

STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
08 DHC 7

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

SCOTT W. LAMB, Attorney,

Defendant

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

This matter was heard before a hearing committee of the Disciplinary Hearing Commission composed of Tommy W. Jarrett, Chair; and members Donna R. Rascoe and Michael J. Houser on July 25, 2008. William N. Farrell represented the North Carolina State Bar. Douglas J. Brocker represented Scott W. Lamb. Based upon the admissions in the Answer, the stipulations of fact in the Pre-Hearing Order, and the evidence presented at the hearing, the hearing committee finds that the following has been established by clear, cogent, and convincing evidence:

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 promulgated thereunder.

2. Defendant, Scott W. Lamb, (hereinafter "defendant"), was admitted to the North Carolina State Bar on August 26, 2003, 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 Revised Rules of Professional Conduct of the State of North Carolina State Bar and the laws of the State of North Carolina.

3. During all or a portion of the relevant periods referred to herein, defendant was actively engaged in the practice of law as an Associate with the firm of Roberts & Stevens, PA (hereinafter "the Firm") in the city of Asheville, Buncombe County, North Carolina.

4. In early December 2004, Mr. Richard Paul Freiling and wife, Ms. Deborah Anne Freiling (hereinafter "the Freilings"), contacted defendant for estate planning.

5. The Freilings received a letter from defendant dated December 8, 2004, acknowledging their contact with him and setting a date to meet with them on January 12, 2005.

6. The Freilings met with defendant at the Firm's office in Asheville, North Carolina.

7. At this first meeting Defendant and the Freilings discussed preparation of estate planning documents.

8. Defendant quoted the Freilings a \$500.00 fee for estate planning services.

9. During the week of January 24, 2005, defendant was informed by the Firm that the law firm was discontinuing his employment.

10. The Firm informed defendant that he would continue to be employed until March 1, 2005 and that he would have until then to close out his files and transition client files to other attorneys in the firm. Defendant continued as a full-time employee of the Firm during this transition period.

11. On February 9, 2005, the Freilings returned to the Firm's offices to review and sign their respective Last Wills and Testaments, Living Wills, and General Durable Powers of Attorney.

12. After the aforementioned documents were executed and notarized, Mrs. Freiling asked Defendant about the legal fees for services and wrote a check payable to Roberts & Stevens, at the instruction of Defendant, in the amount of \$500.00 and gave it to Defendant.

13. The Freilings requested an invoice for the legal services. An invoice was presented and it appeared to be a standard format invoice prepared by the Firm for the Freilings.

14. After Defendant held the \$500.00 check for a few days, he called the Freilings and asked them to rewrite the check to make it payable to him rather than the Firm.

15. Defendant thereafter met with Mr. Freiling in order for Mr. Freiling to make the check payable to Defendant.

16. At the meeting after receiving the original \$500.00 check, Mr. Freiling marked through the original payee, "Roberts & Stevens", wrote "Scott Lamb" above the name of the original payee, placed his initials, "RF", on the payee line of the check and returned the check to defendant. Defendant subsequently endorsed the check and deposited the check in his personal account.

17. Defendant was not entitled to the money paid by the Freilings to him. The funds were the property of the Firm.

18. Defendant did not have a fee sharing agreement with the Firm during his employment, including the "winding down" period, including any agreement concerning services rendered by him as an employee of the Firm, or any fee sharing provision.

Based on the foregoing Findings of Fact, the Committee enters 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 Defendant and the subject matter of this proceeding.

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

- (a) By misappropriating funds (\$500.00) belonging to the firm, Defendant committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer 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 requesting that the Freilings alter their check originally made to the Firm and to make the check payable to him instead, Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

In addition to the foregoing Findings of Fact and Conclusions of Law, the evidence presented and the arguments of counsel, the Hearing Committee hereby makes the following:

FINDINGS REGARDING DISCIPLINE

- 1. Defendant's misconduct is aggravated by a dishonest or selfish motive.
- 2. Defendant's misconduct is mitigated by the following factors:
 - (a) Absence of a prior disciplinary record.
 - (b) Timely good faith efforts to make restitution or to rectify consequences of his misconduct. The Committee finds Defendant made monetary restitution to the Firm, along with a written letter of apology, within one week of the Bar's letter of notice to him.

- (c) Full and free disclosure to the hearing committee and cooperative attitude toward the proceedings. The Committee notes Defendant's early acknowledgment of misconduct to the Bar as well as formal admissions of misconduct in his answer and stipulations of fact.
- (d) Inexperience in the practice of law. Defendant had been practicing law for less than two years when the misconduct occurred.
- (e) Character or reputation.
- (f) Mental disability or impairment. The Committee finds that the Grievance Committee of the North Carolina State Bar initially considered this grievance at its July 14, 2005 quarterly meeting and referred Defendant to the Lawyer's Assistance Program ("LAP"). Rule .0112(j) of the Discipline and Disability Rules provides that the Grievance Committee may refer a grievance to LAP, before a finding of probable cause, if it determines that the misconduct is primarily attributable to substance abuse or mental health problems.
- (g) Delay in disciplinary proceedings through no fault of Defendant. The Grievance Committee referred Defendant to the Lawyer's Assistance Program and Defendant accepted this referral and participated in LAP. This case was referred to the Disciplinary Hearing Commission by the Grievance Committee after Defendant's successful completion of LAP. The delay in these proceedings occurred because Defendant cooperated with the Grievance Committee's LAP referral and occurred through no fault of Defendant's.
- (h) Interim rehabilitation. Defendant successfully completed the two year LAP referral without incident;
- (i) Remorse. Defendant admitted misconduct and apologized in writing to the Firm within one week of the receipt of the letter of notice from the State Bar;
- (j) Mental health and substance abuse problems to which the misconduct at issue was primarily attributable.

3. This is not the usual misappropriation case. Defendant is not now engaged in the private practice of law. This was a single act of misconduct occurring during the time Defendant was leaving and winding down his work with the Firm. There

were no other instances of misappropriation from the Firm during his tenure with the Firm and no instances of misappropriation of client funds. There was no pattern of misconduct or multiplicity of offenses which are significant aggravating factors.

4. Defendant made an early acknowledgment of his wrongdoing to his former Firm and made formal admissions of misconduct to the Bar in his responses, answer and stipulation of facts.

5. The Grievance Committee initially considered this matter at its July 14, 2005 quarterly meeting and referred it to the Lawyer's Assistance Program. The Chair of the Grievance Committee wrote Defendant and advised him that the Committee had determined he may benefit from a referral to LAP. Among other things, Defendant was told that if he consented to the referral, the Complainant would be advised that the misconduct was primarily attributed to his substance abuse or mental health problems and that the Committee referred the matter to LAP to address the underlying problem.

6. The letter further advised Defendant that if he successfully completed his rehabilitation program with LAP, the Chair of the Grievance Committee may order the grievance to be dismissed. Although the referral and applicable rule (27 N.C.A.C. Chapter 1, Subchapter B, § .0112(j) does not promise or imply to Defendant that his grievance would be dismissed, the Grievance Committee's action in January 2008 to send this matter to the Disciplinary Hearing Commission ignores what transpired between its initial referral to LAP and its later referral to the DHC.

7. The action of the Grievance Committee allowed Defendant to continue to practice law for over two years although he had been accused of misappropriation.

8. Defendant's conduct has caused significant harm or potential significant harm to his former Firm and the Freilings, whom Defendant made unwitting participants in his misconduct.

9. Defendant's conduct has caused significant harm or potential significant harm to the standing of the legal profession in the eyes of the public because it shows disdain for his obligation as an attorney and citizen to obey the law.

10. To that end, the Hearing Committee has carefully considered all of the different forms of sanction available to it and finds that any sanction less than suspension would not be appropriate in this case. The Hearing Committee has considered lesser alternatives and finds that a public censure or reprimand would not be sufficient discipline because of the gravity of the harm caused by the conduct of the Defendant to the Firm, the legal profession, and to the Freilings.

11. The Committee finds that because of the significant harm or potential harm to the Freilings, the Firm, and to the profession, caused by Defendant, entry of any Order imposing lesser discipline than suspension would fail to acknowledge the seriousness of the offenses that the Defendant has committed and would send the wrong

message to attorneys and the public regarding the conduct expected of members of the Bar. The only sanction in this case that can adequately protect the public is suspension of the Defendant's license for a period of time that is stayed only upon Defendant's compliance with certain conditions.

Based on the foregoing Findings of Fact, Conclusions of Law and the Findings of Fact Regarding Discipline, and the Conclusions with Respect to Discipline, the Hearing Committee enters the following:

ORDER OF DISCIPLINE

1. The Defendant's license to practice law in the State of North Carolina is hereby suspended for two years. The suspension is stayed for a period of two years after its effective date so long as Defendant complies with the following conditions.

- (a) Defendant will not violate the Revised Rules of Professional Conduct or the laws of the United States, this state or any state during his suspension;
- (b) Defendant will keep the North Carolina State Bar Membership Department advised of his current business and home address in writing within 10 days of any change;
- (c) Defendant will respond to all communications from the North Carolina State Bar by the deadline stated in the communication;
- (d) Defendant will pay all Membership dues, fees and costs, as well as Client Security Fund assessments and comply with all Continuing Legal Education (CLE) requirements on a timely basis during the stay of the suspension; and
- (e) Defendant will pay the costs of this proceeding, including the costs of Plaintiff's depositions, within thirty (30) days of service upon him of the statement of costs from the Office of Secretary.
- (f) Within 90 days after service of this order, Defendant shall obtain an evaluation by his psychiatrist, psychologist, or therapist, approved by the Office of Counsel, for the purpose of determining his current mental and psychological state as well as the state of his alcohol addiction. Defendant will follow any prescribed treatment determined to be necessary by his mental health professional. With respect to his treating counselor, psychologist, psychiatrist, or therapist, Defendant, at his expense, will direct his mental health professional to directly provide quarterly written reports to the Office of Counsel describing his current treatment regimen, compliance, and prognosis or treatment plan for the next quarter

within 15 days of the end of each calendar quarter (i.e. by January 15, April 15, July 15, and October 15). Defendant will execute written waivers and releases as necessary, authorizing the Office of Counsel to confer with necessary persons for the purpose of determining if Defendant has cooperated and complied with any requirements of the treatment program. Defendant will continue the treatment program during his period of suspension. As part of the treatment Defendant is required to continue his voluntary active participation in Alcoholics Anonymous as he has voluntarily chosen to do for a number of years. Defendant is required to retain or obtain a mentor in the program who shall provide quarterly reports to the Office of Counsel on the same schedule as the mental health professional's scheduled reports. These reports shall address Defendant's participation and attendance.

- (g) If Defendant resumes the private practice of law, he shall permit the State Bar to conduct random audits of all accounts over which he has signatory authority and into which client or fiduciary funds have been deposited. Defendant shall provide the State Bar with all documents requested by the Bar within five business days and shall be solely responsible for the expense of complying with the random audit request, which will not be conducted more than one time in any 12 month period.
- (h) If Defendant resumes the private practice of law within the two year stay period, he shall retain, at his sole expense, a certified public accountant who shall provide semiannual written reports to the State Bar confirming that Defendant's trust accounts comply with all the applicable provisions of the Revised Rules of Professional Conduct. The reports shall be received in the Office of Counsel each July 1 and January 1 throughout the period of the stayed suspension.

2. If the Defendant fails to comply with any one or more of the conditions referenced in Paragraph 1 above, then the stay of the suspension of his law license may be revoked as provided in 27 N.C. Admin. Code 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

3. If the stay of the suspension is revoked, Defendant must comply with all of the conditions set out in paragraph 1 above before seeking reinstatement of his license to practice law.

4. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of the stayed suspension.

Signed by the Chair with the consent of the other hearing committee members,
this the 16 day of September, 2008.



Tommy W. Jarrett, Chair
Disciplinary Hearing Committee