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STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
81 DHC 9

THE NORTH CAROLINA STATE BAR, )  
PLAINTIFF, )  
- vs - )  
LAWRENCE T. JONES, ATTORNEY, )  
DEFENDANT )

FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW

This cause came on to be heard by the undersigned, duly appointed Hearing Committee of the Disciplinary Hearing Commission composed of W. Osborne Lee, Chairman; Phillip A. Baddour; and Leander Morgan, on Friday, March 26, 1982, in the Council Chambers of The North Carolina State Bar at Raleigh, North Carolina. The Plaintiff was represented by David R. Johnson. The Defendant was present and represented by Phillip G. Kelley of the Buncombe County Bar. Based upon the clear, cogent, and convincing evidence before the Hearing Committee, including the admissions of the Defendant in the pleadings and the pre-trial stipulations, the Hearing Committee makes the following FINDINGS OF FACT regarding Plaintiff's First Claim for Relief:

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, Lawrence T. Jones, was admitted to the North Carolina State Bar on September 3, 1976, and is and was at all times referred to herein, an Attorney at Law, licensed to practice law in the State of North Carolina, subject to the Rules, Regulations, Canons of Ethics and Code of Professional Responsibility of the North Carolina State Bar and of the laws of the State of North Carolina.

3. At and during all of the times hereinafter referred to, the Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the town of Asheville, Buncombe County, North Carolina.

4. ~~Shortly~~ On February 6, 1981, the Defendant was employed by Maria Akins to represent Ms. Akins in the purchase of a tract of real property from one Hattie Henry. The purchase price of the land was \$3,000.00.

5. On or about February 6, 1981, the closing of the real estate transaction was held. At the closing the Defendant was entrusted with the responsibility of receiving the funds due from the purchaser, his client Maria Akins, and disbursing the funds in accordance with a closing statement prepared by the Defendant to the appropriate parties, including the realtor's commissions, the surveyor's fee, and the seller's proceeds. The closing statement prepared by the Defendant is Plaintiff's Exhibit 4 introduced into evidence and is incorporated into these Findings of Fact as if fully set out herein. Ms. Akins delivered an official check in the amount of \$3,108.59 to the Defendant to disburse. Mrs. Henry was due \$2,465.29 out of those funds entrusted to the Defendant.

6. The Defendant deposited Ms. Akins' check in a checking account maintained by the Defendant at the Northwestern Bank in Asheville, North Carolina, under the name of "Lawrence T. Jones, Attorney at Law, Special Account," account number 0301054866. The Defendant then drew seven checks on that account in connection with the closing, including check #510 payable to Mrs. Henry in the amount of \$2,465.29, a copy of which check was introduced into evidence as Plaintiff's Exhibit 5 and is hereby incorporated by reference.

7. Mrs. Henry, the seller in the real estate transaction, is at least eighty years old, nearly blind, and unable to routinely attend business meetings as she is feeble. At the closing of the real estate transaction on February 6, 1981, the Defendant delivered check #510, Exhibit 5, to Mrs. Charity Adell, the sister of Mrs. Henry, who attended the closing on behalf of Mrs. Henry. Mrs. Adell deposited the check in Mrs. Henry's savings account at the Northwestern Bank in Fletcher, North Carolina, on or about February 6, 1981. The funds represented by check #510 were debited to the Defendant's account number 0301054866 on February 9, 1981, as shown by the Defendant's bank statement covering February, 1981, Plaintiff's Exhibit 7 introduced into evidence.

8. Sometime after February 9, 1981, the funds represented by check #510, Plaintiff's Exhibit 5, were debited from Mrs. Henry's account by the bank, the bank giving the reason that the funds were uncollected. The bank then credited the Defendant's account on or about February 17, 1981, in the amount of check #510, \$2,465.29.

9. Approximately one month after depositing the funds in Mrs. Henry's savings account, Mrs. Adell went to the bank to withdraw the funds on deposit including the funds delivered by the Defendant on February 6, 1981, by check #510. The funds represented by check #510 were no longer in the account when Mrs. Adell attempted the withdrawal.

10. Upon learning that the funds were no longer in the account, Mr. Rufus Adell, the brother-in-law of Mrs. Henry, made demand on the Defendant to deliver the funds due Mrs. Henry on at least three (3) occasions. The Defendant did not attempt to deliver any funds to Mrs. Henry until the Defendant issued check #559 drawn on account number 0301054866 on April 29, 1981, a copy of which was introduced into evidence as Plaintiff's Exhibit 6 and is hereby incorporated by reference.

11. Check #559, Plaintiff's Exhibit 7, was returned by the bank because of insufficient funds on or before May 10, 1981. The Defendant became aware of the fact that check #559 was returned for insufficient funds on May 10, 1981.

12. After check #559 was returned by the Northwestern Bank for insufficient funds, the Adells contacted the offices of Pisgah Legal Services. Additional demands were made on the Defendant to deliver the funds to Mrs. Henry.

13. Upon the failure of the Defendant to deliver funds to Mrs. Henry following the demands, Sean Devereux, an attorney for Pisgah Legal Services, filed suit against the Defendant to recover the funds on May 22, 1981. On May 29, 1981, the Defendant delivered an "official check" of the Northwestern Bank to Mr. Devereux on behalf of Mrs. Henry in the amount due. A Voluntary Dismissal of the suit was filed on June 10, 1981.

14. The account on which checks #510 and #559 were drawn, account number 0301054866, was not clearly labeled and designated as a "trust" account and was not maintained by the Defendant as an attorney trust account as required by Disciplinary Rule 9-102(A) and Discipline and Disbarment Rule §28 of the North Carolina State Bar.

15. The Defendant did not maintain a trust account.

16. The Defendant allowed funds to be deposited in and withdrawn from Northwestern Bank account number 0301054866 for the Defendant's personal use, including drafts for payment of life insurance policy premiums payable to New York Life on a policy covering the Defendant's wife, Elizabeth A. Jones, as the insured and checks drawn to himself or to personal creditors, including the N.C. Department of Revenue for payment of the Defendant's 1979 income taxes.

17. The Defendant maintained no accounting ledgers or statements of account covering any particular person or client for funds deposited into account number 0301054866 from which it could be determined the amounts due any particular person or client from the bank account.

18. The Defendant did not indicate or designate on deposit slips recording deposits into account number 0301054866 the source or the beneficiary of the deposits made into the account. On occasion, the Defendant did not note on checks drawn to himself or for his personal use from whose funds or for what reason the funds were withdrawn from the account.

19. The Defendant did not maintain records from which he could determine the source or amount of any attorney's fees due him from deposits in the account.

20. At the time of the hearing of this cause, the Defendant did not know from what source the deposits into the account came or the source or amount of any attorney's fees due him from deposits in the account.

21. The Defendant did not produce pursuant to subpoena at the trial of this cause records and material relating to the maintenance of Northwestern Bank account number 0301054866, in particular, check stubs or registers reflecting the checks drawn by the Defendant and his notations on the same.

22. The Defendant received from a client, one Robert Blough, in December, 1980, \$10,500.00 to be deposited into his trust account to be held to pay for a release on behalf of Blough at Blough's instructions, and the Defendant did deposit those funds in account number 0301054866 in December, 1980. As of January 1, 1981, the account balance in account number 0301054866 was \$848.99 according to the Defendant's bank statement, Plaintiff's Exhibit 9 introduced into evidence. The Defendant admitted that Mr. Blough had not instructed the Defendant to release those funds prior to or on January 1, 1981. The Defendant admitted that the funds were used prior to January 1, 1981, and that the funds were not in the trust account on January 1, 1981. The Defendant admitted that Mr. Blough instructed him to release those funds in February, 1981, which the Defendant did by drawing check #521 on February 11, 1981. According to the Defendant's bank statement for February, 1981, Plaintiff's Exhibit 7, check #521 was debited from account number 0301054866 on February 12, 1981, and there was an overdraft balance of \$1,433.38 in the account on that date. The Defendant's bank statements for January and February, 1981, do not reflect any deposits of \$10,500.00 to cover the funds of Mr. Blough. The Defendant offered no explanation for the account not having a sufficient balance to reflect the funds of Mr. Blough from January 1, 1981, through February 27, 1981.

23. On or about January 2, 1981, the Internal Revenue Service delivered to the Northwestern Bank a Notice of Levy in the amount of \$2,568.43 to secure payment from the Defendant's bank accounts for personal income taxes owed by the Defendant and his wife. The Defendant was delivered a copy of the Notice of Levy, Plaintiff's Exhibit 11 introduced into evidence. The Defendant also had knowledge that the Internal Revenue Service levied on funds maintained by the Defendant in account number 0301054866 no later than the delivery of the January bank statement in early February, 1981. The Internal Revenue Service received \$2,568.43 out of account number 0301054866 on January 5, 1981. The Defendant did nothing to secure his client's funds entrusted to him as an attorney from this levy and did not deposit sufficient funds into the account in January, February, or March, 1981, to cover the amount levied from the account by the Internal Revenue Service.

The Hearing Committee makes the following additional FINDINGS OF FACT regarding the Second Claim for Relief:

24. The Defendant was served with a subpoena to produce his trust account records pursuant to §28 of the Discipline and Disbarment Rules of the North Carolina State Bar and to appear before the Chairman of the Grievance Committee on August 17, 1981. At the Defendant's request said appearance was continued until September 11, 1981.

25. A second subpoena was issued to the Defendant requesting that the Defendant produce his trust account records pursuant to §28 and that he produce copies of checks matching a bank statement the Defendant supplied with a letter to the Chairman of the Grievance Committee dated August 8, 1981.

26. The Defendant appeared before the Chairman on September 11, 1981. At that appearance the Defendant requested an opportunity to secure legal counsel before further proceedings were conducted. At the Defendant's request, the appearance was continued to September 18, 1981. The Defendant waived any further notice or subpoena for his appearance on September 18, 1981 and waived any defects in prior subpoenas.

27. The Defendant failed to appear before the Chairman on September 18, 1981.

Based upon the foregoing FINDINGS OF FACT, the Hearing Committee unanimously makes the following CONCLUSIONS OF LAW regarding the First Claim for Relief:

1. The Hearing Committee has subject matter jurisdiction over this cause and personal jurisdiction over the Defendant.
2. The Defendant's conduct constitutes grounds for discipline under N.C. Gen. Stat. §84-28(a) and (b) (2) in that:
  - (a) By allowing his personal funds to be deposited in and withdrawn from the Defendant's Northwestern Bank account number 0301054866, the same account used by the Defendant to maintain and disburse funds belonging to his clients, by failing to label the account as a trust account in accordance with the §28 of the Discipline and Disbarment Rules of the North Carolina State Bar,

and by maintaining the account in such a manner that the Internal Revenue Service could levy on funds maintained in the account for payment of the Defendant's personal income taxes, the Defendant failed to segregate his funds from those belonging to his clients and maintain a trust bank account in violation of Disciplinary Rule 9-102(A) of the Code of Professional Responsibility of the North Carolina State Bar; and

(b) By failing to deliver to Mrs. Henry funds representing the proceeds of the sale in a satisfactory form on February 6, 1981 or on April 29, 1981, the Defendant failed to promptly pay or deliver funds in his possession according to his clients' instructions and engaged in conduct adversely reflecting upon his ability to practice law in violation of Disciplinary Rule 9-102(B) (4) and 1-102(A) (6) of the Code of Professional Responsibility of the North Carolina State Bar.

Based upon the foregoing FINDINGS OF FACT, The Hearing Committee, with Mr. Baddour dissenting, makes the following CONCLUSION OF LAW regarding the First Claim for Relief:

1. By failing to deliver to Mrs. Henry funds representing the proceeds of the sale in a satisfactory form on February 6, 1981 or on April 29, 1981, the Defendant engaged in conduct involving deceit and dishonesty in violation of Disciplinary Rule 1-102(A) (4) of the Code of Professional Responsibility of the North Carolina State Bar.

Based upon the foregoing FINDINGS OF FACT the Hearing Committee unanimously makes the following CONCLUSIONS OF LAW regarding the Second Claim for Relief:

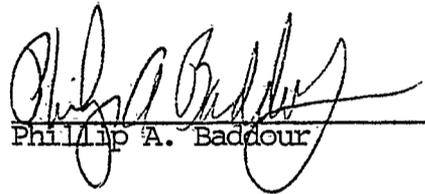
1. The Plaintiff alleges that the Defendant's conduct constitutes grounds for discipline in accordance with North Carolina General Statute §84-28(a) and (b) (2) and (3) in that by failing to appear before the Chairman on September 18, 1981, the Defendant failed to answer a formal inquiry issued by or in the name of the North Carolina State Bar and engaged in conduct adversely reflecting on his fitness to practice law in violation of North Carolina General Statute §84-28(b) (3) and Disciplinary

Rule 1-102 (a) of the Code of Professional Responsibility of the  
North Carolina State Bar.

This the 3<sup>rd</sup> day of May 1982.



W. Osborne Lee, Chairman  
Disciplinary Hearing Committee  
The North Carolina State Bar



Phillip A. Baddour



Leander Morgan