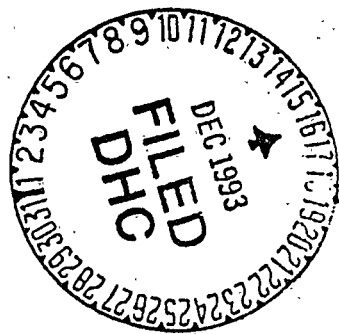


NORTH CAROLINA

WAKE COUNTY



12664

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
93 DHC 20

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

CONSENT ORDER OF DISCIPLINE

DAVID P. STEWART, ATTORNEY
Defendant

This matter came on before the Hearing Committee of the Disciplinary Hearing Commission composed of Stephen T. Smith, Chair, Paul L. Jones and Frank L. Boushee pursuant to Section 14 (H) of Article IX of the Rules and Regulations of the North Carolina State Bar. The Defendant has agreed to waive a formal hearing in the above referenced matter. All parties stipulate that these matters may be resolved by the undersigned Hearing Committee, that Defendant does not contest the following Findings of Fact and Conclusions of Law recited in this Consent Order and the discipline imposed, and that Defendant further hereby waives his right to appeal this consent order or challenge in any way the sufficiency of the findings. The Hearing Committee therefore enters 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, David P. Stewart (hereafter Stewart) was admitted to the North Carolina State Bar in 1984, 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 all the periods referred to herein, Stewart was actively engaged in the practice of law in the State of North Carolina and maintained a law office in Madison, North Carolina.

4. Mr. Titus Sparks, who is a longtime sophisticated business client and personal friend of Stewart, had approximately \$14,000.00 in Stewart's trust account on June 29, 1992.

5. Titus A. Sparks submitted an affidavit to the North Carolina State Bar stating the following:

(A) In May or early June, 1992, Sparks entrusted to Stewart approximately \$14,000.00 in order to resolve a legal matter with Crestar Bank.

(B) In mid June, Stewart asked to borrow monies pending receipt of the anticipated fee in the Ramsey matter and that Sparks not only authorized Stewart to borrow his funds but, in fact, directed Stewart to do so.

6. Stewart did not sign a promissory note or other document evidencing the loan from Sparks.

7. Prior to June 29, 1992, Stewart undertook to represent Joe Ramsey in a Social Security claim.

8. On June 29, 1992, Stewart wrote himself check number 2910 from his trust account in the amount of \$4,000.00.

9. On or about June 29, 1992, Stewart falsely noted on the client ledger card that this payment represented his fee in a Social Security claim for Ramsey.

10. Ramsey had no funds in Stewart's trust account on June 29, 1992.

11. During all relevant time periods referred to above, Titus Sparks had sufficient funds in Stewart's trust account to cover Stewart's withdrawal relating to Ramsey.

12. On or about July 17, 1992, Stewart received and deposited a check in the amount of \$4,000.00 for attorney's fees received in the Ramsey case.

13. During all relevant time periods referred to below, Dr. Phillip G. Madison, was a sophisticated business client and close personal friend of Stewart.

14. Dr. Madison submitted an affidavit stating the following:

(A) Stewart has been Madison's attorney for more than five years and has represented Madison in all his business dealings in

Rockingham County and that during the course of the professional relationship they have become good personal friends.

(B) For a number of years Stewart has assisted Madison in winding up the affairs of Rockingham Housing, a failed business partnership in which Madison was not actively involved. Madison sent money to Stewart on a regular basis to settle and pay outstanding claims against Rockingham Housing.

(C) On or about December, 1992 Madison and Stewart were discussing a disputed debt of Rockingham Housing; that Madison had sent Stewart approximately \$3,000 to be used, if necessary, to settle this claim and that Madison's matter was not expected to be resolved in the near future.

(D) When the conversation later turned to personal affairs, Stewart had indicated his frustration about not being paid many times until long after the work was done and also indicated that his receivables had reached well into the five figures.

(E) At that time, Madison gave Stewart permission to use funds that he (Madison) had in Stewart's trust account and Madison specifically authorized and directed Stewart to feel free to use such monies pending receipt of some of Stewart's outstanding receivables.

15. Stewart did not sign a promissory note or other document evidencing the loan from Madison.

16. Prior to February 1993, Stewart undertook to represent Patsy Harris regarding a Social Security claim.

17. On or about February 9, 1993, Stewart wrote himself check number 3013 in the amount of \$2,043.75 drawn on his attorney trust account number 181-545685 at Southern National Bank, hereafter trust account.

18. On or about February 9, 1993, Stewart entered a false notation on Harris' client ledger card to the effect that the \$2,043.75 check represented his fee in Harris' case.

19. As of February 9, 1993, no funds belonging to Harris were present in Stewart's trust account.

20. On or about March 16, 1993, Stewart received and deposited a check into his trust account in the amount of \$2,043.75 for attorney fees in the Patsy Harris matter.

21. Prior to March 1993, Stewart undertook to represent Dwayne Gray regarding a workers' compensation matter and a domestic matter.

22. Prior to March 17, 1993, Stewart reached a clincher agreement in Gray's workers' compensation case in the amount of \$7,000.00.

23. On or about March 17, 1993, Stewart wrote himself check number 3025 drawn on his trust account in the amount of \$1,400.00.

24. Stewart falsely noted on Gray's client ledger card that the \$1,400.00 check represented his fee in Gray's workers' compensation case.

25. As of March 17, 1993, no funds belonging to Gray were present in Stewart's trust account.

26. On March 24, 1993, Stewart wrote himself check number 3027 drawn on his trust account in the amount of \$150.00.

26. On or about March 24, 1993, Stewart entered a false notation on Gray's client ledger card to the effect that the \$150 check represented his fee in Gray's domestic case.

27. As of March 24, 1993, Gray had no funds in Stewart's trust account.

28. During all relevant times referred to herein, Dr. Phillip Madison had sufficient funds in Stewart's trust account to cover Stewart's withdrawals relating to Harris and Gray.

29. The Grievance Committee found that there was no probable cause to believe that Stewart had misappropriated the client funds referred to above in light of Dr. Madison's sworn affidavit.

30. The Grievance Committee found that there was no probable cause to believe that Stewart had misappropriated any of Ramsey's funds in light of the sworn affidavit of Titus A. Sparks.

Based upon the foregoing Findings of Fact, the Committee enters the following:

CONCLUSIONS OF LAW

1. By borrowing trust account funds from Madison and Sparks and not indicating the loans on their trust account ledger cards, Stewart failed to accurately maintain the current balance of funds held in the trust account for Madison and Sparks in violation of Rule 10.2(C)(3) of the Rules of Professional Conduct.

2. By borrowing trust account funds from Madison and Sparks without evidencing these business transactions by a promissory note or other document, Stewart entered into a business transaction with his clients without protecting his clients' interests in violation of Rule 5.4(A) of the Rules of Professional Conduct.

3. By indicating on the Harris, Gray and Ramsey ledger cards that monies had been received and fees paid on their behalf when no monies had been received at the time of such entries, Stewart engaged in conduct involving fraud, deceit, dishonesty or misrepresentation in violation of Rule 1.2(C) of the Rules of Professional Conduct and failed to keep ledger cards which accurately maintained the current balance of funds held in the trust account for Harris, Gray and Ramsey in violation of Rule 10.2(C)(3) of the Rules of Professional Conduct.

Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW and upon the consent of the parties, the Hearing Committee enters the following:

ORDER OF DISCIPLINE

1. The Defendant, David P. Stewart, is suspended from the practice of law in North Carolina for a period of one year.

2. The suspension is stayed for a period of three years on the following conditions:

a) During the first year of the three year stay period, Defendant shall attend a seminar conducted by Bruno Demolli dealing with the operation and management of trust accounts. Defendant shall provide written documentation demonstrating compliance with this condition no later than one week after Defendant completes the seminar.

b) Within one month of the entry of this order, Defendant shall schedule an appointment to participate, at his own expense, in the Law Practice Assistance Program for one year during which at least two audits shall be conducted and a law practice management plan shall be implemented and monitored by Nancy Byerly Jones.

c) Defendant shall employ a CPA at his own expense to audit his trust account to ensure it is being maintained in compliance with Canon X of the Rules of Professional Conduct. The CPA shall certify Defendant's compliance to the North Carolina State Bar every six months during the three year stay period.

d) Defendant shall properly handle his trust account and maintain correct and current trust account records.

e) Defendant shall submit to random audits of his trust account at any time during the three year stay period at the State Bar's request.

f) Defendant shall violate no provisions of the Rules of Professional Conduct during the three year stay period.

g) Defendant shall violate no laws of the State of North Carolina during the three year stay period.

3. Defendant is taxed with the costs as assessed by the Secretary.

This the 16 day of December, 1993

consented to:

Stephen T. Smith
Stephen T. Smith, Chairman
Disciplinary Hearing Committee

Paul L. Jones
Paul L. Jones, Member

Frank L. Boushee
Frank L. Boushee, Member

David P. Stewart
David P. Stewart, Defendant

Alan M. Schneider
Alan M. Schneider
Attorney for Defendant

Harriet P. Tharrington
Harriet P. Tharrington
Attorney for Plaintiff