

NORTH CAROLINA

WAKE COUNTY

3164

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
89 DHC 25

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

J. BRUCE MULLIGAN, ATTORNEY
Defendant

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This matter being heard on November 15, 1989 before a hearing committee composed of John G. Shaw, Chairman, James E. Ferguson, II, and Sam L. Beam; with A. Root Edmonson representing the North Carolina State Bar and Gray Robinson representing J. Bruce Mulligan; and based upon the pleadings, the stipulations of the parties, and the evidence presented at the hearing, the hearing committee finds the following to be supported 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, J. Bruce Mulligan, was admitted to the North Carolina State Bar on August 31, 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, 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 herein, 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 Winston-Salem, Forsyth County, North Carolina.
4. On November 1, 1988, Defendant wrote check number 2386 on his trust account at First Citizens Bank, account number 461 1419161 (hereinafter trust account) to his professional association (hereinafter P.A.) in the sum of \$500 indicating that the payment was on behalf of Forsyth Cardiology Association.
5. No deposit had been made into Defendant's trust account on behalf of Forsyth Cardiology Association at the time Defendant wrote this check. Defendant deposited it into his office account.

00650

6. On November 1, 1988, Defendant wrote check number 2384 on his trust account to his P.A. in the sum of \$529 for which no deposit had been made from which Defendant was entitled to said sum.
7. Defendant deposited check number 2384 into his office account.
8. On November 2, 1988, Defendant wrote check number 2387 on his trust account to his P.A. in the sum of \$300.00 for which no deposit had been made from which Defendant was entitled to said sum.
9. Defendant deposited check number 2387 into his office account.
10. On November 14, 1988, Defendant deposited \$2,550 into his trust account to replace these funds.
11. On November 22, 1988, Defendant wrote check number 2401 on his trust account to himself in the sum of \$2,000 indicating that the payment was a partial trustee's commission on Pacific Mutual's foreclosure on Shelter Properties.
12. No deposit had been made into Defendant's trust account from which such a trustee's commission could be paid.
13. On December 7, 1988, Defendant wrote check number 2433 on his trust account to his P.A. in the sum of \$1,500.00 indicating that it was for T. Ramsey Estate (partial).
14. No deposit had been made into Defendant's trust account on behalf of the T. Ramsey Estate when Defendant wrote and cashed check number 2433.
15. On December 14, 1988, Defendant wrote check number 2440 on his trust account to himself in the sum of \$1,000 indicating it was for Evaline Smart fee (pt).
16. No deposit had been made into Defendant's trust account on behalf of Evaline Smart when Defendant wrote and cashed check number 2440.
17. On December 28, 1989, Defendant deposited \$3,497.50 to replace these funds.
18. On January 24, 1989, Defendant wrote check number 2503 on his trust account to himself in the sum of \$15,000.00 indicating it was for Hyatt-Special.
19. No deposit had been made into Defendant's trust account out of which Defendant was entitled to receive \$15,000 or any part thereof.
20. Defendant deposited the proceeds of check number 2503 into a savings account maintained in his and his wife's name at NCNB, account number 197056583.
21. On February 3, 1989, Defendant deposited \$12,000 from the savings account into his trust account to return a portion

of those funds.

22. On March 1, 1989, Defendant wrote check number 2537 on his trust account to himself in the sum of \$1,300.00 indicating it was for Jarvis Enterprises foreclosure.
23. No deposit had been made to Defendant's trust account in any Jarvis Enterprises foreclosure matter at the time that Defendant wrote and cashed check number 2537.
24. On March 14, 1987, Defendant wrote check number 2551 on his trust account to his P.A. in the sum of \$1,430.00 indicating it was for NCNB - Jarvis Foreclosure.
25. No deposit had been made into his trust account in any Jarvis Enterprises foreclosure matter at the time Defendant wrote and cashed check number 2551.
26. On April 10, 1989, Defendant deposited \$6,300 into his trust account to fully reimburse the account for all funds removed.
27. Defendant was not presently entitled to or authorized to remove any of the funds described above from his trust account.
28. The sums removed by Defendant from his trust account as set out above belonged to other clients of Defendant which Defendant was holding in a fiduciary capacity.
29. Defendant appropriated the sums removed from his trust account as set out above to his own use.

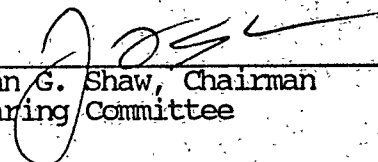
BASED UPON the foregoing Findings of Fact, the hearing committee makes the following Conclusions of Law:

Defendant's foregoing actions constitute grounds for discipline pursuant to N. C. Gen. Stat. Sec. 84-28(b) (2) in that Defendant violated the Rules of Professional Conduct as follows:

- (a) By removing funds belonging to his clients from his trust account and appropriating those funds to his own use, Defendant committed criminal acts that reflect adversely on the lawyer's 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 in violation of Rule 1.2(C).
- (b) By failing to preserve his clients' funds received in a fiduciary capacity separately from his own funds in a trust account, Defendant violated Rules 10.1(A) and (C).

Signed by the undersigned chairman with the knowledge and consent of the other members of the hearing committee this the 11 day of

May, 1989.
199


John G. Shaw, Chairman
Hearing Committee

[791]

00052

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
89 DHC 25

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

J. BRUCE MULLIGAN, ATTORNEY
Defendant

ORDER OF DISCIPLINE

Based upon the Findings of Fact and Conclusions of Law of even date herewith, and further based upon the evidence presented and arguments of counsel concerning the aggravating and mitigating factors in this matter, the hearing committee finds as follows:

That the violations found by the hearing committee in this matter normally would warrant disbarment. However, due to the quantity and quality of the mitigating evidence in this matter, a different result is warranted. The mitigating factors found by the hearing committee include:

- 1) At the time that Defendant removed any sums from his trust account he was presently due and owing substantial fees from the clients named on the checks. However, the fees had not been received by Defendant at the time the sums were removed from the trust account.
- 2) Although his use of the funds was improper, Defendant was not motivated by selfish personal gain. He used the funds removed from the trust account to pay salaries and other expenses which he otherwise would have paid from the fees owed but not yet received.
- 3) Defendant quickly replaced all funds improperly removed from his trust account and no client experienced any loss as a result of his having removed the funds.
- 4) Defendant has no prior disciplinary record.
- 5) Defendant had personal and family problems at the time of his misconduct that affected his judgment.
- 6) Defendant fully cooperated with the North Carolina State Bar in their investigation of this matter.
- 7) Defendant had an excellent reputation as an individual and an attorney prior to the incidents that lead to this proceeding.
- 8) Defendant showed genuine remorse for his conduct.

Therefore, based upon the mitigating factors found above, the hearing committee enters the following Order of Discipline:

- 1) Defendant, J. Bruce Mulligan, is suspended from the practice of law for three (3) years.
- 2) Defendant shall comply with the requirements of Section 24 of Article IX of the Rules and Regulations of the North Carolina State Bar concerning the winding down of his practice.
- 3) Defendant shall surrender his license certificate and permanent membership card to the Secretary of the North Carolina State Bar.
- 4) Defendant is taxed with the costs of this proceeding as assessed by the Secretary.

Signed by the undersigned chairman with the knowledge and consent of the other members of the hearing committee this the 11 day of

January, 1989.
1990.



John G. Shaw, Chairman
Hearing Committee

[793]

00654