

NORTH CAROLINA

WAKE COUNTY

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BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
91 DHC 15

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

J. BRUCE HOOF, ATTORNEY
Defendant

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This matter came on to be heard and was heard on November 22 and 23, 1991 before a hearing committee of the Disciplinary Hearing Commission composed of W. Harold Mitchell, Chairman; James Lee Burney, and Paul L. Jones. The North Carolina State Bar was represented by Fern E. Gunn and the Defendant was represented by Joseph B. Cheshire V and Alan M. Schneider. Based upon the stipulations of the parties and the evidence admitted at the hearing, the committee finds the following facts 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, J. Bruce Hoof, was admitted to the North Carolina State Bar on September 18, 1973, 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 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 Durham, Durham County, North Carolina.
4. The Defendant was a partner in the law firm of

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Spears, Barnes, Baker, Hoof, and Wainio (hereinafter Spears, Barnes law firm) until he withdrew as a partner on March 21, 1989.

5. Carolantic Investments is a company owned by J. Harold Colclough, Sr. and J. Harold Colclough, Jr. (hereinafter Joey Colclough). Carolantic Investments was a client of the Spears, Barnes law firm which had been brought to the firm by the Defendant.
6. When he was a member of the Spears, Barnes law firm, Defendant was responsible for handling the two lawsuits for Carolantic Investments: Carolantic v. Willis and Carolantic v. Durham Housing Authority.
7. Mark Scruggs, a former associate at the Spears, Barnes law firm, performed most of the legal work in the Carolantic Investments v. Willis case under the direction and supervision of Defendant.
8. Jim Angell, a former associate at the Spears, Barnes law firm, performed most of the legal services in the Carolantic Investments v. Durham Housing Authority case under the direction and supervision of Defendant.
9. C.D.T., a partnership consisting of J. Harold Colclough, Sr., J. Harold Colclough, Jr., and others, was a client of the Spears, Barnes law firm, which had been brought to the firm by the Defendant. When he was a member of the law firm, Defendant was responsible for handling the C.D.T. partnership matter.
10. Cindy Ruiz, a former associate at the Spears, Barnes law firm, and Martha Ball, a former paralegal at the law firm, provided the legal services to the CDT partnership.
11. J. Harold Colclough Associates Inc., a construction company owned by J. Harold Colclough Sr. and Joey Colclough, built the Defendant's home located at 3215 Banbury Way in Durham, North Carolina.
12. In April, 1988, there existed a dispute regarding whether additional monies were owed on Defendant's residence. J. Harold Colclough Associates, Inc. contended that Defendant owed additional money to the company for construction of his home.
13. On April 15, 1988, the Defendant met with J. Harold Colclough, Jr. to attempt to resolve the dispute as to whether additional monies were owed on his residence.


14. Check number 1689, dated April 15, 1988 and written on the account of Carolantic Investments, is made payable to J. Bruce Hoof, Attorney, in the amount of \$3,875.65.
15. Check number 118, dated April 15, 1988 and written on the account of C.D.T., is made payable to J. Bruce Hoof, Attorney, in the amount of \$1,330.43.
16. The total amount of check number 1689 and check number 118, referred to in paragraphs 14 and 15 above, is \$5206.08.
17. The Defendant received the checks totalling \$5206.08 from Joey Colclough on or about April 15, 1988. These checks represented payment of legal fees due and belonging to the Spears, Barnes law firm.
18. The Defendant deposited the two checks totalling \$5206.08 in the personal bank account of Defendant and his wife, Lloydette H. Hoof, on or about April 15, 1988. The Defendant did not deposit the legal fees due to the Spears, Barnes, law firm in the firm's bank account.
19. The Defendant wrote a check back to J. Harold Colclough Associates Inc. in the amount of \$5206.08. The check was dated April 15, 1988 and was written on the personal bank account of the Defendant and his wife, Lloydette H. Hoof. The following words, "Payment 3215 Banbury", appeared on the memo line of the check.
20. At the time the Defendant wrote a check payable to J. Harold Colclough Associates Inc. in the amount of \$5206.08, J. Harold Colclough Associates Inc. contended that Defendant owed additional money to the company for the construction of his home.
21. The Defendant received a deduction or credit on the amount owed to J. Harold Colclough Associates Inc. for the construction of his home.
22. The Defendant received some benefit from the checks totalling \$5206.08 which were given to him by Joey Colclough.
23. The Defendant never informed the other partners in the Spears, Barnes law firm that he (1) received legal fees from Joey Colclough, (2) deposited those legal fees in his personal bank account, and (3) wrote a personal check in the amount of the legal fees to the construction company which built his home.

24. The Defendant's actions involved dishonesty, fraud, or deceit.

Based upon the foregoing Findings of Fact, the hearing committee makes the following CONCLUSION OF LAW:

The Defendant converted legal fees belonging to the Spears, Barnes law firm to his own personal use and thus engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2 (C) of the Rules of Professional Conduct.

Signed by the undersigned chairman with the full knowledge and consent of the other members of the hearing committee, this the 16th day of December, 1991.


W. Harold Mitchell, Chairman
Hearing Committee of the
Disciplinary Hearing
Commission

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THE NORTH CAROLINA STATE BAR,
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Defendant

ORDER OF DISCIPLINE

This cause was heard on November 22 and 23, 1991 by a duly appointed hearing committee of the Disciplinary Hearing Commission consisting of W. Harold Mitchell, Chairman; James Lee Burney, and Paul L. Jones. In addition to the Findings of Fact and Conclusions of Law made following the evidentiary hearing, the hearing committee makes additional Findings of Fact relative to aggravating and mitigating factors as follows:

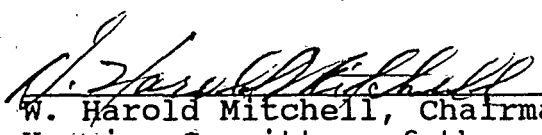
ADDITIONAL FINDINGS OF FACT

1. As aggravating factors, the hearing committee considered that the Defendant (a) had a dishonest or selfish motive regarding his actions, (b) refused to acknowledge the wrongful nature of his conduct, (c) had substantial experience in the practice of law, and (d) was indifferent to making restitution to the Spears, Barnes law firm.
2. The hearing committee also considered the following mitigating factors: (a) an absence of a prior disciplinary record, (b) the Defendant may have suffered from personal or emotional problems as a result of the death of his daughter in 1986; (c) Defendant's outstanding character or reputation, and (d) delay in disciplinary proceedings due to the delay of the Spears, Barnes law firm to discover the conversion of funds belonging to them and the further delay in the law firm filing a grievance with the N.C. State Bar about the Defendant's conduct.
3. The mitigating factors outweighed the aggravating factors and the Defendant's conduct in the matter before the North Carolina State Bar was an aberration in his life.

Based upon the Findings of Fact and Conclusions of Law entered in this case and the further Findings of Fact set forth above, the hearing committee enters the following ORDER OF DISCIPLINE:

1. The Defendant is suspended from the practice of law for a period of one (1) year. This suspension is stayed for two (2) years on the following terms and conditions:
 - a. Within one (1) year from the date of this Order of Discipline, the Defendant shall pay the law firm of Spears, Barnes, Baker & Wainio the sum of \$4,190.89, which represents the total amount of the two checks less the amount he would have been entitled to as a partner of that law firm in 1988. In the event there exists a controversy between the Defendant and the Spears, Barnes law firm about any other sums owed one another, such sums will not be taken into consideration for the purposes of this Order.
 - b. The Defendant shall not violate the Rules of Professional Conduct of the North Carolina State Bar during the period of the stayed suspension.
 - c. The Defendant shall remain of good behavior.
2. The Defendant shall pay the costs of this proceeding.

Signed by the undersigned chairman with the full knowledge and consent of the other members of the hearing committee, this the 16th day of December, 1991.


W. Harold Mitchell, Chairman
Hearing Committee of the
Disciplinary Hearing Commission