

STATE OF NORTH CAROLINA
COUNTY OF WAKE

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BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
90 DHC 7

THE NORTH CAROLINA STATE BAR,)
Plaintiff,)
v.)
THOMAS L. JONES, SR.,)
Defendant.)

CONSENT ORDER ON FINDINGS
OF FACT AND CONCLUSIONS OF
LAW

WHEREAS this matter was heard on September 7, 1990 before a hearing committee of the Disciplinary Hearing Commission composed of Maureen D. Murray, Chairman, Samuel J. Crow and Frank L. Boushee ("the DHC"). Fern E. Gunn represented the North Carolina State Bar and Johnny M. Loper and G. Eugene Boyce represented Thomas L. Jones; and

WHEREAS by findings of fact and conclusions of law an Order of Discipline dated December 21, 1990 the DHC rendered its decision in this matter and ordered that Thomas L. Jones be disciplined; and

WHEREAS Thomas L. Jones thereafter gave notice to the North Carolina Court of Appeals of his appeal of the Findings, Conclusions and Order of Discipline entered by the DHC on December 21, 1990; and

WHEREAS Jones' prior counsel were forced to withdraw because of a conflict involving their firm and Daniel C. Higgins thereafter appeared as substitute counsel for Jones; and

WHEREAS Thomas L. Jones has, in his appeal, assigned error to those findings of fact and conclusions of law made by the DHC wherein the DHC found that Jones had misappropriated funds of a client; and

WHEREAS the North Carolina State Bar has reluctantly conceded in Jones' appeal that the evidence presented to the DHC in this matter did not establish a violation of DR1-102(A)(4) of the Code of Professional Responsibility or Rule 1.2(C) of the Rules of Professional Conduct, and that because the evidence presented showed no improper intent on Jones' part, the State Bar conceded that the challenged findings of fact and conclusions of law regarding misappropriation of client funds were not supported by the evidence; and

WHEREAS Thomas L. Jones, Sr. and the North Carolina State Bar now mutually desire to resolve the charges made against Jones in this proceeding, and to dismiss their appeal and cross-appeal respectively, and to supercede the findings of fact, conclusions of law and Order of Discipline entered herein on December 21, 1990. Therefore, based upon the DHC's uncontested findings of fact and conclusions of law counsel for the North Carolina State Bar and Jones agree and consent to 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, Thomas L. Jones, was admitted to the North Carolina State Bar in 1951 and is, and was at all times referred to in the Complaint filed herein, an Attorney at Law licensed to practice in North Carolina, subject to the rules, regulations, Rules of Professional Conduct, and Code of Professional Responsibility of the North Carolina State Bar and the laws of the State of North Carolina.

3. During all of the periods referred to 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 Murfreesboro, Hertford County, North Carolina.

4. Prior to 1984, defendant undertook to perform collections work for Medical Center Hospital (hereinafter "MCH"), a health care corporation which owned or owns Norfolk General Hospital and Leigh Memorial Hospital, both of which are located in Virginia.

5. Defendant prepared monthly reports of the amounts collected on behalf of MCH.

6. Defendant maintained a trust account at NCNB, account number 441003407, during 1984, 1987, 1988 and 1989. Defendant also maintained a business account for his law practice at NCNB.

7. Defendant instructed his former secretaries, Rachel F. Barnes and Wanda Bryant, to deposit certain monies into his trust account and to write certain checks from the trust

account. Ms. Barnes and Ms. Bryant deposited funds into the defendant's trust account and wrote checks from his trust account as directed by the defendant.

8. According to defendant's accounting report, defendant collected \$2,538.25 on behalf of MCH in January 1984. Defendant disbursed \$2,538.25 to MCH on February 22, 1984.

9. Defendant deposited a total of \$1,203.25 belonging to MCH into his trust account in January 1984.

10. According to defendant's accounting report, defendant collected \$4,100.51 on behalf of MCH in February 1984. Defendant disbursed \$4,100.51 to MCH in two installments on March 16, 1984 and March 19, 1984.

11. Defendant deposited a total of \$3,489.70 belonging to MCH into his trust account in February 1984.

12. According to defendant's accounting report, defendant collected \$44,278.48 on behalf of MCH in March 1984. Defendant disbursed \$44,278.48 to MCH on April 25, 1984.

13. Defendant deposited a total of \$43,517.74 belonging to MCH into his trust account in March 1984.

14. According to defendant's accounting report, defendant collected \$30,952.94 on behalf of MCH in June 1984. Defendant disbursed \$30,952.94 in two checks to MCH on July 25, 1984.

15. Defendant deposited a total of \$28,622.92 belonging to MCH into his trust account in June 1984.

16. Defendant deposited a total of \$9,675.08 belonging to MCH into his trust account in September 1984.

17. According to defendant's accounting report, defendant collected \$2,217.24 on behalf of MCH in October 1984. Defendant disbursed \$2,217.24 to MCH in two installments on November 23 and 26, 1984.

18. Defendant deposited a total of \$1,537.24 belonging to MCH into his trust account in October 1984.

19. According to defendant's accounting report, defendant collected \$635.00 on behalf of MCH for April 1988. Defendant disbursed \$635.00 to MCH on May 23, 1988.

20. Defendant deposited a total of \$8,072.08 belonging to MCH into his trust account in April 1988.

21. According to defendant's accounting report, defendant collected \$1,668.81 on behalf of MCH for August 1988. Defendant disbursed \$1,668.81 to MCH on September 26, 1988.

22. Defendant deposited a total of \$4,623.81 belonging to MCH into his trust account in August 1988.

23. Between October 11 and 13, 1988, defendant deposited into his trust account a total of \$10,751.64 on behalf of MCH.

24. On September 28, 1988 defendant deposited \$8,762.06 into his trust account on behalf of MCH.

25. On March 26, 1984, \$40,000.00 was deposited into defendant's trust account. Defendant held a mortgage on Sawyer's property and the \$40,000.00 was payment on that mortgage.

26. Defendant loaned money to Viola Branch over a period of time. On August 14, 1984, \$7,700.00, which represented Branch's payment on loans defendant made to her, was deposited into defendant's trust account.

27. On August 17, 1984, \$12,106.76 was deposited into defendant's trust account. This amount represented repayment of a loan defendant made to James Thomas Parker and secured by deeds of trust.

28. J. W. Britt repaid the defendant \$14,611.94 on a \$15,000 loan defendant made to Britt. Britt's check for \$14,611.94 was deposited into defendant's trust account on August 31, 1984.

29. Defendant received a \$182,000 loan from NCNB to pay for renovations on his home. During 1984, a total of \$71,861.25, representing installments on the loan, was deposited into defendant's trust account.

30. Defendant deposited a total of approximately \$182,104.61 of his personal funds (including the NCNB loan,

payments on personal loans made to other people, and earned attorney's fees) into his trust account.

31. During 1984, approximately 120 checks were written from defendant's trust account in payment of renovation work on his house.

32. Defendant personally signed three checks written on his trust account to pay personal obligations:

- (a) check number 2120, dated June 14, 1984, to W. T. Sawyer, in the amount of \$1,000.00.
- (b) check number 2218, dated October 31, 1984, to Ms. Vickie Jones, in the amount of \$60.00.
- (c) check number 2247, dated December 6, 1984, to Lowes, in the amount of \$1,891.72.

33. On various occasions in 1984, 1987, 1988 and 1989, checks were written from defendant's trust account to Farmers Home administration for payment of a loan on the Quinton Whitaker House, property owned by the defendant.

34. On or about March 28, 1989, defendant deposited \$10,000 of his personal funds into his trust account.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, Jones' actions constitute grounds for discipline pursuant to N.C.G.S. § 84-28(b)(2) in that Jones violated the Code of Professional Responsibility and the Rules of Professional Conduct as follows:

(a) by failing to preserve the identity of client funds that he received in a fiduciary capacity separate and apart from his personal funds in a trust account, defendant has violated DR9-102(A);

(b) by depositing his personal funds into his trust account and not keeping his personal funds separate and apart from his clients' funds held in his trust account, defendant violated DR9-102 and Rules 10.1(A) and (C);


(c) by disbursing checks from his trust account to pay personal obligations, defendant has violated DR9-102 and Rules 10.1(A) and (C).

Signed by the undersigned chairman with the full knowledge and consent of the parties and the other hearing committee members, this the 13th day of November, 1992.



Maureen D. Murray
Chairman, Hearing Committee

WE CONSENT:

NORTH CAROLINA STATE BAR


Fern E. Gunn
Deputy Counsel

BURNS, DAY & PRESNELL, P.A.


Daniel C. Higgins
Attorneys for Thomas L. Jones, Sr.

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Defendant.)

CONSENT ORDER OF DISCIPLINE

Based on the Findings of Fact and Conclusions of Law of even date herewith, and the consent of the parties, the hearing committee hereby supercedes its Order of Discipline entered in this matter on December 21, 1990 and enters the following:

ORDER OF DISCIPLINE

1. Defendant Thomas L. Jones is suspended from the practice of law for one year from the date of this Order.
2. Defendant shall, if he has not already done so, comply with the requirements of Section 24 of Article IX of the Rules and Regulations of the North Carolina State Bar concerning the winding down of his practice.
3. Defendant shall, if he not already done so, surrender his license certificate and permanent membership to the Secretary of the North Carolina State Bar.

Signed by the undersigned chairman with the full knowledge and consent of the parties and the other hearing committee members, this the 13~~th~~ day of November, 1992.

Maureen D. Murray
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Chairman, Hearing Committee

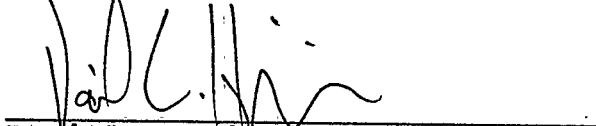
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