

NORTH CAROLINA

WAKE COUNTY

12249

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

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

WALTER J. MOREY,
Defendant

CONSENT ORDER OF
DISCIPLINE

This matter coming on before the undersigned hearing committee of the Disciplinary Hearing Commission pursuant to Section 14(8) of Article IX of the Rules and Regulations of the North Carolina State Bar and it appearing that both parties have agreed to waive a formal hearing in this matter and it further appearing that both parties stipulate and agree to the following Findings of Fact and Conclusions of Law recited in this Consent Order and to the discipline imposed, the Hearing Committee therefore enters the following:

FINDINGS OF FACT

1. Plaintiff 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. Defendant was admitted by comity from the State of Ohio to the North Carolina State Bar on May 10, 1984 and is, and was at all times relevant 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 times relevant herein, Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Asheville, Buncombe County, North Carolina and later on, in the Town of Arden, Buncombe County, North Carolina.
4. On or about December 30, 1985, Ms. Joyce Stover failed to yield the right-of-way and collided with an automobile operated by Ms. Fran Walden. Ms. Walden suffered personal injury as a result of this accident. Shortly thereafter, Ms. Walden retained the Law Firm of Gray, Kimel & Connolly, P. A. ("the Law Firm") to represent her with her claim against Ms. Stover. This case was assigned to Defendant who was an associate with the Law Firm.

5. The Law Firm had an agreement with the Defendant to split the attorney's fee in this case. This agreement provided that the Law Firm would receive one-third of any fees collected by Defendant. The Law Firm also agreed to advance any necessary expenses. The Law Firm ultimately paid a total of \$196.73 in advance expenses. Defendant has failed to reimburse the Law Firm for these advanced expenses.
6. Defendant left the Law Firm sometime during the summer or fall of 1986. Defendant took the Walden file with him.
7. Sometime late in 1988, Defendant filed suit on behalf of Ms. Walden.
8. By letter dated March 3, 1989, a copy of which is attached to Plaintiff's complaint as Exhibit 1, American Mutual transmitted a settlement check in the amount of \$12,500 to Defendant made payable to Ms. Walden and Defendant. A copy of said check is attached to Plaintiff's complaint as Exhibit 2. Said letter explicitly requested Defendant to hold the settlement check in trust until the release was "...properly signed and returned to me, along with a dismissal of suit with prejudice." The release was eventually signed by Ms. Walden on May 24, 1989, a copy of which is attached to Plaintiff's complaint as Exhibit 3. The voluntary dismissal with prejudice was eventually filed on July 5, 1989, a copy of which is attached to Plaintiff's complaint as Exhibit 4.
9. Despite these instructions, Defendant wrote the following checks concerning this matter:
 - a) Check number 182 dated March 14, 1989 made payable to Defendant in the amount of \$3,115, a copy of which is attached to Plaintiff's complaint as Exhibit 5;
 - b) Check number 183 dated March 20, 1989 made payable to Dr. Steven Snider in the amount of \$2,153.20, a copy of which is attached to Plaintiff's complaint as Exhibit 6;
 - c) Check number 184 dated April 14, 1989 made payable to Defendant in the amount of \$160, a copy of which is attached to Plaintiff's complaint as Exhibit 7;
 - d) Check number 186 dated April 27, 1989 made payable to Ms. Fran Walden in the amount of \$5,358.43, a copy of which is attached to Plaintiff's complaint as Exhibit 8.
10. At the time of settlement, Defendant was obligated to reimburse the Law Firm \$196.73 for advanced costs and pay the Law Firm \$1,388.88 for its share of the attorney fee. Defendant has failed to use the balance of the settlement proceeds to pay these debts. Instead, Defendant has used this money for his own benefit or for

the benefit of individuals other than Ms. Walden or the above-named creditors, in that Defendant's trust account balance dropped below \$1,675.61 in June of 1989 as shown on the audit of Defendant's trust account, a copy of which is attached to Plaintiff's complaint as Exhibit 9.

11. During interviews with R. F. Hartsell, Staff Investigator for the North Carolina State Bar, on December 18, 1990 and February 22, 1991, Defendant admitted that the above-named creditors were never paid and that each was an obligation in connection with Ms. Walden's case. Defendant gave no specific excuse for his failure to pay these obligations. As of the date of this action, these debts have yet to be paid.
12. On or about August 19, 1987 Robbie Gale McMahan was a passenger in automobile which was struck from behind by Douglas Ward. Ms. McMahan retained Defendant on or about February 23, 1988 to represent her with her claim against Mr. Ward. A copy of the employment contract is attached to Plaintiff's complaint as Exhibit 10. On or about September 5, 1988 Ms. McMahan agreed to settle her claim against Mr. Ward for the sum \$5,300. On or about September 5, 1988, Defendant deposited the settlement check of \$5,300 into his trust account, and prepared a Distribution Agreement, a copy of which is attached to Plaintiff's complaint as Exhibit 11. Ms. McMahan had incurred medical expenses to Dr. Stephen Snider in the amount of \$1,662 which Defendant agreed to pay on behalf of Ms. McMahan from the settlement proceeds. However, Defendant failed to pay this obligation in full until August 16, 1989. Defendant made the first payment of \$300 to Dr. Snider in cash on or about April 10, 1989. Defendant made a second payment in cash of \$1,000 on or about June 19, 1989. Defendant made a third and final payment of \$369.84 drawn on Defendant's trust account on or about July 13, 1989. A copy of said check is attached to Plaintiff's complaint as Exhibit 12. This check was returned for insufficient funds on or about August 9, 1989. Defendant wrote another check on his trust account to Dr. Snider on or about August 16, 1989 in the amount of \$369.84. A copy of said check is attached to Plaintiff's complaint as Exhibit 13.
13. Defendant without the permission of Ms. McMahan, used this money for his own benefit or for the benefit of individuals other than Ms. McMahan or Dr. Snider in that the balance in Defendant's trust account dropped below \$1,621.45 in January of 1989 before Defendant began paying Dr. Snider, as shown on the audit of Defendant's trust account attached to Plaintiff's complaint as Exhibit 9.

14. In November of 1985, the Law Firm was contacted by Ranger Insurance Company ("Ranger") and requested to handle a subrogation claim against Mr. Lanny Cogdill on a contingency basis. On or about December 2, 1985, the Law Firm agreed to pursue collection on this claim for one-third contingency fee. Sometime during 1986, Defendant was assigned this file by the Law Firm. On or about June 10, 1988, Defendant filed suit against Mr. Cogdill. At this time, Defendant had left the Law Firm and had associated with a different firm. As with other contingency fee files, Defendant promised to pay the Law Firm one-third of any legal fees that he received.
15. On or about April 3, 1989, Defendant negotiated a settlement for the sum of \$3,000. Defendant executed the release, voluntary dismissal and settlement check without the knowledge or consent of Ranger. On or about April 14, 1989, Defendant deposited the settlement check into his trust account. A copy of the settlement check is attached to Plaintiff's complaint as Exhibit 14. A copy of the deposit slip is attached to Plaintiff's complaint as Exhibit 15. A copy of the Release is attached to Plaintiff's complaint as Exhibit 16. A copy of the voluntary Dismissal is attached to Plaintiff's complaint as Exhibit 17. Pursuant to his agreements with the Law Firm and Ranger, Defendant was obligated to pay \$2,000 to Ranger and \$333.33 to the Law Firm. However, Defendant failed to make these disbursements.
16. During an interview with R. F. Hartsell on February 22, 1991, Defendant admitted that he did not pay these obligations after receiving the settlement check. Defendant gave no specific reason for not paying these obligations other than the fact that he had not done so to date. Defendant confirmed that he no longer had funds in his trust account to pay these obligations. Neither Ranger nor the Law Firm had been informed by Defendant that this matter had settled and that they were entitled to a portion of the settlement proceeds.
17. Defendant used the \$2,333.33 owed to Ranger and the Law Firm for his own benefit or the benefit of individuals other than Ranger and the Law Firm in that the balance in Defendant's trust account dropped to \$1,842.82 on June 1, 1989 as shown on the trust account audit attached to Plaintiff's complaint as Exhibit 9.
18. Throughout 1989 and 1990, Defendant used trust funds for personal obligations, deposited personal funds into his trust account, and wrote checks made payable to cash from his trust account, as detailed below.
19. Defendant made the following cash deposits to his trust account;
 - a) The sum of \$40 on August 11, 1989. A copy of the deposit slip is attached to Plaintiff's complaint as Exhibit 18; and

- b) The sum of \$200 on July 30, 1990. A copy of the deposit slip is attached to Plaintiff's complaint as Exhibit 19.
20. The following attorneys fees were deposited into Defendant's trust account:
- a) \$400 for services rendered to a client named Jones deposited on October 10, 1989. A copy of the deposit slip is attached to Plaintiff's complaint as Exhibit 20; and
 - b) \$2,375 for services rendered to a client named Case deposited on October 17, 1989. Copies of the check and deposit slip are attached to Plaintiff's complaint as Exhibit 21.
21. On or about June 22, 1989, Defendant deposited a personal check made payable to his wife in the amount of \$50 into his trust account. A copy of said check is attached to Plaintiff's complaint as Exhibit 22.
22. Defendant made several disbursements to "cash" as follows:
- a) Check number 171 in the amount of \$150, a copy of which is attached to Plaintiff's complaint as Exhibit 23;
 - b) Check number 181 in the amount of \$32, a copy of which is attached to Plaintiff's complaint as Exhibit 24;
 - c) Counter check in the amount of \$40, a copy of which is attached to Plaintiff's complaint as Exhibit 25;
 - d) Check number 198 in the amount of \$2,000, a copy of which is attached to Plaintiff's complaint as Exhibit 26;
 - e) Counter check in the amount of \$1,000, a copy of which is attached to Plaintiff's complaint as Exhibit 27;
 - f) Counter check in the amount of \$120, a copy of which is attached to Plaintiff's complaint as Exhibit 28;
 - g) Counter check in the amount of \$100, a copy of which is attached to Plaintiff's complaint as Exhibit 29;
 - h) Counter check in the amount \$35, a copy of which is attached to Plaintiff's complaint as Exhibit 30;
 - i) Counter check in the amount of \$70, a copy of which is attached to Plaintiff's complaint as Exhibit 31;
 - j) Counter check in the amount of \$85, a copy of which is attached to Plaintiff's complaint as Exhibit 32;
 - k) Check number 227 in the amount of \$150, a copy of which is attached to Plaintiff's complaint as Exhibit 33;

- l) Counter check in the amount of \$300, a copy of which is attached to Plaintiff's complaint as Exhibit 34; and
 - m) Cash from deposit in the amount of \$850, copies of the deposited checks and the deposit slip is attached to Plaintiff's complaint as Exhibit 22.
23. Defendant wrote the following checks from his trust account for personal obligations:
- a) Counter check made payable to Mary Morey in the amount of \$400, a copy of which is attached to Plaintiff's complaint as Exhibit 35;
 - b) Check number 187 made payable to Ballard (for Drew) in the amount of \$81.89, a copy of which is attached to Plaintiff's complaint as Exhibit 36;
 - c) Check number 188 made payable to Willitt Electrical Contractors in the amount of \$249.50, a copy of which is attached to Plaintiff's complaint as Exhibit 37;
 - d) Check number 190 made payable to Yesterday's Tree in the amount of \$280.34, a copy of which is attached to Plaintiff's complaint as Exhibit 38;
 - e) Check number 191 made payable to Sherwin-Williams in the amount of \$59.82, a copy of which is attached to Plaintiff's complaint as Exhibit 39;
 - f) Check number 192 made payable to Harrin's Sand and Gravel in the amount of \$88, a copy of which is attached to Plaintiff's complaint as Exhibit 40;
 - g) Check number 197 made payable to Sherwin-Williams in the amount of \$24.13, a copy of which is attached to Plaintiff's complaint as Exhibit 41;
 - h) Check number 189 made payable to Southern Bell in the amount of \$83.32, a copy of which is attached to Plaintiff's complaint as Exhibit 42;
 - i) Check number 194 made payable to First Federal Savings and Loan in the amount of \$640, a copy of which is attached to Plaintiff's complaint as Exhibit 43;
 - j) Check number 201 made payable to Wellon Valley Resort in the amount of \$220.42, a copy of which is attached to Plaintiff's complaint as Exhibit 44;
 - l) Wire transfer debit in the amount of \$300. A copy of the trust account statement dated October 31, 1989 is attached to Plaintiff's complaint as Exhibit 45;
 - m) Wire transfer debit in the amount of \$600. A copy of the trust account statement dated November 30, 1989 is attached to Plaintiff's complaint as Exhibit 46;

- n) Check number 206 made payable to First Federal Bank in the amount of \$1,411.26, a copy of which is attached to Plaintiff's complaint as Exhibit 47;
- o) Check number 214 made payable to K-Mart in the amount of \$7.11, a copy of which is attached to Plaintiff's complaint as Exhibit 48; and
- p) Check number 222 made payable to Southern Bell in the amount of \$60, a copy of which is attached to Plaintiff's complaint as Exhibit 49.

BASED UPON THE FOREGOING Findings of Fact, the Committee makes the following:

CONCLUSIONS OF LAW

1. By misappropriating client funds in the Fran Walden matter, Defendant: (a) engaged in criminal acts that reflect adversely on Defendant's honesty, trustworthiness or fitness as a lawyer in violation of Rule 1.2(B); (b) engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C); and (c) failed to promptly pay third parties, as directed by the client, funds belonging to the client in violation of Rule 10.2(E).
2. By misappropriating client funds in the Robbie Gale McMahan matter, Defendant: (a) engaged in criminal acts that reflect adversely on Defendant's honesty, trustworthiness or fitness as a lawyer in violation of Rule 1.2(B); (b) engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C); and (c) failed to promptly pay third parties, as directed by the client, funds belonging to the client in violation of Rule 10.2(E).
3. By misappropriating client funds in the Ranger Insurance Company matter, Defendant: (a) engaged in criminal acts that reflect adversely on Defendant's honesty, trustworthiness or fitness as a lawyer in violation of Rule 1.2(B); (b) engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C); and (c) failed to promptly pay third parties as directed by the client funds belonging to the client in violation of Rule 10.2(E).
4. By using trust funds for personal obligations, depositing personal funds into his trust account and writing checks made payable to cash from his trust account, Defendant: (a) engaged in criminal acts that reflect adversely on Defendant's honesty, trustworthiness or fitness as a lawyer in violation of Rule 1.2(B); (b) engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C); (c) commingled trust account funds and personal funds in violation of 10.1(A) and

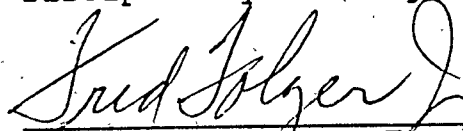
10.1(C); and (d) failed to designate the payee and from which client balance the payment was drawn by writing trust account checks made payable to "cash" in violation of 10.2(C)(2).

ORDER OF DISCIPLINE

1. The Defendant, Walter J. Morey, is hereby disbarred.
2. The cost of this matter as assessed by the secretary are taxed to the Defendant.
3. The Defendant shall comply with the provisions of Section 24 of Article IX of the Discipline and Disbarment Rules and Regulation of the North Carolina State Bar.
4. The Defendant shall surrender his license and permanent membership card to the Secretary of the North Carolina State Bar.

This the 12th day of November, 1991.

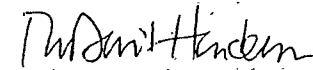

W. Harold Mitchell, Chair
Disciplinary Hearing Committee


Fred Folger, Jr., Esq.


Frank L. Boushee, Esq.

CONSENTED TO:


Walter J. Morey, Defendant


R. David Henderson
Attorney for Plaintiff