

STATE OF NORTH CAROLINA

WAKE COUNTY

THE NORTH CAROLINA STATE BAR



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
08 DHC 4

Plaintiff

v.

TONYA J. CREW, Attorney,

Defendant

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

This matter was heard on 1 August 2008, before a hearing panel of the Disciplinary Hearing Commission composed of C. Colon Willoughby, Jr., Chair, Theodore C. Edwards, II, and Rebecca Brownlee. Carmen K. Hoyme represented Plaintiff, the North Carolina State Bar. Defendant, Tonya J. Crew, represented herself. Based upon the pleadings and the 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, 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 ("NCAC").

2. Defendant, Tonya J. Crew (hereinafter "Crew" or "Defendant"), was admitted to the North Carolina State Bar in 1999, 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 Revised Rules of Professional Conduct.

3. During the relevant periods referred to herein, Crew was engaged in the practice of law in the State of North Carolina and maintained a law office in Roanoke Rapids, Halifax County, North Carolina.

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

5. On or about 4 June 2003, Crew received a check in the amount of \$22,000.00 for the benefit of her client, Christine A. Philpot ("Philpot").

6. Crew received the \$22,000.00 check in trust.
7. On or about 4 June 2003, Crew deposited the \$22,000.00 check into her attorney trust account at First Citizens Bank, account #003102305473 (hereinafter referred to as "account #5473.")
8. From June 2003 until 15 November 2004, the \$22,000.00 held in trust for Philpot remained in account #5473.
9. On 15 November 2004, Crew withdrew the \$22,000.00 from account #5473.
10. On 22 November 2004, Crew opened a new bank account at Generations Community Credit Union ("account #2668 75") and deposited the \$22,000.00 into account #2668 75.
11. Account #2668 75 was not an attorney trust account. Account #2668 75 was a personal bank account in the name of Tonya J. Crew.
12. Crew was not authorized by Philpot to deposit Philpot's entrusted funds into Crew's personal bank account.
13. On 24 November 2004, Crew withdrew cash in the amount of \$2000.00 from account #2668 75.
14. On 1 December 2004, Crew requested and obtained certified check #40402752 in the amount of \$5,000.00 from account #2668 75. Check #40402752 was payable to Crew.
15. On 3 December 2004, Crew requested and obtained certified check #40402759 in the amount of \$1727.96 from account #2668 75. Check #40402759 was payable to Crew.
16. On 23 December 2004, Crew withdrew cash in the amount of \$1,000.00 from account #2668 75.
17. On 29 December 2004, Crew withdrew cash in the amount of \$300.00 from account #2668 75.
18. On 7 January 2005, Crew withdrew cash in the amount of \$2,500.00 from account #2668 75.
19. On 24 January 2005, Crew withdrew cash in the amount of \$500.00 from account #2668 75.
20. On 9 March 2005, Crew withdrew cash in the amount of \$650.00 from account #2668 75.

21. On 9 March 2005, Crew withdrew cash in the amount of \$500.00 from account #2668 75.

22. On 18 March 2005, Crew requested and obtained certified check #40402856 in the amount of \$7,500.00 from account #2668 75.

23. Check #40402856 was payable to attorney Amy Robinson, who represented Crew in Crew's purchase of her personal residence located at 17 Green Ash Court, Roanoke Rapids, North Carolina.

24. At Crew's instruction, Amy Robinson applied the \$7,500.00 toward Crew's purchase of her personal residence.

25. On 20 April 2005, Crew withdrew cash in the amount of \$100.00 from account #2668 75.

26. On 17 November 2005, Crew withdrew cash in the amount of \$100.04 from account #2668 75.

27. On 17 November 2005, defendant also transferred \$89.00 from account #2668 75 into her personal savings account at Generations Community Credit Union.

28. After the transactions on 17 November 2005, no funds belonging to Philpot remained in account #2668 75.

29. Defendant did not deliver any portion of the \$22,000.00 to Philpot or to any other person or entity for Philpot's benefit.

30. Crew utilized the \$22,000.00 for Crew's own personal benefit or for the benefit of a person or persons other than Philpot without authorization to do so from Philpot.

31. When questioned about the Philpot funds by a State Bar investigator, Crew represented that she escheated the \$22,000.00 to the State of North Carolina.

32. Crew's representation that she escheated the funds to the State of North Carolina was false.

33. Crew's representation that she escheated the funds to the State of North Carolina was made by Crew intentionally, in order to deceive the State Bar.

34. Crew later represented to the State Bar that account #2668 75 was opened by a worker in Crew's office without Crew's knowledge.

35. Crew's representation set forth in paragraph 34 above was false.

36. Crew's representation set forth in paragraph 34 above was made by Crew intentionally, in order to deceive the State Bar.

37. Crew knowingly and willfully converted and embezzled the \$22,000.00 she held in trust for Philpot.

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

CONCLUSIONS OF LAW

1. All the parties are properly before the hearing panel and the panel has jurisdiction over Defendant, Tonya J. Crew, and the subject matter.

2. Crew'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) as follows:

- (a) By willfully, and knowingly converting the \$22,000.00 which she was holding in trust for the benefit of Philpot, and by utilizing those funds for her own personal benefit without authorization from Philpot, Crew used entrusted property for her personal benefit without authorization, in violation of Rule 1.15-2(j); engaged in criminal conduct, embezzlement, that reflects adversely on her honesty, trustworthiness, or fitness to practice, in violation of Rule 8.4(b); and engaged in conduct involving fraud, deceit, dishonesty, or misrepresentation in violation of Rule 8.4(c); and
- (b) By falsely representing to the State Bar that she had escheated the \$22,000.00 to the State of North Carolina and falsely representing to the State Bar that account #2886 75 was opened by an office worker without her knowledge, Crew engaged in conduct involving fraud, deceit, dishonesty, or misrepresentation in violation of Rule 8.4(c) and knowingly made a false statement of material fact in connection with a disciplinary matter in violation of Rule 8.1(a).

Based upon the foregoing Findings of Fact and Conclusions of Law, 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 AND CONCLUSIONS REGARDING DISCIPLINE

- 1. Crew's misconduct is aggravated by the following factors:
 - a. Prior disciplinary offenses, to wit, a 2007 Admonition;
 - b. Dishonest or selfish motive;

- c. A pattern of misconduct;
 - d. Multiple offenses;
 - e. The submission of false statements during the disciplinary process;
 - f. Refusal to acknowledge wrongful nature of conduct;
 - g. Indifference to making restitution; and
 - h. Issuance of a letter of warning to the defendant within the three years preceding the filing of the complaint.
2. Crew's misconduct is mitigated by the following factor:
- a. Physical impairment;
3. The aggravating factors outweigh the mitigating factor.
4. Crew's actions caused significant actual harm to her client in that her misappropriation of the \$22,000.00 which she was holding in trust for the benefit of Philpot:
- a. Deprived Philpot of funds to which Philpot was entitled, resulting in significant financial harm to Philpot; and
 - b. Continues to constitute financial harm to Philpot, in that Crew has failed to make restitution to Philpot.
5. Crew's actions caused significant actual harm to the profession, in that the public in her community is aware of her misconduct. Such publicity erodes public confidence in attorneys, tends to sully the reputation of, and fosters disrespect for, the profession as a whole.
6. The hearing panel has considered lesser alternatives and finds that a public censure or reprimand would not be sufficient discipline because of the gravity of the actual harm to her client and to the legal profession caused by Defendant's conduct, and the threat of significant potential harm Defendant poses to the public and to potential future clients.
7. The hearing panel has considered lesser sanctions and finds that discipline short of disbarment would not sufficiently protect the public for the following reasons:
- a. Crew's continuing course of multiple offenses;
 - b. Crew's pattern of dishonesty and deceit;

- c. Crew's refusal to appreciate or acknowledge the wrongful nature of her misconduct;
- d. Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses Crew committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar of this State.

8. The hearing panel therefore finds that the only sanction in this case that can adequately protect the public is Crew's disbarment.

9. The expenses incurred by Plaintiff for stenographic and videographic assistance in the taking of depositions in this matter and the cost of those deposition transcripts were reasonable and necessary in the litigation of this case. The cost of those depositions should be taxed to Defendant.

Based upon the foregoing Findings of Fact, Conclusions of Law, and additional Findings of Fact and Conclusions Regarding Discipline, the hearing panel hereby enters the following

ORDER OF DISCIPLINE

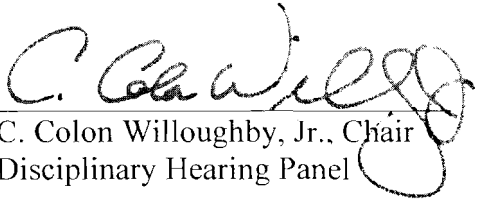
1. Defendant, Tonya J. Crew, is hereby DISBARRED from the practice of law.

2. Defendant shall surrender her 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, including DHC costs and including costs of the transcription and depositions taken in this case as follows: court reporter costs; videographer and videotaping costs; transcription costs; shipping, handling, and transmittal costs; and witness costs. Defendant must pay the costs within 30 days of service upon her 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
19 day of August, 2008.


C. Colon Willoughby, Jr., Chair
Disciplinary Hearing Panel