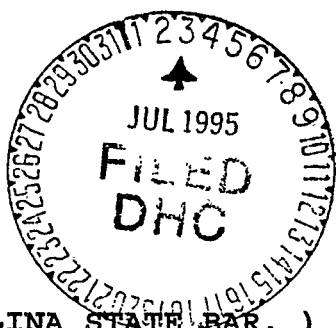


16748



NORTH CAROLINA
WAKE COUNTY

THE NORTH CAROLINA STATE BAR,)
)
Plaintiff,)
)
vs.)
)
A. STANLEY MITCHELL,)
)
Defendant.)

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

AMENDED ORDER
OF DISCIPLINE

Based upon the Amended Findings of Fact and Conclusions of Law of even date herewith; and further based upon the arguments presented in the rehearing of this matter; the hearing committee, composed of Frank E. Emory, Jr., Chairman; Richard L. Doughton; and Frank L. Boushee, finds the following:

AGGRAVATING FACTORS

1. A pattern of misconduct.
2. Failure to timely respond to the State Bar's requests for information during the investigation and prosecution of this matter.

MITIGATING FACTORS

1. Inexperience in the practice of law.
2. No client was harmed by the Defendant's conduct.
3. No prior disciplinary actions before the North Carolina State Bar.
4. Defendant enjoys a good reputation for character in the Forsyth County community.

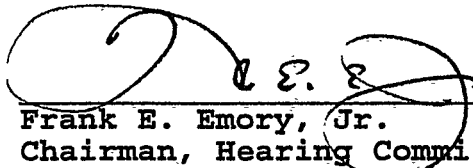
While being impressed with and encouraged by the mitigating factors in this matter, the Panel believes that the aggravating factors outweigh the mitigating factors.

BASED UPON all of the factors presented at the rehearing of this matter, the hearing committee enters the following ORDER OF DISCIPLINE:

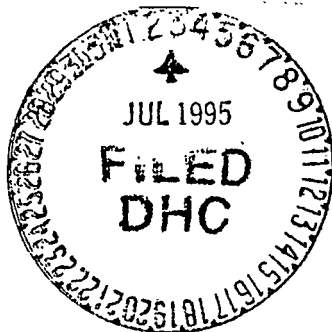
1. The Defendant, A. Stanley Mitchell, is SUSPENDED from the practice of law in North Carolina for a period of three (3) years.

2. The Defendant is taxed with the costs of this hearing as assessed by the Secretary.

Signed by the undersigned Chairman with the full knowledge and consent of the other members of the hearing committee this the 30th day of June, 1995.


Frank E. Emory, Jr.
Chairman, Hearing Committee

NORTH CAROLINA
WAKE COUNTY



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

THE NORTH CAROLINA STATE BAR,)
)
Plaintiff,)
)
vs.)
)
A. STANLEY MITCHELL, Attorney)
)
Defendant.)

AMENDED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

THIS CAUSE came on to be heard and was originally heard on July 15, 1994, before a hearing committee composed of Frank E. Emory, Jr., Chair; Richard L. Doughton and Frank L. Boushee. At that hearing, A. Root Edmonson represented the North Carolina State Bar and the Defendant, A. Stanley Mitchell, appeared pro se. Based upon the admissions of the Defendant due to his default for failure to file an Answer or otherwise plead in this matter after having been served with the Complaint, and after hearing from and considering the evidence offered on behalf of the State Bar and hearing from the Defendant, the hearing committee entered Findings of Fact, Conclusions of Law and entered an Order of Discipline disbaring the Defendant.

On August 9, 1994, the Defendant filed a Motion pursuant to Rule 60 of the North Carolina Rules of Civil Procedure in which he requested a new hearing based upon the facts set forth in that motion. An Order was entered by the Chair granting a new hearing.

The rehearing of this matter commenced on January 18, 1995, with the same Panel which had been convened previously and is set forth above. A. Root Edmonson again represented the North Carolina State Bar and James B. Maxwell appeared on behalf of the Defendant. It was not possible to conclude the rehearing on that date, and it was adjourned until January 30, 1995, with the consent of all parties.

On January 30, 1995, and at the conclusion of the hearing, the Panel announced its decision which included the conclusion that the Order of Discipline should not be changed from the July 15, 1994, decision. Thereafter, on its own consideration and upon a motion filed on behalf of the Defendant to amend the decision of the Panel and after further consideration, the Panel decided to amend some of its prior findings of fact, conclusions of law and the ultimate Order of Discipline in this matter, and now believes that the following findings of fact and conclusions are supported by clear, cogent and convincing evidence.

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, A. Stanley Mitchell (hereinafter Mitchell) was admitted to the North Carolina State Bar on August 19, 1989, 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, Mitchell 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. For a relatively short period of time after he began practicing law, Stanley Mitchell was associated with Greg Davis, an attorney at law practicing in Forsyth County. During that period of time, Mr. Davis and his office staff were responsible for handling all funds in connection with the operation of the office, including client funds and the trust account. Mr. Mitchell neither had any exposure to nor training in the maintenance of such trust accounts or balancing of books or the maintenance of ledger cards on each client.

5. Beginning in approximately late 1990, or early 1991, and because Mr. Davis became a Public Defender for Forsyth County, Mr. Mitchell began his practice as a sole practitioner. At that time, he opened a trust account at Branch Banking & Trust Company (hereinafter, BB&T), Account No. 1911021745 (hereinafter BB&T Trust Account). He did not maintain nor create client ledger cards for either his trust account or his operating account, nor did he or any member of his staff attempt to reconcile bank statements at the end of each month for each client. His office did balance their respective accounts each month to determine that they were accurate in the amount of funds they were showing in the trust account, but they did not credit that amount to individual clients or to Mr. Mitchell. Generally, Mr. Mitchell and his secretary attempted to keep an account for their clients "in their heads" each and every month, based upon their best recollection of the amounts that had been deposited in the trust account on behalf of clients.

6. During law school, Stanley Mitchell had received no instructions on trust account or its proper maintenance, nor at any CLE program that he attended, and since he did not learn from Greg Davis about the appropriate handling of trust accounts, he was

generally unfamiliar with how to maintain such accounts. It was his general opinion that so long as the trust account "balanced" each month and as long as he and his secretary had an idea of (thought they knew) how much was in the account on behalf of each client, that would be sufficient, particularly if there were funds of Mitchell's in the trust account so there would be a "surplus" to protect clients.

7. From time to time, Mitchell would deposit funds of his own in his trust account or allow fees that had been earned to remain in that account after the case was closed. It was his belief that in so doing he could ensure that the trust account checks would never "bounce" or be returned for insufficient funds. Because neither he nor his secretary did a client per client crediting of the trust account at the end of each month, Mr. Mitchell was never aware of how much, if any, of his funds might have been in the trust account. He believed that there were always funds in some amount that represented fees that he had not yet transferred or monies of his own he had deposited directly into the trust account. He did not appreciate nor understand that this was a commingling of funds.

8. Sometime in late 1991 or the early part of 1992, Mitchell became interested in expanding his business interests to include the purchase, fix-up, rent and/or ultimate sale of property in and around Forsyth County. More often than not, the property he was interested in acquiring was at foreclosure sale. He discussed this with his wife and several friends and over an approximate 12 - 18 month period of time would, on behalf of himself and/or his wife and friends, make investments, on his or their behalf, in various pieces of real estate in this manner.

9. In late December, 1991, Mitchell learned of a piece of real estate located in Winston-Salem, North Carolina, at 3010 Apollo Drive which was in foreclosure. He discussed that with his wife and two other individuals who ultimately agreed to become investors in purchasing this property. In order to acquire this, an upset bid would need to be made in the office of Clerk of Superior Court of Forsyth County and the only method of doing that would be by cash or cashier's check. It was Mitchell's intention that the investors, including his wife, would put up \$1,100 for this purpose and that from that fund he would be able to put up a cash "upset bid" on their behalf.

10. On December 30, 1991, Mitchell took a personal check or business check to BB&T and gave it to the bank in return for a cashier's check made payable to the Forsyth County Clerk of Superior Court. The amount of the personal or business check given to BB&T by Mitchell was \$1,080 and that was the amount of the cashier's check directed to the Clerk of Superior Court. This transaction did not involve his trust account in any manner.

11. On December 31, 1991, Mitchell deposited an additional check in the amount of \$1,100 into his trust account at BB&T on behalf of the investor group which was intended to be used for additional expenses in connection with the purchase at foreclosure of the Apollo Drive property.

12. The personal or business check that Mitchell had given to BB&T to purchase the cashier's check was later returned for insufficient funds. At that time the only account that Mitchell had with BB&T was his trust account, and thus, BB&T made a charge against the trust account as the only account it had access to in order to satisfy the dishonored personal check of Mitchell. Coincidentally, and because Mitchell had deposited a check for \$1,100 in the trust account for the investors subsequent to the purchase of the \$1,080 cashier's check, no other funds in the trust account were initially affected.

13. On January 6, 1992, the \$1,100 item of deposit which had been made into Mitchell's trust account on behalf of the investors was also returned uncollected and the trust account was debited in that amount.

14. Mitchell's secretary, Pam Holland, advised him that the deposit of \$1,100 that had been made into the trust account was returned for insufficient funds and that the BB&T trust account had been so debited. Mitchell did not replace the debited item with other funds and as a result of that action, the \$1,080 charge back that had been levied against his trust account from his original \$1,080 check was covered, by necessity, by other funds of clients held in the trust account or with funds of his own which had been commingled.

15. In October, 1991, Mitchell was employed by Bishop J.D. Johnson to file a Chapter 11 bankruptcy reorganization for Gospel Media, Inc.

16. Approximately \$3,100 was delivered to Mitchell on behalf of Gospel Media, Inc. to be held in trust as filing fees, expenses, and an advanced payment of Mitchell's fees. That money was deposited into Mitchell's trust account at BB&T.

17. Over a period of time, Mitchell removed a total of \$2,600 which represented the payment of his fees from the trust account and deposited that sum into his office account.

18. After all of the fee Mitchell had been paid in advance had been removed from the BB&T trust account, Bishop Johnson became dissatisfied with the progress of the Gospel Media, Inc. matter and retained new counsel. Bishop Johnson requested a refund of the entire fee previously paid to Mitchell.

19. Although contending that he had done considerable work for Gospel Media, Inc., Mitchell agreed to refund the fee.

20. On March 19, 1992, Mitchell deposited \$2,600 into his BB&T trust account from his office account.

21. By check #1255 on his BB&T trust account, Mitchell paid the \$2,600 refund to the new attorney for Gospel Media, Inc.. Check #1255 cleared the BB&T trust account on March 25, 1992.

22. On March 25, 1992, Mitchell's BB&T trust account was debited \$2,600 because the check Mitchell had deposited into the trust account was returned for insufficient funds.

23. Mitchell did not replace the \$2,600 debited from the BB&T trust account due to his office account check being returned for insufficient funds. This caused funds which he held in a fiduciary capacity for other clients to be used to cover the \$2,600 debit, or individual commingled funds of his to be so used.

24. On July 8, 1992, Mitchell opened a new trust account at Mechanics and Farmers Bank in Winston-Salem, NC, Account No. 4150009282 (hereinafter M&F trust account). He also had at that time his office operating account at Mechanics and Farmers Bank, Account No. 415007907.

25. In April, 1992, Mitchell undertook to represent Lawson Banks Graves (hereinafter Graves) in an attempt to reopen a Chapter 13 bankruptcy case that had been dismissed by the bankruptcy court in March, 1992.

26. On or about July 8, 1992, Graves delivered \$5,000 to Mitchell to be used for expenses and payments Graves would be responsible for making to the Chapter 13 office.

27. Mitchell, or his office staff, erroneously deposited the \$5,000 received from Graves into his office account at M&F, Account #415007907, instead of the newly opened trust account. Over time, Mitchell used those funds which had been deposited into his office account to pay office expenses or for his own benefit.

28. Mitchell subsequently made disbursements from his M&F trust account on behalf of Graves in the total sum of \$4,530. Since no funds were on deposit for Graves in the M&F trust account, funds which he held in a fiduciary capacity for other clients, or his personal commingled funds, were used to pay the Graves trust account disbursements.

29. Because there were at that time no ledger cards kept for clients, Mitchell was unaware that he had used other client funds for the Graves' purposes since he had erroneously believed that the \$5,000 had initially been put into the trust account, as did his

secretary, and thus when they would make "draws" against the "Graves trust account funds", they believed such funds were there.

30. In September 1992, Mitchell became interested in purchasing another piece of property as an investment. The property was to be purchased from a Margaret Spence and was known as 2401 Patterson Avenue. Mitchell spoke with his wife about this transaction and believed that his wife was going to provide at least \$5,000 toward the purchase of that property.

31. Based upon his belief that his wife would provide the \$5,000 necessary to purchase the Patterson Avenue property from Spence and knowing that he would put that into the trust account as he had previously done, on September 18, 1992, Mitchell wrote check #123 from his M&F trust account payable to Ms. Spence, the sum of \$3,500 for the purchase of the property. Mitchell's wife later changed her mind and refused to give him money for the purchase of Patterson Avenue property, and thus, there was no deposit made into the trust account to cover the check that had been previously issued on September 18, 1992, to Ms. Spence.

32. At all times relevant to this proceeding, the Defendant's wife, Carol Mitchell, was employed at RJR Nabisco and had a capital investment account with that company in addition to other separate assets and savings that would have been more than sufficient to have covered all transactions described above, had demand ever been made to reconcile an account.

33. On September 21, 1992, Mitchell wrote check #124 from his M&F trust account payable to himself in the sum of \$1,500, in the apparent belief that he had fees earned but not yet taken sufficient to cover that amount in that account.

34. On October 16, 1992, Mitchell wrote another check, #153, from his M&F trust account payable to Margaret Spence in the sum of \$200.

35. At the time check #153 was written, there were no funds on deposit for Margaret Spence on behalf of investors for Ms. Spence's property in Mitchell's M&F trust account. The check was paid from funds which he held in a fiduciary capacity for his clients, or personal commingled funds.

36. On October 20, 1992, Mitchell deposited \$18,685 in loan proceeds from a personal loan to his M&F trust account as the first deposit relating to the property at 2401 Patterson Avenue. These funds would remain in the account as personal and/or commingled funds for an indefinite period of time.

37. Mitchell represented Arthur L. and Martha B. Parent in a Chapter 13 bankruptcy petition. In court on November 12, 1992, respondent promised to send a \$4,000 payment to FHA on behalf of

the Parents. The Parents entrusted \$4,000 to Mitchell for that purpose. Mitchell deposited the Parents' \$4,000 to his M&F trust account. That deposit was credited to the account on November 13, 1992.

38. On November 27, 1992, Mitchell directed M&F to transfer \$1,400 from his M&F trust account to his office account. The bank prepared a debit memo as a record of this transaction. This withdrawal from the M&F trust account was not attributed to any client by Mitchell on his copy of the debit memo, but was covered by the personal loan funds commingled by Mitchell in his trust account.

39. On November 27, 1992, Mitchell also directed M&F to transfer another \$1,000 from his M&F trust account to his office account. The bank prepared a debit memo as a record of this transaction. This withdrawal from the M&F trust account was not attributed to any client by Mitchell on his copy of the debit memo, but was covered by the personal loan funds commingled by Mitchell in his trust account.

40. On November 30, 1992, Mitchell directed M&F to transfer another \$2,000 from his M&F trust account to his office account. The bank prepared a debit memo as a record of this transaction. This withdrawal from the M&F trust account was not attributed to any client by Mitchell on his copy of the debit memo, but was covered by the personal loan funds commingled by Mitchell in his trust account.

41. Mitchell did not send a check to FHA on behalf of the Parents until December 4, 1992. Mitchell's M&F trust account check made payable to FHA in the sum of \$4,000 was returned because there were insufficient funds on deposit in Mitchell's account to pay the check. In all transactions described above, this was the only known instance in which a trust account check of Mitchell's (either from the BB&T or M&F trust account) had been dishonored.

42. Mitchell promptly made the FHA payment from personal funds after notification of the return of that check.

43. Like his BB&T trust account, Mitchell failed to keep ledger cards for individual accounts showing trust account or office account cards for each client so that could be reconciled or so that he would know the amounts that were actually on deposit for any client at any given time. He or his office continued to simply "balance" the account with the bank statement each month.

44. During the North Carolina State Bar's investigation of this matter, David Frederick and a deputy counsel from the State Bar met with Mitchell in Mitchell's office in Winston-Salem, NC on September 28, 1993. At that meeting, Mitchell was asked to provide

the State Bar with additional documents necessary to the State Bar's investigation. Mitchell promised to provide the documents.

45. Mitchell did not provide the documents as promised.

46. Numerous attempts were made by Frederick, the deputy counsel and State Bar investigator Don Jones to get Mitchell to provide the documents.

47. Mitchell promised to provide the documents several more times.

48. Mitchell never did provide the State Bar with the documents necessary for the State Bar's investigation of this matter.

49. When the irregularities of the trust account became known to the State Bar, the trust accounts were frozen. Since that time, Mitchell has continued his practice of law and has not used any trust account (he did not attempt to open a new one), but rather, has had his clients deal only in cash and/or cashier's checks and while cumbersome, this has worked sufficiently. There have been no apparent additional comminglings and/or problems with the trust account.

50. With the exception of the \$4,000 check made payable to the FHA on behalf of the Parents, it does not appear that any other check from either trust account (BB&T or M&F) was ever returned for insufficient funds.

51. At no time has any client of Mr. Mitchell's ever asked for funds which had been deposited with him which were not returned to them in a prompt manner.

52. The Defendant, A. Stanley Mitchell, enjoys a good reputation in the community and with the Bar of Forsyth County, as shown by letter affidavits and testimony of witnesses on his behalf, including Greg Davis. Thomas J. Keith, District Attorney for Forsyth County, offered a character affidavit as to Mitchell's legal competency and his work in the community, with particular emphasis upon his work with young black males who may be at risk, in a program referred to as "Big Brother". Mitchell has voluntarily expended significant amounts of time, energy and effort in that program.

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

CONCLUSIONS OF LAW

1. At the rehearing of this matter, the burden was on the Defendant to prove that any findings of fact or conclusions of law previously found by this hearing committee which had been based upon the Defendant's default should be changed or modified.

2. The Defendant has satisfied the Committee at the rehearing that his actions were not such as to constitute a violation of Rule 1.2(B) or 1.2(C).

3. While the Defendant has offered a fuller explanation of what transpired, some documentation as to the financial stability of his wife throughout all times in which issues were involved and has provided additional character testimony on his behalf, he has failed to carry his burden to establish that all of the findings of fact or conclusions previously found by the hearing committee were erroneous. The Committee does believe his actions in regard to the management of his trust account were never intended to "embezzle" or divert funds to his own use, although this may have been the ultimate unintended effect of some of his actions.

4. The Committee does conclude that no individual client ever lost any money that had been entrusted to the Defendant.

5. The conduct of the Defendant as set out above, constitutes grounds for discipline pursuant to N.C.G.S. §84-28(b)(2) in that Defendant's conduct violates the North Carolina Rules of Professional Conduct as follows:

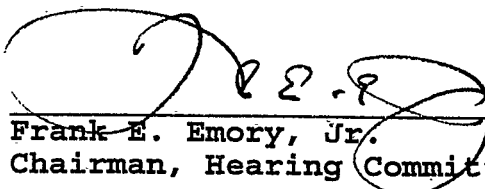
- (a) By failing to replace the \$1,100 item of deposit that his secretary had advised him had caused a deficit in his trust account after the \$1,080 cashier's check had been charged against his BB&T trust account, Mitchell failed to preserve funds of clients received in a fiduciary capacity in his trust account in violation of Rules 10.1(A) and (C).
- (b) By failing to replace the \$2,600 item of deposit from his office account that caused a deficit in his trust account, and by allowing funds which he held in a fiduciary capacity for his clients to cover that deficit, Mitchell failed to preserve funds of clients received in a fiduciary capacity in his trust account in violation of Rules 10.1(A) and (C).
- (c) By erroneously failing to place the Graves' \$5,000 which he received in a fiduciary capacity into his trust account, causing funds of clients held in a fiduciary capacity in his M&F trust account to cover the Graves' disbursements from that account, Mitchell failed to

preserve funds of clients received in a fiduciary capacity in his trust account in violation of Rules 10.1(A) and (C).

- (d) By advancing payment from his trust account, in anticipation of receipt of an equal amount of funds from his wife, Mitchell was using funds which he held in a fiduciary capacity for other clients in his M&F trust account to pay the \$3,500 to Margaret Spence to facilitate his purchase of the Spence property at 2401 Patterson Avenue. By failing to preserve funds of clients received in a fiduciary capacity in his trust account, he violated Rules 10.1(A) and (C).
- (e) By using funds which he held in a fiduciary capacity for his clients in his M&F trust account to pay check #124 in the sum of \$1,500 to himself, Mitchell failed to preserve funds of clients received in a fiduciary capacity in his trust account in violation of Rules 10.1(A) and (C), or commingled personal funds with those of his clients in violation of Rule 10.1(C).
- (f) By using funds which he held in a fiduciary capacity for his clients in his M&F trust account to pay check #153 in the sum of \$200 to Margaret Spence to facilitate his purchase of the Spence property at 2401 Patterson Avenue, Mitchell failed to preserve funds of clients received in a fiduciary capacity in his trust account in violation of Rules 10.1(A) and (C).
- (g) By failing to pay the FHA the \$4,000 entrusted to him by the Parents on November 12, 1992 for that purpose until December 4, 1992, Mitchell failed to promptly pay or deliver to a third party, as directed by his client, the funds of the client which he had received for that purpose in violation of Rule 10.2(E).
- (h) By failing to preserve the funds the Parents had left with him in a fiduciary capacity in his trust account by making the Graves disbursements from the trust account without the Graves money having been deposited into that account, Mitchell failed to preserve funds of clients received in a fiduciary capacity in his trust account in violation of Rules 10.1(A) and (C).
- (i) By authorizing M&F to transfer funds from his trust account without indicating from whose client balance the transfer was made, Mitchell violated Rule 10.2(C) (2).

- (j) By failing to keep client ledgers for the clients whose money he held in a fiduciary capacity which he deposited into his BB&T and his M&F trust accounts, Mitchell violated Rule 10.2(C)(3).
- (k) By failing to reconcile his BB&T and M&F trust accounts, Mitchell violated Rule 10.2(D).
- (l) By failing to provide the documents necessary to the State Bar's investigation after being requested to do so by Frederick, Mitchell violated Rule 1.1(B).

Signed by the undersigned chairman with the full knowledge and consent of the other members of the hearing committee this the 30th day of June, 1995.



Frank E. Emory, Jr.
Chairman, Hearing Committee