

NORTH CAROLINA  
WAKE COUNTY

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
90 DHC 5

THE NORTH CAROLINA STATE BAR  
Plaintiff

v.

CLARENCE EUGENE BAKER, JR., ATTORNEY  
Defendant

FINDINGS OF FACT  
AND CONCLUSIONS OF LAW

This cause was heard by a Hearing Committee of the Disciplinary Hearing Commission consisting of L. P. Hornthal, Jr., Chairman, John Shaw and Emily Turner on Wednesday, August 8, 1990. Carolin Bakewell represented the North Carolina State Bar and the Defendant, Clarence E. Baker Jr., appeared on his own behalf. Based upon the pleadings, pre-hearing stipulations and evidence presented at trial, 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, Clarence Eugene Baker, was admitted to the North Carolina State Bar in 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, and the Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During all of the relevant periods referred to herein, Baker was engaged in the practice of law in the State of North Carolina and maintained a law office in the city of Morganton, Burke County, N.C.

4. In 1989, Baker was appointed to represent Beverly Corpening respecting a criminal matter.

5. Prior to July 11, 1989, Baker, Corpening and Corpening's sister, Gardenia Jones, discussed additional criminal charges then pending against Corpening in Union County. It was agreed that Corpening's relatives would bring \$800 to Baker's office and that the money would be used to make restitution in the Union County matters. Baker was aware that the money would be paid and agreed to assist in ensuring that restitution was made.

6. On or about July 12, 1989, \$800 belonging to Ms. Corpening was

deposited into Baker's trust account.

7. Baker failed to pay out the \$800 as directed by Ms. Corpening and by July 21, 1989, the balance in Baker's trust account had dropped below \$800.

8. Corpening's funds were used for the benefit of Baker and third parties other than Ms. Corpening, without Corpening's knowledge or permission.

9. In July or August, 1989 Corpening engaged the services of another attorney to represent her respecting the Union County criminal charges.

10. Prior to August 23, 1989, Corpening asked Baker to refund the \$800 to her, so that restitution could be made.

11. On or about August 23, 1989, Baker gave Corpening or her relatives check no. 1177 drawn on his trust account for \$800. This check was later returned for insufficient funds.

12. On August 29, 1989, after learning that the August 23 check had been returned for insufficient funds, Baker gave Ms. Corpening's Union County attorney a certified check for \$800 drawn on Baker's personal bank account.

13. In late July or early August, 1987, Baker undertook to represent Patricia Brown respecting injuries she received in a motorcycle accident on July 26, 1987.

14. In April 1988, Baker received a check for \$12,500 in settlement of Ms. Brown's personal injury claim. The check was deposited into Baker's trust account on or about April 11, 1988.

15. Baker disbursed \$8,000 of the proceeds of the settlement check to Ms. Brown on or about April 11, 1988. Baker agreed to pay himself a \$2,500 fee and pay Ms. Brown's medical bills with the remaining \$2,000.

16. On or about July 13, 1988, Baker paid \$207.60 to Catawba Memorial Hospital on behalf of Ms. Brown.

17. Baker failed to pay Ms. Brown's other medical bills until Jan. 12, 1989, despite the fact that Ms. Brown made numerous telephone calls to his office, asking him to pay the bills.

18. By April 29, 1988, the balance in Baker's trust account had dropped to \$48.08.

19. On or about January 12, 1989, Baker placed \$4,000 of his personal funds into his trust account. Later that same day, Baker used \$2,000.76 of these personal funds to pay Ms. Brown's medical bills.

20. Baker knowingly misappropriated Ms. Brown's funds for approximately nine months without her knowledge or consent.

21. Ms. Brown's credit rating was damaged by the delay in payment of her medical bills.

22. In 1988, Baker represented William H. Williams Sr. respecting a divorce and equitable distribution. On or about May 20, 1988, Williams received \$20,000 pursuant to the settlement of the equitable distribution case.

23. The \$20,000 check was deposited into Baker's trust account on May 20, 1988. Williams asked Baker to use the money to pay for the college expenses of Williams' son and to pay debts of Williams.

24. Despite Williams' instructions, the \$20,000 was transferred into the personal savings account of Christie Baker, Baker's daughter, later in the day on May 20, 1988. Baker was aware of the transfer of Williams' funds into his daughter's personal account.

25. Williams did not give prior consent to the transfer of his funds to Ms. Baker's personal account.

26. Between August 15, 1988 and August 30, 1989, Baker knowingly permitted the removal of \$3,765.21 of Williams' funds from Ms. Baker's personal account. These funds were used for the benefit of Baker and his daughter.

27. Between May 21, 1988 and February 1990, Baker made various payments to or on behalf of Williams. As of the date of hearing, Williams had received a total of \$21,168.91 back from Baker.

28. Baker used his personal funds and funds of other clients to repay the \$3,765.21 temporarily misappropriated from Williams.

29. Between January 1, 1985 and August 31, 1989, Baker commingled personal funds and client funds in his attorney trust account.

30. On various occasions in 1988 and 1989, Baker made cash deposits into his trust account without designating the source of the deposit.

31. On seven occasions in 1988 and 1989 Baker wrote checks to cash drawn on his attorney trust account as follows:

<u>Date</u>	<u>Check No.</u>	<u>Amount of Check</u>
May 9, 1988	720	\$50
Oct. 13, 1988	815	\$400
Dec. 27, 1988	854	\$380.73
March 2, 1989	933	\$200
April 27, 1989	1077	\$415.88
May 12, 1989	1091	\$450
May 26, 1989	1095	\$75

32. On Jan. 3, 1990, the N.C. State Bar issued a subpoena to Baker,

ordering him to produce records relating to his trust account at the offices of the N.C. State Bar on Jan. 17, 1990.

33. Baker was personally served with the subpoena on Jan. 4, 1990.

34. Baker failed to produce the records as commanded by the subpoena.

Based upon the foregoing Findings of Fact, the Committee makes the following

#### CONCLUSIONS OF LAW

1. By failing to appear as commanded by the subpoena of the N.C. State Bar, the Defendant failed to comply with a lawful request for information from a disciplinary authority, in violation of Rule 1.1(B).

2. By misappropriating funds of Ms. Corpening, the Defendant engaged in conduct involving deceit or misrepresentation in violation of Rule 1.2(C).

3. By failing to promptly deliver to Ms. Corpening or to third parties as she directed all funds belonging to Ms. Corpening, the Defendant violated Rule 10.2(E).

4. By misappropriating Williams' funds, Baker engaged in conduct involving deceit or misrepresentation in violation of Rule 1.2(C).

5. By misappropriating funds of Ms. Brown, the Defendant engaged in conduct involving deceit or misrepresentation in violation of Rule 1.2(C).

6. By failing to deliver to Ms. Brown or her medical care providers promptly all funds due Ms. Brown, the Defendant violated Rule 10.2(E), prejudiced a client in violation of Rule 7.1(A)(3), failed to seek the lawful objectives of a client in violation of Rule 7.1(A)(1) and neglected a matter entrusted to him in violation of Rule 6(B)(3).

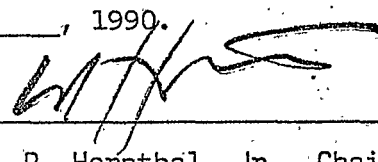
7. By commingling personal and client funds in his attorney trust account, the Defendant violated Rule 10.1(A).

8. By failing to designate the source of all deposits made into his trust account, the Defendant violated Rule 10.2(C)(1).

9. By drawing checks payable to cash from his trust account, the Defendant violated Rule 10.2(C)(2).

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

This the 20 day of August, 1990.

  
L. P. Hornthal, Jr., Chairman



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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 Wednesday, August 8, 1990. Based on the pleadings, evidence at trial and the prehearing stipulations the Committee makes the following findings:

1. 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 N.C. State Bar.

b. The Defendant was cooperative with the N.C. State Bar during the investigation of the complaint against him.

2. The Defendant's misconduct is aggravated by the following factors:

a. The Defendant was motivated by a selfish or dishonest motive.

b. The Defendant engaged in a pattern of misconduct.

c. The Defendant engaged in multiple violations of the Rules of Professional Conduct.

d. At least one of the individuals harmed by the Defendant's misconduct was a vulnerable victim within the meaning of the American Bar Association Standards on Attorney Discipline.


Based upon the Findings of Fact and Conclusions of Law entered in this cause and the foregoing considerations bearing upon the appropriate measure of discipline, the Hearing Committee enters this ORDER OF DISCIPLINE:

1. The Defendant is hereby disbarred;

2. The Defendant shall pay the costs of the proceeding.

This the 20 day of August, 1990.

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



L. P. Hornthal, Jr., Chairman