

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, T. Worth Coltrane, was admitted to the North Carolina State Bar on June 26, 1951, 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, and Code of Professional Responsibility of the North Carolina State Bar and 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 City of Asheboro, Randolph County, North Carolina.

4. Between January 1, 1983, and September 31, 1983, the Defendant maintained a checking account incident to his law practice at Randolph Bank and Trust Company, hereinafter sometimes called "the Bank", in Asheboro, North Carolina. This account was denominated "T. Worth Coltrane, Trust Account" and bore account number 400-384-5. It will be referred to hereinafter as the "trust account."

5. On February 22, 1983, the Clerk of the Superior Court of Randolph County, John H. Skeen, entered findings in a pending foreclosure proceeding, 82 SP 207, in which he authorized the Defendant, as trustee in a deed of trust from B. F. Coleman and wife, Dorothy B. Coleman for the benefit of I. B. Luck and J. D. King, to proceed to sell the real property described in the deed of trust to satisfy a debt found to be \$73,233.10.

6. The Defendant sold the real property mentioned in the preceding paragraph at a series of sales and resales during the spring and summer of 1983. Sales of various parcels of said real property were confirmed on April 13, 1983, May 13, 1983, and June 14, 1983.

7. Sometime prior to the last confirmation date, I. B. Luck entrusted the sum of \$750.00 to the Defendant which represented a bid deposit relative to certain of the Coleman property. The Defendant deposited this money in the trust account.

8. On June 14, 1983, the sale of lot 10 and a portion of lot 9 of the Glenwood Heights subdivision from tract 1 of the subject real property to Wade Robbins and wife, Carol Robbins, for \$4,725.00 was confirmed by the Clerk.

9. On or about June 23, 1983, the Defendant received a check from Wade Robbins dated June 22, 1983, payable to Worth Coltrane, Trustee in the amount of \$2,092.50, and a check from Danny Carter (a coinvestor) dated June 21, 1983, payable to Wade Robbins Jr. in the amount of \$2,362.50 which was endorsed in blank. These checks totalling \$4,455.00 represented the balance of the purchase price for lots 9 and 10. The funds were deposited by the Defendant in the trust account on June 22, 1983 (banking day June 23, 1983), and held for the joint benefit of Luck and King.

10. Immediately prior to the deposit described in the preceding paragraph, the trust account balance was \$376.05.

11. On June 28, 1983, the trust account was debited \$750.00 on account of trust check 638 dated June 28, 1983, and made payable to I. B. Luck in that amount representing a refund from the Defendant to Luck of the bid deposit referred to paragraph 7 above, leaving the trust account balance at \$4,076.05.

12. On July 5, 1983, with the trust account balance still at \$4,076.05, the Defendant deposited four checks totalling \$600.00 made payable to himself from the Administrative Office of the Courts representing legal fees for indigent representation in the trust account, bringing the account balance to \$4,676.05.

13. On July 5, 1983, the trust account was debited \$4,675.00 on account of check number 646 made jointly payable to I. B. Luck and J. D. King in that amount representing payment from the Defendant as trustee to Luck and King of their share of the proceeds from the sale of lots 9 and 10.

14. Although the sale of all remaining property subject to foreclosure was confirmed on June 14, 1983, the Defendant has failed to file a final accounting of his activity as trustee as required by law, despite repeated orders from the Clerk to do so.

Based upon the foregoing FINDINGS OF FACT, the Hearing Committee enters the following CONCLUSIONS OF LAW:

a. The Defendant, by allowing the trust account balance to fall below the amount necessary to preserve the identity of the \$750 bid deposit of I. B. Luck, engaged in illegal conduct involving moral turpitude, engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation, engaged in professional conduct which adversely reflects upon his fitness to practice law, and misappropriated trust funds in violation of Disciplinary Rules 1-102(A)(3), (4), and (6), and 9-102(A), respectively, of the North Carolina Code of Professional Responsibility.

b. The Defendant, by using trust funds belonging in part to J. D. King to satisfy his obligation to refund the bid deposit of I. B. Luck, engaged in illegal conduct involving moral turpitude, engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation, engaged in professional conduct which adversely reflects upon his fitness to practice law, and misappropriated trust funds, in violation of Disciplinary Rules 1-102(A)(3), (4), and (6), and 9-102(A), respectively, of the North Carolina Code of Professional Responsibility.

c. The Defendant, by depositing personal funds into the trust account, commingled his own funds with those of his clients in violation of Disciplinary Rule 9-102(A) of the North Carolina Code of Professional Responsibility.

d. The Defendant, by failing to file a final accounting of his activity as trustee relative to the Coleman property as required by law and ordered by the Clerk, neglected legal business entrusted to him in violation of Disciplinary Rule 6-101(A)(3) of the North Carolina Code of Professional Responsibility.

Relative to the Plaintiff's Second Claim for Relief, the Hearing Committee makes the following FINDINGS OF FACT:

1. In June, 1983, the Defendant was employed by Guy E. Richardson and wife, Shirley R. Richardson, to examine the title to and close the sale of a certain parcel of real estate they were purchasing from James E. Nicholson and wife, Jeannette H. Nicholson.

2. On August 11, 1983, the Defendant closed the transaction and accepted two checks totalling \$32,805.71 from the Richardsons for disbursement in accordance with a closing statement he had prepared, which checks he immediately deposited in the trust account.

3. Among the disbursements the Defendant was required to make was a \$7,000.00 pay-off of a note secured by a second deed of trust in favor of W. T. Newton. On August 11, 1983, the Defendant drew trust checks 649 and 653 payable to W. T. Newton in the amount of \$3,500.00 each and gave them to Newton who cashed them on August 17, 1983, at Wachovia Bank and Trust Company.

4. On August 18, 1983, checks 649 and 653 were presented at Randolph Bank and Trust Company for payment along with undated trust check 671 jointly

payable to J. D. King and I. B. Luck in the amount of \$4,132.22. There was only \$2,076.05 in the account on that date and all three checks were dishonored for insufficient funds. After dishonoring the checks, Randolph Bank and Trust Company informed the Defendant of the problem with his account.

5. Because of an error of Randolph Bank and Trust Company, the trust account balance was \$5,000.00 short on August 19, 1983. On August 19, 1983, the balance should have been \$7,076.05 instead of \$2,076.05.

6. On August 23, 1983, Wachovia informed Newton that there were insufficient funds in the Defendant's trust account to cover either of his checks, the balance in the account being only \$2,040.05.

7. The Defendant made no further deposits in the trust account until August 29, 1983. On August 29, 1983, the Defendant deposited 3 checks totalling \$66,817.75 into the trust account. Two checks totalling \$66,076.44 represented the balance of the purchase price of a parcel of real property sold by Lester Davis to Donnie Ray Sumner. The other check in the amount of \$741.31 and dated August 25, 1983, was made payable to Worth Coltrane by Lola Davis. Following this deposit, the balance in the trust account was \$68,857.80.

8. On August 29, 1983, the Defendant instructed the Bank to issue a cashiers check payable to W. T. Newton in the amount of \$7,000.00 and to charge the check against the trust account. Such a check was drawn and paid by the Bank using funds held in trust for Davis and Sumner.

9. On September 1, 1983, without there having been made any additional deposits, trust check 671 described in paragraph 4 above, which had been previously dishonored, was presented a second time and was paid by the Bank using funds held in trust for Davis and Sumner.

10. On September 9, 1983, the Bank credited the trust account with \$5,000.00 to compensate for its earlier error.

11. On September 15, 1983, the trust account balance was \$61,882.08. Incident to the Davis/Sumner transaction mentioned in paragraph 7 above, the Defendant was responsible for paying off a lien in the amount of \$65,413.44 against the subject property in favor of Ben Zaitz and Sons.

12. On September 16, the Defendant deposited 3 checks totalling \$49,487.00 into the trust account. All of the money was intended to fund the purchase of a parcel of real property by Kimberly Sneed from William R. Farlow and related closing costs.

13. On September 19, 1983, the Defendant instructed the Bank to issue a cashiers check payable to B. Zaitz and Sons in the amount of \$65,413.44 and to charge the check against the trust account. This check was drawn to discharge the lien described in paragraph 11 incident to the Davis/Sumner transaction. This check was paid by the Bank using funds held in the trust for Sneed and Farlow.

14. On September 19, 1983, the trust account was debited \$566.38 on account of check 723 dated August 16, 1983, and made payable to G.M.A.C. in the amount of \$566.38 representing payment of two of the Defendant's outstanding car payments with trust funds.

15. On September 28, 1983, trust check 669, dated September 15, 1983, and made payable to Scottish Savings and Loan Association in the amount of \$19,954.84, was presented to the Bank and dishonored for lack of sufficient funds, there being a balance of only \$16,710.10 present in the account. This check was intended to pay off the first deed of trust in the Sneed/Farlow transaction.

16. After dishonor, the Bank held the check and notified the Defendant of the situation. The Defendant promised to bring the necessary funds to the Bank but did not fulfill the promise.

17. After holding the check for longer than 24 hours, the Bank returned it to Scottish Savings and Loan Association whereupon Scottish filed a late return item claim against the Bank with the Federal Reserve Bank of Richmond. As a result, the Federal Reserve Bank, pursuant to federal regulations, credited its account with Scottish Savings and Loan in the amount of \$19,954.85 and debited its account with the Bank in the amount of \$19,954.84.

18. Thereafter, the Bank tried repeatedly to persuade the Defendant to make the check good, but the Defendant took no action. Subsequently, the Bank appropriated the remaining funds in the trust account leaving the Defendant with a liability to the Bank relative to check 669 of \$3,244.74. The Defendant has since refused to satisfy that obligation.

Based upon the foregoing FINDINGS OF FACT, the Hearing Committee enters the following CONCLUSIONS OF LAW:

a. The Defendant, by allowing the trust account balance to fall below the amounts necessary to satisfy his obligations to I. B. Luck and J. D. King, Lester Davis and Donnie Sumner, Kimberly Sneed and William Farlow, Scottish Savings and Loan Association and Randolph Bank and Trust Company, and by using funds held in trust for some clients to fulfill the obligations of others, engaged in illegal conduct involving moral turpitude, engaged in conduct involving dishonesty, fraud, deceit and misrepresentation, engaged in professional conduct which adversely reflects upon his fitness to practice law, and misappropriated trust funds in violation of Disciplinary Rules 1-102(A)(3), (4), and (6) and 9-102(A), respectively, of the North Carolina Code of Professional Responsibility.

b. The Defendant, by using client funds in the trust account to pay personal indebtedness owed to G.M.A.C., engaged in illegal conduct involving moral turpitude, engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, engaged in professional conduct which adversely reflects upon his fitness to practice law, prejudiced his clients during the course of the professional relationship, and misappropriated trust funds in violation of Disciplinary Rules 1-102(A) (3), (4), and (6), 7-101(A)(3), and 9-102(A), respectively, of the North Carolina Code of Professional Responsibility.

Relative to the Plaintiff's Third Claim for Relief, the Hearing Committee makes the following FINDINGS OF FACT:

1. On July 19, 1982, the Plaintiff received a grievance against the Defendant from James F. Everhart alleging professional misconduct.

2. In January, 1983, a formal Letter of Notice from Rivers D. Johnson, Jr., Chairman of the Plaintiff's Grievance Committee was served on the Defendant by certified mail, along with a "Substance of Grievance" summarizing the alleged misconduct.

3. Although an attorney receiving a Letter of Notice is required by Section 12(3) of Article IX of the Discipline and Disbarment Rules of the North Carolina State Bar to respond within 15 days of service by making a full and fair disclosure of all pertinent facts and circumstances, the Defendant has never filed a response to the Letter of Notice in the Everhart case.

4. On February 21, 1983, the Plaintiff received a grievance against the Defendant from Louise Sykes alleging professional misconduct.

5. On March 30, 1983, a formal Letter of Notice concerning the Sykes grievance from Rivers D. Johnson, Jr., was served upon the Defendant by certified mail along with a "Substance of Grievance" summarizing the alleged misconduct.

6. On September 19, 1983, Counsel for the Plaintiff wrote the Defendant a letter reminding him of his obligation to respond to the subject Letter of Notice.

7. The Defendant has never filed a response to the Letter of Notice in the Sykes case.

8. On October 7, 1983, the Plaintiff received a grievance against the Defendant from William T. Newton alleging professional misconduct.

9. On November 18, 1983, a formal Letter of Notice concerning the Newton grievance from Rivers D. Johnson, Jr., was served upon the Defendant by certified mail along with a "Substance of Grievance" summarizing the alleged misconduct.

10. The Defendant has never filed a response to the Letter of Notice in the Newton case.

11. On March 26, 1984, the Plaintiff received a grievance against the Defendant from J. Harold Holmes alleging professional misconduct.

12. On March 26, 1984, a formal Letter of Notice concerning the Holmes grievance from Rivers D. Johnson, Jr., was served upon the Defendant by Plaintiff's Counsel by leaving it with his secretary at his office along with a copy of the Holmes grievance.

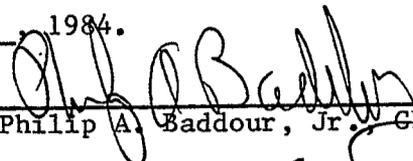
13. The Defendant has never responded to the Letter of Notice in the Holmes case.

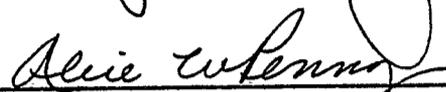
Based upon the foregoing FINDINGS OF FACT, the Hearing Committee enters the following CONCLUSIONS OF LAW:

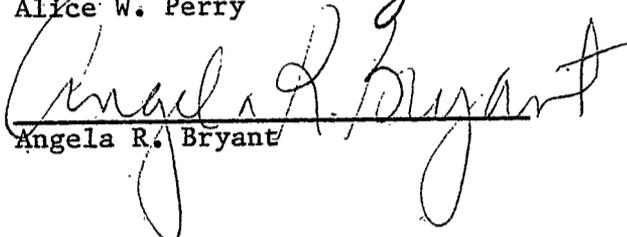
The Defendant, by failing to answer four Letters of Notice has failed to answer formal inquiries concerning allegations of misconduct and has engaged in conduct which adversely reflects upon his fitness to practice law in violation of North Carolina General Statute 84-28(b)(3) and Disciplinary Rule

1-102(A)(6) of the North Carolina Code of Professional Responsibility,
respectively.

This the 12 day of October, 1984.


Philip A. Baddour, Jr., Chairman


Alice W. Perry


Angela R. Bryant

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
84 DHC 5

THE NORTH CAROLINA STATE BAR,
Plaintiff,

-vs-

T. WORTH COLTRANE,
Defendant.

ORDER IMPOSING DISCIPLINE

This cause was heard by the undersigned, duly appointed Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar on Friday, September 21, 1984. Based upon the FINDINGS OF FACT and CONCLUSIONS OF LAW entered in this cause and the evidence presented relevant to the discipline to be imposed, including all aggravating and mitigating evidence, the Hearing Committee enters the following ORDER IMPOSING DISCIPLINE:

1) The Defendant is hereby disbarred from the practice of law, said disbarment to be effective thirty days after service of this Order upon the Defendant or affirmation of this Order on appeal or dismissal of any appeal.

2) The Defendant shall surrender his license and membership card to the Secretary of the North Carolina State Bar who shall maintain them in his possession for the duration of disbarment.

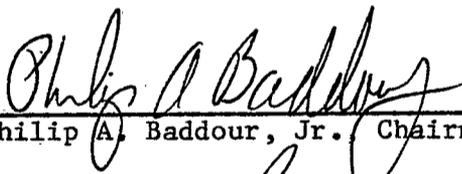
3) Reinstatement of the Defendant to the practice of law shall be subject to the following conditions:

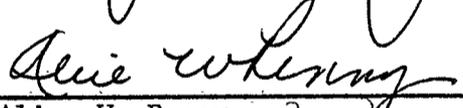
- A. The Defendant shall submit clear, cogent, and convincing evidence that he has fully complied with all court orders to which he is subject, whether related to this proceeding or not, including those orders of the Clerk of Superior Court of

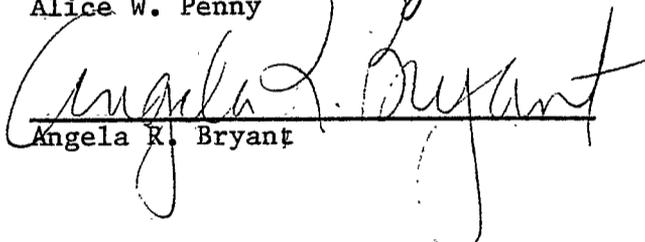
Randolph County with respect to which he is currently in contempt;

- B. The Defendant shall submit clear, cogent, and convincing evidence that he has made full restitution, including the payment of interest at the legal rate, to all parties and clients whose funds he has misappropriated, including most particularly the sum of \$3244.74 he owes Randolph Bank and Trust Company; and
 - C. The Defendant shall submit clear, cogent, and convincing evidence that he has fully complied with all rules of the North Carolina State Bar relative to the winding down and termination of his law practice, most particularly those provisions contained in Rule 24 of the Rules of Discipline and Disbarment.
- 4) The costs of the proceedings are taxed to the Defendant.

This the 12 day of October, 1984.


Philip A. Baddour, Jr. Chairman


Alice W. Penny


Angela R. Bryant