

BEFORE THE COUNCIL
OF THE
NORTH CAROLINA STATE BAR

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95 BCS 5

IN THE MATTER OF THE TENDER)
OF SURRENDER OF LICENSE OF)
JAMES H. TOMS)

ORDER

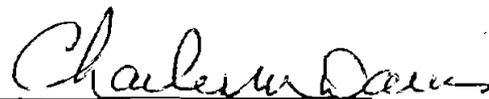
This matter coming on to be heard and being heard before the council of the North Carolina State Bar on October 20, 1995, pursuant to Title 27, N.C.A.C., Chapter 1, Subchapter B, Section .0117 upon the tender of surrender of license of James H. Toms sworn to and subscribed on September 8, 1995 and filed in the offices of the North Carolina State Bar on September 11, 1995; and

BASED UPON the affidavit, the council finds that James H. Toms has misappropriated client funds in violation of Rules 1.2(b) and 1.2(c) of the Rules of Professional Conduct.

WHEREFORE, upon motion being duly made and seconded, the council enters the following ORDER:

1. The tender of surrender of license of James H. Toms is hereby accepted.
2. James H. Toms is hereby DISBARRED from the practice of law in North Carolina.
3. The costs of this action are taxed against James H. Toms.

DONE AND ORDERED, this the 20th day of October, 1995.


Charles M. Davis, President

BEFORE THE COUNCIL
OF THE
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95 BCS 5

IN THE MATTER OF THE TENDER)
OR SURRENDER OF LICENSE OF)
JAMES H. TOMS)

AFFIDAVIT

The undersigned, being first duly sworn, hereby states as follows:

I, James H. Toms, hereby tender my license to practice and desire to resign from the North Carolina State Bar. My resignation is tendered freely and voluntarily, is not the result of coercion or duress, and I am fully aware of the implications of submitting the resignation.

I am aware that there is presently an investigation regarding allegations that I have been guilty of misconduct, to wit: (1) Since 1989, respondent has served as attorney in fact for John Howard Smith, now deceased. Respondent paid from Mr. Smith's account at First Union National Bank ("FUNB"), 6075517934, expenses for his care, until Mr. Smith's death in 1994, but in addition embezzled funds of at least \$100,000.00 belonging to Mr. Smith from that account; (2) Subsequent to Mr. Smith's death, respondent embezzled the proceeds of the sale of Mr. Smith's land in the approximate sum of \$280,000.00 from respondent's trust account at FUNB, 7078443967; (3) Further embezzlements occurred of Smith property in note proceeds and various certificates of deposit, in amounts not yet determined; and (4) Respondent has in recent years served either as executor or attorney in fact for other estates for clients, in which he has embezzled funds in excess of \$150,000.00.

I acknowledge that the material facts upon which the complaints are predicated are true. I am submitting my resignation because I know that if charges were predicated upon the misconduct under investigation, I could not successfully defend against them.

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This affidavit is submitted pursuant to Subchapter B, Section .0117 of the State Bar Rules. I am aware that I have 30 days from the date of this affidavit to wind down my practice in accordance with Sections .0117(e) and .0124.

This the 8 day of September, 1995.

James H. Toms

James H. Toms

SWORN TO AND SUBSCRIBED before me,
this the 8th day of September, 1995.

J. H. Toms
Notary Public

My Commission Expires: 5/24/2000