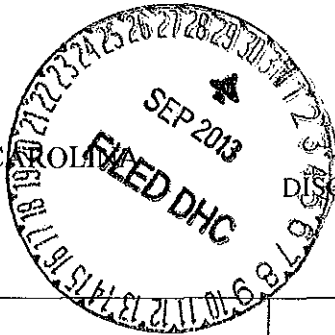


STATE OF NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
13 DHC 15

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

PHILLIP HUNTER GILFUS, Attorney,

Defendant

**ORDER OF DISCIPLINE**

THIS MATTER was heard on September 13, 2013 before a hearing panel of the Disciplinary Hearing Commission composed of Ronald R. Davis, Chair, Harriett Smalls and Patti Head. Plaintiff, the North Carolina State Bar, was represented by G. Patrick Murphy. Defendant, Phillip Hunter Gilfus, appeared in this disciplinary matter *pro se*. Based on the Complaint, Answer of Defendant, stipulations and exhibits and evidence admitted during the hearing, the Hearing Panel hereby finds, by clear, cogent and convincing evidence, the following:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("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, Phillip Hunter Gilfus, ("Gilfus" or "Defendant"), was admitted to the North Carolina State Bar on August 28, 2009, 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 all or part of the relevant periods referred to herein, Gilfus was engaged in the practice of law in Cumberland County, North Carolina.

4. In early 2009, Gilfus was appointed treasurer, a fiduciary position, of Cumberland County Democratic Men's Club ("CCDMC"), an organization in Cumberland County, North Carolina.

5. CCDMC maintained a bank account at Capital Bank, last four numbers 3397 ("Capital Bank account 3397").

6. As treasurer of CCDMC, Gilfus was entrusted with the money in CCDMC's Capital Bank account 3397.

7. Between November 2011 and July 2012, Gilfus wrote the following checks on Capital Bank account 3397 payable to himself:

	<b>DATE</b>	<b>CHECK NUMBER</b>	<b>AMOUNT</b>
1.	11/15/11	3033	\$182.00
2.	1/5/12	3036	\$600.00
3.	1/21/12	3038	\$100.00
4.	1/26/12	3040	\$100.00
5.	4/10/12	3046	\$200.00
6.	6/1/12	3050	\$100.00
7.	6/3/12	3051	\$700.00
8.	7/3/12	3052	\$50.00
9.	7/6/12	3053	\$100.00
10.	7/19/12	3054	\$150.00 (NSF)

8. CCDMC had not authorized the above listed payments to Gilfus and Gilfus was not otherwise entitled to the above listed funds.

9. With the first nine checks listed in paragraph 7, Gilfus obtained CCDMC money in the amount of \$2,132.00 and converted it to his personal use and benefit.

10. In his capacity as treasurer of CCDMC, Gilfus knowingly and willfully misapplied, and converted to his own use, \$2,132.00 belonging to CCDMC.

11. In each instance, Gilfus' conduct related to checks 1-9 of paragraph 7 was unlawful criminal conduct in violation of N.C. Gen. Stat. §14-90.

12. Gilfus attempted to deposit check number 3054 to his personal bank account with USAA Federal Savings Bank but the check was returned for nonsufficient funds.

13. In his capacity as treasurer of CCDMC, by writing check number 3054 and delivering it to his bank for deposit to his personal account, Gilfus attempted to knowingly and willfully misapply, and convert to his own use, \$150.00 belonging to CCDMC.

14. Gilfus' conduct related to check 3054 was unlawful criminal conduct in violation of N.C. Gen. Stat. §§14-2.5 and 14-90.

Based upon the foregoing findings of fact, the Hearing Panel enters the following:

CONCLUSIONS OF LAW

1. All the parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, Phillip Hunter Gilfus, and the subject matter.

2. That Defendant's conduct, as set forth 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 writing checks to himself on CCDMC's bank account while serving as treasurer of CCDMC and converting the money from those checks to his personal use and benefit, Defendant committed criminal acts that reflect adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b);
- b. By writing checks to himself on CCDMC's bank account while serving as treasurer of CCDMC and converting the money from those checks to his personal use and benefit, Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);
- c. By writing check 3054 on CCDMC's bank account to himself while serving as treasurer of CCDMC and attempting to convert the money from that check to his personal use and benefit, Defendant committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b); and
- d. By writing check 3054 on CCDMC's bank account to himself while serving as treasurer of CCDMC and attempting to convert the money from that check to his personal use and benefit, Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Panel also finds by clear, cogent, and convincing evidence the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Defendant's misappropriation was discovered in July 2012 when check number 3054 was returned for nonsufficient funds. When that happened, a representative of the bank called the president of CCDMC and reported the problem. The CCDMC president then reported the matter to the Cumberland County Sheriff's Department and the president was interviewed by an investigator and had to produce CCDMC bank records for the investigator. The time and effort that CCDMC's president had to expend cooperating with a criminal investigation demonstrates the negative effect of Defendant's conduct on third parties, and actual harm to CCDMC and its members.

2. On January 11, 2013, Defendant entered into a deferred prosecution agreement with the State. Pursuant to the deferred prosecution agreement, Defendant was placed on supervised probation for six months and ordered to pay the costs, remaining restitution of \$35.00, and complete 24 hours of community service.

3. The facts of Defendant's conduct and resulting criminal charge were reported in the *Fayetteville Observer* in articles that appeared in the paper on December 20, 2012 and January 12, 2013.

4. Defendant's decision to write ten (10) separate checks on CCDMC's account over the course of eight (8) months to the point of overdrawing the account demonstrates Defendant's intent to cause the resulting harm or potential harm.

5. On January 27, 2012, Defendant repaid \$604.92 to the CCDMC account but subsequently wrote six (6) additional checks on the account. The fact that Defendant continued write checks on the account after paying back some of the misappropriated money and eventually overdrawing the account demonstrates Defendant's intent to commit acts where harm or potential harm is foreseeable.

6. Defendant's well-publicized acts of criminal conduct that reflect adversely on the honesty, trustworthiness or fitness of Defendant as a lawyer has a negative impact on the public's perception of the legal profession.

7. On January 15, 2013, Defendant reported his misconduct to the North Carolina State Bar. Defendant's report, however, came more than five months after Defendant knew his misconduct had been discovered and after he was served with criminal charges.

8. Defendant testified at the hearing and candidly admitted the seriousness of his misconduct.

9. Defendant serves in the U.S. Army Reserves JAG Corp with the rank of Captain. Defendant's most recent Officer Evaluation Report ("OER") which covers the period August 10, 2012 through March 17, 2013 found positive comments from his evaluator and senior evaluator about his personal, legal, and military performance. On the professionalism section of the OER, however, Defendant's evaluator checked "no" on the attribute: "Integrity - Possess high personal moral standards, honest in word and deed."

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

### CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has carefully considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and determines the following factors which support suspension or disbarment of Defendant's license are applicable to this matter:

- a. Intent of the Defendant to cause the resulting harm or potential harm;
- b. Intent of the Defendant to commit acts where the harm or potential harm is foreseeable;
- c. Negative impact of Defendant's actions on the public's perception of the profession;
- d. Negative effect of Defendant's conduct on third parties; and
- e. Multiple acts of dishonesty, misrepresentation and deceit.

2. The Hearing Panel has also considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(2) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are present in this instance that would warrant and require the Hearing Panel to consider disbarment:

- a. Acts of dishonesty, misrepresentation and deceit;
- b. Misappropriation of assets to which Defendant was not entitled; and
- c. Commission of a felony.

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

- a. Absence of any prior disciplinary offense;
- b. Defendant's dishonest and selfish motive;
- c. A pattern of misconduct;
- d. Multiple offenses;
- e. Defendant's full disclosure to the Hearing Panel and his cooperative attitude toward the proceedings; and
- f. Character and reputation of the Defendant.


4. The Hearing Panel has considered all lesser forms of discipline but finds 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 in this State. Defendant's misconduct caused significant harm to CCDMC and its members, the legal profession and the public's perception of the legal profession.

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

ORDER OF DISCIPLINE

1. Defendant, Phillip Hunter Gilfus, is hereby DISBARRED from the practice of law in the State of North Carolina.
2. Defendant shall surrender his license and membership card to the Secretary of The North Carolina State Bar no later than 30 days following service of this order on Defendant.
3. Defendant shall pay the costs of this proceeding as assessed by the Secretary of The North Carolina State Bar. Defendant shall pay the costs within 120 days of service upon him of the statement of costs by the Secretary.
4. Defendant shall comply with all provisions of 27 N.C.A.C. 1B § .0124 of The North Carolina State Bar Disciplinary & Disability Rules.

Signed by the Chair with the consent of the other Hearing Panel members, this the 30<sup>th</sup> day of September, 2013.

 PANEL CHAIR  
Ronald R. Davis, Chair  
Disciplinary Hearing Panel