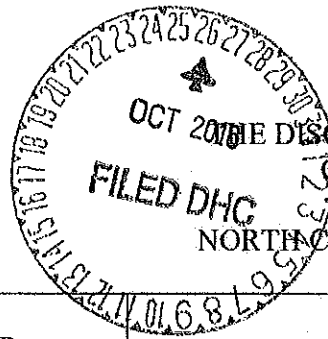


STATE OF NORTH CAROLINA

WAKE COUNTY



THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

MICHAEL C. STAMEY, Attorney,

Defendant

ORDER OF DISCIPLINE

THIS MATTER was heard on October 13, 2016 by a hearing panel ("panel") of the Disciplinary Hearing Commission ("DHC") composed of Fred M. Morelock, Chair; Bill King; and, Michael S. Edwards pursuant to 27 N.C. Admin. Code 1B § .0114 of the Rules and Regulations of the North Carolina State Bar. Barry S. McNeill, Deputy Counsel, represented Plaintiff, the North Carolina State Bar ("State Bar"). Defendant did not appear *pro se* or by counsel at the hearing. On October 12, 2016, the North Carolina State Bar, pursuant to 27 N.C. Admin. Code 1B § .0114(a), and under N.C. R. Civ. P. 41(a), filed a notice of voluntary dismissal of the Third and Fourth Claims for relief as alleged in the State Bar's Complaint filed on July 13, 2015. The panel heard and considered evidence only on the Complaint's First and Second Claims for relief.

Based upon the pleadings and evidence introduced at the hearing, the panel hereby finds by clear, cogent and convincing evidence the following

FINDINGS OF FACT

1. Plaintiff, the 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, Michael C. Stamey ("Defendant"), was admitted to the State Bar on August 21, 1983, 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 part of the relevant periods referred to herein, Defendant was engaged in the practice of law in the law firm of Stamey & Foust, L.L.P., Greensboro, Guilford County,

North Carolina and, subsequently, as a sole practitioner in the Stamey Law Offices, P.A., Jamestown, Guilford County, North Carolina.

FINDINGS OF FACT RELATED TO FIRST CLAIM FOR RELIEF

4. Dale Underhill ("Underhill") and Darrell Miller ("Miller") co-owned Showcase Homes, Inc. ("Showcase Homes"), which developed property and built residential homes in a subdivision in Winston-Salem, North Carolina.

5. Showcase Homes built a house on one of the lots (2450 Meadowpark Lane) in the subdivision, which Miller and his wife contracted to purchase.

6. In January 2007, Underhill and Miller entered into an agreement to dissolve their business relationship in Showcase Homes.

7. On February 16, 2007, Defendant and his firm at the time, Stamey & Foust, served as the settlement agent for Miller and his wife in the closing on 2450 Meadowpark Lane.

8. The HUD-1 and ledger for the closing shows that Defendant issued disbursements totaling \$152,504.23 via nine checks from the Stamey & Foust BB&T trust account (ending in -2530), including \$34,681.16 to Showcase Homes via check no. 109996, but Defendant never forwarded disbursement check no. 109996 to Showcase Homes.

9. Underhill contacted Defendant after the closing on numerous occasions to inquire when he might expect the disbursement check to Showcase Homes, but Defendant never provided Underhill a definite answer.

10. Instead, because of a dispute between Underhill and Miller over their Showcase Homes dissolution agreement, Defendant held the \$34,681.16 that was to be disbursed to the seller, Showcase Homes, in the Stamey & Foust BB&T trust account (ending in -2530).

11. In 2010, Miller brought a civil action against Underhill, *Darrell Miller v. Dale Underhill and Showcase Homes, Inc.*, No. 10-CVS-5422 (Forsyth Co. Sup. Ct.) ("the Miller lawsuit") regarding the Showcase Homes dissolution agreement.

12. Defendant represented Miller in the *Miller* lawsuit.

13. Defendant disassociated himself from the Stamey & Foust firm in 2011 and on May 20, 2011, Defendant opened his own NewBridge Bank trust account (ending in -4720) and operating account (ending in -4739).

14. Defendant did not immediately transfer the \$34,681.16 remaining in the Stamey & Foust BB&T trust account to his new NewBridge Bank trust account. As a result, the \$34,681.16 remained in the Stamey & Foust BB&T trust account for nearly a year and a half after Defendant had disassociated himself from the Stamey & Foust firm.

15. An Order and Judgment was entered in the *Miller* lawsuit on March 12, 2012 by Superior Court Judge A. Moses Massey, who ruled that the dissolution agreement previously entered into by Underhill and Miller was legal and enforceable.

16. Judge Massey ordered that Underhill and Miller were to receive certain proceeds and reimbursements under their dissolution agreement, including \$20,345.87 to Underhill and \$14,335.31 to Miller from the \$34,681.16 that remained in the Stamey & Foust BB&T trust account.

17. Underhill and Miller made repeated demands of Defendant for payment of their sums owed, but Defendant did not make the disbursements as ordered.

18. In an exchange of messages in September and early October of 2012, Defendant took the position that there were liens for assessments on the property that prevented Underhill from conveying clear title to Miller and, therefore, Defendant needed to clarify Judge Massey's Order as to who was responsible for the liens.

19. On October 3, 2012, Defendant deposited into his NewBridge Bank trust account a check in the amount of \$34,681.16 from the Stamey & Foust BB&T trust account, representing the funds Judge Massey ordered to be disbursed to Underhill and Miller.

20. Because of Defendant's delay in disbursing the \$14,335.31 to Miller per Judge Massey's order, Miller retained attorney T. Lawson Newton ("Newton") to obtain his disbursement from Defendant.

21. Newton initiated conversations with Defendant's office in October of 2012 and left messages for Defendant to return his telephone calls, but Defendant did not do so.

22. On December 1, 2012, Defendant issued a check from his NewBridge Bank trust account (check no. 14089) in the amount of \$14,335.31 to Newton, on behalf of Miller, but misaddressed or did not immediately mail the check to Newton, causing the check not to reach Newton until on or about February 6, 2013.

23. The debit to Defendant's NewBridge Bank trust account for check no. 14089 posted on February 7, 2013.

24. Newton thereafter disbursed the \$14,335.31 to Miller on February 20, 2013.

25. Miller spent approximately \$2,000 in legal fees in order to have Newton seek to enforce the disbursement ordered by Judge Massey.

26. Following the disbursement of the \$14,335.31 to Miller, a total of \$20,345.85 should have remained in Defendant's NewBridge Bank trust account for the benefit of Underhill per Judge Massey's Order.

27. Defendant's NewBridge Bank trust account records showed numerous unattributed payments to Defendant during March and April of 2013 that depleted his trust account balance below what should have been in the trust account to cover the remaining \$20,345.85 held in trust for Underhill.

28. Defendant's NewBridge Bank trust account records also showed a number of unidentified and/or unverified withdrawals in November and December 2013 that contributed to the balance depletion, including the following: (1) November 6, 2013 in the amount of \$1,756.64; (2) November 15, 2013 in the amount of \$1,200; (3) November 21, 2013 in the

amount of \$1,211; (4) November 25, 2013 in the amount of \$825; (5) November 29, 2013 in the amount of \$500; (6) December 2, 2013 in the amount of \$200; and, (7) December 9, 2013 in the amount of \$300.

29. NewBridge Bank subsequently furnished the withdrawal and "Miscellaneous Charge" tickets for these previously unidentified and/or unverified withdrawals in question.

30. The withdrawal debit tickets showed that Defendant made the November 6, 2013 withdrawal of \$1,756.64 at the Jamestown, North Carolina NewBridge Bank branch. The ticket was signed by Defendant as the owner of the account, but Defendant did not provide any client attribution on the ticket.

31. Defendant made the November 15, 2013 withdrawal of \$1,200 at the Calabash, North Carolina NewBridge Bank branch. This ticket was also signed by Defendant as the owner of the account, but Defendant did not provide any client attribution on the ticket.

32. Defendant made the November 21, 2013 withdrawal of \$1,211 at the Calabash, North Carolina NewBridge Bank branch. This ticket was signed by Defendant as the owner of the account, but Defendant did not provide any client attribution on the ticket.

33. Defendant made the November 25, 2013 withdrawal of \$825 at the Calabash, North Carolina NewBridge Bank branch. This ticket was signed by Defendant as the owner of the account, but Defendant did not provide any client attribution on the ticket.

34. Defendant made the November 29, 2013 withdrawal of \$500 at the Calabash, North Carolina NewBridge Bank branch. This ticket was signed by Defendant as the owner of the account, but Defendant did not provide any client attribution on the ticket.

35. Defendant's handwriting on the withdrawal tickets made at the Calabash, North Carolina branch became progressively worse as he made the respective withdrawals.

36. A "Miscellaneous Charge" ticket showed that Defendant made the December 2, 2013 withdrawal of \$200 at the Jamestown, North Carolina NewBridge Bank branch. This ticket was not signed by Defendant, but indicated that it was made by telephone. Defendant provided client attribution on the ticket for "Elisabeth [sic] Jordan."

37. Defendant made the December 9, 2013 withdrawal of \$300 at the Jamestown, North Carolina NewBridge Bank branch. This "Miscellaneous Charge" also was not signed by Defendant, but indicated that it was made to Defendant. Defendant provided client attribution on the ticket as "per client request for Elizabeth Price Jordan."

38. Defendant's trust account records showed that there were no funds in the account held for or on behalf of "Elizabeth Jordan" in December 2013.

39. The two disbursements Defendant attributed to "Elizabeth Jordan" in December of 2013 placed her ledger into a \$500 negative balance.

40. As a result of unattributed payments to Defendant in March and April of 2013 and the withdrawals by Defendant in November and December of 2013, the balance of Defendant's

NewBridge Bank trust account dropped to \$18,358.75 on April 3, 2013, and the balance had dropped to \$6,049.17 as of March 31, 2014.

41. During the State Bar's investigation, Defendant offered no explanation for the missing funds of at least \$14,296.68 as of the March 31, 2014 NewBridge Bank trust account balance.

42. Defendant never disbursed the \$20,345.87 in entrusted funds to which Underhill was entitled under Judge Massey's March 12, 2012 Order and Judgment.

43. Defendant misappropriated at least \$14,296.68 he held in trust for the benefit of Underhill and used those funds for his own benefit or for the use and benefit of a third person or entity without authorization to do so from Underhill.

FINDINGS OF FACT RELATED TO SECOND CLAIM FOR RELIEF

44. Brad A. Kemmerer ("Kemmerer") and his wife retained Defendant as the closing attorney for their mortgage refinancing in August 2012 on property located at 3401 Terrault Drive, Greensboro, North Carolina.

45. Following the closing and other disbursements, \$2,913.64 remained in Defendant's NewBridge Bank trust account (ending in -4720) for the benefit of the Kemmerers in order for Defendant to pay the Kemmerers' Guilford County property taxes on the refinanced property.

46. On August 17, 2012, Defendant disbursed check no. 21822 from his NewBridge Bank trust account payable to the Guilford County Tax Department in the amount of \$2,913.64 for payment of the Kemmerers' property taxes.

47. The check incorrectly referenced parcel number "0181999" but did not otherwise include the Kemmerers' identification; the correct parcel number for the Kemmerers' refinanced property was "0081999."

48. As a result of the incorrect parcel number, the Guilford County Tax Department credited the tax payment to the tax bill for the owner of parcel "0181999" in the amount of \$1,157, instead of the Kemmerers' account, leaving the Kemmerers' tax bill unpaid.

49. On or about October 24, 2012, the Guilford County Tax Department issued a refund check (dated September 28, 2012, check no. 479435) to Defendant's office in the amount of \$1,756.64.

50. The refund amount should have been deposited and held in Defendant's NewBridge Bank trust account as fiduciary funds on behalf of the Kemmerers, but instead was deposited into Defendant's NewBridge Bank operating account on November 7, 2012 and posted on November 8, 2012.

51. After receiving overdue property tax notices, in January 2013 Kemmerer contacted Defendant's office and received assurances that the unpaid property taxes would be corrected.

52. In February 2013, the Guilford County Tax Department credited the Kemmerers' account with the \$1,157 that previously had been credited to another account, leaving a balance owed by the Kemmerers of \$1,823.18.

53. Defendant's paralegal, Angela Renshaw, acting on Defendant's behalf and with his authorization, made repeated promises to the Guilford County Tax Department that Defendant would be disbursing a check for the balance due on behalf of the Kemmerers.

54. Defendant never paid the balance due to the Guilford County Tax Department for the Kemmerers' unpaid taxes.

55. As a result of the unpaid balance on their tax bill, on July 3, 2013 the Kemmerers paid to the Guilford County Tax Department the balance due plus late charges and interest totaling \$1,876.41.

56. Defendant misappropriated \$1,756.64 which was held by Defendant for the benefit of the Kemmerers and used it for his own benefit or for the benefit of a third person or entity without authorization to do so from the Kemmerers.

ADDITIONAL FINDINGS OF FACT

57. Defendant failed to maintain client ledgers for entrusted funds, thereby failing to keep accurate records of the funds received and disbursed on behalf of his clients, including Miller.

58. Defendant failed to conduct quarterly reconciliations of his former Stamey & Foust trust account and his NewBridge Bank trust account.

59. Although properly noticed of the hearing, Defendant advised the State Bar's counsel, Mr. McNeill, through his counsel at the time, James E. McNeil of Ocean Isle Beach, North Carolina, that Defendant would not appear or participate at the hearing. On October 10, 2016, the panel chair granted McNeil's motion to withdraw as Defendant's counsel for purposes of representing Defendant at the hearing, but allowed McNeil to limit his representation of Defendant to accepting service of process and facilitating communication.

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, Michael C. Stamey, and the subject matter of this proceeding.

2. Misappropriation by a lawyer of clients' entrusted funds is serious misconduct that reflects adversely on a lawyer's fitness to practice law.

3. Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) under the North Carolina Rules of Professional Conduct as follows:

- a) By failing to promptly deposit the entrusted funds from the Underhill/Miller settlement in his trust account, Defendant violated Rule 1.15-2(b);
- b) By misappropriating at least \$14,296.68 of Underhill's entrusted funds, Defendant used entrusted property for someone other than the legal or beneficial owner of that property, in violation of Rule 1.15-2(j);
- c) By failing to promptly make the disbursements to Underhill and Miller, Defendant failed to promptly pay or deliver entrusted property belonging to the owners and to which the owners were entitled in violation of Rule 1.15-2(m);
- d) By failing to respond to Miller's inquiries about the disbursement of the funds to which he was entitled, Defendant failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- e) By misappropriating the funds belonging to Underhill, Defendant committed 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 Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);
- f) By failing to conduct quarterly reconciliations of his trust accounts, Defendant violated Rule 1.15-3(d);
- g) By failing to keep accurate records of the funds received and disbursed on behalf of his clients, Defendant violated Rule 1.15-3(b)(5);
- h) By failing to deposit the \$1,756.64 refund from the Guilford County Tax Department into his NewBridge Bank trust account, Defendant failed to promptly deposit the Kemmerers' entrusted funds in his trust account in violation of 1.15-2(b);
- i) By misappropriating \$1,756.64 of the Kemmerers' entrusted funds, Defendant used entrusted property for his own personal benefit or for the personal benefit of another when neither Defendant nor the other were the legal or beneficial owner of that property, in violation of Rule 1.15-2(j), Defendant committed 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 Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c); and,
- j) By failing to disburse the balance due to the Guilford County Tax Department on behalf of the Kemmerers, Defendant failed to promptly pay or deliver the entrusted property belonging to the client and to which the client was entitled in violation of Rule 1.15-2(m).

Based upon the evidence, the hearing panel also finds by clear, cogent, and convincing evidence the following

ADDITIONAL FINDINGS OF FACT CONCERNING DISCIPLINE

1. Defendant has no record of prior discipline in North Carolina.
2. Defendant has substantial experience in the practice of law.
3. Defendant's misconduct occurred in connection with his representation of clients.
4. Effective February 7, 2013, the State Bar administratively suspended Defendant for failure to comply with his 2012 Continuing Legal Education ("CLE") requirements.
5. On October 31, 2012, Defendant entered into a deferred prosecution agreement to obtain treatment in a rehabilitation program after he was charged with contempt by a Guilford County District Court in *State v. Michael Stamey*, No. 12-CR-43030 (Guilford Co. Dist. Ct.).
6. In approximately April or May of 2013, Defendant entered the substance abuse treatment program pursuant to his deferred prosecution agreement.
7. Upon Defendant's completion of the substance abuse treatment program, Defendant abandoned his law practice and in approximately June of 2013 his paralegal, Ms. Renshaw, moved his files to a storage facility in Jamestown, North Carolina.
8. Defendant relapsed into substance abuse in October of 2013.
9. Many of the unauthorized withdrawals of funds by Defendant from his NewBridge Bank trust account appear to have occurred during the time periods that Defendant was dealing with substance abuse.
10. Underhill filed a Client Security Fund ("CSF") claim (14CSF0045) with the State Bar for the \$20,345.85 misappropriated by Defendant, and the claim was granted at the January 22, 2015 meeting of the CSF Committee. On February 12, 2015, the State Bar CSF forwarded to Underhill a check in the amount of \$20,345.87 for the loss attributed to Defendant.
11. On January 23, 2014, Defendant's father, James C. Stamey, issued Kemmerer a personal check in the amount of \$1,756.64 to reimburse the Kemmerers for the out-of-pocket money that they incurred in paying the balance owed to the Guilford County Tax Department. On March 3, 2014, Kemmerer acknowledged receiving and depositing the funds from Defendant's father.
12. Despite notice and the opportunity to do so, Defendant failed to appear or have legal representation appear on his behalf at the hearing before this panel, and therefore he deliberately failed to participate in the self-regulation process.
13. According to Kemmerer, Defendant violated his trust by mishandling the funds which were supposed to pay his tax bill, and the incident also caused Kemmerer concern about the legal profession as a whole.

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

DISCIPLINE CONCLUSIONS

1. The hearing panel has carefully considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are applicable and warrant consideration of suspension or disbarment of Defendant's license:

- (B) Intent of Defendant to commit acts where the harm or potential harm is foreseeable;
- (C) Circumstances reflecting Defendant's lack of honesty, trustworthiness, or integrity;
- (D) Elevation of Defendant's own interest above that of the client;
- (E) Negative impact of Defendant's actions on the clients' or public's perception of the legal profession;
- (F) Negative impact of Defendant's actions on the administration of justice;
- (G) Impairment of the clients' ability to achieve the goals of the representation;
- (I) Acts of dishonesty, misrepresentation, deceit, or fabrication; and,
- (J) Multiple instances of failure to participate in the legal profession's self-regulation process.

2. The hearing panel has also carefully considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0114(w)(2) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are applicable and warrant consideration of disbarment:

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

3. 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. Admin. Code 1B § .0114(w)(3) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are applicable in this matter:

- (A) Absence of prior disciplinary offenses in this state or any other jurisdiction;

- (C) A dishonest or selfish motive;
- (D) Timely good faith effort to make restitution to Kemmerer;
- (F) Defendant engaged in a pattern of misconduct;
- (G) There were multiple offenses;
- (I) Effect of any physical impairment on the conduct in question;
- (O) Defendant refused to acknowledge the wrongful nature of his conduct; and,
- (S) Defendant's substantial experience in the practice of law.

4. Defendant's failure to properly maintain and handle entrusted funds betrays a vital trust that clients and the public place in attorneys and the legal profession.

5. Defendant's misconduct caused potential significant harm to his clients in that his failure to safeguard entrusted client funds placed his clients' funds at risk.

6. Defendant's misconduct caused significant harm to multiple of his clients and to a third party in that he failed to make prompt disbursements of entrusted funds to or on behalf of some clients and to a third party.

7. Defendant's misappropriations from his clients and an opposing party show that he is untrustworthy.

8. Defendant's misappropriations also constitute criminal offenses, demonstrating his unfitness to be an attorney.

9. The hearing panel has considered all other forms of discipline available and concludes that any sanction less than disbarment would fail to acknowledge the seriousness of the offenses committed by Defendant, would not adequately protect the public, and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar.

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

ORDER OF DISCIPLINE

1. Defendant, Michael C. Stamey, is hereby DISBARRED from the practice of law, effective 30 days from the date of service of this order upon him.

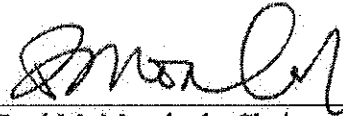
2. Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon him.

3. Defendant shall comply with the wind down provisions contained in 27 N.C. Admin. Code 1B § .0124. As provided in § .0124(d), Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within 10 days of the effective date of this order, certifying he has complied with the wind down rule.

4. Defendant is taxed with the administrative fees and costs of this action, including the cost of the depositions taken in this matter as allowed by statute. The deposition costs were necessarily incurred for the prosecution of this proceeding. Defendant will receive a statement of costs from the Secretary of the State Bar and Defendant shall pay these costs within 90 days of service of the notice of costs upon him.

Signed by the undersigned Chair with full knowledge and consent of the other members of the hearing panel.

This is the 26th day of October, 2016.

A handwritten signature in black ink, appearing to read 'Fred M. Morelock', written over a horizontal line.

Fred M. Morelock, Chair
Disciplinary Hearing Committee