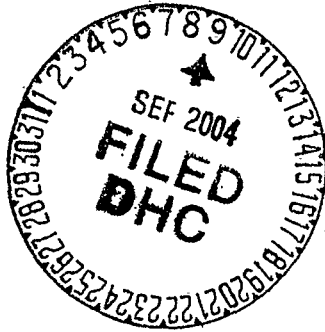


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NORTH CAROLINA
COMMISSION
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING
OF THE
NORTH CAROLINA STATE BAR
04 DHC 1

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

EDWARD V. ZOTIAN, Attorney,
Defendant

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER OF DISCIPLINE

On August 18, 2004, this matter came on to be heard before a hearing committee of the Disciplinary Hearing Commission composed of Richard T. Gammon, Chair; Elizabeth Bunting, and Betty Ann Knudsen. A. Root Edmonson represented the North Carolina State Bar and Alan M. Schneider represented Edward V. Zotian. Based upon the admissions in the Answer and the stipulations of fact in the Pre-Hearing Order, the hearing committee finds that the following has been established by clear, cogent and convincing evidence:

FINDINGS OF FACT

1. The 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 promulgated thereunder.
2. The defendant, Edward V. Zotian (hereinafter, "Zotian"), was admitted to the North Carolina State Bar on July 1, 1979 and is, and was at all times referred to herein, an Attorney at Law licensed to practice in North Carolina, 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 times relevant to this complaint, Zotian actively engaged in the practice of law in the State of North Carolina and maintained a law office in the city of Greensboro, Guilford County, North Carolina.
4. In the fall of 1999, Zotian joined the law firm of Adams Kleemeier Hagan Hannah & Fouts, PLLC (hereinafter, "the firm") as an associate. Zotian's compensation with the firm included a base salary, plus a formula amount based upon fee income from clients that Zotian originated for the firm. Zotian's 2002 compensation agreement also provided a framework for his becoming an equity partner.

5. Any fee that Zotian received from a client was the property of the firm, and Zotian was to turn any fee he received in to the firm's bookkeeper.

6. Late in the day on April 15, 2002, Zotian met with a new firm client, Ricky Loye (hereinafter, "Loye"), in connection with obtaining a surety bond for Loye.

7. At their April 15, 2002 meeting, Loye delivered \$3,700.00 (in thirty-seven \$100 bills) to Zotian as payment for the Zotian's professional services.

8. Zotian gave Loye a hand-written receipt for the \$3,700.00.

9. Zotian did not turn the Loye fee over to the firm's bookkeeper and did not advise the bookkeeper or anyone else at the firm that he had received the \$3,700.00 fee.

10. On April 16, 2002, Zotian deposited \$3,600.00 of the fee paid to him by Loye into his personal account at Bank of America, account number 0001 9372 4309.

11. Zotian appropriated the firm's \$3,700.00 to his own use.

12. On June 14, 2002, Zotian's employment at the firm terminated.

13. In an effort to keep the firm from discovering his receipt of the Loye fee, Zotian offered to return Loye's \$3,700.00 if Loye would return the receipt Zotian gave to Loye on April 15, 2002.

14. Zotian had several telephone conversations with Loye in which Zotian asked Loye to give false information to the firm about the \$3,700.00, including suggesting that Loye tell the firm that 1) the money was for Zotian to deliver to Loye's employee or 2) the fee was not retained by Zotian, but was immediately returned.

15. On September 4, 2002, in a telephone conversation, the managing partner at the firm asked Zotian to explain why the firm never got the fee.

16. Zotian told the managing partner that, immediately after meeting with Loye on April 15, 2002, he had placed the thirty-seven \$100 bills in an envelope and left the envelope in his outbox, since it was late in the day, with instructions to the law firm's accounting department to credit the funds to "client development." Zotian further said that, when he returned to his office the next morning, the envelope was gone from his outbox and he therefore assumed that his secretary had picked up the envelope and had taken it to the firm's accounting department in accordance with his instructions. Zotian denied that he had taken the funds for his personal use.

17. Zotian's explanation given to the firm's managing partner on September 4, 2002 was false.

18. By check dated September 11, 2002, Zotian paid the firm \$3,700.00.

19. After the managing partner of the firm filed a grievance against Zotian, the Chair of the grievance committee sent Zotian a letter of notice seeking a response to the grievance for the grievance committee's consideration.

20. In his November 6, 2002 response to the letter of notice, Zotian claimed that:

I put the cash payment in an envelope with a notation on the face that it was to go to bookkeeping. On the envelope I wrote, "R. Loye Bonding Fee \$3,700.00 cash, no billing number had yet been obtained, any questions please call me, E.Z." I went to the bookkeeping office and since no one was there I brought the envelope back and put it in my outbox in my office. The following morning the envelope was not in my outbox. I assumed it had been picked up and delivered to bookkeeping.

21. The portion of Zotian's response to the grievance quoted above was false.

BASED UPON the foregoing Findings of Fact, the hearing committee makes the following:

CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee of the Disciplinary Hearing Commission and the hearing committee has jurisdiction over Zotian and the subject matter.

2. Zotian's conduct, as set out above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(a) & (b)(2) in that Zotian violated the Revised Rules of Professional Conduct as follows:

- (a) By appropriating the fees Zotian received from Loye while an associate with the firm to his own use instead of remitting the fees to the firm, Zotian committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);
- (b) By asking Loye to make false statements to the firm about the \$3,700.00 fee for Zotian's benefit, Zotian counseled his client to falsify evidence in violation of Rule 3.4(b) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);
- (c) By making false statements to the managing partner in the firm about his handling of the Loye funds, including denying that he had taken the funds for his personal use, Zotian engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);

- (d) By making false statements to the grievance committee in his November 6, 2002 response to the letter of notice, Zotian offered evidence that he knew was false in violation of Rule 3.3(a)(4); knowingly made a false statement of material fact in a disciplinary matter in violation of Rule 8.1; and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c).

BASED UPON the foregoing Findings of Fact and Conclusions of Law, the evidence presented at the hearing and the arguments of counsel, the hearing committee hereby makes the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Zotian's misconduct is aggravated by the following factors:

- (a) Zotian had a dishonest or selfish motive in taking his firm's funds and in attempting to get his client to lie to the firm for his own benefit;
- (b) Zotian made false statements to his firm during its investigation of the Loye fee;
- (c) Zotian submitted false statements to the State Bar during the disciplinary process;
- (d) Zotian had substantial experience in the practice of law; and
- (e) Zotian's conduct involved multiple offenses.

2. Zotian's misconduct is mitigated by the following factors:

- (a) Zotian has no prior disciplinary record;
- (b) Zotian made timely reimbursement to the law firm;
- (c) Zotian presented evidence at the hearing of mental health impairment that may have affected his judgment; and
- (d) Zotian expressed remorse during the hearing.

3. The aggravating factors outweigh the mitigating factors.

CONCLUSIONS OF LAW REGARDING DISCIPLINE

1. The hearing committee specifically finds that Zotian's conduct involves material misrepresentations, dishonest conduct and misappropriation of money belonging to his former law

firm. The hearing committee believed Zotian's assertion that he did not know why he took the firm's money and concludes that this isolated incident of misappropriation did not warrant disbarment. However, Zotian's attempt to get his client to cover up his misconduct and his false statements to his firm and to the State Bar warrant a substantial suspension of his license.

2. Suspension of Zotian's license is the only sanction that can adequately protect the public for the following reasons:

(a) An order of discipline less than suspension would not sufficiently protect the public because Zotian's misconduct involved commission of misdeeds involving moral turpitude and violations of the public trust.

(b) Zotian's attempt to have his client, Loye, make false statements to the law firm about the \$3,700.00 fee caused significant harm to his client, the legal profession, and the administration of justice.

(c) Zotian's false statements made to the member of the law firm that questioned him about the Loye fee violated the trust and honesty that all officers of the court owe to each other, causing significant harm to our system of jurisprudence.

(d) Zotian's false statements to the Grievance Committee during the investigation of this matter undermines the State Bar's ability to regulate attorneys and undermines the privilege of attorneys in this state to remain self-regulating.

(e) Entry of an order imposing lesser discipline would fail to acknowledge the seriousness of the offenses that Zotian committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar in North Carolina.

BASED UPON the foregoing Findings of Fact Regarding Discipline and the arguments of counsel, the hearing committee hereby enters the following:

ORDER OF DISCIPLINE

1. The Defendant, Edward V. Zotian, is hereby suspended from the practice of law for a period of five years.

2. After three years of active suspension, Zotian may petition to have the remaining portion of his suspension stayed if he can prove that he has met the following conditions:

(a) That he has not violated any local, state or federal law or the Revised Rules of Professional Conduct; and

(b) That he has submitted to a mental health assessment by a psychiatrist acceptable to the North Carolina State Bar, other than Dr. James D. Mattox, Jr., who has determined that Zotian is fit to practice law;

3. If any portion of Zotian's suspension is stayed, that portion will be stayed for five years upon the following conditions:

(a) That he maintains his mental health treatment as recommended by Dr. James D. Mattox, Jr. or other treating psychiatrist of his choice, including taking the medication recommended by the psychiatrist;

(b) That he provides and continues in force a signed waiver or release that allows his psychiatrist to provide information to the North Carolina State Bar concerning Zotian's compliance with the psychiatrist's treatment recommendations;

(c) That his treating psychiatrist reports in writing to the North Carolina State Bar on a semi-annual basis that Zotian is following the psychiatrist's recommended treatment and taking the recommended medication;

(d) That, if he is self-employed, he provides on a semi-annual basis a written report by a CPA acceptable to the North Carolina State Bar showing that Zotian is in compliance with the Revised Rules of Professional Conduct as they apply to trust accounts.

(e) That, if he is employed by a third party, he provides to the North Carolina State Bar on a semi-annual basis a written report showing that he is in compliance with the Revised Rules of Professional Conduct as they apply to receipt of money from clients and maintaining appropriate billing and trust account records. Zotian's billing and trust account records shall be subject to audit by the North Carolina State Bar during the period of the stay.

4. If Zotian does not seek a stay of any portion of his suspension, or a stay is revoked, then Zotian must prove at any time that he seeks reinstatement, in addition to the other proof required by the reinstatement rules, that he has submitted to a mental health assessment by a psychiatrist acceptable to the North Carolina State Bar, other than Dr. James D. Mattox, Jr., who has determined that Zotian is fit to practice law.

5. Zotian shall surrender his license and membership card to the Secretary within 30 days of the effective date of this order.

6. Zotian shall comply with the requirements of 27 NCAC 1B, § .0124.

7. The costs of this proceeding are taxed to Zotian and shall be paid as assessed by the Secretary within 90 days of the effective date of this order.

Signed with the Chair with the consent of the other members of the hearing committee this
the 3RD day of ~~August~~, 2004.
September



Richard T. Gammon
Chair
Hearing Committee