

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
87 DHC 6

THE NORTH CAROLINA STATE BAR,)	
Plaintiff)	
)	FINDINGS OF FACT
vs.)	AND
)	CONCLUSIONS OF LAW
DOUGLAS M. HOLMES, Attorney)	
Defendant)	

This cause was heard by a Hearing Committee of the Disciplinary Hearing Commission consisting of John B. McMillan, Chairman, Fred Folger and Harry Sherwood on Friday, September 4, 1987. The Plaintiff was represented by L. Thomas Lunsford, II and the Defendant was present and represented by James B. Maxwell. Based upon the stipulations of the parties and the evidence at trial, the Committee makes the following Findings of Fact in regard to the Plaintiff's First Claim for Relief by clear, cogent and convincing evidence:

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, Douglas M. Holmes, was admitted to the North Carolina State Bar on November 2, 1971, 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, Code of Professional Responsibility and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.
3. During all of the periods referred to below, the Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Durham, Durham County, North Carolina.

4. In September, 1981, the Defendant was employed to represent Lila M. Armstrong (Armstrong) relative to a claim she had against Michael C. Browning for injuries sustained in an automobile accident on September 13, 1981.
5. In late September, 1981, the Defendant was able to negotiate a satisfactory settlement of his client's claim for property damage with the Horace Mann Insurance Company. It was agreed that Armstrong would accept the sum of \$1,778.12 in satisfaction of that aspect of her claim. On or about September 22, 1981, the Horace Mann Insurance Company issued and mailed to the Defendant draft number 975594 in the specified amount payable to the order of the Defendant and his client, Lila Armstrong.
6. Although the Defendant maintained a trust account at North Carolina National Bank for the purpose of handling client funds received in trust during the time in question, the draft mentioned in the preceding paragraph was not deposited in the Defendant's trust account but, rather, was deposited in his personal account at North Carolina National Bank from which account disbursements were made to the Defendant and his client in accordance with their contingent fee contract.
7. In December, 1981, the Defendant negotiated a satisfactory settlement of his client's personal injury claim with the Horace Mann Insurance Company. The Defendant's client agreed to accept the sum of \$4,500 in full settlement of that aspect of her claim. On or about December 28, 1981, the Horace Mann Insurance Company issued and mailed to the Defendant draft number 1012692 in the amount of \$4,500 payable to the Defendant and his client, Lila Armstrong. Rather than depositing this instrument in his trust account, the Defendant caused appropriate endorsements to be placed upon the instrument and negotiated it for cash. From the proceeds, the Defendant paid himself \$1,500, which represented his fee. Of the remaining \$3,000 to which his client was entitled, he paid his client \$2,500 and retained, with his client's permission, the sum of \$500 in trust to satisfy his client's obligation to Dr. Sampson E. Harrell for medical treatment necessitated by her injuries, which obligation was at that time unliquidated.

8. The Defendant did not deposit the \$500 which he had retained for the purpose of paying Dr. Harrell in his trust account, nor did he maintain any contemporaneous records of account concerning those funds.
9. In June, 1986, the Defendant issued undated trust account check number 401 to Dr. Harrell in the amount of \$535 to pay for medical services rendered to his client, Lila Armstrong.

Based upon the foregoing Findings of Fact, the Committee makes the following Conclusions of Law:

1. By failing to deposit client funds received in trust in a trust account and by failing to segregate client funds from personal funds, the Defendant failed to maintain trust funds in an identifiable bank account separate from his personal funds in violation of Disciplinary Rule 9-102(A) of the North Carolina Code of Professional Responsibility;
2. By failing to keep any contemporaneous account of the money entrusted to him for the payment of his client's doctor, the Defendant failed to maintain complete records of funds of a client coming into his possession in violation of Disciplinary Rule 9-102(B)(3) of the North Carolina Code of Professional Responsibility; and
3. By failing to pay his client's doctor money entrusted to him for that purpose for more than four years, the Defendant failed to promptly pay funds in his possession as directed by his client in violation of Disciplinary Rule 9-102(B)(4) of the North Carolina Code of Professional Responsibility.

Based upon the stipulations of the parties and the evidence at trial, the Committee makes the following Findings of Fact in regard to the Plaintiff's Second Claim for Relief by clear, cogent and convincing evidence:

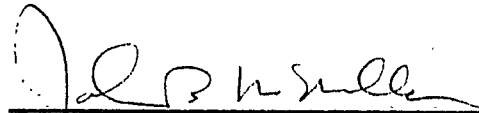
1. On August 13, 1984, the Defendant maintained a balance of \$10,108.05 in his trust account. Of that sum \$6,805.75 was money belonging to the Defendant, consisting for the most part of legal fees which had been earned in the preceding months and which had never been transferred from the trust account into the Defendant's personal account. The balance was money entrusted to the Defendant by clients.

2. During the period between August 13, 1984, and September 14, 1984, the Defendant wrote two checks on his trust account, numbers 377 and 381, each payable to cash in the amounts of \$2,081.40 and \$7,500, respectively. The proceeds from the negotiation of those two instruments were used to compromise a claim being made against the Defendant by the co-owner of his home. At least \$1,775.65 of the money held in trust for clients was mistakenly used to fund checks 377 and 381.
3. At the end of June, 1985, the Defendant maintained a balance in his trust account of \$7,578.97. Of this amount, no more than \$3,088.58 were client funds being held in trust. The remaining funds belonged to the Defendant and consisted mostly of legal fees which had been allowed to accumulate in the account over a period of many months.
4. On or about July 2, 1985, the Defendant transferred the entire balance in his trust account, \$7,578.97, into his personal account.
5. All trust funds which were thus transferred were preserved and paid in accordance with clients' instructions.

Based upon the foregoing Findings of Fact, the Committee makes the following Conclusions of Law:

1. By failing to segregate client funds from personal funds, the Defendant commingled trust funds and personal funds in violation of Disciplinary Rule 9-102(A) of the North Carolina Code of Professional Responsibility; and
2. By inadvertently using client funds entrusted to him to satisfy his own personal obligation, the Defendant engaged in professional conduct that adversely reflects on his fitness to practice law and failed to maintain client funds in trust in violation of Disciplinary Rules 1-102(A)(6) and 9-102(A), respectively, of the North Carolina Code of Professional Responsibility.
3. No other alleged violations of the Code of Professional Responsibility were proven.

This the 5th day of October, 1987.



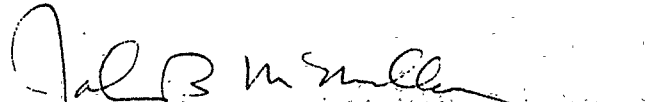
John B. McMillan, Chairman
Hearing Committee
(For the Committee)

5. The Defendant maintained his trust account in conformance with the requirements of the Rules of Professional Conduct consistently for a period of two years prior to the hearing in this action.

Based upon the Findings of Fact and Conclusions of Law entered in this case and the further Findings of Fact set forth above in regard to the appropriate disciplinary sanction, the Hearing Committee enters this Order of Discipline.

1. The Defendant shall be publicly censured for his misconduct.
2. The Defendant shall pay the costs of this proceeding.

This the 5th day of October, 1987.



John B. McMillan, Chairman
Hearing Committee
(For the Committee)

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PUBLIC CENSURE

In December, 1981, you negotiated a satisfactory settlement of your client's personal injury claim with the Horace Mann Insurance Company. Your client agreed to accept the sum of \$4,500 in full settlement of that aspect of her claim. On or about December 28, 1981, the Horace Mann Insurance Company issued and mailed to you draft number 1012692 in the amount of \$4,500 payable to you and your client, Lila Armstrong. Rather than depositing this instrument in your trust account, you caused

appropriate endorsements to be placed upon the instrument and negotiated it for cash. From the proceeds, you paid yourself \$1,500, which represented your fee. Of the remaining \$3,000 to which your client was entitled, you paid your client \$2,500 and retained, with your client's permission, the sum of \$500 in trust to satisfy your client's obligation to Dr. Sampson E. Harrell for medical treatment necessitated by her injuries, which obligation was at that time unliquidated.

You did not deposit the \$500 which you had retained for the purpose of paying Dr. Harrell in your trust account, nor did you maintain any contemporaneous records of account concerning those funds.

In June, 1986, you issued undated trust account check number 401 to Dr. Sampson Harrell in the amount of \$535 to pay for medical services rendered to your client, Lila Armstrong.

On August 13, 1984, you maintained a balance of \$10,108.05 in your trust account. Of that sum \$6,805.75 was money belonging to you, consisting for the most part of legal fees which had been earned in the preceding months and which had never been transferred from the trust account into your personal account.

During the period between August 13, 1984, and September 14, 1984, you wrote two checks on your trust account, numbers 377 and 381, each payable to cash in the amounts of \$2,081.40 and \$7,500, respectively. The proceeds from the negotiation of these two instruments were used to compromise a claim being made against you by the co-owner of your home. At least \$1,775.65 of the money held in trust for clients was used to fund checks 377 and 381.

At the end of June, 1985, you maintained a balance in your trust account of \$7,578.97. Of this amount, no more than \$3,088.58 were client funds being held in trust. The remaining funds belonged to you and consisted mostly of legal fees which had been allowed to accumulate in the account over a period of many months.

On or about July 2, 1985, you transferred the entire balance in your trust account, \$7,578.97, into your personal account.

All trust funds which were thus transferred were preserved and paid in accordance with clients' instructions.

The conduct which you have admitted in this action violated numerous provisions of the Code of Professional Responsibility. You commingled client funds in violation of Disciplinary Rule 9-102(A), you failed to maintain adequate records as required by Disciplinary Rule 9-102(B)(3) and you failed to abide by your client's instructions in regard to the disbursement of her funds in violation of Disciplinary Rule 9-102(B)(4). Most significant, however, was your misappropriation of client funds, albeit by

inadvertence, in violation of Disciplinary Rule 9-102(A). Your conduct adversely reflected upon your fitness to practice law in violation of Disciplinary Rule 1-102(A)(6).

Just as surely as your actions violated the letter of the disciplinary rules cited herein, it also violated the spirit of the Code of Professional Responsibility. Your conduct was unprofessional and placed your privilege to practice law in serious jeopardy. Your conduct tended to cast disrepute upon not only yourself but also upon your fellow members of the Bar.

The Hearing Committee was ultimately persuaded that your misconduct in this case was generally the product of gross negligence rather than deliberation. Primarily for that reason you were not suspended from the practice of law as urged by the Counsel for the State Bar. Nevertheless, the Committee is compelled to observe that your misconduct, particularly in light of your training as a certified public accountant, was outrageous and totally inconsistent with the high standard of care and fidelity required of attorneys in this state. A client who entrusts his or her property to a lawyer has a right to expect that the property will be preserved in accordance with well understood principles of fiduciary responsibility. Your conduct mocked of our professional standards in this regard.

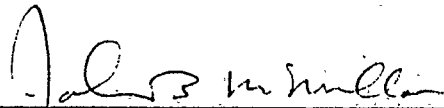
The fact that the Hearing Committee has chosen to impose the relatively moderate sanction of public censure should not be taken by you to indicate that the Disciplinary Hearing Commission in any way feels that your conduct in this matter was excusable. Were it not for the presence of several significant mitigating circumstances, it is likely that a more severe disciplinary sanction would have been imposed. The Committee was particularly impressed by your cooperation with the State Bar in its investigation as well as by your diligent efforts to reconcile your books and modify your procedures in order that a recurrence of this sort of misconduct might be prevented. It was also noted that none of your clients suffered any permanent loss as a result of your misconduct.

The North Carolina State Bar is confident that this Public Censure will be heeded by you, that it will be remembered by you, and that it will be a benefit to you. Hopefully, you will never again allow yourself to depart from strict adherence to the highest standards of the legal profession. Accordingly, it is hoped that this Public Censure, instead of being a burden, will actually serve as a profitable reminder that you should weigh carefully your responsibilities to the public, your clients, your fellow attorneys and the Court to the end that you will ultimately be known as a respected member of our profession whose word and conduct can be relied upon without question.

Pursuant to Section 23 of the Rules of Disciplinary Procedure, it is ordered that a certified copy of this Public Censure be entered upon the judgment docket of the Superior Court

of Durham County and also upon the minutes of the Supreme Court of North Carolina.

This the 5th day of October, 1987.



John B. McMillan, Chairman
Hearing Committee
(For the Committee)