

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
86 SP 1468

IN RE: Disciplinary Hearing of

WILLIE A. SWANN, Attorney

ORDER

This matter coming on to be heard and being heard on January 6, 1987 and continued on January 27, 1987 before Frank W. Snepp, Senior Resident Superior Court Judge of the 26th Judicial District pursuant to a show cause order issued to Willie A. Swann on December 18, 1986 by Superior Court Judge Forrest A. Ferrell; with A. Root Edmonson appearing for the North Carolina State Bar and Willie A. Swann appearing pro se on January 6, 1987 and not appearing or being represented on January 27, 1987; and

BASED UPON the evidence presented at the hearing of this matter, the court finds the following supported by clear, cogent and convincing evidence:

1. Willie A. Swann maintained an office for the practice of law at Suite 203 Latta Arcade, 320 S. Tryon St., Charlotte, N. C. 28202. He maintained a trust account at First Union National Bank, account number 7018292453 (hereinafter trust account).
2. The balance in Swann's trust account at the beginning of November, 1986 was \$25.79.
3. Willie A. Swann wrote check number 1011 on his trust account on November 11, 1986 to Stuckey Furniture Company in the sum of \$500.00 as a down payment for office furniture.
4. Swann later wrote check number 1015 on his trust account to Stuckey Furniture Company on November 14, 1986 in the sum of \$9,238.50 for office furniture.
5. No deposit was made to his trust account from which these two checks could be paid.

6. During the month of November, 1986, Swann wrote other checks on the trust account for which no corresponding deposit had been made from which these checks could be paid.
7. During the month of November, 1986, Swann undertook to represent C. Ray Kennedy in the closing of a loan to refinance Mr. Kennedy's home.
8. During the course of that representation, Swann instructed Mr. Kennedy's lender, N. C. Federal Savings and Loan Association (hereinafter N. C. Federal) to wire the \$123,600 in loan proceeds to his trust account.
9. Pursuant to Swann's instructions, N. C. Federal wired the \$123,600 amount of their loan to Mr. Kennedy to Swann's trust account on November 21, 1986.
10. Swann was also sent closing instructions by N. C. Federal and instructions on how to return the funds by wire if the loan was not going to close.
11. Swann was to close the loan on November 28, 1986.
12. Swann failed to close Mr. Kennedy's loan on November 28, 1986 or anytime thereafter.
13. Swann advised Mr. Kennedy that he would not close the loan because the closing figures did not add up. However, both Mr. Kennedy and Swann's secretary, Michele Tidwell, reviewed the figures and failed to find any problem which would have prevented the loan from being closed.
14. Swann advised Mr. Kennedy that he would return the loan proceeds to N. C. Federal.
15. Swann made no effort to return the funds to N. C. Federal by wire transfer or otherwise.
16. Swann had been notified by First Union National Bank on at least one occasion prior to the \$123,600 wire transfer being made that a check written on his trust account had been returned for insufficient funds.
17. The \$123,600 wire transfer was not posted to Swann's account until December 1, 1986, because of a restraint which had been placed on activity in the account by First Union National Bank due to checks written on the account for insufficient

funds during the month of November, 1986. The \$123,600 deposit was made to Swann's trust account when the restraint was overridden upon instructions of Shirley Inscoe, Area Operations Officer for First Union National Bank.

18. Shirley Inscoe had met with Willie A. Swann on December 1, 1986 prior to posting the deposit to discuss the status of his trust account with him. Swann did not instruct her not to post the \$123,600 to the account even though he knew the overdraft status of his trust account. He did not instruct her to return the funds to N. C. Federal.
19. As a result of the checks written on the trust account for which no deposits had been made, Swann's trust account was overdrawn by \$11,366.61 when the \$123,600 wire transfer was made into Swann's trust account on December 1, 1986.
20. Two further checks and one further deposit were subsequently posted to Swann's trust account leaving a balance in the account of \$92,522.79 at the time Judge Forrest A. Ferrell ordered the balance of the account to be turned over to the Clerk of Superior Court.
21. The deficit balance in Swann's trust account caused by the checks written on the account to Stuckey's Furniture Company and others directly caused the misappropriation of a portion of the funds wired into the trust account by N. C. Federal for C. Ray Kennedy.

BASED UPON the foregoing Findings of Fact, the court makes the following Conclusions of Law:

Willie A. Swann's misappropriation of the funds wired to him by N. C. Federal to be used in closing a loan for C. Ray Kennedy constituted misconduct pursuant to N. C. Gen. Stat. §84-28(b)(2) in that Swann violated Rules 1.2(C), 10.1(A) and (C), and 10.2(E) of the Rules of Professional Conduct.

BASED UPON statements made to the court by Swann's wife, Mary Swann, the court further finds for its consideration in determining what discipline to impose that:

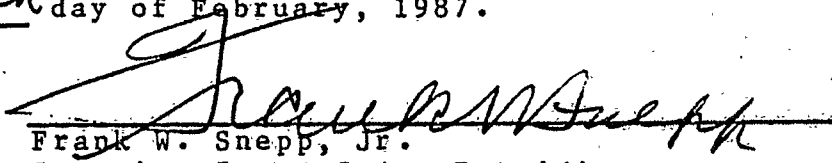
22. Willie A. Swann has a history of manic depressive illness dating back at least to 1981.

23. At the time of the aforementioned misconduct, Swann was not taking sufficient quantities of the medication prescribed for control of his illness.
24. Swann's illness was a contributing factor in his misconduct.

BASED UPON all of the findings of the court and the conclusions drawn therefrom, the court enters the following ORDER:

1. Willie A. Swann is hereby disbarred from the practice of law in North Carolina.
2. Willie A. Swann shall forthwith surrender his license certificate and membership card to the Secretary of the North Carolina State Bar.
3. Willie A. Swann shall comply with §24 of Article IX of the Rules and Regulations of the North Carolina State Bar regarding the winding down of his law practice.
4. The North Carolina State Bar Council shall have the authority to reinstate the license to practice law of Willie A. Swann pursuant to their reinstatement procedures at any time that they should determine that Willie A. Swann is fit to resume the practice of law. The five year minimum wait before a disbarred attorney may petition for reinstatement is waived if Willie A. Swann avers in any reinstatement petition and is able to prove to the satisfaction of a hearing committee of the Disciplinary Hearing Commission and the Council that:
 - (a) Willie A. Swann's misconduct was caused by his mental illness.
 - (b) If not for the illness, the misconduct would not have occurred.
 - (c) The mental illness has been controlled for a sufficient period of time to show that there is little likelihood that the illness will cause further misconduct or danger to the public.
5. A copy of this Order shall be served upon Willie A. Swann.

This the 5th day of February, 1987.


Frank W. Snepp, Jr.
Superior Court Judge Presiding