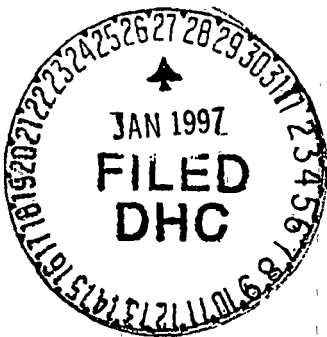


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NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
96 DHC 14

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
v.)
LINDA M. PITTS, Attorney,)
Defendant)

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW
AND
ORDER OF DISCIPLINE

This matter was heard on the 10th day of January, 1997, before a hearing committee of the Disciplinary Hearing Commission composed of Henry C. Babb, Jr., Chair; James R. Fox and Robert B. Frantz. The defendant, Linda M. Pitts appeared pro se. The plaintiff was represented by A. Root Edmonson. Based upon the pleadings and the evidence introduced at the hearing, the hearing committee hereby 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, Linda M. Pitts (hereinafter Pitts), was admitted to the North Carolina State Bar on March 19, 1988 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 the times relevant to this complaint, Pitts was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Raleigh, Wake County, North Carolina.

4. The defendant was properly served with process and the hearing was held with due notice to all parties.

5. Prior to January 4, 1996, Pitts was retained by Susan Rhodes (hereinafter Rhodes) to represent Rhodes and her minor daughter, Traci Suzanne Sullivan (hereinafter Sullivan), in

recovering for injuries Sullivan sustained in a September 22, 1995 traffic accident, including medical expenses for which Rhodes was responsible as Sullivan's parent.

6. On January 4, 1996, Pitts filed a complaint in Wake County Superior Court on behalf of Rhodes and Sullivan's guardian in file number 96 CVS 00163.,

7. Prior to January 18, 1996, the insurance company insuring the defendants in the lawsuit brought by Pitts tendered a check in the sum of \$4,387.12 to Rhodes to cover the medical expenses Sullivan had incurred as a result of the accident.

8. At Pitts' request, Rhodes endorsed the \$4,387.12 check and left it with Pitts for her to use to pay the medical providers who had rendered services to Sullivan.

9. On January 18, 1996, Pitts deposited the insurance company's check into her trust account at First Citizens Bank, account number 0861264446 (hereinafter trust account).

10. On January 31, 1996, Pitts wrote trust account check number 2993 payable to her law office for her anticipated attorney fee in the Sullivan and Rhodes matter in the sum of \$4,790.91. Pitts was not entitled to her attorney fee until the minor's settlement was approved by the court.

11. On February 1, 1996, Pitts deposited check number 2993 into her office account at First Citizens Bank, account number 0861317229 (hereinafter office account).

12. Pitts had no funds in her trust account for Sullivan and Rhodes on January 31, 1996 except the \$4,387.12 on hand to pay Sullivan's medical providers.

13. By paying herself from the funds she held for the payment of Sullivan's medical providers, Pitts appropriated funds held in a fiduciary capacity to her own use without her client's knowledge and consent.

14. By writing herself a check from her trust account in an amount greater than the amount on deposit for Sullivan and Rhodes, Pitts appropriated funds held in a fiduciary capacity on behalf of other clients to her own use without their knowledge or consent.

15. On February 13, 1996, a settlement document entitled Judgment for Minor Traci Suzanne Sullivan was accepted and signed by Judge David Q. LaBarre. The judgment recited that \$4,387.12 had previously been paid to Rhodes for her daughter's medical bills and that \$10,000 was to be paid to the Clerk of Superior Court (hereinafter clerk) on behalf of Sullivan out of which Pitts' \$4,790.91 attorney fee and \$80.00 in costs were to be paid. The remainder of Sullivan's funds were to be held in trust until she reached her majority.

16. On February 13, 1996, Pitts wrote trust account check 2962 to her law office to reimburse herself for the \$80.00 in costs the judgment authorized. This left the Sullivan trust ledger with a negative balance of \$483.79. Because no other funds had been deposited on behalf

of Sullivan or Rhodes, this also caused other clients' funds which Pitts held in a fiduciary capacity to be appropriated to her own use without their knowledge or consent.

17. On February 28, 1996, Pitts sent four payment authorization documents which she had prepared to the clerk seeking to have the clerk pay the four medical providers who had provided medical services to Sullivan. The four payment authorizations totaled \$4,387.12.

18. In addition, Pitts sent one other payment authorization document to the clerk seeking the \$403.79 difference between the \$4,387.12 she had previously received from Rhodes and the \$4,790.91 fee awarded to her by the court.

19. Since the clerk had received no funds from which medical providers could be paid, and since the judgment required the clerk to pay all of Pitts' legal fee, the clerk sent Pitts a check for \$4,790.91 on or about March 6, 1996 as her fee..

20. On or before March 8, 1996, Pitts deposited the clerk's \$4,790.91 check into her office account.

21. Prior to the North Carolina State Bar contacting her in this matter in June, 1996, Pitts had not paid any of Sullivan's medical providers. Pitts had left the Sullivan trust ledger with a negative balance of \$483.79.

22. Prior to November 1, 1995, Pitts was retained by Elaine Williams (hereinafter Williams) to represent Williams and her minor son, Joshua M. Waymire (hereinafter Waymire), in recovering for injuries Waymire sustained in a September 17, 1995 traffic accident, including the medical expenses for which Williams was responsible as Waymire's parent.

23. On or about November 1, 1995, Teachers Insurance Company (hereinafter Teachers), who insured Roscoe Brown, Jr., the owner of the vehicle in which Waymire was injured, tendered a check in the sum of \$4,863.37 to Williams. \$2,000.00 of the Teachers check represented med pay and the remaining \$2,863.37 was a partial payment of medical expenses incurred up to that date for Waymire's injuries.

24. At Pitts' request, Williams left the Teachers check with Pitts without negotiating it.

25. Pitts did not deposit the Teachers check into her trust account or otherwise negotiate the check.

26. On January 19, 1996, Pitts filed a complaint in Wake County Superior Court on behalf of Williams and Waymire's guardian in file number 96 CVS 00743.

27. On or about February 6, 1996, the attorney for Teachers, Jeanne Washburn, tendered a check in the sum of \$6,557.94 to Williams to cover the remaining medical expenses incurred due to Waymire's injuries.

28. On February 6, 1996, at Pitts' request, Williams endorsed the \$6,557.94 check over to Pitts and left it with Pitts to be used to pay a subrogation lien and medical providers who had rendered services to Waymire.

29. Also on February 6, 1996, a settlement document entitled Minor's Settlement was accepted and signed by Judge David Q. LaBarre in file number 96 CVS 00743. The settlement recited that \$2,863.37 had previously been advanced and that \$6,557.94 had also been tendered to Williams for her son's medical bills. The settlement further indicated that \$20,578.66 was to be paid to the clerk on behalf of Waymire out of which Pitts' \$10,000.00 attorney fee was to be paid. The remainder of Waymire's funds were to be held in trust until he reached his majority.

30. On or about February 7, 1996, Pitts deposited the \$6,557.94 Teachers check into her trust account.

31. Pitts did not pay any of the medical providers who had provided services to Waymire from the \$6,557.94 she had deposited into her trust account for that purpose prior to June, 1996.

32. Pitts, or someone in her office, prepared payment authorization documents for Waymire's medical providers for delivery to the clerk's office. They were not received in the clerk's office.

33. On or about April 16, 1996, the clerk paid Pitts the \$10,000.00 fee that had been authorized by the Minor's Settlement.

34. On April 18, 1996, Pitts deposited the \$10,000.00 fee in the Waymire matter sent to her by the clerk into her trust account.

35. Also on April 18, 1996, Pitts wrote trust account check number 3017 to her law office in the amount of \$10,000.00 and deposited that check into her law office account.

36. As of May 31, 1996, the balance in Pitts' trust account had dropped to \$3,235.22.

37. Pitts had appropriated at least part of the \$6,557.94 which should have remained in her trust account for Waymire's medical providers and the subrogation lien creditor to her own use without the knowledge or consent of Williams.

38. After her son's medical providers were not paid, Williams contacted Pitts.

39. Pitts advised Williams that the clerk's office would pay the medical providers.

40. After discovering that the clerk's office would not pay the medical providers, Williams advised Senior Resident Judge Robert L. Farmer (hereinafter Farmer) that her son's medical providers had not been paid.

41. Farmer asked Pitts and Washburn to come to his office on June 6, 1996.

42. After being summoned to Farmer's office, Washburn called Pitts to discuss the Waymire matter.

43. Pitts told Washburn that the clerk's office's was responsible for paying the delinquent medical expenses.

44. Washburn reminded Pitts that the money for the medical providers had been paid to Williams and Pitts, and not to the clerk's office.

45. At the conference with Farmer on June 6, 1996, with Washburn present, Pitts falsely advised Farmer that the subrogation lien and most of the medical providers had been paid. Pitts did not continue to contend that the clerk's office was responsible for paying Waymire's medical expenses.

46. At the time Pitts made the representation that the subrogation lien creditor and most of the medical providers had been paid, Pitts knew that she had no factual basis for making that statement. At the time the representation was made, Pitts had not paid the subrogation lien creditor or any of Waymire's medical providers, and had no basis for believing that anyone else had.

47. On or about May 3, 1996, Pitts wrote trust account check number 3022 to First Citizen's Bank in the sum of \$15,000.00. Pitts did not indicate on the check what the check was for. On the checkbook stub for check 3022, Pitts indicated that the check was payable to her as fees. Pitts did not indicate which clients' fees were being paid by check number 3022 on the checkbook stub.

48. Pitts used the proceeds of check number 3022 to purchase a cashier's check payable to Marc Bagwell and his attorney, William Little. Pitts had settled a malpractice claim with Bagwell and Little by agreeing to pay \$15,000.00 up front and an additional \$1,000.00 a month for fifteen months.

49. In her trust account records, Pitts charged \$10,000.00 of check number 3022 to the Waymire ledger and the remaining \$5,000.00 to the ledger of a client named Mishue.

50. At the time Pitts attributed the \$15,000.00 removed from her trust account as fees due her from Waymire and Mishue, Pitts knew that she had already received her fees from each of those clients.

51. By writing check number 3022 from her trust account to First Citizens Bank for her personal use when she had no fees remaining in the trust account for Waymire or Mishue, Pitts appropriated funds held in a fiduciary capacity on behalf of other clients to her own use without their knowledge or consent.

52. The plaintiff abandoned the allegations contained in the Fourth Claim for Relief in its Complaint.

Based upon the foregoing Findings of Fact, the hearing committee enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee and the committee has jurisdiction over Linda M. Pitts and the subject matter.
2. The defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that the defendant violated the NC Rules of Professional Conduct as follows:
 - (a) By appropriating funds of clients which she should have held in a fiduciary capacity to her own use to pay trust account check number 2993 written to her law office on January 31, 1996 as an anticipated fee in the Sullivan and Rhodes matter when no funds had been deposited into her trust account out of which that fee could be paid, and when she was not yet entitled to a fee, Pitts committed a criminal act that reflects adversely on her honesty, trustworthiness, or fitness as a lawyer in other respects in violation of Rule 1.2(b); engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(c); and failed to maintain funds received in a fiduciary capacity separately from her property in her trust account in violation of Rules 10.1(a) & (c).
 - (b) By appropriating funds of clients which she should have held in a fiduciary capacity to her own use to pay trust account check number 2962 written to her law office on February 13, 1996 as costs in the Sullivan and Rhodes matter when no funds had been deposited into her trust account out of which those costs could be paid, Pitts committed a criminal act that reflects adversely on her honesty, trustworthiness, or fitness as a lawyer in other respects in violation of Rule 1.2(b); engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(c); and failed to maintain funds received in a fiduciary capacity separately from her property in her trust account in violation of Rules 10.1(a) & (c).
 - (c) By failing to promptly pay Sullivan's medical providers with the funds Rhodes had left with her for that purpose, Pitts failed to promptly pay to third persons as directed by the client the funds belonging to the client in Pitts' possession in violation of Rule 10.2(e).
 - (d) By appropriating at least a portion of the \$6,557.94 she held in a fiduciary capacity to pay Waymire's medical providers to her own use, or by using those funds for the benefit of other clients, without William's knowledge or consent, Pitts committed a criminal act that reflects adversely on her honesty, trustworthiness, or fitness as a

lawyer in other respects in violation of Rule 1.2(b); engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(c); and failed to maintain funds received in a fiduciary capacity separately from her property in her trust account in violation of Rules 10.1(a) & (c).

- (e) By failing to promptly pay Waymire's medical providers with the proceeds of the \$6,557.94 check Williams had left with her for that purpose, Pitts failed to promptly pay to third persons as directed by the client the funds belonging to the client in Pitts' possession in violation of Rule 10.2(e).
- (f) By falsely representing to Williams that the clerk's office would be paying Waymire's medical providers when she knew that she had received funds that should have been applied to that purpose, and that the clerk had not received any funds for that purpose, Pitts engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(c) and knowingly made a false statement of fact in violation of Rule 7.2(a)(4).
- (g) By falsely representing to Judge Farmer that Waymire's medical providers had been paid, while knowing that she had not paid the medical providers with the funds that she had received for that purpose, and with no other information upon which to base that representation, Pitts engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(c) and knowingly made a false statement of fact in violation of Rule 7.2(a)(4).
- (h) By appropriating funds of clients which she should have held in a fiduciary capacity to her own use to pay trust account check number 3022 written to First Citizens Bank on May 3, 1996 for her personal benefit as fees in the Waymire and Mishue matters when no funds were on deposit in her trust account out of which those fees could be paid, Pitts committed a criminal act that reflects adversely on her honesty, trustworthiness, or fitness as a lawyer in other respects in violation of Rule 1.2(b); engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(c); and failed to maintain funds received in a fiduciary capacity separately from her property in her trust account in violation of Rules 10.1(a) & (c).

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the evidence and arguments of the parties concerning the appropriate discipline, the hearing committee hereby makes additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. The defendant's misconduct is aggravated by the following factors:

- (a) prior disciplinary offenses;

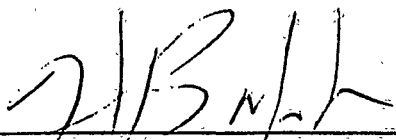
- (b) a dishonest or selfish motive;
 - (c) a pattern of misconduct;
 - (d) multiple offenses;
 - (e) vulnerability of her victims;
 - (f) substantial experience in the practice of law.
2. The defendant's misconduct is not mitigated by any of the factors in § .0114(w)(2).
 3. The aggravating factors outweigh the mitigating factors.

Based upon the foregoing aggravating and mitigating factors and the arguments of the parties, the hearing committee hereby enters the following

ORDER OF DISCIPLINE

1. The defendant is hereby disbarred from the practice of law effective 30 days from service of this order upon the defendant.
2. The defendant shall submit her license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon the defendant.
3. The defendant shall pay the costs of this proceeding as, assessed by the Secretary, by April 30, 1997.
4. The defendant shall comply with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the N.C. State Bar Discipline & Disability Rules.

Signed by the chair with the consent of the other hearing committee members, this
the 22nd day of January, 1997.


Henry C. Babb, Jr., Chair
Hearing Committee