



STATE OF NORTH CAROLINA
WAKE COUNTY

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

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

JONATHAN BRENT GARNER, Attorney,

Defendant

ORDER OF DISCIPLINE

THIS MATTER was heard on 1 and 2 June 2023 before a Hearing Panel of the Disciplinary Hearing Commission composed of Shannon R. Joseph, Chair, and members Christon S. Halkiotis and Ronald C. Brinson. Jennifer A. Porter represented Plaintiff, the North Carolina State Bar. Defendant, Jonathan Brent Garner, was represented by Melody J. Jolly.

Based upon the pleadings, the stipulated facts, and the evidence admitted 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 (“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, Jonathan Brent Garner (“Garner” or “Defendant”), was admitted to the North Carolina State Bar in 2003, 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, Garner was engaged in the practice of law in the State of North Carolina and maintained a law office in Rockingham, Richmond County, North Carolina.

4. Garner 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. Garner embezzled entrusted funds from TA x4231, including as follows:

- a. \$2,000.00 attributed to client W. Chavis by actions taken on or about December 13, 2017;
- b. \$200.00 attributed to client A. Sellers by actions taken on or about December 13, 2017;
- c. \$1,000.00 attributed to client K. Glidwell by actions taken on or about December 5 – 13, 2017;
- d. \$250.00 attributed to client P. Butler by actions taken on or about December 13 – 15, 2017;
- e. \$350.00 attributed to client S. Leake by actions taken on or about December 13 – 15, 2017;
- f. \$300.00 attributed to client D. McDonald by actions taken on or about December 13 – 15, 2017;
- g. \$100.00 attributed to client A. Quick by actions taken on or about December 13 – 15, 2017;
- h. \$400.00 attributed to client G. Wilbourn by actions taken on or about December 13, 2017 and on or about March 16, 2018;
- i. \$100.00 attributed to client K. Glidwell by actions taken on or about July 20, 2018 and on or about August 21, 2018;
- j. \$1,000.00 attributed to client H. Hale by actions taken on or about August 21 – 24, 2018; and
- k. \$200.00 transferred from TA x4231 to Garner’s operating account with no client attribution on or about December 24, 2018.

6. Garner knowingly disbursed to himself or caused to be disbursed to himself the funds identified in paragraph 5.

7. Garner was not entitled to the funds he disbursed to himself or caused to be disbursed to himself identified in paragraph 5.

8. Garner knew he was not entitled to the funds he disbursed to himself or caused to be disbursed to himself identified in paragraph 5.

9. The disbursements identified in paragraph 5 misused entrusted funds in TA x4231.

10. During his practice, including in December 2018, Garner was assisting in the administration of the Estate of Sarah Branham (“the Estate”).

11. On or about December 24, 2018, Garner issued a check for \$6,763.52 from the Estate's bank account ("the Estate Account").

12. The check Garner issued from the Estate Account for \$6,763.52 was made payable to "Law office of J. Brent Garner (trust)."

13. The check Garner issued from the Estate Account for \$6,763.52 contained the notation "To trust" in the memo line.

14. Garner deposited the check he issued from the Estate Account for \$6,763.52 into TA x4231.

15. Garner was not entitled to take \$6,763.52 from the Estate Account.

16. There was no purpose beneficial to the Estate for moving \$6,763.52 from the Estate Account to TA x4231.

17. On December 24, 2018, there was a deficit of at least \$8,000.00 in the funds Garner should have been maintaining for his clients in TA x4231.

18. The check from the Estate Account was identified as unauthorized and the bank charged back the \$6,763.52 from TA x4231, withdrawing those funds from TA x4231 on or about December 27, 2018.

19. On December 14, 2018, checks were written from TA x4231, including checks #4617, 4618, and 4619, which were issued to the Anson County Clerk of Court to pay \$263.00 each for court costs and fines in traffic cases resolved by Defendant for clients J. Herring, C. Cortez, and J. Brubaker.

20. On December 27, 2018, checks #4617, 4618, and 4619 were tendered by the Anson County Clerk of Court for payment.

21. On December 27, 2018, the balance of TA x4231 was \$138.82 after the chargeback of the \$6,763.52 from the Estate.

22. There were insufficient funds in TA x4231 for checks #4617, 4618, and 4619.

23. If these checks had been paid on December 27, 2018 from TA x4231, this would have resulted in a negative balance in TA x4231 of -\$650.18.

24. Garner attempted to embezzle \$6,763.52 from the Estate by issuing the check from the Estate Account and depositing it into TA x4231.

25. In a letter dated March 29, 2019, Garner made statements in a response to the State Bar in the course of the grievance investigation regarding the check Garner issued from the Estate Account for \$6,763.52.

26. In his March 29, 2019 letter, Garner stated he “was intending to place an asset into the estate account that [he] believed was not there yet” and that he “did not pay attention to the deposit slip [he] was using.”

27. These statements were directly contradictory to the information Garner wrote on the check Garner issued from the Estate Account for \$6,763.52 and were false statements of material facts.

28. Upon examination of TA x4231, the State Bar found the following additional misconduct:

- a. Garner made additional improper disbursements of entrusted funds, including as follows:
 - (1) Disbursing funds for clients prior to funds deposited by credit card for the clients had been credited to the trust account;
 - (2) Disbursing funds for clients for whom no funds for the client were in the trust account or were being deposited; and
 - (3) Disbursing funds for clients in excess of the funds in the trust account for the clients.
- b. Through these improper disbursements, Garner misused other entrusted funds in his trust account;
- c. Garner improperly deposited funds into TA x4231 that were not entrusted property as defined in Rule 1.15-1 of the Rules of Professional Conduct, including funds from individuals to whom he was not providing legal or professional fiduciary services and flat fees earned upon receipt;
- d. Garner failed to conduct the required monthly and quarterly reviews and reconciliations and to create and maintain the required review and reconciliation reports; and
- e. Garner failed to maintain required trust account records, including canceled checks, for the required period of time.

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, Jonathan Brent Garner, and the subject matter.

2. Defendant's conduct, as set forth in the Findings of Fact above, constitutes grounds for discipline as follows:

I. Pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- (a) By knowingly disbursing to himself or causing to be disbursed to himself funds to which he was not entitled from TA x4231, Garner committed criminal acts (embezzlement) that reflect adversely on his honesty, trustworthiness, or fitness in other respects in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c);
- (b) By knowingly attempting to disburse \$6,763.52 from the Estate Account to TA x4231 for no purpose beneficial to the Estate and where it would have been used for the benefit of Garner and/or Garner's clients, Garner committed criminal acts (attempted embezzlement) that reflect adversely on his honesty, trustworthiness, or fitness in other respects in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c);
- (c) By stating in a response to the State Bar during the grievance investigation that he "was intending to place an asset into the estate account that [he] believed was not there yet" and that he "did not pay attention to the deposit slip [he] was using" with respect to the check Garner issued from the Estate Account for \$6,763.52 and deposited into TA x4231, Garner knowingly made false statements of material facts in connection with a disciplinary matter in violation of Rule 8.1(a) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c);
- (d) By improperly disbursing entrusted funds from TA x4231, including disbursing funds attributed to a client in excess of funds in the trust account for the client, disbursing funds attributed to a client when there were no funds in the trust account for the client, and disbursing funds without any client attribution, and thereby misusing other entrusted funds in TA x4231, Garner failed to properly maintain and disburse entrusted funds in violation of Rule 1.15-2(a), (k), and (n);
- (e) By improperly depositing funds into TA x4231 that were not entrusted property as defined in Rule 1.15-1 of the Rules of Professional Conduct, including funds from individuals to whom he was not providing legal or professional fiduciary services and flat fees earned upon receipt, Garner failed to maintain only entrusted property in TA x4231 in violation of Rule 1.15-2(f);
- (f) By failing to conduct the required monthly and quarterly reviews and reconciliations of TA x4231 and failing to create and maintain the required review and reconciliation reports, Garner violated Rule 1.15-3(d)(1), (2), and (3) and Rule 1.15-3(i)(1), (2), and (5); and

(g) By failing to maintain all trust account records required under Rule 1.15-3(b), Garner violated Rule 1.15-3(b) and (g); and

II. Pursuant to N.C. Gen. Stat. § 84-28(b)(3) for knowingly misrepresenting facts or circumstances surrounding any complaint, allegation or charge of misconduct.

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

FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1 – 28 above are reincorporated as if set forth herein.

2. Garner was issued a letter of warning within the three years immediately preceding the filing of the complaint, at the April 14, 2021 Grievance Committee meeting, in file 20G0894. This grievance concerned client N. Watkins. Garner was warned for his lack of diligence in representing this client. It was also noted in the letter of warning that Garner had stated in his response to the State Bar in that grievance that he had forwarded an order in the client's case to the appropriate office but that he in fact did not do so until later.

3. Garner was issued an admonition at the July 21, 2022 Grievance Committee meeting, in file 21G0731. This grievance concerned the same client as was at issue in the prior letter of warning, N. Watkins. Garner was admonished for failing to communicate with his client and with continuing to neglect this client's matter.

4. Garner was deceptive in his response to the State Bar in this case regarding his issuance of the check from the Branham estate account and the deposit of those funds into his trust account. Garner had previously been deceptive in his response to the State Bar in grievance file 20G0894.

5. By embezzling entrusted funds, attempting to embezzle fiduciary funds, and by making false statements to the State Bar, Garner caused significant harm to the profession, by betraying the trust of his clients and the public who trust – and should be able to trust – attorneys to safeguard their funds and to be honest in their statements.

6. By embezzling funds from his trust account and by his other improper disbursements of funds from his trust account, Garner caused significant harm by creating a deficit in his trust account that ultimately culminated in funds deposited for clients no longer being in the trust account, including the funds for court costs and fines for clients J. Herring, C. Cortez, and J. Brubaker in December 2018.

7. By attempting to embezzle funds from the Sarah Branham estate account, Garner caused potential significant harm to Mrs. Ormsby and her cousins who would have been deprived of those funds to which they were rightfully entitled.

8. Garner refused to acknowledge the wrongful and intentional nature of his misconduct.

9. Garner introduced letters from ten (10) members of the legal community, including three district court judges, one superior court judge, and the Richmond County Sheriff, all of whom spoke highly of his good character and reputation.

10. Garner deposited personal funds into the trust account to correct deficits in the trust account caused by his embezzlements and other improper disbursements.

11. Garner demonstrated a cooperative attitude towards the proceedings.

12. The Hearing Panel finds by clear, cogent, and convincing evidence the facts contained in the conclusions set out below of the applicable factors regarding discipline from those listed in 27 N.C. Admin. Code 1B.0116(f).

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 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 unanimously determined the following factors apply:

- (a) Factor (B), Intent of Defendant to commit acts where the harm or potential harm was foreseeable;
- (b) Factor (C), Circumstances reflecting Defendant's lack of honesty, trustworthiness, or integrity;
- (c) Factor (D), Elevation of Defendant's own interest above that of the client;
- (d) Factor (E), Negative impact of Defendant's actions on the client's or public's perception of the profession;
- (e) Factor (F), Negative impact on the defendant's action on the administration of justice, including the administration of the disciplinary proceedings in this case; and
- (f) Factor (I), Acts of dishonesty, misrepresentation, deceit, or fabrication, including engaging in acts to cover up his 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 unanimously determines that the following factors apply:

- (a) Factor (A), Acts of dishonesty, misrepresentation, deceit, or fabrication;
- (b) 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) Factor (D), Commission of a felony.

4. The Hearing Panel has considered suspension and disbarment and has determined that disbarment is warranted in this case.

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 apply in this matter:

- (a) Factor (A), The existence of prior disciplinary offenses in this state;
- (b) Factor (C), Dishonest or selfish motive;
- (c) Factor (D), Timely good faith efforts to make restitution or to rectify consequences of misconduct;
- (d) Factor (F), A pattern of misconduct;
- (e) Factor (G), Multiple offenses;
- (f) Factor (K), A cooperative attitude toward the proceedings;
- (g) Factor (N), Submission of false statements during the disciplinary process;
- (h) Factor (O), Refusal to acknowledge the wrongful nature of the conduct;
- (i) Factor (Q), Good character and reputation in that he is viewed favorably by members of the legal community;
- (j) Factor (S), Degree of experience in the practice of law (Defendant is a relatively experienced lawyer); and
- (k) Factor (T), Issuance of a letter of warning to Defendant within the three years immediately preceding the filing of the complaint.

6. A censure, reprimand, admonition, or suspension would be insufficient discipline because of the gravity of the significant harm and the potential significant harm caused by Defendant's conduct to the profession and the public.

7. Discipline short of disbarment 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) support imposition of disbarment as the appropriate discipline;
- b. Defendant has failed to admit to the wrongful nature of his conduct and has given the Hearing Panel no assurance that he would not engage in future violations of the Rules of Professional Conduct; and
- c. 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.

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, Jonathan Brent Garner, is hereby DISBARRED, effective thirty days from the date this Order of Discipline is served upon him pursuant to 27 N.C. Admin. Code 1B.0128(c).
2. Defendant shall surrender his law license and bar card to the Clerk of the DHC no later than 30 days from service of this order upon him.
3. Defendant shall pay the administrative fees and costs of this proceeding as assessed by the Secretary of the North Carolina State Bar. Defendant must pay the administrative fees and costs within 30 days of service upon him of the statement of administrative fees and costs by the Secretary.
4. Within 15 days of the effective date of this Order, Defendant shall provide the State Bar with an address and telephone number at which clients seeking return of files can communicate with Defendant and obtain such files. Defendant must keep this information current with the State Bar, providing updated information to the State Bar within 15 days of any change.
5. With respect to Defendant's obligation to promptly return client files under 27 N.C. Admin. Code 1B.0128(a), Defendant shall promptly return client files in his possession, custody, or control to clients upon request, within 7 business days of receipt of such request. Defendant will be deemed to have received any such request 5 business days after the date such request is sent to Defendant if the request is sent to the address Defendant provided the State Bar pursuant to the preceding paragraph.
6. Defendant shall comply with all provisions of 27 N.C. Admin. Code 1B.0128 as set out therein. As provided in 1B.0128(d), Defendant shall file an affidavit with the Secretary of the State Bar within ten (10) days of the effective date of this Order, certifying his compliance with the rule.

7. If Defendant fails to fully comply with 27 N.C. Admin. Code 1B.0128, Defendant shall reimburse the State Bar for all expenses incurred by the State Bar in winding down Defendant's practice. Such expenses may include, but are not limited to, storage facility fees, rent payments, moving expenses, charges for secure disposal of client files, postage or other mailing expenses and compensation paid to any appointed trustee and/or the trustee's assistant for time and travel associated with the trusteeship. The State Bar shall send an invoice of wind-down expenses to Defendant at Defendant's last known address of record with the State Bar. Defendant shall not be eligible for any stay of suspension or reinstatement from suspension until he has reimbursed the State Bar for all wind-down expenses incurred.

Signed by the Chair with the consent of the other Hearing Panel members, this the 7th day of June, 2023.

A handwritten signature in black ink, appearing to read "Shannon R. Joseph", written over a horizontal line.

Shannon R. Joseph, Chair
Disciplinary Hearing Panel