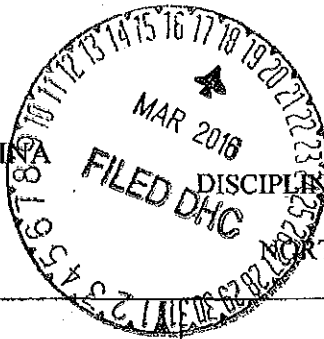


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
15 DHC 45

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

DEVIN FERREE THOMAS, Attorney,
Defendant

DEFAULT ORDER IMPOSING
DISCIPLINE

This matter came on for consideration by a hearing panel of the Disciplinary Hearing Commission composed of Steven D. Michael, Chair, R. Lee Farmer and Bradley Lail pursuant to Plaintiff's Motion for Default Order Imposing Discipline. Leonor Bailey Hodge represented Plaintiff, the North Carolina State Bar. Defendant, Devin Ferree Thomas, was represented by Dudley A. Witt. Pursuant to 27 N.C. Admin. Code § .0114(j), the Hearing Panel decided this matter based upon the written submissions of the parties including Plaintiff's Motion for Default Order Imposing Discipline and Defendant's 2 March 2016 Response to Motion for Default Order Imposing Discipline.

ESTABLISHED FACTS

Pursuant to the Entry of Default against Defendant, all allegations in the complaint are deemed admitted. Therefore, the following are the established facts:

1. Plaintiff, the North Carolina State Bar (hereafter "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, Devin Ferree Thomas (hereafter "Defendant" or "Thomas"), was admitted to the State Bar on 22 March 1997 and is an attorney at law subject to the rules, regulations, and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.
3. During the relevant periods referred to herein, Thomas was actively engaged in the practice of law and maintained law offices in Winston-Salem, Forsyth County; Greensboro, Guilford County; and Raleigh, Wake County; North Carolina.
4. Thomas maintained two attorney trust accounts, BB&T trust account ending in 5900 (hereinafter "trust account 1") and BB&T trust account ending in 4095 (hereinafter "trust account 2").

5. During the period of 28 October 2014 through 20 February 2015, Thomas made 21 transfers totaling \$109,500 from trust account 1 to his business account ending in 9135.
6. Thomas failed to indicate on these transfers the client balance(s) from which these transfers were purportedly made.
7. During the period of 11 February 2015 through 17 February 2015, Thomas made seven cash withdrawals totaling \$3,050 from trust account 1.
8. Thomas was not entitled to the \$109,500 he transferred from trust account 1 to his business account or the cash that he withdrew from trust account 1.
9. Thomas wrote the following checks from trust account 1 without identifying on the face of the items the client balance(s) from which the funds were purportedly drawn:
 - a. Check no. 2091 for \$600 payable to Devin Thomas negotiated on 18 February 2015;
 - b. Check no. 2089 for \$113.14 payable to Walmart negotiated on 20 February 2015; and
 - c. Check no. 2092 for \$11.20 payable to Sheetz negotiated on 20 February 2015.
10. Thomas used the funds obtained via the checks listed in the preceding paragraph for his personal use.
11. On or about 9 February 2015 and 23 February 2015, Thomas wrote three checks drawn on trust account 1 to D. Pascal in the amount of \$400 each for "office cleaning."
12. Thomas provided the checks written in the preceding paragraph as payment for his office cleaning.
13. Thomas was not entitled to the entrusted funds he used to pay D. Pascal.
14. During the period of 6 February 2015 through 17 February 2015, Thomas made four transfers totaling \$8,100 from trust account 1 to an unknown account ending in 2596 without identifying on the face of the transfer items the client balance(s) from which each transfer was purportedly made.
15. Thomas used the funds in the account ending in 2596 for his personal use, not for the use and benefit of his clients.
16. Thomas was not entitled to the funds that he transferred from trust account 1 to the account ending in 2596.

17. On 27 February 2015, Thomas transferred the balance of the funds in trust account 1 to trust account 2. After this transfer, the balance in trust account 1 was reduced to zero.

18. The funds Thomas transferred from trust account 1 to trust account 2 were entrusted funds Thomas was required to maintain in trust for his clients.

19. After transferring the balance of funds from trust account 1, as described in paragraph 18 above, Thomas transferred entrusted funds from trust account 2 without identifying on the face of the transfer items the client balance(s) from which each transfer was purportedly made as follows:

a. From 2 March 2015 through 23 March 2015, Thomas made six transfers totaling \$7,826.66 to his business account ending in 4109; and

b. From 12 March 2015 through 31 March 2015, Thomas made three transfers totaling \$3,600 to the unknown account ending in 2596.

20. Thomas used the funds he transferred from trust account 2, as described in the preceding paragraph, for his personal use. These funds were not used for the benefit of Thomas's client(s).

21. Thomas also made cash withdrawals from trust account 2 in the amount of \$1,600 from 27 February 2015 through 9 April 2015.

22. Thomas used the cash he withdrew from trust account 2 for his personal use and not for the benefit of his clients.

23. Winston Factory Loft Apartments is a downtown apartment community located at 675 North Main Street, Winston-Salem, North Carolina.

24. Thomas rented an apartment at Winston Factory Loft Apartments in 2015.

25. On or about 5 March 2015, Thomas wrote check no. 91 drawn on trust account 2 made payable to Winston Factory Loft Apartments in the amount of \$345.

26. On 20 March 2015, Thomas withdrew cash from trust account 2 in the amount of \$3,450. This cash was used to purchase two official checks, one of which was payable to Winston Factory Loft Apartments in the amount of \$2,050.

27. On 1 April 2015, Thomas used cash he withdrew from trust account 2 to purchase another official check made payable to Winston Factory Loft Apartments in the amount of \$2,441.17.

28. The funds Thomas paid to Winston Factory Loft Apartments were used to satisfy Thomas's personal financial obligations. These payments were not used for the benefit of Thomas's clients.

29. Thomas was not entitled to the funds that he used to make payment to Winston Factory Loft Apartments.

30. Thomas used his clients' entrusted funds for purposes other than that for which the funds were entrusted to him.

31. In May 2011, Thomas undertook representation of R. and D. Pritchard in a personal injury matter.

32. Thomas settled the Pritchards' personal injury claims.

33. On 29 October 2014, Thomas deposited two checks from MetLife Auto & Home on behalf of the Pritchards into trust account 1.

34. The first check was in the amount of \$15,000; the second check was in the amount of \$25,000.

35. On 6 February 2015, Thomas deposited two checks from NC Farm Bureau Mutual Insurance Co. on behalf of the Pritchards into trust account 1.

36. The first check was in the amount of \$5,496; the second check was in the amount of \$10,000.

37. Thomas made three disbursements that he identified as being made on behalf of the Pritchards: two to himself for a total of \$4,500 and one to the Bradley Law Group for \$2,500.

38. Thomas did not disburse any portion of the Pritchards' settlement proceeds to the Pritchards.

39. Thomas did not disburse any portion of the Pritchards' settlement proceeds to their medical providers.

40. After depositing the proceeds of the Pritchards' settlement into trust account 1, Thomas made several transfers to his business account ending in 9135 without identifying on the face of the transfer items the client account(s) from which each transfer was purportedly made.

41. On 11 February 2015, Thomas provided check no. 1047 written for the amount of \$15,174.51 and drawn on his business account ending in 9135 to D. Pritchard in purported partial payment of her settlement proceeds.

42. When D. Pritchard presented the check to the bank for payment, it was not honored. D. Pritchard was informed that the account was closed.

43. To date, Thomas has not paid any portion of the Pritchards' settlement proceeds to the Pritchards or their medical providers.

44. The Pritchards' settlement proceeds were among the funds that Thomas used for his personal and/or business expenditures as described in the First Claim for Relief of the Complaint in this matter.

45. In or about June 2014, R. Holbrook retained Thomas to represent him in a personal injury matter.

46. At the outset of the representation, Thomas maintained communication with Holbrook and was responsive when Holbrook had questions about his case.

47. Beginning in or about January 2015, Thomas stopped communicating with Holbrook.

48. During Thomas's last communication with Holbrook, Thomas told Holbrook that Holbrook's claim had not yet been resolved.

49. Holbrook attempted to contact Thomas by telephone, but Thomas did not return Holbrook's calls.

50. Holbrook contacted the insurance company of the opposing party in his personal injury matter and learned that a check in settlement of Holbrook's case had been mailed to Thomas on or about 5 November 2014.

51. Thomas failed to inform Holbrook that Thomas had received Holbrook's settlement proceeds.

52. Thomas deposited the proceeds of Holbrook's settlement into trust account 1 on 14 November 2014.

53. On or about 20 March 2015, Thomas made a cash withdrawal from trust account 2 that he used to purchase an official check for \$1,400 which was made payable to Health One on behalf of Holbrook. This was the only disbursement that Thomas made on behalf of Holbrook.

54. Thomas did not disburse any portion of Holbrook's settlement proceeds to Holbrook.

55. As of 6 February 2015, the balance in trust account 1 had fallen to \$1,231.72 – less than the amount Thomas was required to maintain in trust for Holbrook.

56. From 12 January 2015 through 6 February 2015, Thomas made several transfers from trust account 1 to his BB&T business account, without identifying on the face of the transfer items the client balance(s) from which each transfer was purportedly made.

57. Thomas used the funds in his BB&T business account for his personal expenditures.

58. Holbrook's settlement proceeds were among the funds that Thomas used for his personal and/or business expenditures as described in the First Claim for Relief of the Complaint in this matter.

59. In or about September 2014, R. Darby retained Thomas to represent her in a personal injury matter.

60. Initially, Thomas appeared to be very helpful – he answered questions posed by Darby's mother and met with Darby.

61. After these initial contacts, Thomas failed to communicate with Darby.
62. Darby attempted to contact Thomas by telephone, email, and she even sent a message to Thomas through his website.
63. Thomas failed to respond to Darby's attempts to contact him.
64. Thomas has failed to perform any substantive work on behalf of Darby.
65. Default was entered against Defendant by the Secretary of the State Bar on 3 December 2015.
66. A copy of the Entry of Default was served on Defendant by sending a copy to his attorney of record.
67. A copy of Plaintiff's Motion for Default Order Imposing Discipline was served on Defendant by sending a copy to his attorney of record.
68. Defendant filed a response to Plaintiff's Motion for Default Order Imposing Discipline on 2 March 2013 stating that Defendant did not wish to be heard in opposition to Plaintiff's motion.

Based on the foregoing Established Facts, the Hearing Panel enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, Devin Ferree Thomas.
2. Entry of Default by the Secretary of the State Bar was proper.
3. Pursuant to N.C. Admin. Code 1B § .0114(j) Plaintiff's Motion for Default Order Imposing Discipline may be decided based on the parties' written submissions.
4. Defendant's conduct, as set forth in the Established Facts 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 failing to identify on items drawn on his trust accounts the client balance(s) from which the items were drawn, Thomas failed to properly maintain entrusted client funds in violation of Rule 1.15-2(a), failed to indicate on an item payable to him, the lawyer, the client balance from which the item was drawn in violation of Rule 1.15-2(h), and failed to maintain proper minimum records for his trust accounts in violation of Rule 1.15-3(b);
 - b) By making cash withdrawals from his trust accounts, Thomas failed to properly maintain entrusted client funds in violation of Rule 1.15-2(a), and withdrew cash from his trust account in violation of Rule 1.15-2(i);
 - c) By using his clients' entrusted funds for his personal and/or business expenditures, Thomas failed to properly maintain entrusted client funds in

violation of Rule 1.15-2(a), used entrusted property for his personal benefit in violation of Rule 1.15-2(j), committed a criminal act (embezzlement) that reflects adversely on his honesty, trustworthiness and 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 failing to perform any substantive work on behalf of Darby, Defendant failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;

e) By failing to disburse the proceeds of their settlement to the Pritchards and Holbrook, Defendant failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3, failed to properly maintain entrusted client funds in violation of Rule 1.15-2(a), and failed to promptly pay to the client entrusted property belonging to the client and to which the client is currently entitled in violation of Rule 1.15-2(m);

f) By failing to communicate with his clients and failing to respond to their attempts to communicate with him, Defendant failed to communicate in violation of Rule 1.4(a)(3)(4) and (b); and

g) By failing to inform Holbrook that he had received Holbrook's settlement check, Defendant failed to communicate in violation of Rule 1.4(a)(1)(3) and failed to notify the client of receipt of entrusted property in violation of Rule 1.15-2(l).

Based on the foregoing Established Facts and Conclusions of Law, the Hearing Panel enters the following:

CONCLUSIONS OF LAW REGARDING DISCIPLINE

1. The Hearing Panel has considered all of the factors contained in 27 N.C. Admin. Code 1B § .0114(w)(1), the Rules and Regulations of the State Bar, and concludes that the following factors that warrant suspension or disbarment are present:

- a. intent of the defendant to cause the resulting harm or potential harm;
- b. intent of the defendant to commit acts where the harm of potential harm is foreseeable;
- c. circumstances reflecting the defendant's lack of honesty, trustworthiness, or integrity;
- d. elevation of the defendant's own interest above that of the client;
- e. negative impact of the defendant's actions on clients' or public's perception of the profession;

- f. negative impact of the defendant's actions on the administration of justice;
- g. impairment of client's ability to achieve the goals of the representation; specifically, Mr. Holbrook and the Pritchards; and
- h. acts of dishonesty, misrepresentation, deceit or fabrication.

2. The Hearing Panel has considered all of the factors contained in 27 N.C. Admin. Code 1B § .0114(w)(2), the Rules and Regulations of the State Bar, and concludes that the following factors that warrant disbarment are present:

- a. acts of dishonesty, misrepresentation, deceit or fabrication;
- b. misappropriation or conversion of assets of any kind to which the defendant or recipient is not entitled, whether from a client or any other source; and
- c. commission of a felony.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0114(w)(3), the Rules and Regulations of the State Bar, and concludes that the following are applicable in this matter:

- a. dishonest or selfish motive;
- b. pattern of misconduct;
- c. multiple offenses;
- d. 19 years experience in the practice of law.

4. By misappropriating entrusted client funds, Defendant has caused harm to the standing of the legal profession in that his conduct undermines the trust and confidence that the public has in lawyers and the legal system.

5. Defendant caused significant harm to his clients, including the Pritchards and Holbrook, by misappropriating their entrusted funds.

6. Defendant caused significant harm to the profession by reinforcing the negative stereotype that lawyers are selfish and out for personal gain.

7. Defendant caused significant harm to the administration of justice in the cases of the Pritchards and Holbrook.

8. The Hearing Panel has considered all lesser sanctions including: suspension, censure, reprimand and admonition and finds that discipline less than disbarment would not adequately protect the public from Defendant's future misconduct for the following reasons:

- a. Defendant committed a criminal act, specifically embezzlement, that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in other respects and violated the trust of his clients, including the Pritchards and Holbrook;
- 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 lawyers and the public regarding the conduct expected of members of the Bar of this State;
- c. the protection of the public and the legal profession requires that Defendant not be permitted to return to the practice of law until he demonstrates the following by clear, cogent and convincing evidence: (i) that he has reformed, (ii) that he possesses the moral qualifications required for admission to practice law in North Carolina, taking into account the misconduct that is the subject of this order, (iii) that he understands the current Rules of Professional Conduct, including but not limited to those Rules relating to "Safekeeping Property" as set forth in Rule 1.15 et seq.; and (iv) that reinstatement will not be detrimental to the public or the integrity and standing of the legal profession. Disbarment is the only discipline that will require Defendant to make such a showing before returning to the practice of law.

Based upon the foregoing Established Facts, Conclusions of Law, and Conclusions of Law Regarding Discipline, the Hearing Panel hereby enters the following:

DEFAULT ORDER OF DISCIPLINE

1. Defendant, Devin Ferree Thomas, is hereby DISBARRED from the practice of law.
2. Defendant shall surrender his 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 within 30 days of service of the statement of costs upon him by the Secretary of the State Bar the administrative fees and costs of this proceeding.

4. Defendant shall comply with all provisions of 27 N.C. Admin. Code 1B § .0124.

5. Defendant shall provide the following to the State Bar within thirty days of the effective date of this Order:

- a. Current contact information for all clients who have or should have funds in Thomas's accounts. Defendant shall cooperate with the State Bar to account for and disburse all client funds as appropriate; and
- b. A physical address (not P.O. Box or Drawer) and telephone number at which clients seeking return of their files can communicate with Defendant and obtain such files.

6. Defendant shall return client files to the client within five days of receipt of a request for return of the client file. Defendant will be deemed to have received any such request three days after the date the request is sent to Defendant if the request is sent to the address Defendant provided to the State Bar pursuant to this Order.

Signed by the Chair with the consent of the other Hearing Panel members,
this the 18th day of March, 2016.


Steven D. Michael, Chair
Disciplinary Hearing Panel