

NORTH CAROLINA

WAKE COUNTY

1984 APR 13 11:11

BEFORE THE COUNCIL
OF THE
NORTH CAROLINA STATE BAR
84 BCS 1

In Re: CHARLES E. VICKERY,
Attorney

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) FINDINGS OF FACT, CONCLUSIONS
) OF LAW, AND ORDER OF DISCIPLINE
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This cause was heard by the Council of The North Carolina State Bar on Friday, April 13, 1984, upon the recommendation of Findings of Fact, Conclusions of Law and Discipline filed in this cause after a hearing before the Disciplinary Hearing Commission. The North Carolina State Bar was represented by David R. Johnson. Charles Vickery was present and appeared pro se. The Council hereby adopts the Hearing Committee's Recommendation and Finds the following facts:

1. Charles E. Vickery, was admitted to the North Carolina State Bar on October 6, 1970, 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, Canons of Ethics, and Code of Professional Responsibility of the North Carolina State Bar and of the laws of the State of North Carolina.

2. During all of the periods referred to herein, Mr. Vickery was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the Town of Chapel Hill, Orange County, North Carolina.

3. On or about March 30, 1980, one Doris C. Sigmon entered into a contractual agreement with the Chapel Hill Residential Retirement Center, Inc. corporation [hereinafter referred to as Carol Woods Nursing Home or Carol Woods] to be admitted as a resident of Carol Woods Nursing Home. The contract required certain financial payments. Additionally, under Ms. Sigmon's circumstances, Carol Woods required a guarantor of payment. Ms. Sigmon's nephew, one James V. Pritchard, entered into the contract as the guarantor.

4. Prior to August 11, 1981, a dispute arose between Ms. Sigmon and Mr. Pritchard and Carol Woods concerning the amount owed to Carol Woods for services rendered to Ms. Sigmon. On or about August 11, 1981, Mr. Vickery was employed by Mr. Pritchard to settle the dispute between Carol Woods Nursing Home and Mr. Pritchard and Ms. Sigmon. Mr. Vickery was also employed to explore whether or not Blue Cross and Blue Shield should pay the disputed amount. The amount in dispute was \$8728.96.

5. On or prior to November 4, 1981, Mr. Pritchard delivered to Mr. Vickery an Official Check drawn on the North Carolina National Bank, made payable to "Charles E. Vickery Escrow Agent," in the amount of \$6000.00 (six thousand dollars).

6. Mr. Pritchard delivered the check to Mr. Vickery to be held in trust for the purpose of tendering the \$6000.00 to Carol Woods Nursing Home to resolve the dispute as set forth above.

7. Contemporaneously with the delivery of the check, Mr. Vickery endorsed it as "Charles E. Vickery, Escrow Agent, Ph 942-8523, 20 2376871, NCDL 2007023."

8. On banking day November 4, 1981, Mr. Vickery presented the check to the Central Carolina Bank for deposit into a checking account maintained by Mr. Vickery at the bank. The checking account was in the name of Charles E. Vickery and bore the account number 20 237 687 1. This account did not comply with the requirements of Rule 28 of the Discipline and Disbarment Rules of the North Carolina State Bar for maintenance of the account as a trust account in that it was not specifically denominated as a trust account. In fact, this account was Mr. Vickery's regular business and/or personal checking account in which he maintained his personal funds. The bank credited Mr. Vickery's account on banking day November 4, 1981, following the deposit of the check by Mr. Vickery.

9. Mr. Vickery also had a business relationship with Mr. Pritchard and on or about December 7, 1981, Mr. Vickery executed a Promissory Note payable to "Pritchard Buildings, a North Carolina Partnership or Jim Pritchard" in the amount of \$13,069.98. Only one-half of this sum was actually owed to Mr. Pritchard.

10. Between November 4, 1981, after Mr. Vickery had deposited the check into his Central Carolina Bank account, and April, 1982, Mr. Vickery communicated on several occasions with the attorney representing Carol Woods Nursing Home. However, at no time during this period did Mr. Vickery deliver to either Carol Woods or its attorney a check or other instrument or cash in the sum of \$6000, or any amount, as a tender in settlement of the dispute between Carol Woods and Mr. Pritchard and Doris Sigmon.

11. At no time did Mr. Vickery transfer the \$6000.00 deposited in his bank account to any other account or instrument to be held in trust for the benefit of Mr. Pritchard and Ms. Sigmon. During the period between the deposit and April, 1982, the balance in Mr. Vickery's bank account consistently fell below \$6000.00. Mr. Vickery used all or part of the \$6000.00 he held in trust for his own personal use and benefit during this period.

12. On or about April 8, 1982, Mr. Pritchard demanded payment of \$6960 on the Promissory Note executed by Mr. Vickery in December, 1981.

13. On April 19, 1982, a Complaint was filed by Carol Woods in Orange County Superior Court against Mr. Pritchard and Ms. Sigmon seeking to enforce its claim. The Complaint was served on Mr. Pritchard on April 20, 1982. Mr. Pritchard contacted Mr. Vickery and again requested that Mr. Vickery tender the \$6000.00 to Carol Woods. At the time of Mr. Pritchard's request Mr. Vickery's bank account had a balance of less than \$100.

14. On April 28, 1982, Mr. Vickery prepared a letter addressed to Mr. Bill Bayliss, attorney for Carol Woods concerning the Complaint that had been filed. During the course of the letter Mr. Vickery indicates that a check for \$6000.00 is enclosed as a settlement of the case. Mr. Vickery never mailed the original of the letter or any check to Mr. Bayliss.

15. On or about May 20, 1982, Mr. Pritchard demanded a return of both the \$6000.00 in trust funds delivered to Mr. Vickery and the \$6960.00 owed to him personally on Promissory Note. Mr. Vickery drew a counter check on his personal checking account at the Central Carolina Bank in the sum of \$12,960.00 on May 20, 1982, and delivered the check to Mr. Pritchard. At the time he drew the check the Mr. Vickery's balance in his account was less than \$1200.00.

16. Mr. Pritchard confronted Mr. Vickery with the fact that the bank would not honor the check. Mr. Vickery repeatedly promised to deliver a certified check for the funds held in trust and the personal debt, but did not repay any amount until June, 1982. Mr. Vickery still owes approximately \$2000.00 on the personal obligation.

17. In January, 1982, one Thomas D. Bayha was charged with careless and reckless driving as a result of an automobile accident. At the time, Bayha was a student at UNC-Chapel Hill.

18. On or about January 15, 1982, Mr. Vickery was employed to represent Bayha on the charges of careless and reckless driving. Mr. Vickery was paid \$200.00 by check dated January 15, 1982, a copy of which check was introduced into evidence as Exhibit 6.

19. Mr. Vickery obtained continuances of the trial of the charges prior to May, 1982. In May, 1982, Bayha contacted Mr. Vickery and was advised that the matter had been continued again. In fact, Mr. Vickery had failed to obtain the necessary continuance.

20. In July, 1982, the Department of Motor Vehicles notified Bayha that a conviction had been entered on his driving record because of his failure to attend Court.

21. Bayha contacted Mr. Vickery concerning the notice from the Department of Motor Vehicles and was advised by Mr. Vickery that he would rectify the matter.

22. Mr. Vickery has failed to take any steps to correct the situation and has failed to return Bayha's citation and any other documents in his possession belonging to Bayha.

23. Therefore, Mr. Vickery has engaged, either cummulatively or alternatively, in conduct constituting grounds for discipline under N. C. Gen. Stat §84-28(a) and (b) in that:

Based upon the foregoing FINDINGS OF FACT, the Council makes the following CONCLUSIONS OF LAW:

1. Mr. Vickery has engaged in conduct constituting grounds for discipline under N. C. Gen. Stat. §84-28(a) and (b) in the First Claim for Relief in that:

- a. by depositing the funds delivered to him in trust by Mr. Pritchard in his personal or business bank account at the Central Carolina Bank, Mr. Vickery failed to deposit the funds belonging to a client in a bank account in which no funds belonging to Mr. Vickery were maintained in violation of Disciplinary Rule 9-102(A) of the Code of Professional Responsibility of the North Carolina State Bar.
- b. by failing at all times during which he was entrusted with funds delivered to him by Mr. Pritchard to maintain a sufficient bank balance in the amount of those funds, Mr. Vickery converted those funds to his own personal use and engaged in conduct involving fraud, deceit, dishonesty, or misrepresentation; engaged in illegal conduct involving moral turpitude; and engaged in conduct adversely reflecting on his fitness to practice law in violation of Disciplinary Rules 1-102(A)(4), (3), and

(6), respectively of the Code of Professional Responsibility of the North Carolina State Bar.

- c. by delivering a check to Mr. Pritchard for which there were insufficient funds in the Defendant's bank account to cover the amount entrusted to Mr. Vickery and by failing to provide funds to cover the amount of the check for a period after delivery of the check, Mr. Vickery failed to promptly pay or deliver to his client the funds of the client that the client was entitled to receive in violation of Disciplinary rule 9-102(B)(4) of the Code of Professional Responsibility of the North Carolina State Bar.
- d. by maintaining the funds in his personal or business bank account and permitting the balance to fall below the amount entrusted to him, Mr. Vickery failed to maintain complete records of all funds of his client coming into his possession and render appropriate accounts to his client in violation of Disciplinary Rule 9-102(B)(3) of the Code of Professional Responsibility of the North Carolina State Bar.
- e. by delivering to Mr. Pritchard a check for which there are insufficient funds to cover the amount, Mr. Vickery engaged in conduct involving fraud, deceit, dishonesty, or misrepresentation and engaged in conduct adversely reflecting on his fitness to practice or both in violation of Disciplinary Rule 1-102(A)(4) and (6), respectively, of the Code of Professional Responsibility of the North Carolina State Bar.

2. Mr. Vickery has engaged in conduct constituting grounds for discipline under N. C. Gen. Stat §84-28(a) and (b) in the Second Claim for Relief in that:

- a. by failing to notify his client of the Court date and by failing to appear in Court on behalf of his client and permitting the conviction to be entered for the client's failure to appear, Mr. Vickery has, neglected a legal matter entrusted to him, intentionally failed

to seek the lawful objectives of his client, intentionally failed to carry out a contract of employment, and prejudiced or damaged his client during the course of the professional relationship in violation of DR's 6-101(A)(3), 7-101(A)(1), 7-101(A)(2), and 7-101(A)(3), respectively, of the Code of Professional Responsibility of The North Carolina State Bar.

- b. by failing to take steps to attempt to rectify the matter after the conviction was brought to his attention, Mr. Vickery has neglected a legal matter entrusted to him, failed to carry out a contract of employment, and prejudiced or damaged his client during the course of the professional relationship in violation of DR's 6-101(A)(3), 7-101(A)(1), 7-101(A)(2), 7-101(A)(3), respectively, of the Code of Professional Responsibility of The North Carolina State Bar.
- c. by advising his client that a continuance had been granted when it in fact had not, Mr. Vickery engaged in conduct involving fraud, deceit, dishonesty, or misrepresentation, in violation of DR 1-102(A)(4) of the Code of Professional Responsibility of The North Carolina State Bar.
- d. by failing to return the documents belonging to his client, Mr. Vickery has failed to return the property of the client to the client in violation of DR9-102(B)(4) of the Code of Professional Responsibility of The North Carolina State Bar.

In addition, in assessing the Committee's recommendation for discipline, the Committee received evidence of Mr. Vickery's prior disciplinary record. That record shows the following:

- 1. In File Number 77 DHC 12, Charles E. Vickery was issued a Private Reprimand for his failure to appear in court in Dare County to represent a client charged with DUI resulting in a warrant for arrest being issued for the client's arrest.
- 2. On File Number 82 DHC 10 and 82 DHC 11, Charles E. Vickery was suspended from the practice of law for two years for the failure to appear in court on behalf of a

client on a traffic matter after being paid and the failure to file any action on behalf of a prisoner-client to challenge the conviction by post-conviction hearings after receiving \$2500 to handle the post-conviction matter. Mr. Vickery was given the option of complying with the conditions of restitution and undergoing counselling to become eligible for reinstatement within six months, but has not complied with the conditions.

Based on the foregoing, the Council enters the following Order of Discipline:

1. Charles E. Vickery is disbarred from the practice of law.
2. Charles E. Vickery shall not become eligible for reinstatement unless and until he complies with the following conditions:
 - a. Pays restitution to Thomas Bayha of \$200.00
 - b. Pays restitution to Hal E. Wilson of \$208.87
 - c. Pays restitution to Frank Thomas of \$2500.00
 - d. Presents proof that James V. Pritchard has been paid the balance owed on the personal obligation.
 - e. Complies with all other conditions of reinstatement as set forth in the Discipline and Disbarment Rules of The North Carolina State Bar.
3. Charles E. Vickery shall be taxed with the costs of these proceedings.

This the 13th day of April, 1984.

Clifton W. Everett
Clifton W. Everett, President
The North Carolina State Bar