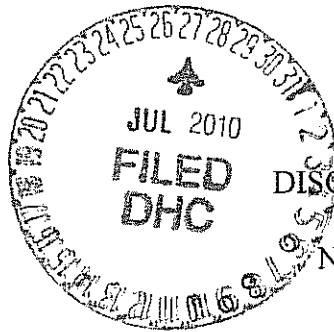


NORTH CAROLINA
WAKE COUNTY



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

THE NORTH CAROLINA STATE BAR,)	
Plaintiff)	
)	
v.)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
)	AND
JAMES E. BAUM, JR., Attorney,)	ORDER OF DISCIPLINE
Defendant)	

This matter was scheduled to be heard by a hearing panel of the Disciplinary Hearing Commission composed of Donna R. Rascoe, Chair; Theodore C. Edwards, II and Karen Ray. A. Root Edmonson represented the North Carolina State Bar. The defendant, James E. Baum, Jr., did not appear and was not represented. Based upon the State Bar's Motion for Default Judgment and Order of Discipline filed herein on June 1, 2010, the defendant's failure to request a hearing on the discipline to be imposed, and the facts deemed admitted based upon the defendant's default, the panel finds the following facts were 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, James E. Baum, Jr. ("Baum"), was admitted to the North Carolina State Bar on March 22, 1997, and practiced law until he was suspended on July 13, 2007 as set out below. At all times referred to herein, even after he was suspended, Baum was 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. However, after July 13, 2007, Baum was not authorized to practice law in North Carolina.

3. Baum was served with the Complaint in this matter on February 23, 2010.
4. Baum failed to file an answer or other responsive pleading.
5. Baum's default was entered on May 21, 2010.

6. On June 8, 2010, the State Bar filed a Motion for Default Judgment and Order of Discipline and served that on Baum that requested the hearing panel to find facts and enter conclusions of law based upon Baum's default and also requested that the hearing panel enter this order of discipline unless Baum requested a hearing on discipline within thirty (30) days.

7. Baum did not request a hearing on the appropriate discipline to be imposed.

8. During the time that Baum was actively engaged in the practice of law in the State of North Carolina, he maintained a law office in the city of Raleigh, Wake County, North Carolina.

9. In January 2007, Baum was served with a show cause order directing Baum to show cause why his license to practice law should not be administratively suspended for multiple years' failure to pay State Bar dues and satisfy his Continuing Legal Education (CLE) requirements.

10. Thereafter, Baum paid his delinquent dues, but never corrected his CLE deficits.

11. On June 13, 2007, Baum was personally served with an order suspending his license to practice law in North Carolina, effective thirty days thereafter.

12. As of July 13, 2007, Baum was no longer authorized to practice law in North Carolina.

13. Since his suspension on July 13, 2007, Baum has not been reinstated to the active practice of law in North Carolina.

14. Since his suspension on July 13, 2007, Baum has continued to hold himself out as able to practice law and has continued to collect fees from clients for legal services as set out below.

15. In or before November 2006, K. Fargalla ("Fargalla") retained Baum to represent her on a traffic ticket in Franklin County.

16. Fargalla paid Baum his fee and the amount necessary to cover Fargalla's court costs and any fine.

17. Although Fargalla's payment included an amount to cover Fargalla's court costs and fine, Baum failed to deposit any of Fargalla's payment into his trust account.

18. Baum appropriated Fargalla's entrusted funds intended to be used for Fargalla's court costs and fine to his own use.

19. On November 21, 2006, Baum wrote an operating account check to the Clerk of Court in Franklin County to pay Fargalla's \$185 in costs and fine.

20. Baum's check to the Clerk was returned for insufficient funds.

21. On or before September 19, 2007, K. O. Jones ("K. Jones") retained Baum to represent him on a speeding ticket K. Jones had received in February 2006.

22. On September 19, 2007, after Baum was no longer authorized to practice law in North Carolina, K. Jones paid Baum \$475 to represent him on the speeding ticket, which included the amount necessary to cover Baum's fee and K. Jones' court costs and any fine.

23. Baum failed to place any of K. Jones' payment into a trust account.

24. Baum appropriated K. Jones' entrusted funds intended to be used for K. Jones' court costs and fine to his own use.

25. Baum failed to perform any valuable legal services for K. Jones and failed to make a refund to K. Jones.

26. By obtaining a fee from K. Jones for the purpose of representing K. Jones on his speeding ticket when Baum knew that he was not able to represent K. Jones due to his suspension, Baum obtained K. Jones' fee payment under a false pretense.

27. On or before November 1, 2007, M. P. D'Amato ("D'Amato") retained Baum to represent him on his speeding tickets.

28. In two payments made on November 1, 2007 and December 27, 2007, after Baum was no longer authorized to practice law in North Carolina, D'Amato paid Baum \$700 of the \$750 Baum quoted as the amount needed to represent D'Amato on the speeding tickets, which included the amount necessary to cover Baum's fee and D'Amato's court costs and any fines.

29. Baum failed to place any of D'Amato's payment into a trust account.

30. Baum appropriated D'Amato's entrusted funds intended to be used for D'Amato's court costs and fines to his own use.

31. Baum failed to perform any valuable legal services for D'Amato and failed to make a refund to D'Amato.

32. By obtaining a fee from D'Amato for the purpose of representing D'Amato on the speeding tickets when Baum knew that he was not going to be able to represent D'Amato due to his suspension, Baum obtained D'Amato's fee payment under a false pretense.

33. On or about April 25, 2007, G. L. Jones ("G. Jones") retained Baum to represent him on a speeding ticket G. Jones received on April 24, 2007.

34. On April 25, 2007, G. Jones paid Baum \$225, which included the amount necessary to cover Baum's fee and G. Jones' court costs and any fine. G. Jones signed a waiver of appearance form.

35. Baum failed to place any of G. Jones' payment into a trust account.

36. Baum appropriated G. Jones' entrusted funds intended to be used for G. Jones' court costs and fine to his own use.

37. Baum failed to perform any valuable legal services for G. Jones and failed to make a refund to G. Jones.

38. G. Jones filed a petition with the North Carolina State Bar's Fee Dispute Resolution Program, seeking resolution of the disputed fee. The Fee Dispute Resolution Program notified Baum in writing that he must respond to the fee dispute petition in writing by the deadline stated in the notice. Baum failed to respond to the notification and failed to participate in the State Bar's fee dispute process.

39. On or about August 11, 2007, V. DeMasi ("DeMasi") retained Baum to represent her daughter, K. DeMasi, on a traffic ticket.

40. On August 11, 2007, after Baum was no longer authorized to practice law in North Carolina, V. DeMasi paid Baum \$250 to represent K. DeMasi on the speeding ticket, which included the amount necessary to cover Baum's fee and K. DeMasi's court costs and any fine.

41. Baum failed to place any of V. DeMasi's payment into a trust account.

42. Baum appropriated V. DeMasi's entrusted funds to be used for K. DeMasi's court costs and fine to his own use.

43. Baum failed to perform any valuable legal services for K. DeMasi and failed to make a refund to V. DeMasi.

44. By obtaining a fee from V. DeMasi for the purpose of representing K. DeMasi on her speeding ticket when Baum knew that he was not going to be able to represent K. DeMasi due to his suspension, Baum obtained V. DeMasi's fee payment under a false pretense.

45. On or about March 7, 2007, R. Pinter ("Pinter") retained Baum to represent him on a traffic ticket.

46. On March 7, 2007, Pintar paid Baum \$225, which included the amount necessary to cover Baum's fee and Pintar's court costs and any fine.

47. Baum failed to place any of Pintar's payment into a trust account.

48. Baum appropriated Pintar's entrusted funds intended to be used for Pintar's court costs and fine to his own use.

49. Baum failed to perform any valuable legal services for Pintar and failed to make a refund to Pintar.

50. Pintar filed a petition with the North Carolina State Bar's Fee Dispute Resolution Program seeking resolution of the disputed fee. The Fee Dispute Resolution Program notified Baum in writing that he must respond to the fee dispute petition in writing by the deadline stated in the notice. Baum failed to respond to the notification and failed to participate in the State Bar's fee dispute process.

51. On or about December 29, 2006, M. Boctor ("Boctor") retained Baum to represent him on his speeding ticket.

52. On December 29, 2006, Boctor paid Baum \$350 to represent him on the speeding ticket, which included the amount necessary to cover Baum's fee and Boctor's court costs and any fine.

53. Baum failed to place any of Boctor's payment into a trust account.

54. Baum appropriated Boctor's entrusted funds intended to be used for Boctor's court costs and fine to his own use.

55. Baum failed to perform any valuable legal services for Boctor and failed to make a refund to Boctor.

56. On or about December 15, 2006, W. D. Greene, Jr. ("Greene") retained Baum to represent him in collecting on a purchase money note that was in default.

57. On December 15, 2006, Greene paid Baum \$1,500 as an advanced payment against which Baum would bill for his services as earned in representing Greene in the loan default matter. The contract of engagement described the \$1,500 payment as a minimum fee.

58. Baum failed to perform any valuable legal services for Greene and failed to make a refund to Greene.

59. Greene filed a petition with the North Carolina State Bar's Fee Dispute Resolution Program seeking resolution of the disputed fee. The Fee Dispute Resolution Program notified Baum in writing that he must respond to the fee dispute petition in writing by the

deadline stated in the notice. Baum failed to respond to the notification and failed to participate in the State Bar's fee dispute process.

60. On or about April 13, 2007, C. Layman ("Layman") retained Baum to represent him on a speeding ticket.

61. On April 13, 2007, Layman paid Baum \$225, which included the amount necessary to cover Baum's fee and Layman's court costs and any fine. Layman signed a waiver of appearance form.

62. Baum failed to place any of Layman's payment into a trust account.

63. Baum appropriated Layman's entrusted funds intended to be used for Layman's court costs and fine to his own use.

64. On August 3, 2007, Layman received a letter from the Division of Motor Vehicles ("DMV") advising Layman that his driver's license would be suspended on October 2, 2007 for his failure to appear for his speeding ticket unless he got the matter resolved.

65. After several attempts, Layman was finally able to communicate with Baum and told Baum about the letter from DMV.

66. On September 7, 2007, after his license to practice law in North Carolina had been suspended, Baum went to the Wake County Courthouse and represented Layman in getting Layman's speeding ticket resolved.

67. Although Baum resolved Layman's ticket in the courtroom, Baum failed to pay Layman's court costs at the Wake County Clerk of Court's office causing DMV to again advise Layman on January 4, 2008 that his license would be suspended as of March 4, 2008 if the court costs remained unpaid.

68. On or about May 24, 2006, A. L. Aycock ("Aycock") retained Baum to represent her in a personal injury matter.

69. Baum neglected Aycock's case and failed to timely send Aycock's claim for damages to the insurance carrier for the responsible party.

70. Baum failed to communicate with Aycock about the status of her matter and failed to respond to Aycock's requests for information.

71. Baum failed to withdraw from representation upon Aycock's request and failed to notify the insurance carrier that he was no longer Aycock's lawyer.

72. On March 8, 2009, Baum was personally served with Letters of Notice from the State Bar's Grievance Committee in ten grievances. Each Letter of Notice directed Baum to

respond to the substance of grievance contained therein within 15 days of service of the Letter of Notice.

73. Baum failed to respond to any of the Letters of Notice in the ten grievances as directed.

BASED UPON the foregoing Findings of Fact, the panel makes the following:

CONCLUSIONS OF LAW

1. All parties are properly before this panel of the Disciplinary Hearing Commission and the Disciplinary Hearing Commission and this panel have jurisdiction over Baum and the subject matter.

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

- (a) By failing to deposit Fargalla's, K. Jones', D'Amato's, G. Jones', V. DeMasi's, Pinter's, Boctor's, and Layman's funds that were entrusted to him to be used for his clients' costs and fees in a trust account, separate and apart from property that belonged to him, Baum violated Rules 1.15-2(a) and (b).
- (b) By appropriating Fargalla's, K. Jones', D'Amato's, G. Jones', V. DeMasi's, Pinter's, Boctor's and Layman's entrusted funds to his own use, Baum used entrusted funds for his own benefit in violation of Rule 1.15-2(j); failed to use entrusted funds as directed by these clients in violation of Rule 1.15-2(m); committed the felony offenses of embezzlement in violation of N.C.G.S. § 14-90 which are criminal acts that reflect 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).
- (c) By obtaining the portion of K. Jones', D'Amato's, and V. DeMasi's, payments that they intended as Baum's fee to represent them on their speeding tickets at a time when he could not represent them on the speeding tickets because he was suspended from the practice of law in North Carolina, Baum committed the felony offenses of obtaining property by false pretenses in violation of N.C.G.S. § 14-100 which are criminal acts that reflect 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).

- (d) By holding himself out to K. Jones, D'Amato, and V. DeMasi as able to provide legal services by accepting funds for their legal services when he was suspended from the practice of law, Baum practiced law in a jurisdiction where doing so violated the regulation of the legal profession in that jurisdiction in violation of Rule 5.5(a).
- (e) By going to the Wake County Courthouse and resolving Layman's speeding ticket after his license was suspended, Baum practiced law in a jurisdiction where doing so violated the regulation of the legal profession in that jurisdiction in violation of Rule 5.5(a).
- (f) By failing to take any action to assist K. Jones, D'Amato, G. Jones, V. DeMasi, Pintar, and Boctor with their speeding tickets, Baum failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3.
- (g) By failing to take any action to assist Greene with his loan default matter, Baum failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3.
- (h) By failing to make a refund of K. Jones', D'Amato's, G. Jones', V. DeMasi's, Pintar's, Boctor's, Greene's, and Layman's funds paid to him in advance that he failed to earn or use for their benefit, Baum violated Rule 1.16(d).
- (i) By failing to participate in good faith in the fee dispute resolution process initiated by G. Jones, Pintar, and Greene, Baum violated Rule 1.5(f).
- (j) By neglecting Aycock's case and failing to timely send Aycock's claim for damages to the insurance carrier, Baum failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3.
- (k) By failing to communicate with Aycock about the status of her matter and failing to respond to Aycock's requests for information, Baum violated Rules 1.4 (a) (3) and (4).
- (l) By failing to notify the insurance provider that he was no longer Aycock's attorney, Baum violated Rule 1.16(d).
- (m) By failing to respond to each of the ten Letters of Notice, Baum failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b).

Based upon the foregoing Findings of Fact and Conclusions of Law, the hearing panel hereby finds by clear, cogent, and convincing evidence the following additional:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Baum knowingly took money from his clients for representation on their legal matters when he knew he would not be able to represent those clients.
2. As a result of Baum's conduct in this matter, his clients were left without representation on their legal matters.
3. Because Baum failed to make refunds of the unearned fees paid to him by his clients, his clients were harmed again by having to pay a second legal fee to get representation in their legal matters.
4. Because Baum misappropriated the amounts that his clients paid to him that represented the clients' costs and fines for their speeding tickets, his clients were harmed by having to again pay costs and fines levied when their speeding tickets were resolved.
5. Baum's conduct significantly and substantially harmed his clients and could only have a negative impact on his clients' and the public's perception of the legal profession.

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), (2) and (3) of the Rules and Regulations of the North Carolina State Bar and finds the following factors are applicable in this matter:

General Factors from 27 N.C.A.C. 1B §.0114(w) (3):

- a. Baum had no prior disciplinary offense in this state;
- b. Baum had a dishonest or selfish motive;
- c. Baum has shown indifference to making restitution to his clients;
- d. Baum exhibited a pattern of misconduct;
- e. Baum committed multiple offenses;

Suspension and Disbarment Factors from 27 N.C.A.C. 1B §.0114(w) (1):

- a. Baum intended to commit acts where the resulting harm or potential harm to his clients was foreseeable;
- b. The circumstances reflect Baum's lack of honesty, trustworthiness and integrity;
- c. Baum elevated his own interest above the interests of his clients;
- d. Baum's conduct had a negative impact on his clients' and the public's perception of the legal profession;
- e. Baum impaired his clients' ability to achieve the goals of the representation;
- f. Baum engaged in acts of dishonesty and deceit; and
- g. Baum engaged in multiple instances of failure to participate in the legal profession's self-regulation process, including his failure to respond to Letters of Notice and his default in the instant matter.

Disbarment Factors from 27 N.C.A.C. 1B §.0114(w) (2):

- a. Baum engaged in acts of dishonesty, misrepresentation, and deceit;
 - b. Baum engaged in misappropriation of his clients' funds and obtained fees from his clients under the false pretense that the fees would pay for his representation in their legal matters; and
 - c. Baum engaged in felonious conduct.
2. The hearing panel has carefully considered all of the different forms of discipline available to it. An admonition, reprimand, censure or suspension of Baum's license would not be sufficient discipline because of the gravity of the actual harm Baum's conduct caused to the public, the administration of justice and the legal profession, and because of the gravity of the significant potential harm to potential clients, the public, the administration of justice, and the legal profession if Baum were permitted to continue practicing law.
3. The hearing panel finds that discipline short of disbarment would not adequately protect the public, the legal profession or the administration of justice for the following reasons:

- a. Baum committed misdeeds involving violations of the public trust, including misappropriation of clients' entrusted funds, material misrepresentations and deceit;
 - b. Misconduct involving misappropriation, misrepresentations and deceit are among the most serious that any attorney can commit. Such offenses demonstrate that Baum is not trustworthy. The public should be able to assume that all lawyers are trustworthy; and
 - c. Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses Baum 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.
4. Protection of the public, the legal professional and the administration of justice requires that Baum not be permitted to resume the practice of law until he demonstrates the following:
 - a. That he has reformed;
 - b. That he understands his obligations to his clients, the public, the legal profession and the administration of justice; and
 - c. That permitting him to practice law will not be detrimental to the public, or the integrity and standing of the legal profession or the administration of justice.

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

ORDER OF DISCIPLINE

1. James E. Baum, Jr. is hereby DISBARRED from the practice of law, effective 30 days from the date of service of this order upon him.
2. Baum shall surrender his law license and bar membership card within 30 days after service of this order upon him.
3. Baum shall comply with all provisions of 27 N.C.A.C. 1B §.0124 of the North Carolina State Bar Discipline and Disability Rules as applicable.
4. Baum is taxed with the costs of this action as assessed by the Secretary which shall be paid within ninety (90) days of service of the notice of costs upon him.

Signed by the undersigned Chair of the hearing panel with the full knowledge and consent of the other panel members, this the 27th day of July 2010.

A handwritten signature in cursive script, appearing to read "Donna R. Rascoe", written over a horizontal line.

Donna R. Rascoe, Chair
Disciplinary Hearing Panel