

NORTH CAROLINA
WAKE COUNTY

9617

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

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

RANDY L. MILLER, ATTORNEY
Defendant

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

THIS CAUSE was heard by a hearing committee of the Disciplinary Hearing Commission consisting of Robert C. Bryan, Chairman, Stephen T. Smith, and Emily W. Turner on Friday, November 2, 1990. Fern E. Gunn represented the North Carolina State Bar and Gerald Bass and Angela Deese represented the Defendant, Randy L. Miller. Based upon the pleadings, prehearing stipulations, and evidence presented at the hearing, the committee makes the following:

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, Randy L. Miller, was admitted to the North Carolina State Bar on April 30, 1981, 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 periods referred to herein, the Defendant was actively engaged in the practice of law in North Carolina and maintained a law office in Monroe, North Carolina or practiced law as an Associate Attorney General in the North Carolina Attorney General's office.
4. The Defendant closed his law office in Monroe, North Carolina on or about July 1, 1987. From July 1987 until early October 1987, Defendant was unemployed.

On October 9, 1987, Defendant began working for the Attorney General's office. He resigned from the Attorney General's office in July, 1990.

5. Defendant represented Willie Reed in a personal injury action. Pursuant to a contingent fee agreement entered into on April 21, 1987, Defendant agreed to handle Reed's case for a one-third contingent fee.
6. Reed's personal injury action was settled for \$6,250 on October 31, 1987. Defendant calculated his one-third contingent fee as \$2,081.25. Defendant received \$2,081.25 as his attorney's fee.
7. Defendant appropriated to his own use \$1,688.75 from the proceeds of Reed's settlement. This amount was in addition to the one-third contingent fee that Defendant was entitled to receive.
8. Reed did not authorize the Defendant to take the additional \$1,688.75.
9. Reed directed the Defendant to pay the medical expenses incurred as a result of Reed's injury. Defendant did not promptly pay from Reed's personal injury proceeds the fees due to Union Memorial Hospital and Dr. Joseph Siragusa.
10. Defendant represented Calvin Chambers in a personal injury action. Pursuant to a contingent fee agreement, Defendant agreed to handle Chambers' case for a one-fourth contingent fee.
11. Chambers' personal injury action was settled for \$18,000 in December 1988. Defendant calculated his one-fourth contingent fee as \$4,500. Defendant received \$4,500 as his attorney's fee.
12. Defendant appropriated to his own use \$1,825.00 from the proceeds of Chambers' settlement. This amount was in addition to the one-fourth contingent fee that Defendant was entitled to receive.
13. Chambers did not authorize the Defendant to take the additional \$1,825.00.
14. Chambers directed the Defendant to pay the medical expenses incurred as a result of Chambers' injury. Defendant did not promptly pay from Chambers' personal injury proceeds the fees due to Dr. Joseph Siragusa, Union Orthopedic, Monroe Radiology, Union Memorial Hospital, Union County Ambulance, and Dr. Dennis Watts.
15. Defendant maintained a trust account at NCNB, account number 031023062.

16. Vance Alean Miller (also known as Vance R. Miller) is Defendant's wife. Some checks written from Defendant's trust account regarding the Reed and Chambers settlements were made payable to Vance Alean Miller or Vance R. Miller.
17. Dr. Joseph S. Siragusa was paid his fee of \$1,623.00 in the Reed case on February 16, 1990, after the State Bar's investigation of Defendant was initiated in February, 1990.
18. Dr. Joseph S. Siragusa was paid his fee of \$1,127.70 in the Chambers case on June 28, 1990, after the State Bar's investigation of Defendant was initiated in February, 1990.

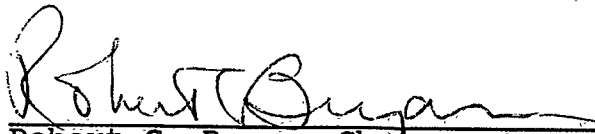
Based upon the foregoing Findings of Fact, the committee makes the following:

CONCLUSIONS OF LAW

1. By misappropriating funds of his client, Willie Reed, Defendant has committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 1.2(B) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C) of the Rules of Professional Conduct by not promptly paying Reed's medical expenses.
2. By not promptly paying Reed's medical expenses as Reed directed, Defendant failed to promptly pay or deliver to the client or to third persons as directed by the client the funds, securities, or properties belonging to the client to which the client is entitled in the possession of the lawyer, in violation of Rule 10.2(E) of the Rules of Professional Conduct.
3. By misappropriating the funds of his client, Calvin Chambers, the Defendant has committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 1.2(B) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C) of the Rules of Professional Conduct.
4. By not promptly paying Chambers' medical expenses as Chambers directed, Defendant failed to promptly pay or deliver to the client or to third persons as directed by the client, the funds, securities, and properties belonging to the client to which the client is entitled in the possession of the lawyer, in violation of Rule 10.2(E) of the Rules of Professional Conduct.

Signed by the chairman with the express consent of all
members of the Disciplinary Hearing Committee.

This the 28th day of December, 1990.


Robert C. Bryan, Chairman
Hearing Committee

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Defendant

ORDER OF DISCIPLINE

THIS CAUSE was heard by the undersigned duly appointed hearing committee of the Disciplinary Hearing Commission of the North Carolina State Bar on Friday, November 2, 1990. Based on the pleadings, prehearing stipulations, evidence at the hearing and Findings of Fact and Conclusions of Law of even date herewith, the hearing committee makes the following additional findings:

1. The Defendant misappropriated funds of two clients as set out in detail in the Findings of Fact and thereby violated Rule 1.2(B) and Rule 1.2(C) of Professional Conduct as set out in the Conclusions of Law. The Defendant also failed to pay promptly the medical expenses of two clients as set out in detail in the Findings of Fact and thereby violated Rule 10.2(E) of the Rules of Professional Conduct as set out in the Conclusions of Law.
2. The following factors mitigate the Defendant's violations of the Rules of Professional Conduct:
 - a) the Defendant has no prior record of discipline by the North Carolina State Bar;
 - b) the Defendant gave full and free disclosure of his misconduct to the disciplinary agencies of the North Carolina State Bar and demonstrated a cooperative attitude toward the disciplinary proceedings; and
 - c) the Defendant had good character or reputation in the communities in which he practiced law. In particular, the Defendant had an exceptional record of service to the community and to the legal profession in espousing the cause of the poor and the disadvantaged, including a substantial and long record of pro bono work.

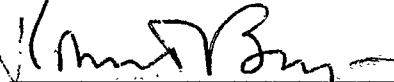
3. The Defendant's misconduct is aggravated by the following factors:
- a) the Defendant was motivated by a dishonest or selfish motive;
 - b) the Defendant engaged in multiple offenses of misconduct.
 - c) the individuals harmed by the Defendant's misconduct were vulnerable victims within the meaning of the American Bar Association's Standards for Imposing Lawyer Sanctions;
 - d) the Defendant had substantial experience in the practice of law; and
 - e) the Defendant showed an indifference to making restitution to those individuals or institutions who had not been paid.
4. The aggravating factors outweigh the mitigating factors. Furthermore, the hearing committee finds that there is nothing in the record or otherwise to justify or excuse the misappropriation of clients' funds by the Defendant.

THEREFORE, based on the foregoing considerations bearing upon the appropriate measure of discipline, the hearing committee, being unanimous in its decision, hereby enters the following Order of Discipline:

ORDER OF DISCIPLINE

- 1. The Defendant is disbarred.
- 2. The Defendant shall surrender his license certificate and permanent membership card to the Secretary of the North Carolina State Bar.
- 3. The Defendant shall pay the costs of this proceeding as assessed by the Secretary.

Signed by the chairman with the express consent of all members of the hearing committee, this the 28th day of December, 1990.


Robert C. Bryan, Chairman
Hearing Committee