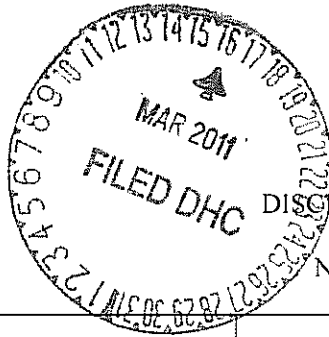


NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
10 DHC 28

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

KELTON T. BROWN, Attorney,

Defendant

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND CONSENT ORDER
OF DISCIPLINE

This matter was considered by a hearing panel of the Disciplinary Hearing Commission composed of Steven D. Michael, Chair, and members Theodore C. Edwards, II and Joe Castro. Carmen Hoyme Bannon represented Plaintiff, the North Carolina State Bar. Defendant, Kelton T. Brown, was represented by Dudley A. Witt. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Defendant freely and voluntarily waives any and all right to appeal the entry of this consent order of discipline. Based upon the stipulations of fact and the consent of the parties, the hearing panel hereby finds by clear, cogent, and convincing evidence the following:

FINDINGS OF FACT

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, Kelton T. Brown (hereafter "Defendant" or "Brown"), was admitted to the North Carolina State Bar on 24 March 2001 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. Brown's license to practice law in North Carolina was active from the date of his admission until 2 December 2004, when he was administratively suspended. Brown's license was reinstated on 27 July 2005 and remained active until 9 September 2008, when it was again administratively suspended. Brown's law license remains administratively suspended as of the date of the filing of this complaint.

3. During all or part of the relevant periods referred to herein, Brown was engaged in the practice of law in the State of North Carolina and maintained law offices in Raleigh and/or Knightdale, Wake County, North Carolina.

4. Brown was properly served with process and received due notice of the hearing in this matter.

5. Brown represented Brenda and Jamel Winstead (collectively "the Winsteads") in personal injury cases related to an accident that occurred on 15 May 2006.

6. On or about 20 December 2006, Brown received a total of \$13,300.00 in settlement proceeds for the Winsteads. Brown deposited the Winsteads' settlement proceeds into his attorney trust account.

7. According to disbursement summaries signed by the Winsteads and provided by Brown to the State Bar, Brown was authorized to disburse the \$13,300.00 as follows:

- (a) \$7,684.83 to the Winsteads;
- (b) \$3,400.00 to an individual named R. Holden on behalf of the Winsteads;
- (c) \$2,195.43 to Brown Law Group for fees and costs; and
- (d) \$19.74 to an entity called Nash Medical Records.

8. The disbursement summaries signed by the Winsteads did not authorize Brown to use the Winsteads' entrusted funds for the benefit of Brown's other clients.

9. Brown deposited the Winsteads' funds on 20 December 2006, and the balance in his attorney trust account was reduced to zero by 5 April 2007.

10. None of the checks written from Brown's trust account during the period from 20 December 2006 through 5 April 2007 was payable to Brenda Winstead, Jamel Winstead, R. Holden, or Nash Medical Records.

11. None of the checks or other withdrawals from Brown's trust account during the period from 20 December 2006 through 5 April 2007 has a notation indicating it was drawn on the Winsteads' client balance.

12. None of the checks or other withdrawals from Brown's trust account during the period from 20 December 2006 through 5 April 2007 corresponds to any of the authorized disbursement amounts set forth in paragraph 7 above.

13. Brown represented to the State Bar that he actually disbursed the \$13,300.00 he received for the benefit of the Winsteads as follows:

- (a) \$4,389.00 payable to Brown Law Group and deposited into Brown's operating account on 12/21/06;
- (b) \$4,000.00 as a counter withdrawal;
- (c) \$2,376.00 payable to Brown and deposited into Brown's operating account on 2/1/07; and
- (d) \$2,535.00 that remained in Brown's trust account and was used for the benefit of other clients.

14. By way of the two deposits dated 21 December 2006 and 1 February 2007, Brown transferred \$6,765.00 of the Winsteads' entrusted funds into his operating account.

15. Brown's operating account was overdrawn by 27 February 2007.

16. During the period from 21 December 2006 through 27 February 2007, Brown used the funds in his operating account to pay for personal expenses.

17. Brown did not maintain client ledgers accounting for his receipt and disbursement of entrusted funds for the Winsteads, nor did he provide either of the Winsteads with a written accounting of his receipt and disbursement of entrusted funds upon the complete disbursement of those funds.

18. On 23 October 2008, the Chair of the North Carolina State Bar Grievance Committee issued a Subpoena for Cause Audit ("SCA") commanding Brown to produce to the State Bar all attorney trust account records he was required to maintain pursuant to Rule 1.15-3 of the Rules of Professional Conduct. Brown was served with the SCA on 27 October 2008.

19. State Bar investigators made repeated attempts throughout 2009 to obtain from Brown sufficient information to complete the audit. Brown did not provide the documentation he was required to produce pursuant to the SCA, nor did he provide specific information and documentation requested by the investigators.

20. Nonetheless, the records Brown did produce to the State Bar revealed the following:

- (a) Brown routinely made counter withdrawals from his trust account. In these transactions, funds were withdrawn either as cash or in the form of a certified check. Brown did not consistently maintain either copies of certified checks or receipts reflecting his distribution of cash. For almost all of these counter withdrawals, Brown's records reflected neither the recipient of funds disbursed from his trust account nor the client balance upon which those funds were drawn.
- (b) Trust account checks payable to Brown that did not reflect the client balance upon which the checks were drawn.
- (c) Brown failed to perform monthly or quarterly reconciliations of his attorney trust account.
- (d) Brown failed to maintain client ledgers, reconciliations, and other required documentation of his receipt and disbursement of entrusted funds.

21. On 9 September 2008, Brown's license to practice law was administratively suspended for failure to comply with the State Bar's Continuing Legal

Education (CLE) requirements and for failure to pay membership dues. His license remained administratively suspended through the filing of the complaint in this case.

22. In February 2009, Brown appeared in Guilford County District Court on behalf of Terry Law, who was charged with possession of marijuana and drug paraphernalia.

23. Also in February 2009, Brown appeared in Wake County District Court on behalf of Ricky J. Floyd, who was charged with drug trafficking. Brown entered a plea of guilty on behalf of Floyd, but sentencing was continued to a later date.

24. Throughout 2009, Brown continued to communicate with the Wake County Assistant District Attorney (ADA) assigned to Floyd's case. Brown did not reveal to the ADA or to the Wake County court that his law license was suspended.

25. On motion of the ADA, Floyd's plea was set aside because Brown had not been licensed to practice law at the time the plea was entered.

26. On 23 April 2009, Brown entered a notice of appearance on behalf of Jeremy A. Smith (AKA Jeremy Colebrook) (hereinafter "Smith") in a criminal case in the United States District Court for the Eastern District of North Carolina.

27. On 4 May 2009, Brown appeared in federal court on behalf of Smith and entered a guilty plea.

28. When it came to the federal court's attention that Brown had not been licensed to practice law at the time of Smith's plea, the plea was set aside.

CONCLUSIONS OF LAW

1. All the parties are properly before the hearing panel and the panel has jurisdiction over Defendant, Kelton T. Brown, and the subject matter.

2. Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C.G.S. §§ 84-28(b)(2) & (b)(3) as follows:

- (a) By using a portion of the Winsteads' entrusted funds for the benefit of other clients and by transferring funds held in trust for the Winsteads into his operating account where the funds were used for personal expenses, Brown failed to identify, hold, and maintain entrusted property separate from his own property in violation of 1.15-2(a), used entrusted funds for his own benefit and/or the benefit of third parties in violation of Rule 1.15-2(j), and engaged in conduct involving dishonesty in violation of Rule 8.4(c);
- (b) By failing to maintain client ledgers or render final accountings to the Winsteads, Brown failed to maintain a record of receipts and disbursements for each person from whom and for whom funds were

received in violation of Rule 1.15-3(b) and failed to provide written accountings of the receipts and disbursements of all trust funds upon the complete disbursement of the funds in violation of 1.15-3(e);

- (c) By engaging in the conduct described in Finding of Fact 20 above, Brown drew items on the trust account, payable to himself, which did not indicate the client balance on which the item was drawn in violation of 1.15-2(h), made cash withdrawals from his trust account in violation of 1.15-2 (i), failed to perform or maintain trust account reconciliations in violation of 1.15-3(d), and failed to maintain the minimum required records for attorney trust accounts in violation of 1.15-3(b) & 1.15-3(g);
- (d) By failing to provide information, documentation, and trust account records as required by the SCA and as repeatedly requested by the State Bar, Brown failed to produce trust account records for inspection and copying upon request by the State Bar in violation of Rule 1.15-3(h) and knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(a) and N.C.G.S. § 84-28(b)(3);
- (e) By continuing to practice law while his license was suspended, Brown engaged in the unauthorized practice of law in violation of Rule 5.5(a); and
- (f) By entering pleas on behalf of Smith and Floyd that were later set aside because Brown was not licensed to practice law at the time of the pleas, Brown engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

Based upon the stipulations of fact and the consent of the parties, the hearing panel hereby makes the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1 through 28 above are reincorporated as if fully set forth herein.
2. Defendant was admonished by the Grievance Committee in 2007 for neglect of a client matter and failure to comply with trust account rules. The admonition also cited Brown's failure to respond as required to the State Bar's requests for information and his misrepresentation of facts to the Grievance Committee.
3. Commingling personal and entrusted funds and failing to properly account for client funds causes a foreseeable risk of harm by putting client funds in jeopardy.

4. Because the pleas entered by Brown on behalf of Floyd and Smith had to be set aside, the disposition of those cases was delayed and court time and resources were wasted.

5. Self-regulation of the legal profession relies upon the cooperation and participation of lawyers in the self-regulatory process. When a lawyer fails to respond to a lawful inquiry from a disciplinary authority, it undermines the system of self-regulation.

6. Although Brown failed to pay one of the Winsteads' medical providers from their settlement proceeds, he later paid their indebtedness to the provider using personal funds, demonstrating a good faith effort to rectify the consequences of his misconduct.

7. Brown acknowledges his failure to comply with the Rules of Professional Conduct and is remorseful.

Based upon the Findings of Fact, Conclusions of Law, additional Findings Regarding Discipline, and the consent of the parties, the hearing panel hereby makes the following additional

CONCLUSIONS OF LAW REGARDING DISCIPLINE

1. The hearing panel considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w) of the Discipline and Disability Rules of the North Carolina State Bar and finds the following factors are present in this case:

- a. Intent of the defendant to commit acts where the harm or potential harm is foreseeable;
- b. Circumstances reflecting the defendant's lack of honesty, trustworthiness, or integrity;
- c. Negative impact of the defendant's actions on the administration of justice;
- d. Acts of dishonesty;
- e. Multiple instances of failure to participate in the legal profession's self-regulation process;
- f. Misappropriation of assets of any kind to which the defendant or recipient is not entitled, whether from a client or any other source;
- g. Prior disciplinary offenses;
- h. Multiple offenses;

- i. Full and free disclosure to the hearing panel or cooperative attitude toward the proceedings;
- j. Good faith efforts to rectify the consequences of his misconduct; and
- k. Remorse.

2. Brown's misconduct caused significant harm to his clients, in that he used entrusted funds for personal benefit. His mishandling of entrusted funds also put client funds at risk, thereby causing significant potential harm to his clients.

3. Brown's failure to comply with the State Bar's lawful demands for information about his handling of client funds impeded the self-regulatory process and thereby caused significant harm to the profession.

4. Brown's misconduct in continuing to practice law when his license was suspended caused significant harm to the administration of justice.

5. 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 seriousness of Defendant's misconduct and the gravity of the actual harm Defendant's conduct caused to clients, the administration of justice, and the legal profession and because of the gravity of the significant potential harm to potential clients, the public, the administration of justice, and the legal profession if Defendant were permitted to continue practicing law.

6. The hearing panel has considered all lesser sanctions and finds that discipline short of disbarment would not adequately protect the public, the profession and the administration of justice for the reasons set forth above and for the following reasons:

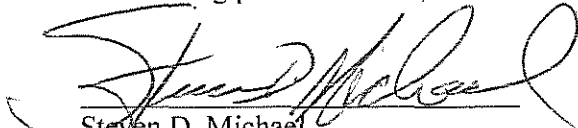
- (a) Defendant engaged in misconduct involving dishonesty. Such offenses demonstrate that the offending attorney is not trustworthy. The public should be able to assume that all lawyers are trustworthy.
- (b) Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses Defendant committed and would send the wrong message to attorneys and to the public regarding the conduct expected of members of the Bar of this State.
- (c) The protection of the public, the legal profession and the administration of justice 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 clients, the public, the legal profession and the administration of justice; 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 upon the foregoing and with the consent of the parties, the hearing panel hereby enters the following

ORDER OF DISCIPLINE

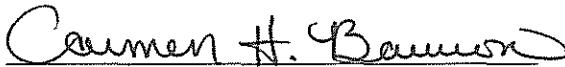
1. Defendant, Kelton T. Brown, is hereby DISBARRED from the practice of law.
2. Defendant shall surrender his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon Defendant.
3. Defendant shall pay the costs and fees of this proceeding as assessed by the Secretary of the North Carolina State Bar, including administrative fees, DHC costs, and costs of the transcription and depositions taken in this case as follows: court reporter costs; transcription costs; shipping, handling, and transmittal costs. Defendant must pay the costs and fees within 30 days of service upon him of the statement of costs by the Secretary.
4. Defendant shall comply with all provisions of 27 NCAC 1B § .0124 of the North Carolina State Bar Discipline & Disability Rules.

15th Signed by the Chair with the consent of the other hearing panel members, this the
day of ~~February~~ *March*, 2011.


Steven D. Michael

Chair, Disciplinary Hearing Panel

CONSENTED TO BY:



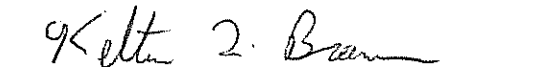
Carmen Hoyme Bannon, Deputy Counsel

Attorney for Plaintiff



Dudley A. Witt

Attorney for Defendant



Kelton T. Brown

Defendant