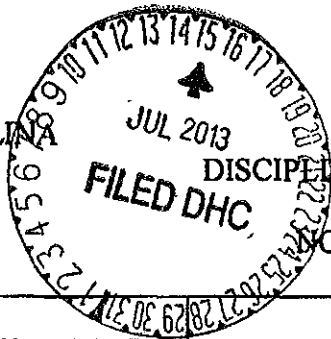


STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
12 DHC 36

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

JOHN A. MAUNEY, Attorney,

Defendant

ORDER OF DISCIPLINE

THIS MATTER was heard on 27 June 2013 by a hearing panel of the Disciplinary Hearing Commission composed of Fred M. Morelock, Chair, Irvin W. Hankins, III, and Joseph Barlow Herget pursuant to 27 N.C.A.C. 1B § .0114 of the Rules and Regulations of the North Carolina State Bar. Carmen Hoyne Bannon represented Plaintiff, the North Carolina State Bar. Defendant was not represented by counsel and did not appear at the hearing.

Based upon the pleadings and evidence presented 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 ("Plaintiff" or "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, John A. Mauney, was admitted to the North Carolina State Bar in August 1979 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 period referred to herein, Mauney was actively engaged in the practice of law in Kitty Hawk, Dare County, North Carolina.

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

5. Mauney was the sole owner of a professional corporation, John A. Mauney & Associates, PC ("Mauney & Associates" or "the firm"), under which name he operated his law firm.

6. In connection with his law practice, Mauney maintained two attorney trust accounts at RBC Bank (account numbers ending in -7955 and -7998). Mauney also maintained two attorney trust accounts at First Bank (account numbers ending in -0608 and -0802). The primary operating account and payroll account for Mauney & Associates were also at First Bank.

7. On numerous occasions Mauney transferred money from his operating account into one of his trust accounts without identifying the purpose of the transfer. The amounts of these transfers exceeded the amounts necessary to pay any bank service charges on the trust accounts.

8. On numerous occasions Mauney deposited funds received in trust from clients for court costs and/or filing fees into his operating account.

9. On numerous occasions Mauney disbursed money from his trust accounts to his operating account via online transfers that did not capture the purpose of the disbursement or the client balance against which it was drawn.

10. Mauney did not maintain the following records for his trust accounts:

- (a) Documentation of the source of all deposits and the client on whose behalf the deposit was received.
- (b) Copies of all checks drawn on the accounts showing the recipient of the disbursement and the client balance against which it was drawn.
- (c) Records of electronic withdrawals and/or transfers showing the recipient of the disbursement and the client balance against which it was drawn.
- (d) General ledgers of receipts and disbursements identifying the client on whose behalf each receipt and disbursement was made.

11. For each of his four trust accounts, Mauney did not compare the balance in the account as shown on his records to the monthly bank statement balance.

12. For each of his four trust accounts, Mauney did not total his individual client ledger balances and compare them to the current bank statement balance at least quarterly.

13. In 2008 and 2009, Mauney & Associates had employees who provided services directly related to and for the benefit of Mauney's law practice.

14. As the managing attorney of Mauney & Associates, Mauney had authority over the funds in bank accounts maintained by Mauney & Associates and made decisions concerning how and when those funds would be spent.

15. When Mauney & Associates paid its employees, it was required to withhold funds from the employees' paychecks to pay federal taxes.

16. From the time the funds were withheld from employees' paychecks until they were paid to the IRS, Mauney & Associates and/or Mauney were obligated to hold the funds in trust for the benefit of the IRS.

17. Mauney 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 Mauney & Associates were paid.

18. Funds withheld from employee paychecks were entrusted funds that Mauney was required to hold in trust as a fiduciary for his employees and/or the IRS. Mauney had a fiduciary duty to deliver all withheld funds to the IRS.

19. For the entirety of 2008 and for the first quarter of 2009 ("the lien period"), funds withheld by Mauney & Associates from employee paychecks were not delivered to the IRS as required by law and were instead utilized for the benefit of Mauney & Associates and/or for the benefit of Mauney.

20. Mauney's failure to pay over to the IRS funds withheld from employee paychecks during the lien period was willful.

21. In August 2009, the IRS filed a Notice of Federal Tax Lien against Mauney & Associates. The notice of lien stated that Mauney & Associates owed a total of \$179,650.86 for unpaid employer withholding taxes for the lien period.

22. In August 2010, the IRS filed a Notice of Federal Tax Lien against Mauney individually. The notice of lien against Mauney assessed \$92,591.05 in Trust Fund Recovery Penalties against Mauney.

23. Trust Fund Recovery Penalties are assessed, pursuant to 26 U.S.C. § 6672, against any person required to collect, truthfully account for, and pay over any tax who willfully fails to collect, or truthfully account for and pay over the tax.

24. Mauney permitted one or more non-lawyer employees of Mauney & Associates to exercise control over his four attorney trust accounts, payroll account, and operating account.

25. Mauney had direct supervisory authority over the non-lawyer employees of the firm, but did not regularly review activity in any of the bank accounts referenced in paragraph 24.

26. Mauney did not employ any other policy or procedure to ensure that the non-lawyer employees of Mauney & Associates who received and disbursed funds (including entrusted funds) complied with the law and the Rules of Professional Conduct.

27. On 2 September 2009, Mauney served as the closing attorney for a real estate transaction in which Mary Wade purchased property in Nags Head, NC.

28. In connection with Wade's closing, Mauney received \$650.00 in trust for the payment of the title insurance premium. Mauney did not disburse this amount to the title company and did not obtain a title policy for Wade.

29. Wade's closing was one of more than thirty closings conducted by Mauney during the eighteen month period from August 2008 through January 2010 in which Mauney collected entrusted funds for title insurance premiums but did not remit the premiums to the title company and did not obtain title policies for his clients.

30. On 2 July 2010, Mauney served as the closing attorney for a real estate transaction in which Jeffrey and Kellie Gardner purchased property in Jarvisburg, NC.

31. In connection with the Gardners' closing, Mauney received the following amounts in trust:

- (a) \$1,107.00 designated for payment of their homeowner's insurance premium;
- (b) A total of \$968.00 designated for payments to third parties who provided septic, well, and plumbing services on the property; and
- (c) \$550.00 to be held in escrow pending completion of home repairs and then paid to the Gardners.

32. Mauney did not disburse the entrusted funds described in paragraph 31 above.

33. When the Gardners contacted Mauney regarding his non-payment of the funds described in paragraph 31, they were told that his trust account had been frozen.

34. The Gardners requested a letter explaining the unavailability of the entrusted funds that they could present to their creditors, but Mauney did not provide such a letter.

35. In October 2008, Chase and Betty Crawford hired Mauney on a contingent fee basis to represent them in bringing a civil suit. The Crawfords provided Mauney with \$10,000.00 to be used for litigation costs and expenses.

36. Mauney did not incur any litigation expenses for the Crawfords beyond standard filing fees and minimal incidental costs, such as postage and/or copying.

37. Mauney's trust account records do not reflect any disbursements for the benefit of the Crawfords. Mauney never provided the Crawfords with an accounting of how their entrusted funds were disbursed.

38. On 15 October 2008, Mauney deposited the Crawfords' \$10,000.00 into his First Bank trust account ending in 0802 ("the non-real estate trust account").

39. In February of 2009, Mauney was confronted by one of his employees about the fact that entrusted funds to which the firm was not entitled were being withdrawn from the non-real estate trust account and used for the firm's benefit.

40. By 26 August 2009, the balance in Mauney's First Bank trust account ending in 0802 had dropped to only \$205.53, meaning the majority of the Crawfords' funds had been disbursed from the trust account by that date.

41. Between October 2008 when he received the Crawfords' \$10,000.00 in trust and August 2009 when the account balance was \$205.53, Mauney transferred a total of \$204,674.40 from that trust account into his operating account using online transfers that did not capture the client balance against which the disbursement was being made.

42. Between October 2008 when he received the Crawfords' \$10,000.00 in trust and August 2009 when the account balance was \$205.53, Mauney made numerous disbursements from that account for the benefit of other clients.

43. Because Mauney incurred only minimal litigation expenses for the benefit of the Crawfords, the majority of the \$10,000.00 they entrusted to Mauney was used for disbursements to the firm and/or to other clients of the firm.

44. The Crawfords did not authorize Mauney to use their money for his personal benefit, the benefit of the firm, or the benefit of third parties.

45. On 6 April 2010, the State Bar received notice from RBC Bank that a check had been presented against one of Mauney's trust accounts when the balance in that account was insufficient to cover the check (this notification is referred to hereafter as an "NSF notice").

46. On 9 April 2010, Mauney received a certified letter from the State Bar requesting an explanation of the NSF notice. The letter provided that he was required to respond within 15 days. Mauney did not respond. A second certified letter regarding the NSF notice, sent 5 May 2010, was returned marked "unclaimed."

47. In August 2010, Mauney was served with a Letter of Notice and Subpoena for Cause Audit in grievance file 10G0830, which related to overdrafts in his trust accounts. He was required to respond in writing to the Letter of Notice within 15 days. Mauney did not submit a response to the Letter of Notice until October 2011.

48. The Subpoena for Cause Audit required Mauney to produce bank records for his four trust accounts, monthly and quarterly reconciliations of the accounts, client ledgers, settlement statements, disbursement summaries, HUD-1 Settlement Statements, cash receipts, and SoftPro-generated accounting documents. The subpoena required Mauney to produce these documents to the State Bar by 7 September 2010. Mauney did not produce the documents by that date.

49. On four occasions between September 13 and October 21, 2010, Mauney produced to the State Bar documents that were partially responsive to the subpoena. Many of these records were illegible. Mauney did not produce complete records and did not comply fully with the subpoena.

50. In November 2010, Mauney left the country. After he returned from more than eight months abroad, Mauney was interviewed by the State Bar about his trust accounts in August 2011.

51. At the August 2011 interview, Mauney was provided with a list of documentation and information that he had not produced in response to the subpoena and/or was necessary in order for the State Bar to complete its analysis of his trust accounts. Mauney was asked to produce the listed documents but did not do so. The State Bar reiterated this request for information on at least five occasions over the ensuing year. Mauney did not comply with the request.

52. Mauney served as the registered agent for numerous North Carolina limited liability companies ("LLCs"). In addition to performing the duties of a registered agent, Mauney agreed to be responsible for filing the LLCs' annual reports with the Secretary of State.

53. In 2009, Mauney did not file annual reports for many of the LLCs for which he served as registered agent.

54. In the spring of 2010, Mauney received notices from the Department of the Secretary of State notifying him that more than twenty of the LLCs for which he served as registered agent were at risk of being administratively dissolved due to delinquency in filing annual reports.

55. Mauney did not file the delinquent annual reports and did not notify his clients who were owners/members of the LLCs about the delinquencies.

56. In August and September 2010, Mauney received notices from the Department of the Secretary of State that at least twenty of the LLCs for which he had not filed annual reports were being administratively dissolved. Mauney did not notify his clients who were owners/members of the LLCs of the dissolutions.

57. By 9 November 2010, Mauney had closed his law practice, put all of his records in storage, and travelled to Ecuador, where he planned to remain for an extended period.

58. When Mauney closed his law practice, he did not notify all current clients that he would no longer represent them. He did not notify clients who were owners/members of the LLCs for which he served as registered agent that he would no longer serve in that capacity.

59. When Mauney closed his law practice, he did not inform current and former clients regarding the whereabouts of their files or how they could obtain those files.

60. From late August through mid-October, the Gardners were communicating with Mauney's office about their entrusted funds and an outstanding issue with their deed. Eventually, they were unable to contact the office by phone. Mr. Gardner learned that Mauney had closed his practice by visiting the office and observing that it was vacant.

Based on the record and the foregoing Findings of Fact, the hearing panel makes the following:

CONCLUSIONS OF LAW

1. All parties are properly before the hearing panel and this tribunal has jurisdiction over Defendant, John A. Mauney, and the subject matter of this proceeding.
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) in that Mauney violated the Rules of Professional Conduct in effect at the time of the conduct as follows:
 - (a) By transferring money from his operating accounts into his trust accounts, Mauney commingled personal and entrusted funds in his trust accounts in violation of Rule 1.15-2(f);
 - (b) By depositing funds received for court costs and/or filing fees into his operating account, Mauney did not deposit entrusted funds into a trust account in violation of Rule 1.15-2(b);
 - (c) By disbursing money from his trust accounts into his operating accounts via online transfers, Mauney used items that did not capture the client balance against which the disbursement was made to withdraw funds from a trust account for payment to himself in violation of Rule 1.15-2(h);
 - (d) By failing to maintain adequate documentation of deposits, disbursements, and electronic withdrawals, and by failing to maintain complete general ledgers for his trust accounts, Mauney violated Rule 1.15-3(b);
 - (e) By failing to perform monthly or quarterly reconciliations of his trust accounts, Mauney violated Rule 1.15-3(d);
 - (f) By willfully failing to pay over to the IRS funds withheld from the paychecks of Mauney & Associates employees, Mauney violated 26 U.S.C. § 7202, which is a criminal act reflecting adversely on his honesty, trustworthiness and fitness as a lawyer in violation of Rule 8.4(b);
 - (g) By using funds held in trust for the IRS for personal benefit or the benefit of his law firm, Mauney used entrusted funds for his own benefit or the benefit of someone other than the legal or beneficial owner of the funds in violation of Rule 1.15-2(j) and committed a criminal act reflecting adversely on his honesty, trustworthiness or fitness as a lawyer—embezzlement—in violation of Rule 8.4(b);
 - (h) By not implementing any policy or procedure to ensure that his non-lawyer employees handled funds (including entrusted funds) in compliance with the law and the Rules, Mauney did not make reasonable efforts to ensure that the firm had in effect measures giving reasonable assurance that the non-lawyers' conduct was compatible with Mauney's professional obligations in violation of Rule 5.3(a);

- (i) By failing to regularly review the activity in any of his law firm accounts, including his trust accounts, Mauney did not make reasonable efforts to ensure that the conduct of a non-lawyer over whom he had direct supervisory authority was compatible with his professional obligations in violation of Rule 5.3(b);
- (j) By failing to timely pay title insurance premiums and obtain title policies for at least thirty of his real estate clients, including Wade, Mauney did not promptly pay entrusted funds to a third party in violation of Rule 1.15-3(m) and did not act with reasonable diligence on behalf of his clients in violation of Rule 1.3;
- (k) By failing to disburse to the appropriate recipients entrusted funds he collected in connection with the Gardners' closing and by failing to honor the Gardners' request for a written explanation of why the funds were not available, Mauney did not promptly pay entrusted funds to his clients and/or a third party in violation of Rule 1.15-3(m) and did not act with reasonable diligence on behalf of his clients in violation of Rule 1.3;
- (l) By failing to provide the Crawfords an accounting for the use of their entrusted funds, Mauney violated Rule 1.15-3(e);
- (m) By using entrusted funds belonging to the Crawfords for the benefit of himself, his firm, and/or his other clients, Mauney used entrusted funds without authorization for the benefit of a third party in violation of Rule 1.15-2(j), committed a criminal act reflecting adversely on his honesty, trustworthiness or fitness as a lawyer—to wit: embezzlement—in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, deceit, or misrepresentation in violation of Rule 8.4(c);
- (n) By not responding to the NSF notice, not timely responding to the Letter of Notice regarding grievance file 10G0830, and not complying with the Subpoena for Cause Audit despite repeated requests for compliance, Mauney failed to produce trust account records for audit 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(b);
- (o) By failing to file annual reports and failing to inform clients who had an interest in the LLCs for which he served as registered agent about the delinquent filings and dissolutions, Mauney did not act with reasonable diligence in violation of Rule 1.3 and did not explain a matter to the extent reasonably necessary to permit his clients to make informed decisions regarding the representation in violation of Rule 1.4(b);
- (p) By failing to notify clients, including the Gardners, that he was closing his law practice and would not assist them further with their legal matters, Mauney did not keep his clients reasonably informed of the status of their legal matters and did not explain matters to the extent reasonably necessary to permit the clients to

make informed decisions regarding the representation, in violation of Rule 1.4(a) & (b); and

- (q) By failing to inform clients who had an interest in the LLCs for which he served as registered agent that he would no longer serve in that capacity and failing to inform current and former clients regarding the whereabouts of their files or how to access those files when he closed his law practice, Mauney did not take steps to the extent reasonably practicable to protect his clients' interests upon termination of the representation in violation of Rule 1.16(d).

3. Defendant's conduct, as set out in the Findings of Fact above, also constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(3) in that failing to respond to the NSF notice, failing to timely respond to the Letter of Notice regarding grievance file 10G0830, and failing to comply with the Subpoena for Cause Audit despite repeated requests for compliance were failures to answer a formal inquiries issued by the North Carolina State Bar in a disciplinary matter.

Based upon the foregoing Findings of Fact and Conclusions of Law, the record in this case, and the additional evidence regarding discipline 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 through 60 above are reincorporated as if fully set forth herein.
2. In September 2009, Mauney entered into an installment payment agreement with the IRS for the unpaid employee withholding taxes described above. Mauney did not comply with the terms of that agreement and the IRS issued a notice of default in April 2010.
3. After the "lien period" described in the Findings of Fact above, several additional Notices of Federal Tax Lien were filed against Mauney's firm, reflecting his continued non-payment of employee withholding taxes in 2009 and 2010.
4. Mauney also did not make payments to the North Carolina Department of Revenue for state withholding taxes during the lien period. The evidence presented in this case established that Mauney willfully failed to pay state and federal payroll withholding taxes over an extended period, which is a felony under state and federal law, respectively.
5. When lawyers violate the law in their business and personal affairs, it brings disrepute upon the legal profession and undermines public confidence in lawyers.
6. Mauney's failure to file annual reports for LLCs and failure to notify the individual clients with an interest in the LLCs that Notices of Grounds for Administrative Dissolution had been issued created a foreseeable risk that the entities would be dissolved to the clients' detriment.

7. Mauney's failure to obtain title insurance policies for real estate clients and mortgage lenders created a foreseeable risk of significant harm by leaving the buyers and lenders unprotected against potential future claims or clouds on title.

8. The Crawfords were in a particularly vulnerable position when they sought Defendant's assistance, in that they were a young couple who had recently suffered the loss of their business and had a large monetary award entered against them due to a default judgment. Moreover, the \$10,000.00 they entrusted to Mauney was all the money they had left to pursue their case. Because Defendant misappropriated the Crawfords' funds, they could not afford to pursue their claims and were forced to abandon them.

9. As a result of Defendant's actions, the Crawfords were unable to achieve the goals of the legal representation. Specifically, they lost the opportunity to challenge the judgment that had been entered against them, and were unable to pursue related claims regarding the loss of their business.

10. Mauney's failure to promptly disburse entrusted funds to third parties as directed by the Gardners created a foreseeable risk that creditors of the Gardners would not be paid for goods and services rendered, and a foreseeable risk that those creditors would try to collect from the Gardners funds which were no longer available because they had been entrusted to Mauney.

11. The Gardners were in a vulnerable position when they sought Defendant's representation for the closing on their home. The Gardners and their children were moving to North Carolina from out of state, and relied on Mauney to use the funds they entrusted to him to pay substantial costs associated with the closing. Because Defendant did not pay those costs, the Gardners had to pay them out-of-pocket, resulting in significant financial harm.

12. Neither the Crawfords nor the Gardners have recouped from another source the money they entrusted to Mauney.

13. Mauney's former clients testified that due to their experience with Mauney, they will be more cautious about trusting lawyers in the future.

14. Defendant gave sworn deposition testimony in this case. During that deposition, Defendant made demonstrably false statements under oath. For example:

- a. Defendant testified that he was unable to produce documents requested by the State Bar because they were among voluminous documents seized by the Kitty Hawk Police Department (KHPD) in connection with its investigation of Mauney's allegation that one of his employees embezzled from the law firm. Credible testimony at the hearing established that KHPD had only minimal records from Mauney's law firm, that those documents were copies, not originals, and that none of the documents in KHPD's possession were responsive to the State Bar's requests.
- b. Defendant testified that in April 2009 when he "discovered" that his wife had not paid the firm's employee withholding taxes for more than a year, he immediately terminated her employment at the firm. This statement is directly contradicted by

a document authored by Defendant in which he informed his CPA that as a cost-cutting measure, his wife would "retire" from the firm at the end of August 2009.

- c. Defendant testified that for the "twenty-something years before [2009]" he "never had an issue" with payment of employee withholding taxes. This statement was false, as evidenced by a 1998 tax lien against J.A. Mauney, PA for employee withholding taxes that were not paid in 1992 and 1996.
- d. Defendant testified that the only income he personally received from his law firm was his salary, which remained the same "forever." The evidence presented in this proceeding showed that Mauney in fact received significant additional income from the firm, over and above his salary.

15. Although Defendant initially participated in this matter, he did not respond fully and completely to the State Bar's discovery requests and did not comply with this tribunal's order compelling him to produce certain documents requested by the State Bar. Mauney also did not appear at the hearing in this matter, as required by 27 N.C.A.C. 1B § .0114(m) ("The defendant will appear in person before the hearing panel at the time and place named by the chairperson").

16. No evidence was presented that tended to show Mauney's non-compliance with the rules and orders of this tribunal was a good faith mistake or the result of excusable neglect.

17. Mauney's failure to comply with the rules and orders of a tribunal is not limited to this case: In January 2013, an Order of Contempt was issued by the Dare County District Court due to Mauney's non-compliance with a prior Order of Sanctions against him for violating Rule 11 of the Rules of Civil Procedure.

18. It undermines the administration of justice when attorneys do not comply with the rules and orders of a tribunal.

19. Self-regulation of the legal profession depends upon the cooperation and participation of lawyers in the self-regulatory process. When a lawyer refuses to respond to a disciplinary authority, submits false evidence in a disciplinary proceeding, and/or does not participate in the disciplinary process, it undermines the system of self-regulation.

20. Defendant has no prior professional discipline.

21. Defendant's course of conduct over an extended period of time was characterized by prioritizing his own pecuniary interests over his clients' interests and his obligation to comply with the law.

22. Defendant's mishandling and misappropriation of entrusted funds created a foreseeable risk that some other entity, such as an insurance carrier or the North Carolina State Bar's Client Security Fund, would bear the financial consequences of his misconduct.

23. Mauney's response to the State Bar's grievance inquiry, answer to the DHC complaint, and deposition testimony reflect a pervasive tendency to blame others for the consequences of his misconduct rather than expressing remorse or acknowledging wrongdoing.

24. Mauney did not take steps to mitigate or rectify the harm to his clients and third parties that resulted from his misconduct.

25. Clients are entitled to attorneys they can trust. A lawyer's conversion of entrusted funds is an egregious breach of fiduciary duty, reflecting the lawyer's lack of trustworthiness and integrity. By engaging in multiple instances of dishonest conduct and deceit over a substantial period of time, Mauney has shown himself to be untrustworthy.

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

- (a) The intent of the Defendant to commit acts where the harm or potential harm is foreseeable;
- (b) Defendant's lack of honesty, trustworthiness and integrity;
- (c) Defendant's elevation of his own interests above that of a client;
- (d) The negative impact of Defendant's actions on the client's and the public's perception of the profession;
- (e) The negative impact on the administration of justice;
- (f) The impairment of the client's ability to achieve the goals of the representation;
- (g) The effect of Defendant's conduct on third parties;
- (h) Multiple instances of failure to participate in the legal profession's self-regulation process;
- (i) Acts of dishonesty, misrepresentation, deceit or fabrication;
- (j) Misappropriation or conversion of assets to which Defendant was not entitled;
- (k) Commission of a felony;

- (l) An absence of prior disciplinary offenses;
- (m) Dishonest or selfish motive;
- (n) Indifference to making restitution;
- (o) Pattern of misconduct;
- (p) Multiple offenses;
- (q) Bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency;
- (r) Submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- (s) Refusal to acknowledge wrongful nature of conduct;
- (t) Lack of remorse; and
- (u) Vulnerability of the victims.

2. The hearing panel has considered all forms of written discipline and suspension as potential discipline but finds that written discipline or suspension would not be sufficient discipline because of the gravity of the harm and potential harm to Defendant's clients, the public, the administration of justice, and the profession in the present case. In light of all the relevant facts and circumstances, the hearing panel finds and concludes that only Defendant's disbarment will adequately protect the public.

3. The hearing panel concludes that discipline short of disbarment would not adequately protect the public for the following reasons:

- (a) In a fiduciary relationship like that of attorney and client, one person, in a position of vulnerability, justifiably places confidence, reliance and trust in another whose aid, advice or protection is sought. In such a relationship the fiduciary must act at all times for the benefit and interest of the person who trusts. Mauney betrayed clients who relied on and trusted him, demonstrating that he is not fit to serve as a fiduciary.
- (b) Mauney committed misdeeds involving moral turpitude and violations of the public trust, including misrepresentations and deceit. Misconduct involving misrepresentations 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.

- (c) Mauney 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 him by his clients.
- (d) Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses Mauney committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar of this State.
- (e) The protection of the public and the legal profession requires that Mauney 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 and Conclusions Regarding Discipline, the hearing panel enters the following

ORDER OF DISCIPLINE

1. Defendant, John A. Mauney, 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 administrative fees and costs of this proceeding as assessed by the Secretary of the North Carolina State Bar. Defendant must pay the fees and 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 15th day of July, 2013.



Fred M. Morelock, Chair
Disciplinary Hearing Panel