Conduct or the laws of the United States or of any state or local government, other than minor traffic violations, during the active suspension.

6. If the Hearing Panel grants a stay of the suspension of Defendant’s law license, such stay will continue in force only as long as Defendant complies with the following conditions:

- (a) Each month Defendant shall provide the Office of Counsel with the three-way reconciliation report described in the State Bar Lawyer's Trust Account Handbook, using the Trust Account Reconciliation sheet currently available on the State Bar's website, for all trust accounts she maintains. Defendant shall provide (i) the three-way reconciliation report, (ii) client ledgers for all clients with funds in the trust account(s) during that month as may be requested by the Office of Counsel, (iii) an administrative ledger for any personal funds maintained in the trust account(s) for bank or credit card fees, (iv) trust account general ledger for each trust account, (v) multiple balance ledger report (report listing balance of funds maintained in trust for each client during reporting period), (vi) the bank statements, (vii) copies of cancelled checks, (viii) lists of outstanding deposits and outstanding checks. These documents are due on the fifteenth day of the following month – for example, the three-way reconciliation for the month of January is due on February 15;
- (b) Within thirty days after obtaining a stay of the suspension, Defendant shall retain a trust account monitor or certified public accountant (“CPA”), approved in advance by the Office of Counsel, who shall independently audit her trust account(s). Any CPA retained must be in good standing with the North Carolina State Board of Certified Public Accountant Examiners;
- (c) Each quarter, Defendant shall have the trust account monitor or CPA audit all trust accounts maintained by Defendant. Defendant shall provide to the trust account monitor/CPA copies of her monthly three-way reconciliations and supporting documentation. This audit shall assess whether Defendant has in her trust account the client funds she is required to maintain for her clients at that time, as well as Defendant's compliance with all requirements of Rule 1.15-2 and Rule 1.15-3. Each quarter the trust account monitor/CPA shall include with the audit report a completed Trust Account Review Report Template, which will be provided by the State Bar to Defendant and shall identify any deficiencies in Defendant's compliance with Rule 1.15-2 and Rule 1.15-3. The quarterly audit reports from the trust account monitor/CPA are due to the Office of Counsel no later than thirty days after the end of the quarter – for example, the audit for the first quarter of the calendar year (January, February, and March) is due on or before April 30. It is Defendant's sole responsibility to ensure that the trust account monitor/CPA completes and timely submits the reports required herein. Defendant shall bear the cost of preparation and submission of these reports;
- (d) Defendant shall pay all costs and/or fees, if any, charged by the trust account monitor or CPA for his/her services, including any costs for preparation and submission of reports associated therewith;

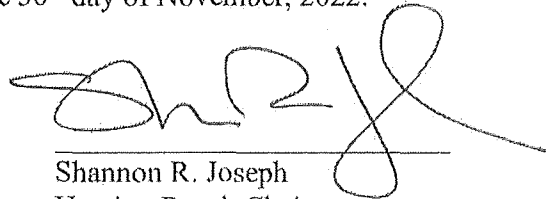
- (e) If either the monthly three-way reconciliation report or the audit reveals any deviation from Defendant's obligations under Rule 1.15-2 or Rule 1.15-3, Defendant shall take remedial action within ten days of the date of the three-way reconciliation report or the trust account monitor/CPA audit and shall provide to the Office of Counsel documentation showing the remedial action taken within two days of the date of the remedial action;
- (f) Defendant shall provide any records or information regarding her trust account(s) requested by the Office of Counsel and, when requested by the Office of Counsel to do so, sign and provide any release or authorization to allow the Office of Counsel to obtain information directly from any bank in which Defendant maintains a trust account, within ten days of the request or by the deadline stated in the request, whichever is sooner;
- (g) If, at any point during the pendency of the stay of the suspension, Defendant ceases handling entrusted or fiduciary funds and maintaining an attorney trust account, Defendant shall submit to the Office of Counsel copies of all her current fee agreement templates and, on a monthly basis, an affidavit certifying that she did not handle any entrusted or fiduciary funds in that month. This affidavit shall be executed on the last day of each month and provided to the Office of Counsel by the fifth day of the following month (e.g. the affidavit for March would be executed on March 31st and provided to the Office of Counsel by April 5th). This affidavit shall be in lieu of the three-way reconciliation report and trust account monitor/CPA audit required in paragraphs 6(a) and 6(c) above for any period in which Defendant did not handle entrusted funds or fiduciary funds. For as long as Defendant is not handling any entrusted funds or fiduciary funds and is not maintaining an attorney trust account, the requirements of paragraph 6(a) and 6(c) above shall be tolled;
- (h) Defendant shall keep the North Carolina State Bar Membership Department advised of her current physical business and home addresses (not post-office box or drawer addresses), telephone number(s), and e-mail address(es). Defendant shall notify the State Bar Membership Department of any change within ten days of such change;
- (i) Defendant shall accept all certified mail from the North Carolina State Bar sent to the address on record with the State Bar Membership Department;
- (j) Defendant shall provide full and complete responses to and all requested documentation in response to all communications from the North Carolina State Bar, including letters of notice, requests for information, and communications from the Attorney Client Assistance Program, within fifteen days of receipt of such communication or by the deadline stated in the communication, whichever is sooner, and participate in good faith in the State Bar's fee dispute resolution process for any petition filed with ACAP;

- (k) Defendant shall timely comply with all North Carolina State Bar CLE requirements as set forth in 27 N.C. Admin. Code 1D.1518 and pay all fees and costs assessed therefor by the applicable deadline. Defendant shall provide proof of the same to the Office of Counsel within ten days of completing the courses;
- (l) Defendant shall pay all North Carolina State Bar membership dues, fees, and costs, including all Client Security Fund assessments and other charges or surcharges the State Bar is authorized to collect from her, including all judicial district dues, fees, and assessments. Defendant shall provide proof that she paid such dues, fees, and/or costs to the State Bar Office of Counsel within ten days of paying them;
- (m) Defendant shall not violate the Rules of Professional Conduct of North Carolina or of any other jurisdiction in which she is or may become licensed to practice law or the laws of the United States or of any state or local government, other than minor traffic violations.

7. If Defendant fails to comply with any of the conditions of the stayed suspension provided in paragraph 6(a) through (m), the stay of the suspension may be lifted as provided in 27 N.C. Admin. Code 1B.0118(a).

8. If Defendant does not seek or fails to obtain a stay of the active portion of her suspension, or if some part of the suspension is stayed and thereafter the stay is lifted/revoked, Defendant must comply with the requirements of paragraph 5(a) through (j) and with all requirements of 27 N.C. Admin. Code 1B .0129(b) before being reinstated to the practice of law.

Signed by the undersigned Chair with the knowledge and consent of the other members of the Hearing Panel, this is the 30th day of November, 2022.



Shannon R. Joseph
Hearing Panel, Chair