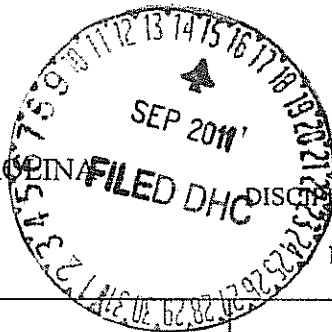


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
11 DHC 2

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

JOE E. BIESECKER, Attorney,

Defendant

CONSENT ORDER
OF
DISCIPLINE

THIS MATTER was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of M. Hood Ellis, Chair, Robert F. Siler and Percy L. Taylor pursuant to 27 N.C.A.C. 1B § .0114 of the Rules and Regulations of the North Carolina State Bar. Plaintiff, the North Carolina State Bar, was represented by William N. Farrell. Defendant, Joe E. Biesecker, was represented by Douglas J. Brocker. Defendant waives a formal hearing in this matter and both parties stipulate and consent to the entry of this order and to the discipline imposed. Defendant waives any right to appeal this consent order or to challenge in any way the sufficiency of the findings.

Based upon the consent of the parties, the Hearing Panel hereby makes, 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, Joe E. Biesecker ("Biesecker" or "Defendant"), was admitted to the North Carolina State Bar on August 16, 1968, 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, Defendant was engaged in the practice of law in the State of North Carolina and maintained a law office in Lexington, Davidson County, North Carolina.

4. On or about March 19, 1998 Alan Horner ("Horner") and Stewart Gloor ("Gloor") formed a professional corporation, Horner-Gloor & Associates, P.A. ("the Company") whose purpose was to provide land surveying services.

5. Horner and Gloor each owned 50% of the shares of the Company.

6. On or about Jan 12, 2004 Gloor asked Horner to buy out Gloor's interest in the Company.

7. From January 12, 2004 through the end of March 2004 Gloor and Horner had various discussions regarding the terms of the buy-out.

8. On or about April 9, 2004, Gloor and Horner together with their respective counsel met for the purpose of resolving their remaining issues. Defendant was not present and did not represent either party at this meeting.

9. A "memorandum of agreement" was signed by Horner and Gloor on April 9, 2004.

10. Disputes arose thereafter between Gloor and Horner regarding alleged breaches of the agreement.

11. Horner commenced an action against Gloor in Davidson County Civil Superior Court, North Carolina, File Number 04 CVS 2479 ("the Davidson County action") seeking damages and various forms of relief.

12. Defendant represented Gloor in this action and alleged counterclaims on Gloor's behalf.

13. On or about February 13, 2007 Superior Court Judge Presiding Erwin W. Spainhour conducted a hearing on various motions in the Davidson County action.

14. In that hearing, Judge Spainhour announced in open court that the checking account from the Bank of North Carolina, bank account number ending ****2039, as owned by the Company shall be closed immediately; that the funds shall be placed in the trust account of Joe Biesecker (Defendant), attorney for Gloor, and shall be held by him, in trust for the benefit of both Gloor and Horner, until further order of the Superior Court of Davidson County. A written order memorializing Judge Spainhour's order was never prepared by Plaintiff's attorney, Scott Tippet, although he indicated to the Court that he would do so.

15. On or about February 15, 2007, pursuant to Judge Spainhour's order, Gloor wrote a check from the Company account to Biesecker, Tripp, Sink & Fritts, LLP in the amount of \$47,036.82 ("trust funds").

16. This check was deposited into the trust account of Defendant's law firm.

17. The funds deposited into Defendant's trust account were to be held in trust for the benefit of Gloor and Horner, according to Judge Spainhour's ruling.

18. Defendant received the trust funds pursuant to Judge Spainhour's oral order. Subsequent to the February 13 hearing, Defendant made numerous efforts to ensure compliance with the remainder of Judge Spainhour's oral ruling.

19. On April 20, 2007, Defendant filed a motion to dismiss the Davidson County action on the ground that counsel for the plaintiff in that action had not prepared a written order to reflect Judge Spainhour's ruling made in open court on February 13, 2007.

20. This motion was noticed for hearing on April 23, 2007.

21. The hearing on the motion was continued from April 23, 2007 until the September 10, 2007 term of Superior Court. Tippet requested the continuance and Defendant agreed to it.

22. On September 10, 2007, Gloor and Horner filed a joint Notice of Voluntary Dismissal without prejudice in the Davidson County action. The notice was signed by Tippet, Defendant and Gloor.

23. Later that same day Defendant caused a check to be written from his firm's trust account to his client Gloor for the total amount of the trust funds, \$47,036.82, pursuant to a letter from Gloor to Defendant, dated September 10, 2007 directing him to send a check for the funds in his trust account to Gloor so he could put them in an interest-bearing account. Contrary to his representation to Defendant, Gloor did not place the returned funds in an interest bearing account but instead deposited them into the business operating account for Stewart Gloor Land Surveying, P.A., unbeknownst to Defendant at the time.

24. Defendant noted on the check "Refund of funds paid into Trust on 2/15/07 Receipt # 78066".

25. Gloor deposited this check the same day, September 10, 2007.

26. Defendant did not make an application to the Superior Court seeking authorization for the disbursement of the trust funds from his trust account.

27. Gloor did not have the legal right to procure the withdrawal of the trust funds from Defendant's trust account.

28. Although Defendant knew that Defendant Horner was entitled to at least one half of the trust funds held in the trust account, he mistakenly believed he had no obligation to Horner because he concluded the voluntary dismissal without prejudice nullified Judge Spainhour's order placing the funds in trust.

29. Defendant did not advise Horner or his counsel of his intention to disburse the trust funds.

30. Defendant did not advise Horner or his counsel that he had disbursed the funds to his client Gloor.

31. Horner and his counsel did not learn that the funds had been disbursed from Defendant's trust account until November 19, 2008 during the testimony of Gloor in the Guilford court action.

32. Gloor used the trust funds received from Defendant to pay personal bills for he and his wife, his company's bills, and attorney fees, including \$30,638.49 to Defendant for legal fees related to his representation of Gloor in the Davidson County action. The fees were paid by Gloor from the business operating account for Stewart Land Surveying, P.A. over a month after the dismissal and Defendant's return of the funds to Gloor. Defendant was not aware that Gloor had used the funds to pay personal expenses, including his fees, until sometime during the proceedings in the Guilford County action.

33. Gloor's personal use of the funds was contrary to the advice of Defendant, who wrote Gloor on September 12, 2004 that he was required to honor the memo of agreement with Horner and that Horner was entitled to his share of the account.

Based upon the foregoing Findings of Fact, the panel enters the following

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the panel has jurisdiction over Defendant, Joe E. Biesecker, 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. Section 84-28(b) (a) as follows:

(a) By disbursing the entire trust fund to Gloor, half of which belonged to Horner, Defendant failed to identify, hold and maintain the entrusted property of Horner, in violation of Rule 1.15-2 (a) of the Rules of Professional Conduct and which had the effect of benefiting his client Gloor in violation of Rule 1.15-2 (j) of the Rules of Professional Conduct.

Based upon the consent of the parties, the Hearing Panel finds by clear, cogent and convincing evidence the following

ADDITIONAL FINDINGS REGARDING DISCIPLINE

1. Defendant's conduct, the disbursement of the entire trust fund to Gloor, caused significant harm to Horner. Horner was entitled to one half of the trust fund and

has not been able to recover it because Gloor dissipated the entire amount for his own uses after receiving same from Defendant.

2. Defendant has no prior discipline in his forty three years of practice.
3. Defendant enjoys a reputation of good character in his professional and personal life with the exception of the conduct at issue in this case.
4. Defendant has cooperated with the State Bar's investigation of this matter and in reaching a resolution in these proceedings.
5. Defendant acknowledges his conduct violated the Rules of Professional Conduct and is remorseful for his actions.
6. In recognition of the harm to Horner, Defendant has made restitution to Horner in the amount of \$23,518.41, one half of the funds disbursed, to rectify a consequence of Defendant's conduct.
7. Based upon Defendant's lack of prior discipline in forty three years of practice, his good professional reputation, and his substantive experience in the practice of law, there is little likelihood of repetition of misconduct.

Based upon the 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. In addition, the Hearing Panel has 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 and determines the following factors are applicable:

- a. Defendant's lack of prior disciplinary offense;
- b. Good faith efforts to make restitution;
- c. Defendant's cooperative attitude toward the proceedings;
- d. Remorse;
- e. Defendant's reputation for good character;
- f. Defendant's substantial experience in the practice of law; and
- g. Vulnerability of Horner.

2. The Hearing Panel has considered all of the different forms of discipline available to it including Admonition, Reprimand and Censure in considering the appropriate discipline to impose in this case.

3. The Hearing Panel finds that censure is the appropriate discipline in this case for the following reasons:

a. The general factors under 27 N.C.A.C. 1B § .0114(w) of the Rules and Regulations of the North Carolina State Bar and the additional findings regarding discipline that are established by the evidence in this case are of a nature to support imposition of a censure.

b. Defendant has made a substantial effort to rectify his misconduct and is remorseful for his acknowledged misconduct.

c. The conduct at issue in this case is an isolated incident in the context of forty three years of practice without any prior discipline.

d. Protection of the public does not require the suspension of Defendant's license to practice law.

e. Entry of an Order of Discipline imposing lesser discipline than a censure would fail to acknowledge the seriousness of the misconduct committed by Defendant, would be inconsistent with discipline issued in prior cases, and would send the wrong message to Defendant, other attorneys and the public regarding the conduct expected of members of the North Carolina State Bar.

f. The protection of the public and the legal profession requires that Defendant be censured so that he understands his obligation to third parties and the legal profession.

Based upon the foregoing Findings of Fact, Conclusions of Law and Conclusions Regarding Discipline, the Hearing Panel enters the following:

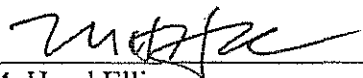
ORDER OF DISCIPLINE

1. Defendant, Joe E. Biesecker, is hereby censured.


2. The costs of this action are taxed to Defendant, including the cost of the depositions taken in this case allowed by statute. The deposition costs were necessarily incurred for the prosecution of this proceeding. Defendant will receive a statement of costs from the State Bar and will pay these costs within 30 days of the effective date of this order.

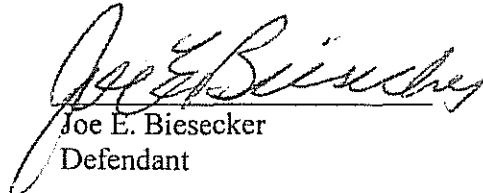
Signed by the undersigned Chair with full knowledge and consent of the other members of the Hearing Committee.


This the 15th day of September, 2011.


M. Hood Ellis
Chair of the Disciplinary Hearing Panel

Consented to by:


William N. Farrell
Deputy Counsel
North Carolina State Bar
P.O. Box 25908
Raleigh, NC 27611
Counsel for Plaintiff


Joe E. Biesecker
Defendant


Douglas J. Bröcker
Counsel for Defendant