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NORTH CAROLINA
WAKE COUNTY

FILED

1985 FEB 29 PM

BEFORE THE
DISCIPLINARY HEARING COMMISSION

12:22 mins

OF THE

B.E. JAMES, SEC.
THE N. C. STATE BAR

NORTH CAROLINA STATE BAR
84 DHC 13

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
vs.)
MICHAEL C. TROY,)
Defendant)

STIPULATED
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This cause was heard by the undersigned members of the duly appointed Hearing Committee of the Disciplinary Hearing Commission on Friday, March 1, 1985. The North Carolina State Bar was represented by David R. Johnson. The Defendant was present and was represented by Robert A. Beason of the Durham Bar. Counsel presented stipulated Findings of Fact and Conclusions of Law and a recommendation as to the discipline to be imposed. The Hearing Committee accepts the recommendations of Counsel and adopts them as its own. Based on the Stipulations of Counsel, the Hearing Committee makes the following FINDINGS OF FACT:

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, Michael C. Troy, was admitted to the North Carolina State Bar on September 5, 1962 and is, and was at all times referred to herein, an Attorney at Law licensed to practice in 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. During all of the periods referred to herein, 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 Durham, Durham County, North Carolina.

4. On or about June 13, 1983, one Charles Edward Honeycutt, Jr. was injured in an automobile accident involving another automobile. The driver of the second automobile was one Sylvia Thrower who was insured by the Pennsylvania National Mutual Casualty Insurance Company [hereinafter referred to as Insurance Company].

5. Shortly after the accident, Mr. Honeycutt employed the Defendant to represent him in pursuing a claim against Ms. Thrower. The Defendant agreed to represent Mr. Honeycutt.

6. The Defendant undertook negotiations with the Insurance Company and in September, 1983, the Defendant received a draft from an insurance company in the amount of \$1,000 under the medical payment provisions of the insurance policy for payment on behalf of his client. The draft was made payable to the Defendant and Mr. Honeycutt as joint-payees.

7. The Defendant notified Mr. Honeycutt of the receipt of the draft. Mr. Honeycutt met the Defendant and accompanied him to the Planters National Bank in Durham where the Defendant maintained several accounts. Mr. Honeycutt endorsed the check and the Defendant negotiated the check for cash at the bank. The Defendant did not deposit the check in a trust account or any bank account. The Defendant delivered \$600 in cash to Mr. Honeycutt at this time and kept \$400 in cash. The Defendant did not obtain a receipt from Mr. Honeycutt indicating delivery of these funds nor did he maintain any ledger or any other document on which the disbursement of these funds was recorded.

8. On or about November 10, 1983, the Defendant received a draft from the Insurance Company in the amount of \$22,500 made payable to the Defendant and Mr. Honeycutt jointly representing the final settlement of Mr. Honeycutt's claim against Ms. Thrower. The Defendant notified Mr. Honeycutt of the receipt of the draft.

9. At the time of the receipt of the draft, Mr. Honeycutt owed several creditors for services provided in the treatment of the injuries sustained in the accident. These obligations were known to the Defendant and included debts of \$4,055.35 owed to Duke University Medical Center, \$886 to Dr. Harker and Associates, \$1800 owed to Home Health Agency, \$106 owed to Wake Radiology, Inc., and \$1014 owed to Piedmont Ambulance Company. Mr. Honeycutt expected these obligations to be paid by the Defendant out of the settlement proceeds from the insurance company.

10. On or about November 14, 1983, the Defendant met with Mr. Honeycutt at the Planters National Bank in Durham. The Defendant had Mr. Honeycutt endorse the \$22,500 draft from the Insurance Company. The Defendant then prepared a deposit slip for his trust account, account number 20-002-526-7, with which he deposited the draft less \$5,000 in cash back from the

deposit. The Defendant delivered \$3,500 in cash to Mr. Honeycutt that day and kept \$1,500 in cash for himself. The deposit slip only shows an entry for receipt of cash for \$5,000. The Defendant received no receipts from Mr. Honeycutt nor did he make any record of the disbursement of the cash he received back from this deposit transaction. At the time of deposit of the balance of the draft in the account, the Defendant had at least \$3,091.29 of his personal funds in the account as the balance from a personal deposit to the account in the amount of \$3,185.25 made in June, 1983, which had not been withdrawn.

11. The Defendant has asserted that he was entitled to a one-third contingency fee on the funds collected on behalf of Mr. Honeycutt from the Insurance Company. One-third of \$23,500 is \$7,833.33.

12. On or about November 23, 1983, the Defendant drew two checks on his trust account. The first was check number 1125 payable to himself in the amount of \$7,500 and was noted on the memo line as for a "fee." This check was deposited in another account maintained by the Defendant at the Planters National Bank, denominated a regular checking account in the name of Michael C. Troy, Attorney at Law, account number 20-002-380-7, on or about November 25, 1983. The second check was numbered 1127 and was payable to Mr. Honeycutt in the amount of \$6,500. Mr. Honeycutt negotiated this check and it cleared the Defendant's trust account on November 30, 1983.

13. The Defendant had received \$9,400 for his personal use from the settlement proceeds as of November 25, 1983. This exceeds the amount due as a fee by \$1,566.67. Mr. Honeycutt had received \$10,600 from the settlement proceeds as of November 30, 1983. Although the Defendant had rendered valuable legal services on behalf of Mr. Honeycutt in an unrelated matter while the negotiations on the personal injury case were being conducted and had not received or entered into any agreement on a fee for those services, the Defendant unilaterally withdrew the excess above the one-third contingency fee in the personal injury case without discussing with Mr. Honeycutt his entitlement to the funds as a fee for the other services.

14. The Defendant did not draw any checks on his trust account from the settlement proceeds to pay any of the debts enumerated in paragraph 9 of these Findings of Fact.

15. As of November 30, 1983, the Defendant had not disbursed \$3,500 from the settlement proceeds. During December, 1983, and January, 1984, the Defendant withdrew an additional \$2150.00 which he designated on his checkbook stubs as either loan repayments of money lent to Mr. Honeycutt or as simply against the Honeycutt balance. The Defendant did not withdraw any funds designated in his books against the personal funds deposited in the account. In June, 1984, an additional \$23.39 was withdrawn by the bank for check printing charges.

16. The Defendant did not maintain any ledgers or other records adequate to show the receipt and disbursement of the funds entrusted to him on behalf of Mr. Honeycutt.

17. In August, 1984, the Defendant, after having been notified that the Grievance Committee was investigating his handling of Mr. Honeycutt's case, delivered \$2,000 in cash to Mr. Honeycutt. Prior to delivery of the cash, the Defendant presented Mr. Honeycutt with a check payable to Honeycutt for \$2,000 and requested Mr. Honeycutt's endorsement. Mr. Honeycutt endorsed the check and returned it to the Defendant. This check was drawn on the Defendant's trust account and the check was negotiated against the trust account balance after Mr. Honeycutt returned the check to Mr. Troy. After this transaction, the trust account balance was \$1,517.90 and there have been no further transactions in the account against this balance. Thus, Mr. Troy has received a total of \$9400 from the settlement proceeds plus an additional \$2150 which was designated on his books as from the Honeycutt matter for a total of \$11,550. Mr. Honeycutt has received a total of \$12,600 from the proceeds. This exceeds the amount received from the insurance company by \$650. However, the Defendant has not withdrawn his personal funds from the trust account and the balance remaining equals the amount that should be remaining in the account as the undisbursed funds of Mr. Honeycutt if the \$2150 withdrawn from the trust account after November 30, 1983, is attributed to the Defendant's personal funds.

18. The Defendant made no other disbursements of the proceeds of the insurance settlement on behalf of Mr. Honeycutt. The Defendant did not return the excess funds received by him to the account and made use of those funds for himself.

19. On August 23, 1984, Mr. Honeycutt was served with a Complaint filed by the Duke University Medical Center seeking payment of the debt owed for medical services as a result of the accident. The Complaint also seeks compensation for attorney's fees for the collection of this debt.

20. The Defendant requested and received an extension of time to file an Answer on behalf of Mr. Honeycutt to the Duke University Medical Center suit. The Defendant was given until October 24, 1984, to file Answer by counsel for Duke University.

21. As of November 6, 1984, the Defendant had not paid any amount of the proceeds held by him on behalf of Mr. Honeycutt to Duke University Medical Center, nor had he paid the balance to Mr. Honeycutt. The Defendant had not filed an Answer to the suit filed by Duke University Medical Center as of November 6, 1984. Duke University obtained a default judgment against Mr. Honeycutt for the amount of the hospital bill plus attorneys' fees and interest on November 8, 1984.

Based upon the foregoing FINDINGS OF FACT, the parties stipulate to the following CONCLUSIONS OF LAW:

1. The Disciplinary Hearing Commission has subject matter jurisdiction and has obtained personal jurisdiction over the Defendant.

2. The Defendant has engaged in conduct constituting grounds for discipline under N. C. Gen. Stat. §84-28(a) and (b) as violations of the Disciplinary Rules of the Code of Professional Responsibility of the North Carolina State Bar in that:

- (a) By negotiating the \$1,000 draft from the insurance company for cash instead of depositing the draft in his trust account, Defendant failed to deposit funds of a client in a trust bank account separate from his own personal account in violation of Disciplinary Rule 9-102(A);
- (b) By failing to deposit the \$1,000 draft from the insurance company in a trust account or otherwise obtain proper records of the transaction, the Defendant failed to maintain complete records of the funds entrusted to him in violation of Disciplinary Rule 9-102(B)(3);
- (c) By receiving and devoting to his own personal use more than one-third of the proceeds delivered to him by the insurance company on behalf of Mr. Honeycutt, the Defendant has engaged in conduct involving misrepresentation in violation of Disciplinary Rule 1-102(A)(4) and has failed to disburse the funds of a client entrusted to him as directed by the client in violation of Disciplinary Rule 9-102(B)(4);
- (d) By failing to pay the Duke University Medical Center out of the proceeds received, the Defendant has neglected a legal matter entrusted to him in violation of Disciplinary Rule 6-101(A)(3) and has failed to promptly pay the funds entrusted to him as directed by a client in violation of Disciplinary Rule 9-102(B)(4);
- (e) By failing to file an Answer within the requisite time to the lawsuit filed by the Duke University Medical Center after assuring the client that he would handle the matter and obtaining an extension of time in which to file an Answer from opposing counsel, the Defendant has neglected a legal matter entrusted to him in violation of Disciplinary Rule 6-101(A)(3), has intentionally

failed to carry out the lawful objectives of a client in violation of Disciplinary Rule 7-101(A)(1), has failed to carry out a contract of employment in violation of Disciplinary Rule 7-101(A)(2), and has prejudiced or damaged his client in the course of the professional relationship in violation of Disciplinary Rule 7-101(A)(3);

- (f) By failing to pay any of the other creditors out of the proceeds received from the insurance settlement, the Defendant has neglected a legal matter entrusted to him in violation of Disciplinary Rule 6-101(A)(3);
- (g) By failing to maintain any ledgers or other documents showing the receipt and disbursement of the proceeds from the insurance company, the Defendant has failed to maintain complete records of the funds entrusted to him in violation of Disciplinary Rule 9-102(B)(3); and
- (h) By depositing his own personal funds into his trust account and by allowing the funds to remain in the trust account, the Defendant commingled the funds of clients in a bank account in which the Defendant had deposited his own funds in violation of Disciplinary Rule 9-101(A).

Stipulated to, this the 15th day of March, 1985.

David R. Johnson
David R. Johnson
Attorney for Plaintiff

Robert A. Beason
Robert A. Beason
Attorney for Defendant

Michael Troy
Michael Troy, Defendant

The foregoing Stipulated FINDINGS OF FACT AND CONCLUSIONS OF LAW are adopted and the Hearing Committee finds the facts and CONCLUSIONS OF LAW as stated. Further, the Committee finds misconduct.

Pursuant to Discipline and Disbarment and Rule §14(20), the Committee has authorized the Chairman to sign on behalf of all members.

This the 1st day of March, 1985.

Frank B. Wyatt
Frank Wyatt, Chairman
Hearing Committee

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OF THE
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84 DHC 13

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
vs.)
MICHAEL C. TROY,)
Defendant)

CONSENT ORDER OF
DISCIPLINE

This cause was heard by the undersigned duly appointed members of the Hearing Committee of the Disciplinary Hearing Commission based upon the stipulated Findings of Fact and Conclusions of Law agreed to by the parties on Friday, March 1, 1985. In addition to the stipulations of fact with regard to the Defendant's violations of the Code of Professional Responsibility, the parties also stipulate to the following facts relevant to consideration of the discipline to be imposed:

1. The Defendant has previously been disciplined by the Disciplinary Hearing Commission in file number 77 DHC 5. The essence of the prior disciplinary action was a failure on the part of the Defendant to substitute parties and to attend a hearing at which an order of dismissal of his client's action was entered for failure to prosecute. The discipline ordered at that time was a Private Reprimand.

2. The Defendant was subpoenaed to produce his trust account records to the Counsel of the North Carolina State Bar while this matter was pending before the Grievance Committee. The Defendant appeared before Counsel but did not bring his trust account records which necessitated production of those records from the bank at a cost to the State Bar. Additionally, the Defendant did not assert that he was entitled to the excess withdrawn from the proceeds belonging to Mr. Honeycutt at that time. Instead, the Defendant stated that he had returned the funds to the trust account, a statement which he had not previously verified and which subsequently proved to be untrue.

Based on the FINDINGS OF FACT AND CONCLUSIONS OF LAW entered in this cause and the above facts in consideration of the discipline to be imposed, the parties have consented to the following ORDER OF DISCIPLINE which the Hearing Committee approves and adopts as its own:

1. The Defendant is suspended from the practice of law for a period of three years.

2. The second and third years of the suspension will be stayed upon compliance by the Defendant with the following conditions:

- (a) The Defendant pays the costs of this proceeding as certified by the Secretary and the costs of the State Bar of obtaining the Defendant's bank records from Planters National Bank in the sum of \$155.45 prior to filing the petition for reinstatement.
- (b) By March 20, 1985, the Defendant shall have caused the judgment of Duke University against Mr. Honeycutt to have been cancelled of record with an explicit written explanation regarding Mr. Honeycutt's status as a debtor to Duke University.
- (c) By March 30, 1985 the Defendant shall, through counsel and with cooperation of the complainant Honeycutt, satisfy the outstanding debts of Mr. Honeycutt as outlined in paragraph nine of the Findings of Fact in this matter. The Defendant shall further provide a full accounting of all proceeds received on Mr. Honeycutt's behalf to Mr. Honeycutt. Documentation of the satisfaction of the judgment and the creditors and a copy of the accounting shall be provided to the State Bar.
- (d) During the period the suspension is stayed, the Defendant will enter into a fee agreement with all clients contemporaneously with the acceptance of employment and the fee agreement with the client shall be in writing. Copies of proposed form contracts to be used to comply with this condition will be attached to the petition for reinstatement. Copies of the executed fee agreements shall be made available to the Office of Counsel of the North Carolina State Bar promptly upon request during the period that the suspension is stayed.
- (e) The Defendant will employ, at his expense, a Certified Public Accountant acceptable to all parties to audit his trust account records at the end of the first six months of resumption of practice, at the end of the first year of

resumption of practice, and at the end of 22 months of resumption of practice. The Certified Public Accountant shall file with the North Carolina State Bar within thirty days of the end of the first six months of resumption of practice, of the end of the first year of resumption of practice, and of the end of 22 months of the resumption of practice, a report stating whether the Defendant has complied with the requirements of the Code of Professional Responsibility with regard to record keeping of trust accounts, avoidance of commingling of the Defendant's funds with client funds, and use of clients' funds as directed by the client. The report shall specify any deficiencies in the handling of the funds by the Defendant. It will be the Defendant's responsibility to see that the report is filed in a timely manner. The Defendant shall promptly provide copies of his trust account records during this period on request of the North Carolina State Bar without a subpoena for inspection by the Office of Counsel of the North Carolina State Bar for review of the Defendant's compliance with the trust account rules.

- (f) The Defendant shall strictly comply with the disciplinary rules of the North Carolina State Bar governing the handling of client funds at all times during the period of the stay.

3. If the Defendant seeks reinstatement to the practice of law at the end of the first year of suspension, the Defendant shall petition the Council of the North Carolina State Bar under the rules governing reinstatement following suspension. The Defendant agrees to and shall comply with all conditions set forth in paragraph 2 of the ORDER for a period of two years following reinstatement regardless of when he seeks reinstatement, including paragraphs 2a and 2b, which conditions shall continue to be conditions precedent to any petition for reinstatement. If the Defendant is reinstated during the period that the suspension is stayed, he shall petition the Council for full reinstatement at the end of the expiration of the suspension under the rules governing reinstatement to the practice.

4. This ORDER is effective thirty days after service on the Defendant or thirty days after affirmation of this ORDER if it is appealed.

5. The Defendant shall surrender his license and membership card to the Secretary of the North Carolina State Bar who will maintain them during the period of suspension.

6. The Defendant shall comply with all provisions of Rule 24 of the Discipline and Disbarment Rules of the North Carolina State Bar governing the winding down of his practice and shall not engage in any conduct which would constitute the practice of law or a holding out as capable of practicing law during the period of suspension.

7. The Defendant is taxed with the costs of this proceeding.

Consented and agreed to, this the 1st day of March, 1985.

David R. Johnson
David R. Johnson
Attorney for Plaintiff

Robert A. Beason
Robert A. Beason
Attorney for Defendant

Michael C. Troy
Michael C. Troy
Defendant

The foregoing Consent Order of Discipline is adopted by the Hearing Committee and entered as the Order of Discipline of the Committee.

Pursuant to Discipline and Disbarment and Rule §14(20), the Committee has authorized the Chairman to sign on behalf of all members.

This the 1 day of March, 1985.

Frank B. Wyatt
Frank Wyatt, Chairman
Hearing Committee