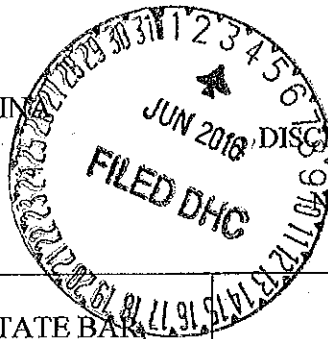


STATE OF NORTH CAROLINA

WAKE COUNTY



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

THE NORTH CAROLINA STATE BAR

Plaintiff

v.

KEITH C. BOOKER, Attorney,

Defendant

CONSENT ORDER OF DISCIPLINE

THIS MATTER was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Steven Michael, Chair, William O. King, and Tyler B. Morris. Plaintiff, the North Carolina State Bar, was represented by Brian P.D. Oten. Defendant, Keith C. Booker, was represented by Dudley A. Witt. Defendant waives a formal hearing in this matter. The parties stipulate and agree to the findings of fact and conclusions of law recited in this order, and consent to the discipline imposed by this order. By consenting to the entry of this order, Defendant knowingly, freely, and voluntarily waives his right to appeal this consent order or to challenge in any way the sufficiency of the findings and conclusions herein.

Based on the foregoing and with 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 ("Plaintiff" or "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, Keith C. Booker ("Defendant" or "Booker"), was admitted to the North Carolina State Bar on 24 August 1996 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 relevant periods referred to herein, Booker was actively engaged in the private practice of law in the city of China Grove, Rowan County, North Carolina.

4. Booker was properly served with the summons and complaint in this matter.

5. From at least May 2013 to May 2014, Booker maintained an attorney trust account at Bank of America, account number ending in 1330.

6. From at least May 2013 to the present, Booker maintained a business operating account at Bank of America, account number ending in 7993.

7. During the periods of time recited above that Booker maintained an attorney trust account, Booker gave his office manager authority to electronically transfer funds from his trust account to his operating and/or personal accounts without Booker's supervision or approval, many of which resulted in the over-disbursements and commingling of personal funds with entrusted client funds noted below.

8. Booker shared his responsibility to create, maintain, and review the trust account records required by the Rules of Professional Conduct and his responsibility to review his operating account records with his office manager. Booker failed to provide sufficient instruction to ensure his office manager could carry out her assigned duties in accordance with the Rules of Professional Conduct and Booker failed to take reasonable steps to review his office manager's conduct.

9. During the periods of time recited above that Booker maintained an attorney trust account, Booker engaged in the following conduct:

- a. On multiple occasions, Booker and/or Booker's office manager electronically disbursed funds from his trust account to his operating account and personal account without maintaining any record in the bank documents identifying the client against whose balance in the trust account the disbursements were being made;
- b. Booker disbursed more funds from his trust account for particular clients than he had in the trust account for those clients;
- c. Booker routinely deposited and disbursed entrusted client funds into and from his business operating account;
- d. Booker and/or Booker's office manager commingled Booker's funds with client funds, both by depositing his personal funds into the trust account and by depositing entrusted client funds in his operating and personal accounts;
- e. Booker routinely failed to conduct monthly and quarterly reconciliations of his trust account;
- f. Booker failed to timely and accurately identify and track, per client, the funds received and disbursed for each client;
- g. Booker failed to show on some trust account checks the client(s) against whose balance in the trust account funds were being disbursed by the check, or did not accurately show the client(s) against whose balance in the trust account funds were being disbursed; and

- h. Booker failed to maintain records reflecting the client(s) to whom the funds being deposited into his trust or operating account belonged, or did not accurately show the client(s) to whom the funds belonged.
10. On 14 June 2013, Booker deposited into his trust account payment made by client Hicks in the amount of \$350.00.
11. Hicks's payment included anticipated court costs and fines for Hicks's traffic ticket, which were entrusted client funds, and attorney's fees.
12. After resolving Hicks's case, Booker paid Hicks's court costs and fines on or about 15 July 2013.
13. Between 14 June 2013 and 15 July 2013, Booker should have maintained in his trust account a sufficient balance to cover the court costs and fines associated with Hicks's traffic ticket.
14. Booker did not maintain in his trust account a balance sufficient to cover Hicks's court costs and fines between 14 June 2013 and 15 July 2013.
15. Booker failed to safeguard Hicks's entrusted client funds, resulting in those funds being used for the benefit of someone other than Hicks without authorization to do so.
16. On 14 June 2013, Booker deposited into his trust account payment made by client Graham in the amount of \$360.00.
17. Graham's payment included anticipated court costs and fines for Graham's traffic ticket, which were entrusted client funds, and attorney's fees.
18. After resolving Graham's case, Booker paid Graham's court costs and fines on or about 17 July 2013.
19. Between 14 June 2013 and 17 July 2013, Booker should have maintained in his trust account a sufficient balance to cover the court costs and fines associated with Graham's traffic ticket.
20. Booker did not maintain in his trust account a balance sufficient to cover Graham's court costs and fines between 14 June 2013 and 17 July 2013.
21. Booker failed to safeguard Graham's entrusted client funds, resulting in those funds being used for the benefit of someone other than Graham without authorization to do so.
22. On 26 June 2013, Booker wrote check no. 4095 out of his operating account in the amount of \$1,677.00, made payable to the Clerk of Court for Davidson County.
23. Check no. 4095 represented Booker's payment of court costs and fines associated with traffic tickets for 4 of Booker's clients.

24. As of 26 June 2013, Booker's operating account maintained a balance of \$33.91.
25. As of 26 June 2013, Booker's trust account maintained a balance of \$817.83.
26. On 26 June 2013, Booker deposited into his trust account payments made by clients Nixon, Uliciansky, and Mulligan totaling \$896.37, raising his trust account balance to \$1,714.20. This deposit contained payment for anticipated court costs and fines associated with these clients' respective cases, which were entrusted client funds, and Booker's attorney fees.
27. On 26 June 2013, Booker or his office manager electronically transferred a total of \$1,675.00 from his trust account to his operating account.
28. As a result of this transfer, Booker's trust account balance decreased to \$39.20.
29. Check no. 4095 did not cover court costs and fines for and otherwise did not benefit clients Nixon, Uliciansky, and/or Mulligan.
30. Booker failed to safeguard entrusted client funds belonging to Nixon, Uliciansky, and Mulligan, resulting in those funds being used for the benefit of someone other than the beneficial owners of the funds without authorization to do so.
31. On or before 2 August 2013, Booker received a total of at least \$6,284.00 in entrusted funds to be held for the benefit of 25 separate clients (clients Deberry, Hadden, Rookwood, Ventura-Romero, Saunders, Holmes, Mills, Colson, Bernachec, Salazar, Robinson, Simmons, Perry, Uliciansky, Huebner, Osorio, Speidel, Firooznia, Freeman, Holdaway, Beheler, Delgado, Grant, Claffey, and/or Casey) to pay the court costs and fines associated with their respective traffic tickets.
32. Booker deposited these funds in his trust account.
33. Booker did not pay the court costs and fines associated with any of the 25 clients listed in paragraph 31 until 10 October 2013.
34. Between 2 August 2013 and 10 October 2013, Booker should have maintained in his trust account a minimum balance of \$6,284.00.
35. Booker did not maintain in his trust account the required minimum balance of \$6,284.00 between 2 August 2013 and 10 October 2013.
36. Booker failed to safeguard entrusted client funds belonging to the 25 clients identified in paragraph 31, resulting in those funds being used for the benefit of someone other than the beneficial owners of those funds without authorization to do so.
37. In or around February 2013, William Mitchell retained Booker for representation concerning a traffic ticket.
38. Mitchell paid Booker \$548.00 for the representation.

39. Mitchell's payment to Booker included anticipated court costs and fines for the ticket, which were entrusted client funds, and attorney's fees.

40. After retaining Booker, Mitchell made multiple inquiries of Booker about the status of his case.

41. Booker did not promptly respond to all of Mitchell's requests for information.

42. Mitchell had a court date scheduled for 27 March 2013. Booker told Mitchell that he would appear in court on Mitchell's behalf and that Mitchell did not need to appear in court on the scheduled court date.

43. Booker subsequently had Mitchell's court date continued to 17 April 2013.

44. Booker failed to appear on Mitchell's behalf at the 17 April 2013 court date.

45. Booker did not inform Mitchell of his failure to appear at the 17 April 2013 court date.

46. On or about 16 May 2013, the North Carolina Department of Motor Vehicles informed Mitchell that his driving privilege would be suspended due to his failure to appear in court.

47. After receiving the suspension notice from the DMV, Mitchell made multiple inquiries to Booker requesting an update on the status of his case.

48. Booker did not respond to Mitchell's inquiries.

49. On or about 22 May 2013, Booker resolved Mitchell's case.

50. Booker failed to timely pay the court costs and fines associated with Mitchell's traffic ticket.

51. Booker never informed Mitchell that he had failed to timely pay the court costs and fines associated with Mitchell's ticket.

52. On or about 20 June 2013, as a result of Booker's failure to pay the court costs and fines associated with Mitchell's traffic ticket, Mitchell received another letter from the North Carolina Department of Motor Vehicle informing him that his driving privilege would be suspended for failure to pay the court costs and fines associated with his traffic ticket.

53. Mitchell contacted Booker inquiring about Booker's failure to pay the court costs and fines associated with his traffic ticket.

54. On or about 26 June 2013, Booker paid the court costs and fines (\$488.00) associated with Mitchell's traffic ticket.

55. Booker deposited Mitchell's payment of \$548.00 into his attorney trust account on or about 20 February 2013.

56. Because Booker did not pay the court costs and fine associated with Mitchell's ticket until 26 June 2013, Booker should have maintained in his trust account a minimum balance of \$488.00 between the date of deposit (20 February 2013) and the date of disbursement (26 June 2013).

57. Booker did not maintain the required minimum balance in his trust account to cover Mitchell's court costs and fines between 20 February 2013 and 26 June 2013.

58. Booker failed to safeguard Mitchell's entrusted client funds, resulting in those funds being used for the benefit of someone other than Mitchell without authorization to do so.

59. In or around May 2013, Brian Miller retained Booker for representation concerning a traffic ticket.

60. Miller paid Booker \$510.00 for the representation.

61. Miller's payment to Booker included anticipated court costs and fines for the ticket, which were entrusted client funds, and attorney's fees.

62. Booker promised Miller that he would get Miller's traffic ticket reduced to a charge of 9 miles per hour over the speed limit.

63. After retaining Booker, Miller and/or Miller's wife made multiple inquiries of Booker about the status of Miller's case.

64. Booker did not promptly respond to all of Miller's or Miller's wife's requests for information.

65. In or around July 2013, Booker resolved Miller's case.

66. Booker failed to timely pay the court costs and fines associated with Miller's traffic ticket.

67. After resolving Miller's case, Booker informed Miller or Miller's wife of the resolution and told Miller that he would send confirmation of the resolution.

68. Booker did not provide Miller with confirmation of the resolution as promised.

69. Booker did not inform Miller that he had failed to pay the court costs and fines associated with Miller's ticket.

70. On or about 8 August 2013, as a result of Booker's failure to pay the court costs and fines associated with Miller's traffic ticket, Miller received a letter from the North Carolina Department of Motor Vehicles informing him that his driver's license would be suspended for failure to pay the court costs and fines associated with his traffic ticket.

71. Miller subsequently contacted Booker inquiring about Booker's failure to pay the court costs and fines associated with his traffic ticket.

72. Booker did not pay Miller's court costs and fines (\$508.00) until 13 September 2013.

73. Booker deposited Miller's payment of \$510.00 into his attorney trust account on or about 30 May 2013.

74. Because Booker did not pay the court costs and fine associated with Miller's ticket until 13 September 2013, Booker should have maintained in his trust account a minimum balance of \$508.00 between the date of deposit (30 May 2013) and the date of disbursement (13 September 2013).

75. Booker did not maintain the required minimum balance in his trust account to cover Miller's court costs and fines between 30 May 2013 and 13 September 2013.

76. Booker failed to safeguard Miller's entrusted client funds, resulting in those funds being used for the benefit of someone other than Miller without authorization to do so.

77. In or around May 2013, Mary Marlow retained Booker to represent her then-minor son concerning a traffic ticket.

78. Marlow paid Booker \$350.00 for the representation.

79. Marlow's payment to Booker included anticipated court costs and fines for the ticket, which were entrusted client funds, and attorney's fees.

80. Booker promised Marlow that he would get her son's traffic ticket reduced to a non-moving violation.

81. Booker did not resolve Marlow's son's case until 11 October 2013.

82. Booker failed to inform Marlow or her son that the case had been resolved.

83. Booker did not pay the court costs and fines (\$283.00) associated with Marlow's son's ticket until 30 October 2013.

84. Booker failed to timely pay the court costs and fines associated with Marlow's son's traffic ticket.

85. Booker deposited Marlow's payment of \$350.00 into his attorney trust account on or about 30 May 2013.

86. Because Booker did not pay the court costs and fines associated with Marlow's son's ticket until 30 October 2013, Booker's trust account should have maintained a sufficient balance to cover the court costs and fines from the date of deposit (30 May 2013) until the date of disbursement (30 October 2013).

87. Booker did not maintain the required minimum balance in his trust account to cover Marlow's son's court costs and fines between 30 May 2013 and 30 October 2013.

88. Booker failed to safeguard Marlow's son's entrusted client funds, resulting in those funds being used for the benefit of someone other than Marlow's son without authorization to do so.

89. During 2013, Booker represented Ishenika Carr in a domestic case.

90. In or around September 2013, Booker was paid \$300.00 to file a motion for contempt on Carr's behalf.

91. Booker never filed the motion for contempt.

92. Booker did not earn the fee Carr paid him concerning the motion for contempt.

93. On or about 2 December 2013, Carr terminated Booker's representation and requested a refund of her paid fee.

94. Booker did not promptly provide a refund of the unearned fee.

95. In or around April 2013, Samuel L. Cureton retained Booker for representation in a divorce from his wife.

96. Cureton paid Booker at least \$990.00 for the representation.

97. Throughout the representation, Booker failed to respond and/or failed to timely respond to Cureton's inquiries requesting an update on the status of his case.

98. Booker never filed a complaint for divorce on Cureton's behalf.

99. Booker did not provide the legal services for which Cureton paid him.

100. Booker did not earn the fee Cureton paid him.

101. Booker never refunded any unearned portion of Cureton's paid fee.

102. During 2014, Booker represented clients April Beije, James Pope, and James Gavin in Cabarrus County concerning their respective traffic tickets.

103. Beije, Pope, and Gavin paid Booker for the representations.

104. Booker failed to appear on behalf of Beije, Pope, and Gavin at their respective scheduled court dates in 2014.

Based on the foregoing Findings of Fact and with the consent of the parties, the Hearing Panel makes the following

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the DHC has jurisdiction over Defendant, Keith C. Booker, and over 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. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

- (a) By failing to appear at Mitchell's scheduled court date and by failing to timely pay the court costs and fines associated with his Mitchell's traffic ticket, Booker failed to act with reasonable diligence in representing a client in violation of Rule 1.3, failed to promptly pay entrusted funds to a third party as directed by his client in violation of Rule 1.15-2(m), and engaged in conduct that was prejudicial to the administration of justice in violation of Rule 8.4(d);
- (b) By failing to inform Mitchell of his failure to appear at Mitchell's scheduled court date, by failing to inform Mitchell of his failure to timely pay the court costs and fines associated with Mitchell's ticket, and by failing to promptly respond to Mitchell's multiple inquiries regarding the status of his case, Booker failed to keep his client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3) and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- (c) By promising to have Miller's traffic ticket reduced to a charge of 9 miles per hour over the speed limit, Booker made a false or misleading statement about the services he could provide to Miller in violation of Rule 7.1(a);
- (d) By failing to timely pay the court costs and fines associated with Miller's traffic ticket, Booker failed to act with reasonable diligence in representing a client in violation of Rule 1.3, failed to promptly pay entrusted funds to a third party as directed by his client in violation of Rule 1.15-2(m), and engaged in conduct that was prejudicial to the administration of justice in violation of Rule 8.4(d);
- (e) By failing to inform Miller of his ticket being resolved, by failing to inform Miller of his failure to pay the court costs and fines associated with Miller's ticket, and by failing to promptly respond to Miller's multiple inquiries regarding the status of his case, Booker failed to keep his client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3) and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- (f) By promising to have Marlow's son's traffic ticket reduced to a non-moving violation, Booker made a false or misleading statement about the services he could provide in violation of Rule 7.1(a);
- (g) By failing to timely resolve Marlow's son's traffic ticket and by failing to timely pay the court costs and fines associated with Marlow's son's traffic ticket, Booker failed to act with reasonable diligence in representing a client in violation of Rule 1.3, failed to promptly pay entrusted funds to a third party as directed by his client in violation of Rule 1.15-2(m), and engaged in conduct that was prejudicial to the administration of justice in violation of Rule 8.4(d);

- (h) By failing to inform Marlow or Marlow's son that the ticket was resolved and by failing to inform Marlow or her son of his failure to pay the court costs and fines associated with Marlow's son's ticket, Booker failed to keep his client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3);
- (i) By failing to file the motion for contempt on Carr's behalf, Booker failed to act with reasonable diligence in representing a client in violation of Rule 1.3;
- (j) By failing to promptly refund Carr's paid fee after being terminated from the representation, Booker failed to take steps to the extent reasonably practicable to protect a client's interest upon termination of representation in violation of Rule 1.16(d);
- (k) By failing to file a complaint for divorce on Cureton's behalf, by otherwise failing to compete the matter for which he was retained, and by keeping the entire fee paid by Cureton despite failing to provide the legal services for which he was retained, Booker failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 and collected a clearly excessive fee in violation of Rule 1.5(a);
- (l) By failing to respond to Cureton's inquiries concerning his case, Booker failed to reasonably consult with his client about the means by which the client's objectives were to be accomplished in violation of Rule 1.4(a)(2), failed to keep the client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3), and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- (m) By failing to appear on behalf of clients Beije, Pope, and Gavin at their respective scheduled court dates, Booker failed to act with reasonable diligence in representing a client in violation of Rule 1.3 and engaged in conduct that was prejudicial to the administration of justice in violation of Rule 8.4(d);
- (n) By failing to supervise and review his office manager's disbursements of entrusted funds from his trust account, Booker failed to make reasonable efforts to ensure a nonlawyer's conduct was compatible with his professional obligations in violation of Rule 5.3(b);
- (o) By failing to reconcile his trust accounts monthly and quarterly, Booker failed to conduct the requisite reconciliations of his trust accounts in violation of Rules 1.15-3(d)(1) and (2);
- (p) By failing to accurately track, per client, the funds received and disbursed for each client, Booker failed to properly identify and maintain entrusted funds in violation of Rules 1.15-2(a) and 1.15-3(b)(5);
- (q) By failing to show on each cancelled check the client against whose balance in the trust account funds were being disbursed by said check and by failing to show on each trust account deposit record the client to whom the funds being

deposited into the trust account belonged, Booker failed to maintain required minimum records for his trust account in violation of Rules 1.15-3(b)(1) and (2);

- (r) By disbursing funds via electronic transfer from his trust account to his operating or personal accounts without showing the name of the client against whose balance in the trust account funds were being disbursed, Booker failed to maintain required minimum records for his trust account in violation of Rule 1.15-3(b)(3) and used an improper item to disburse fees or expenses to himself in violation of Rule 1.15-2(h);
- (s) By depositing personal funds into his trust account, Booker failed to maintain entrusted funds separate from his property in violation of Rule 1.15-2(a) and deposited funds belonging to him into a trust account in violation of Rule 1.15-2(f);
- (t) By depositing entrusted client funds into his operating and personal accounts, Booker failed to safeguard entrusted funds in violation of Rules 1.15-2(a) and (b);
- (u) By disbursing more funds for clients than he had in his trust account for those clients' benefits, Booker failed to properly maintain and disburse funds in violation of Rules 1.15-2(a), (j), and (m); and
- (v) By failing to monitor and safeguard the entrusted funds that he held for the benefit of clients Mitchell, Miller, Marlow's son, Hicks, Graham, Nixon, Uliciansky, Mulligan, Deberry, Hadden, Rookwood, Ventura-Romero, Saunders, Holmes, Mills, Colson, Bernachec, Salazar, Robinson, Simmons, Perry, Uliciansky, Huebner, Osorio, Speidel, Firooznia, Freeman, Holdaway, Beheler, Delgado, Grant, Claffey, and/or Casey, resulting in those funds being disbursed for the benefit of someone other than the beneficial owner of the funds, Booker failed to safeguard entrusted funds in violation of Rules 1.15-2(a), (b), and (j).

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

ADDITIONAL FINDINGS REGARDING DISCIPLINE

1. Although Defendant's failure to properly monitor, track, and safeguard entrusted funds – including Defendant's failure to adequately supervise his office manager's improper handling of entrusted funds – resulted in some funds being misused for the benefit of someone other than the beneficial owner of the funds, there is no evidence that Defendant knowingly or intentionally misused entrusted client funds, there is no evidence that Defendant intended to harm his clients, and there is no evidence of any dishonest or selfish motive on the part of Defendant.

2. Defendant fully cooperated with the State Bar throughout the disciplinary process, and was candid and forthright in his responses to the State Bar's inquiries.

3. Defendant has been diagnosed with anxiety disorder and attention deficit hyperactivity disorder. It is the opinion of Defendant's evaluating mental health professional that Defendant has suffered from these conditions for a substantial period of time that includes the time frame of misconduct reflected in this Order, and that these conditions contributed to the misconduct described in this Order.

4. Defendant's conduct – to wit: severe neglect of multiple client matters, failure to adequately communicate with his clients, failure to timely resolve the matters for which he was retained, and failure to safeguard entrusted client funds – impaired his clients' ability to achieve the goals of the representation and unnecessarily delayed resolution of his clients' pending cases. Nevertheless, the evidence demonstrates that despite this neglect, Defendant consistently made efforts to rectify the consequences of his misconduct to ensure his clients' cases were ultimately properly resolved.

5. Defendant's conduct in over-disbursing entrusted funds from his trust account caused significant harm to his clients whose entrusted funds were used for the benefit of someone other than the beneficial owner of the funds without their knowledge or consent.

6. Conducting quarterly reconciliations of the trust account is the lynchpin of proper maintenance and protection of entrusted funds. Defendant's continued failure to reconcile his trust account and failure to maintain proper trust account records demonstrates a pattern of misconduct and demonstrates Defendant's intent to commit acts where the potential harm is foreseeable.

7. Defendant's conduct – ranging from his neglect of his clients' cases to allowing client funds to be improperly maintained or disbursed, even if inadvertent – placed entrusted funds at risk and has the potential to cause significant harm to the standing of the profession in the eyes of the public because it shows his disregard for his duties as an attorney. Such erosion of public confidence in attorneys tends to sully the reputation of, and fosters disrespect for, the profession as a whole. Confidence in the legal profession is a building block for public trust in the entire legal system.

8. Defendant's failure to adequately track and facilitate the proper receipt and disbursement of entrusted client funds was exacerbated by his failure to exercise any amount of supervision over his office staff's handling of entrusted funds, including his office manager to whom he delegated the authority to electronically disburse funds from his trust account. Although some of the misconduct set out above is the result of actions taken by Defendant's staff, Defendant is solely responsible for safeguarding client funds entrusted to him and for maintaining proper trust account records as required by the Rules of Professional Conduct. Defendant's complete failure to supervise and review his staff's efforts demonstrates Defendant's intent to commit acts where the potential harm is foreseeable, and Defendant's conduct impaired his clients' ability to achieve the goals of their respective representations.

9. Defendant has substantial experience in the practice of law.

10. Defendant acknowledges the wrongful nature of his conduct and is genuinely remorseful for his misconduct.

11. Defendant has prior discipline. In 2011, Defendant was reprimanded by the State Bar's Grievance Committee for his neglect of four separate client matters (file nos. 10G0444, 10G0487, 10G0608, 10G0868) -- including his failure to appear on behalf of clients in their respective traffic cases and his failure to adequately communicate with his clients -- as well as his failure to timely respond to the State Bar during the grievance process. Although not discipline, in 2013, Defendant was issued a Letter of Warning by the Grievance Committee in file no. 13G0207 for his failure to appear on behalf of a client in a traffic case.

12. 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, and with the consent of the parties, the Hearing Panel also enters the following

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel considered all of the factors enumerated in 27 N.C. Admin. Code 1B § .0114(w) of the Discipline and Disability Rules of the North Carolina State Bar.

2. The Hearing Panel concludes that the following factors from § .0114(w)(1), which are to be considered in imposing suspension or disbarment, are present in this case:

- (a) intent of the defendant to commit acts where the harm or potential harm is foreseeable;
- (b) Defendant's actions had a potential negative impact on his clients' and the public's perception of the legal profession; and
- (c) impairment of the client's ability to achieve the goals of the representation.

3. The Hearing Panel has considered all of the factors enumerated in § .0114(w)(2) of the Rules and Regulations of the North Carolina State Bar and concludes that, although Defendant misappropriated or converted assets to which the recipient was not entitled, Defendant's conduct does not warrant disbarment.

4. The Hearing Panel concludes that the following factors from § .0114(w)(3), which are to be considered in all cases, are present in this case:

- (a) Defendant's prior disciplinary offenses;
- (b) absence of a dishonest or selfish motive;
- (c) a pattern of misconduct;
- (d) multiple offenses;

- (e) Defendant's timely good faith efforts to rectify the consequences of his misconduct;
- (f) the effect of Defendant's mental health conditions on the conduct in question;
- (g) Defendant's remorse;
- (h) issuance of a letter of warning to Defendant within the three years immediately preceding the filing of the complaint; and
- (i) Defendant's substantial experience in the practice of law.

5. Defendant's neglect, failure to communicate, failure to timely resolve the matters for which he was retained, and failure to safeguard entrusted client funds caused significant harm to his clients.

6. Defendant's conduct caused significant harm to the public and to the administration of justice by unnecessarily delaying resolution of his clients' cases. Justice is achieved when all matters are timely pursued and resolved; justice is impeded by attorneys who abandon their clients and their duties as an attorney, leaving their clients' cases and their clients' interests in an unnecessarily uncertain status such as that created by Defendant.

7. Defendant's conduct, if continued or tolerated by the Bar, poses significant potential harm to future clients and to the profession.

8. The Hearing Panel has considered admonition, reprimand, and censure as potential discipline but finds that admonition, reprimand, or censure would not be sufficient discipline because of the gravity of the harm to clients and the significant threat of potential harm to the public.

9. Due to Defendant's gross failure to adequately create, maintain, and review trust account records as required by the Rules of Professional Conduct, Defendant's complete failure to supervise his office manager's conduct, the significant harm suffered by Defendant's clients as a result of Defendant's conduct, and the significant potential harm resulting from Defendant's conduct, the Hearing Panel concludes that active suspension of Defendant's license for a set period of time is the only discipline that will adequately protect the public from future transgressions by Defendant, that acknowledges the seriousness of the offenses Defendant committed, and that sends a proper message to attorneys and the public regarding the conduct expected of members of the Bar of this State. The Panel finds that any sanction less than suspension 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 in this State.

10. Under other circumstances, the misconduct in this case would warrant more serious discipline. However, the unique circumstances surrounding this case justify lesser discipline than would otherwise be appropriate. The factors that particularly warrant lesser discipline include: Defendant's candor and complete cooperation during the disciplinary process; Defendant's mental health conditions, which significantly contributed to Defendant's

misconduct; Defendant's acceptance of personal responsibility for his actions; Defendant's acknowledgment of the wrongfulness and seriousness of his misconduct; and Defendant's genuine remorse.

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

ORDER OF DISCIPLINE

1. The license of Defendant, Keith C. Booker, is hereby suspended for five years, effective 30 days from the date of service of this order upon Defendant.

2. Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following the effective date of this Order.

3. Defendant shall comply with the wind down provisions contained in Rule .0124 of the North Carolina State Bar Discipline and Disability Rules, 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. Within 10 days of the effective date of this Order, Defendant shall provide the State Bar with an address and telephone number at which clients seeking return of files can communicate with Defendant and obtain such files, and Defendant shall promptly return all files to his clients upon request.

5. Defendant shall pay the costs and administrative fees of this proceeding as assessed by the Secretary, including the costs of all depositions and transcriptions of depositions taken in this case, within 60 days of service of the statement of costs and administrative fees upon him.

6. At the end of the five-year active period of suspension, Defendant may apply for reinstatement by filing a petition with the DHC in accordance with the North Carolina State Bar Discipline and Disability Rules and by showing by clear, cogent, and convincing evidence that he has complied with the following conditions for reinstatement:

- (a) That he has complied with the general provisions for reinstatement listed in 27 N.C. Admin. Code 1B § .0125 of the North Carolina State Bar Discipline & Disability Rules;
- (b) That he has timely complied with paragraphs 2-5 of this section of the Order of Discipline;
- (c) That, not more than 90 days before he petitions for reinstatement, Defendant has been evaluated by a licensed and qualified psychiatrist or psychologist. Such psychiatrist/psychologist shall be approved in advance by the North Carolina State Bar Office of Counsel. Such psychiatrist/psychologist shall certify under

oath whether, based on his or her independent and comprehensive evaluation of Defendant and in his or her professional opinion, Defendant currently has any physical, mental, psychological, behavioral, cognitive, or emotional illness, disorder, or other condition that impairs Defendant's ability to practice law, that impacts Defendant's ability or willingness to comply with the Rules of Professional Conduct, and/or that poses a risk of harm to the public if he engages in the practice of law. Defendant bears the burden of proving that he does not suffer from any such impairing condition at the time of reinstatement. Defendant shall sign an authorization form consenting to the release of all medical records and information related to Defendant's evaluation to the Office of Counsel, and Defendant shall not revoke that release. Defendant shall simultaneously provide a copy of such signed authorization to the Office of Counsel and the psychiatrist/psychologist. Defendant shall direct the evaluating psychiatrist/psychologist described herein to provide a written report of such evaluation and recommended treatment, if any, to the Office of Counsel within 30 days of the evaluation taking place. In addition to the foregoing, Defendant shall provide to the Office of Counsel a full description of all treatment undertaken during the period of suspension, including the mental health professional(s) administering such treatment, and Defendant shall certify that he was complied with all treatment recommendation(s) from his treating mental health professional(s) during the period of suspension. Defendant shall sign an authorization form consenting to the release of all medical records and information related to Defendant's treatment to the Office of Counsel, and Defendant shall not revoke that release. All expenses of such evaluation, report(s), and production of records shall be borne by Defendant;

- (d) That, at Defendant's sole expense, he has completed eight hours of trust account continuing legal education programs, approved in advance by the Office of Counsel, including at least one hour that includes discussion of quarterly reconciliations of the trust account taught by Trust Account Compliance Counsel for the North Carolina State Bar;
- (e) That he has kept the North Carolina State Bar membership department advised of his current physical home and business addresses and telephone numbers;
- (f) That he has accepted all certified mail from the North Carolina State Bar and responded to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication or within fifteen days of receipt of such communication, whichever is earlier;
- (g) That he has timely complied with his State Bar membership and continuing legal education requirements, and paid all fees and costs assessed by the State Bar and the Client Security Fund by the applicable deadline;
- (h) That he has participated fully and timely in the State Bar's fee dispute resolution program when notified of any petitions for resolution of disputed fees; and

- (i) That he has not violated the Rules of Professional Conduct or any state or federal laws other than minor traffic violations during the period of suspension.

7. If Defendant successfully petitions for reinstatement under paragraph 6 above, Defendant's reinstatement to the active practice of law may be conditionally granted so long as Defendant complies with the following additional condition:

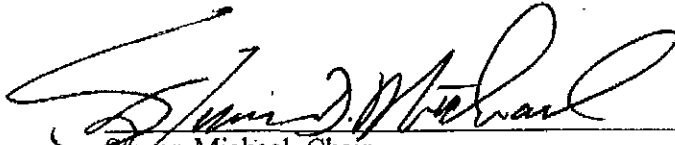
- (a) For the next two years following the date Defendant is reinstated to active practice, Defendant shall permit audits of his trust and operating accounts by the North Carolina State Bar. Such audits will be conducted at Defendant's expense. The North Carolina State Bar will not exercise the right to audit the Defendant's bank accounts more than twice a year. Such limitation on random audits will not preclude the North Carolina State Bar from conducting any audits for cause pursuant to the Rules of Professional Conduct. Furthermore, any information or documentation obtained by the North Carolina State Bar while conducting said audit(s) that indicates Defendant committed additional violations of the Rules of Professional Conduct may result in further disciplinary proceedings being brought against Defendant.

8. Defendant's conditional reinstatement shall be subjected to the same procedures as set out in 27 N.C. Admin. Code 1B § .0114(x). Defendant hereby waives any right to other administrative procedure regarding his conditional reinstatement and consents to his conditional reinstatement being subject to the procedural structure of 27 N.C. Admin. Code 1B § .0114(x). If the Disciplinary Hearing Commission finds, after a hearing, that Defendant is not in compliance with the condition listed in paragraph 7, the Disciplinary Hearing Commission shall revoke Defendant's reinstatement to the active practice of law for a period of one (1) year, after which time Defendant may again apply for reinstatement.

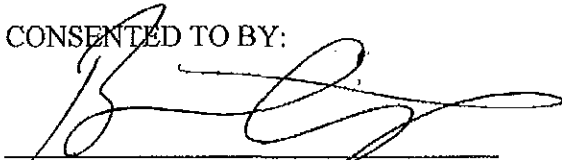
9. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the suspension and throughout any period of conditional reinstatement to determine Defendant's compliance with the condition listed in paragraph 7 above.

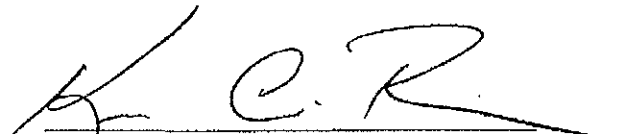
10. Nothing in this Order shall prohibit the State Bar from investigating and, if necessary, pursuing disciplinary action against Defendant for additional misconduct discovered or reported which occurred during the same time period as the conduct addressed in this Order.


Signed by the Chair with the consent of the other hearing panel members, this the 3rd
day of June, 2016.


Steven Michael, Chair
Disciplinary Hearing Panel

CONSENTED TO BY:


Brian Oten, Deputy Counsel
Attorney for the North Carolina State Bar


Keith C. Booker
Defendant


Dudley A. Witt
Attorney for Defendant