

NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
12 DHC 5

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

ROBERT L. MEBANE, Attorney,

Defendant

ORDER
OF DISCIPLINE

This matter is before a hearing panel of the Disciplinary Hearing Commission composed of M. H. Hood Ellis, Chair, and members Joshua W. Willey, Jr. and Charles L. Garrett, Jr. Carmen Hoyme Bannon represented Plaintiff, the North Carolina State Bar. Defendant, Robert L. Mebane, has not participated in this matter and no counsel of record has appeared on his behalf.

On Plaintiff's motion, judgment by default was entered against Defendant. Based upon the pleadings and admissions pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(f) and Rule 8(d) of the Rules of Civil Procedure, 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, Robert L. Mebane, was admitted to the North Carolina State Bar on 23 August 1980 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. Defendant was properly served with process in this action.

4. During the relevant period referred to herein, Mebane was actively engaged in the practice of law in Rutherfordton, Rutherford County, North Carolina.

5. Mebane practiced law with the firm of Hamrick, Bowen, Mebane, & Lloyd, LLP (HBM&L).

6. HBM&L had two trust accounts: (a) a real estate trust account (RBC Centura account number ending in 1230); and (b) a general trust account (BB&T account number ending in 1837).

7. From April 2008 through February 2011, nearly all of the trust account checks issued from HBM&L's real estate and general trust accounts were signed either by Mebane or by a non-lawyer employee acting under Mebane's direction and supervision.

8. In April 2008, Mebane began issuing monthly paychecks to the firm's non-lawyer employees out of HBM&L's general trust account. He continued this practice until all of the employees left the firm in 2010.

9. Mebane also began paying overhead and office expenses like postage, utilities, supplies, and insurance premiums directly from HBM&L's general trust account.

10. The trust account checks that were issued to pay firm expenses did not indicate the client balance upon which the checks were drawn.

11. During the period when Mebane was paying firm expenses out of the general trust account, he intermittently deposited personal funds into that account.

12. Mebane did not deposit sufficient personal funds to cover the firm expenses he paid out of the general trust account. Between April 2009 and April 2010, Mebane misappropriated more than \$60,000.00 of client funds from the general trust account to pay HBM&L expenses.

13. By June 2010, Mebane was the sole remaining person at the firm; No other lawyers or non-lawyer employees worked at HBM&L.

14. Throughout 2010, Mebane repeatedly disbursed money from the general and real estate trust accounts to himself using trust account checks that did not indicate the client balance upon which the checks were drawn.

15. Between April 2010 and January 2011, Mebane converted more than \$75,000.00 of entrusted funds from HBM&L's two trust accounts to his own use by disbursing funds to himself without authorization from the beneficial owners of the funds.

16. As a result of Mebane's misappropriation, at least one client of the firm was deprived of funds to which the client was entitled: In January 2011, HBM&L client Rutherford Hospital attempted to deposit a check for \$71,340.32, which represented entrusted funds that should have been held in the HBM&L general trust account for the Hospital's benefit. Due to Mebane's conversion of funds from the general trust account,

there were insufficient funds in the account to cover the check to Rutherford Hospital and the check was dishonored. As of 12 January 2012, when the complaint in this disciplinary case was filed, the hospital still had not received the \$71,340.32.

17. In the fall of 2010, the State Bar received several notices indicating that checks drawn on Mebane's attorney trust accounts had been presented against insufficient funds ("NSF notices"). Each time the State Bar received an NSF notice, it sent Mebane a letter notifying him of his obligation to explain the overdraft. Mebane failed to respond to any of the State Bar's requests for information about the NSF notices.

18. Due to Mebane's failure to respond to requests for information about the NSF notices, the State Bar opened grievance file #11G0136. On 7 February 2011, Mebane was personally served with the Letter of Notice in grievance #11G0136. The Letter of Notice required Mebane to respond in writing to the allegations therein within fifteen days. Mebane failed to respond to the Letter of Notice.

19. Also on 7 February 2011, Mebane was served with a subpoena for cause audit issued by the Chair of the Grievance Committee that required him to produce trust account documentation to the State Bar by 4 March 2011. Mebane did not comply with the subpoena.

20. In 2009 and part of 2010, HBM&L had several employees who provided services directly related to and for the benefit of Mebane's law practice.

21. Mebane controlled the funds in bank accounts maintained by HBM&L and made decisions concerning how and when those funds would be spent.

22. When Mebane paid HBM&L employees' wages, he was required by law to withhold funds from the employees' paychecks to pay the employees' federal income taxes.

23. Mebane failed to withhold federal income taxes from HBM&L employees from the second quarter of 2009 through the first quarter of 2010. The employees continued to work at HBM&L through at least the first quarter of 2010.

24. Mebane was a "responsible person" within the meaning of Title 26 of the United States Code, in that he had the power to see that the tax obligations of HBM&L were paid.

25. Mebane's failure to withhold federal income tax from employee paychecks from April 2009 through April 2010 was willful.

26. Mebane's conduct as described in paragraphs 20 through 25 above was in violation of 26 U.S.C. § 7202.

As previously found in the Default Judgment and now recited herein, 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, Robert L. Mebane, 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. Gen. Stat. §§ 84-28(b)(2) and (b)(3) as follows:

- (a) By using more than \$60,000.00 of client funds to pay firm expenses, Defendant used entrusted property for the benefit of third parties other than the beneficial owners of that property in violation of Rule 1.15-2(j), engaged in criminal conduct (embezzlement) reflecting adversely on his honesty, trustworthiness, and fitness as a lawyer in violation of Rule 8.4(b), and engaged in conduct involving dishonesty in violation of Rule 8.4(c);
- (b) By converting more than \$75,000.00 of entrusted funds from HBM&L's two trust accounts to his own use, Defendant used entrusted property for personal benefit in violation of Rule 1.15-2(j), engaged in criminal conduct (embezzlement) that reflected adversely on his honesty, trustworthiness, and fitness as a lawyer in violation of Rule 8.4(b), and engaged in conduct involving dishonesty in violation of Rule 8.4(c);
- (c) By commingling personal and entrusted funds in the firm's general trust account, Defendant deposited personal funds into a trust account in violation of Rule 1.15-2(f);
- (d) By paying himself and paying firm expenses using trust account checks that did not indicate a client balance, Defendant withdrew money from a trust account for payment of his fees and/or expenses using an item that did not indicate the client balance upon which the item was drawn in violation of Rule 1.15-2(h);
- (e) By failing to respond as required to the State Bar's inquiries regarding the NSF notices, the Letter of Notice in file number 11G0136, and the subpoena for cause audit, Defendant failed to respond to lawful inquiries of a disciplinary authority and/or formal inquiries issued by the State Bar in a disciplinary matter in violation of Rule 8.1(b) and N.C.G.S. § 84-28(b)(3); and
- (f) By willfully failing to withhold federal income tax from HBM&L employees, Defendant engaged in criminal conduct reflecting adversely on his honesty, trustworthiness and fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct involving dishonesty in violation of Rule 8.4(c).

Based upon 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 in paragraphs 1 through 26 above are reincorporated as if fully set forth herein.

2. The individuals whose entrusted funds were in HBM&L's trust account during the period of time described in this order were, with respect to Mebane, either Mebane's clients or members of the public.

3. By continuously misusing and converting entrusted funds, Mebane engaged in conduct involving dishonesty and deceit over a period of several years.

4. Mebane's misappropriation of entrusted client funds caused significant actual harm to Rutherford Hospital, in that the hospital was deprived of \$71,340.32 that had been entrusted to Mebane.

5. When a lawyer converts entrusted funds to his own use, it brings disrepute to the legal profession.

6. Clients are entitled to attorneys they can trust. Mebane, by engaging in conduct involving misrepresentation and deceit over a substantial period of time, has shown himself to be not trustworthy.

7. Willful failure to comply with federal tax law in violation of 26 U.S.C. § 7202 is a felony offense.

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

9. The hearing panel has carefully considered all of the different forms of discipline available to it in considering the appropriate discipline to impose in this case.

Based upon the foregoing Findings of Fact, Conclusions of Law, and additional Findings of Fact Regarding Discipline, and upon consideration of the factors set forth in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(w), the hearing panel hereby enters the following additional

CONCLUSIONS OF LAW REGARDING DISCIPLINE

1. The hearing panel has carefully considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w) of the Rules and Regulations of the North Carolina State Bar. The hearing panel finds evidence of the following factors:

- a. From Rule .0114(w)(1) and Rule .0114(w)(2):
 - i. Intent of the defendant to cause the resulting harm or potential harm;
 - ii. Intent of the defendant to commit acts where the harm or potential harm is foreseeable;
 - iii. Circumstances reflecting the defendant's lack of honesty, trustworthiness, or integrity;
 - iv. Elevation of the defendant's own interests above that of the client;
 - v. Effect of the defendant's conduct on third parties;
 - vi. Acts of dishonesty, misrepresentation, deceit, or fabrication;
 - vii. Misappropriation of assets to which the defendant was not entitled; and
 - viii. Commission of a felony.
- b. From Rule .0114(w)(3):
 - i. Dishonest or selfish motive;
 - ii. A pattern of misconduct;
 - iii. Multiple offenses;
 - iv. Bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency; and
 - v. Substantial experience in the practice of law.

2. Because the beneficial owners of the funds in HBM&L's trust account during the period of time described in this order were, with respect to Mebane, either Mebane's clients or members of the public, Mebane caused significant harm and potential harm to his clients and/or the public by:

- a. Embezzling more than \$60,000.00 of client funds to pay firm expenses; and
- b. Converting more than \$75,000.00 of entrusted funds from HBM&L's two trust accounts to his own use.

3. Mebane's actions caused significant potential harm to the profession in that his refusal to respond to lawful inquiries from the State Bar undermines the legal profession's ability to self-regulate. Mebane's commission of criminal acts reflecting

adversely on his honesty, trustworthiness or fitness as a lawyer also caused significant potential harm to the profession, in that criminal conduct by attorneys tends to bring the legal profession into disrepute.

4. The hearing panel has considered lesser alternatives and finds that suspension of Mebane'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 Mebane's conduct, and the threat of significant potential harm Mebane poses to the public.

5. The hearing panel considered all lesser sanctions and finds that discipline short of disbarment would not adequately protect the public for the following reasons:

- a. Mebane committed misdeeds involving moral turpitude and violations of the public trust, including theft and deceit. Misconduct involving misrepresentation and deceit are among the most serious that an attorney can commit. Such offenses demonstrate that the offending attorney is not trustworthy. Clients are entitled to have trustworthy attorneys.
- b. Mebane engaged in criminal acts reflecting adversely on his honesty, trustworthiness or fitness as a lawyer, and engaged in abuses of trust by embezzling funds entrusted to his law firm.
- c. Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses Mebane committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar of this State.
- d. The protection of the public and the legal profession requires that Mebane 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, and the legal profession; 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 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

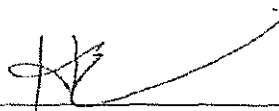
1. Defendant, Robert L. Mebane, is hereby DISBARRED from the practice of law.

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 of this proceeding 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 NCAC 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 22 day of May, 2012.



M. H. Hood Ellis, Chair
Disciplinary Hearing Panel