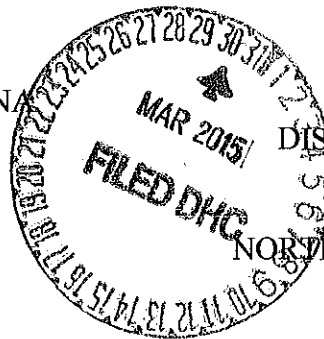


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING
COMMISSION
OF THE
NORTH CAROLINA STATE BAR
14 DHC 30

THE NORTH CAROLINA STATE BAR,

Plaintiff,

v.

DAVID A. KIRKBRIDE, Attorney,

Defendant.

CONSENT ORDER
OF DISCIPLINE

THIS MATTER was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Renny W. Deese, Chair, Joshua W. Willey, Jr., and Bradley Lail pursuant to 27 N.C.A.C. 1B §.0114 of the North Carolina State Bar Discipline and Disability Rules. Plaintiff was represented by Deputy Counsel Margaret Cloutier. Defendant, David A. Kirkbride, was represented by attorney Douglas J. Broucker. Defendant waives a formal hearing in this matter and both parties stipulate and consent to the findings of fact and conclusions of law recited in this order and to the discipline imposed. By consenting to the entry of this order, Defendant waives any right to appeal this consent order or challenge in any way the sufficiency of the findings.

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

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar (hereinafter "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 Discipline and Disability Rules of the North Carolina State Bar promulgated thereunder.

2. Defendant, David A. Kirkbride (hereinafter "Kirkbride" or "Defendant"), was admitted to the North Carolina State Bar on August 22, 1992 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 herein, Defendant was not actively engaged in the practice of law in the State of North Carolina. Defendant resided in Raleigh, Wake County, North Carolina.

4. Prior to 2007, Defendant was engaged in the private practice of law. His practice consisted primarily of closing real estate transactions.

5. During the time Defendant was engaged in the private practice of law, he maintained two trust accounts with North State Bank with the account numbers ending in digits 4880 ("Trust 1") and 2358 ("Trust 2").

6. During the time Defendant maintained Trust 1 and Trust 2, Defendant did not total and reconcile the individual client ledger balances for each trust account with the general ledger and adjusted bank statement balances for that trust account at least quarterly.

7. When Defendant ceased the private practice of law in 2007, the balance of funds in Trust 1 was approximately \$1,375.00. At that time, Defendant did not disburse the funds in Trust 1 to the beneficial owners of the funds.

8. Defendant was not entitled to the funds remaining in Trust 1.

9. When Defendant ceased the private practice of law in 2007, the balance of funds in Trust 2 was approximately \$29,250.00. At that time, he did not disburse the funds in Trust 2 to the beneficial owners of the funds.

10. Defendant was not entitled to the funds remaining in Trust 2.

11. Defendant has not maintained client ledgers identifying each client whose funds are held in Trust 1 and Trust 2. As a result, Defendant can no longer identify the clients to whom these funds belong.

12. On or about January 7, 2010, Defendant applied for credit at the Aria Resort and Casino in Las Vegas, Nevada.

13. As part of the application process, Defendant signed an application form that listed the account number of Trust 1 in the banking information section. The form also listed Defendant's business name as "Law Ofcs of D Kirkbr" and his position as "Owner/Attorney."

14. Defendant knew or should have known that the account number listed on the form belonged to one of his trust accounts.

15. By signing the application form described in paragraph 11 above, Defendant pledged the funds in Trust 1 as collateral to secure future credit the casinos might advance to Defendant in the form of markers.

16. On or about August 1, 2011, check number 11787085 made payable to "Aria" in the amount of \$1,000.00 drawn from Trust 1 cleared the bank.

17. The funds paid out pursuant to check number 11787085 were used to pay Defendant's personal debt to Aria Resort and Casino.

18. Defendant was not entitled to the \$1,000.00 drawn from Trust 1 to Aria.

19. Defendant misappropriated entrusted client funds in the amount of \$1,000.00 from Trust 1.

20. On or about January 8, 2013, Defendant signed an authorization form thereby authorizing MGM Grand Hotel and Casino ("MGM") and Mirage Hotel and Casino ("Mirage"), and their affiliates, to obtain and verify Defendant's balance information for Trust 1 and Trust 2.

21. By signing the authorization form, Defendant agreed to sign credit instruments, also known as markers or checks, for the amount of chips, tokens, cash or other credit issued to Defendant by the casinos.

22. The form Defendant signed authorized MGM/Mirage to insert on the credit instruments the account numbers and other banking or financial information for any account from which Defendant has the right to withdraw funds.

23. The authorization form Defendant signed had the effect of pledging the balances of all bank accounts for which Defendant was signatory, including Trust 1 and Trust 2, as security to satisfy any gambling debt of Defendant to the casinos or credit advanced to Defendant by the casinos.

24. Defendant did not exempt Trust 1 and Trust 2 from the accounts subject to the terms of the authorization referred to in the preceding paragraph. Defendant did not notify MGM/Mirage that the funds contained in Trust 1 and Trust 2 were not funds to which Defendant was entitled.

Based upon the foregoing Findings of Fact, the Hearing Panel enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Disciplinary Hearing Commission and the Disciplinary Hearing Commission has jurisdiction over Defendant, David A. Kirkbride, 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.G.S. §84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

a. By failing to total and reconcile the individual client balances with the current general ledger balance and adjusted bank balance in each trust account at least quarterly, Defendant failed to perform the requisite quarterly reconciliations of his general trust account in violation of Rule 1.15-3(d);

b. By failing to maintain client ledgers, Defendant failed to maintain a ledger containing a record of receipts and disbursements for each person or entity from whom and for whom funds are received and showing the current balance of funds held in the trust account for each such person or entity in violation of Rule 1.15-3(b)(5);

c. By failing to properly disburse the balance of the entrusted funds in Trust 1 and Trust 2 when he ceased the private practice of law, Defendant did not promptly pay or deliver to the client entrusted property belonging to the client and to which the client is currently entitled in violation of Rule 1.15-2(m) and failed to take steps to protect a client's interests in violation of Rule 1.16(d);

d. By misappropriating entrusted funds from Trust 1 for his own personal benefit, Defendant used or pledged entrusted property to obtain personal benefit for the lawyer or any person other than the legal or beneficial owner of the property in violation of Rule 1.15-2(j), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c); and

e. By pledging the balances of Trust 1 and/or Trust 2 to obtain credit at casinos in January 2010 and January 2013, Defendant used or pledged entrusted property to obtain personal benefit for the lawyer or any person other than the legal or beneficial owner of the property in violation of Rule 1.15-2(j), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

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

ADDITIONAL FINDINGS REGARDING DISCIPLINE

1. Defendant was issued a Public Reprimand by the Wake County Superior Court on March 14, 2014 for lying under oath in a trial.

2. By pledging client funds as security against his debts to the casinos, Defendant put his own interests above those of his clients.

3. Defendant's conduct caused significant harm or potential significant harm to the clients whose funds were used to pay Defendant's personal debts.

4. Defendant's conduct has the potential to cause significant harm to the standing of the legal profession in the eyes of the public because it shows disdain for his obligations as a fiduciary and officer of the court. Such erosion of public confidence in attorneys tends to sully the reputation of, and fosters disrespect for, the profession as a whole.

5. The Hearing Panel has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension, and disbarment, in considering the appropriate discipline to impose in this case.

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

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and determines that the following factors are applicable in this matter:

- (a) Defendant's intent to commit acts where the harm or potential harm was foreseeable;
- (b) The circumstances reflecting Defendant's lack of trustworthiness and integrity;
- (c) Elevation of Defendant's own interest above that of the clients;
- (d) The negative impact of Defendant's actions on the public's perception of the profession; and
- (e) Acts of dishonesty, misrepresentation, deceit or fabrication.

2. The Hearing Panel has considered the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(2) of the Rules and Regulations of the North Carolina State Bar and concludes that the following factors are present:

- (a) Acts of dishonesty, misrepresentation, deceit or fabrication; and
- (b) Misappropriation or conversion of assets of any kind to which Defendant or recipient is not entitled, whether from a client or other source.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(3) of the Rules and Regulations of the North Carolina State Bar and determines that the following factors are applicable in this matter:

- (a) Defendant's prior disciplinary offense;

- (b) Defendant's dishonest or selfish motive;
- (c) That Defendant committed multiple offenses;
- (d) Defendant's full and free disclosure and cooperative attitude toward the proceedings; and
- (e) Defendant's remorse.

4. The Hearing Panel has carefully considered all of the different forms of discipline available to it. An admonition, reprimand, censure or suspension would not be sufficient discipline because of the gravity of the potential harm Defendant's conduct caused to the public and to the public's confidence in the legal profession.

5. The Hearing Panel has considered all lesser sanctions and determines that discipline short of disbarment would not adequately protect the public, the legal profession or the administration of justice for the following reasons:

- (a) The factors under Rule .0114(w)(2) that are established by the evidence in this case are of a nature that support imposition of disbarment as the appropriate discipline;
- (b) Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses Defendant committed and would send the wrong message to attorneys and to the public regarding the conduct expected of members of the Bar of this state; and
- (c) Protection of the public requires that Defendant not be permitted to resume the practice of law unless and until he demonstrates that he has reformed, that he understands his obligations as an attorney, officer of the court, and as a citizen of this state and country. Disbarment is the only sanction that requires Defendant to demonstrate reformation before he may resume the practice of law.

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

ORDER OF DISCIPLINE

1. Defendant, David A. Kirkbride, is hereby DISBARRED effective thirty days from the date this Order of Discipline is served on him.

2. Defendant shall surrender his law 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.

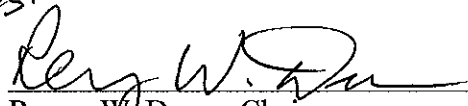
3. Defendant shall pay the administrative fees and costs of this proceeding within thirty days of service of the statement of costs upon him by the Secretary of the State Bar.

4. Defendant shall comply with all provisions of 27 N.C.A.C. 1B §.0124.


5. Within 30 days of the effective date of this Order, Defendant will provide the North Carolina State Bar with an address and telephone number at which clients seeking return of files can communicate with Defendant and obtain such files.

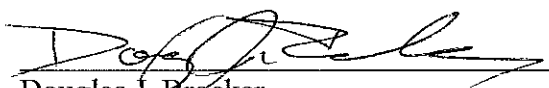
6. Defendant shall return client files in his possession, custody or control to clients within five days of receipt of such request. Defendant will be deemed to have received any such request three days after the date such request is sent to Defendant if the request is sent to the address Defendant provided the State Bar pursuant to this Order.

Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Panel, this ^{17th}~~25th~~ day of March, 2015.


Renny W. Deese, Chair
Disciplinary Hearing Panel

Consented to:


David A. Kirkbride, Defendant


Douglas J. Brocker
Attorney for Defendant


Margaret Cloutier, Deputy Counsel
Attorney for Plaintiff