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STATE OF NORTH CAROLINA  
COUNTY OF WAKE

FILED  
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D.E. JAMES, CLERK  
THE H.C. STATE BAR  
BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
83 DHC 4

THE NORTH CAROLINA STATE BAR, )  
Plaintiff, )  
vs )  
WILLIAM M. SHEFFIELD, Attorney )  
Defendant )

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

This cause was heard by a duly appointed Hearing Committee of The North Carolina State Bar composed of Frank B. Wyatt, Chairman; George Ward Hendon; and Alice W. Penny on September 15, 16 and 22, 1983. David R. Johnson represented the Plaintiff. The Defendant was present and represented by Thomas F. Loflin, III, of the Durham County Bar. Based upon the evidence presented and the arguments of counsel, the Committee makes the following FINDINGS OF FACT by clear, cogent, and convincing evidence:

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 William M. Sheffield was admitted to The North Carolina State Bar on September 1, 1982, and was at all times during the period in question an attorney at law licensed to practice in the State of North Carolina and subject to the Rules, Regulations, Canons of Ethics, 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 times of the period in question 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 June 19, 1979, one Billy Wayne Fowler was injured in an automobile accident involving himself and one Pamela L. Allen as the driver of the other automobile.

5. On or about June 22, 1979, the Defendant was offered employment to represent Fowler by Fowler's father, William Henry Fowler. The Defendant accepted the employment on a contingency fee basis and was entitled to

one-third of any settlement reached with the insurance carrier of Ms. Allen. The Defendant advised the insurance carrier, the Travelers of Hartford, that he would be representing Fowler on or about August 1, 1979.

6. After the Defendant's employment both Fowlers would periodically bring bills from creditors to the Defendant.

7. Beginning in May, 1980, settlement negotiations began in earnest between the Defendant and the Travelers.

8. On or about June 19, 1980, Fowler was arrested and charged with the murder of one Tony Holland and with assault with a deadly weapon with intent to kill inflicting serious injury of one Terry Holland, both charges arising from the same incident in Orange County.

9. On or about the day of Fowler's arrest, Fowler's father contacted the Defendant about representation of Fowler on criminal charges. The Defendant accepted the employment and was paid \$1,000.00 on June 23, 1980, by Fowler's father. On or about July 3, 1980, the Defendant requested and received another \$1,000.00 from Fowler's father. The Defendant assured the father that he expected no more payments from the father individually as opposed to the son, Billy Wayne Fowler.

10. The formal indictment of Fowler was returned by the grand jury on August 5, 1980. Fowler was arraigned on August 25, 1980. Fowler was incarcerated in the Orange County jail during this period.

11. On or about August 13, 1980, the Defendant and Travelers agreed to settle the accident claim for \$40,000.00. The Defendant then delivered the draft drawn by the Travelers and the release, Exhibits A and B to the Complaint, to Fowler on August 15, 1980, at the Orange County jail.

12. Fowler was advised by the Defendant to accept the settlement because of his current incarceration and pending criminal trial.

13. Fowler executed the release and endorsed the draft in blank and returned the documents to the Defendant.

14. The Defendant then endorsed the draft and deposited it in a checking account at the Guaranty State Bank which had been labelled a "trust account." The deposit was made on August 15, banking day August 18, 1980.

15. At the time of the deposit by the Defendant there was an account balance of \$27.54. There were no other deposits into the account until bank day October 29, 1980, at which time there was a balance of \$5,394.58.

16. The Defendant was entitled to a contingency fee of \$13,333.33 from the \$40,000.00 settlement proceeds deposited into his trust account by virtue of Defendant's representation of Fowler on the personal injury automobile accident claim.

17. Between the day of deposit of the settlement proceeds and the day of the next deposit into the account, the Defendant wrote four checks on the

account upon which he noted that the checks were for payment of fees from Fowler. The sum of these checks is \$9,371.34. The Defendant did not at any time draw one check for the \$13,333.33 to which he was entitled as the contingency fee.

18. During this same period, the Defendant drew numerous checks from the account to pay personal and business obligations. The sum of these checks is \$21,983.10. Additionally, the Defendant drew another check for cash for \$1,000.00 of which no more than \$25.00 was used for Fowler's benefit.

19. During this same period, the Defendant drew several checks for payment of the obligations of other clients and not for the benefit of Fowler. Fowler at no time authorized the Defendant to draw checks from his proceeds for the benefit of other clients of the Defendant. The sum of these checks is \$474.12.

20. The Defendant did pay from the account \$1,804.40 to John D. Myers on behalf of Fowler for private investigative services in connection with the criminal trial.

21. The Defendant did not keep records from which he could determine at any one time what amount in his trust account belonged to any particular client. The Defendant did not maintain a running balance of the proceeds due Fowler.

22. The Defendant did not render to Fowler an accounting of the disbursement of the settlement proceeds.

23. The Defendant did not pay the balance owed to the medical care providers of Fowler of \$1,414.40.

24. The Defendant did not pay to Fowler any of the funds received on his behalf from the settlement.

25. The Defendant and Billy Wayne Fowler agreed that the Defendant would represent Billy Wayne Fowler as his attorney in the criminal charges for a fee of \$25,000.00.

26. The Defendant claimed the balance of the proceeds from the automobile accident claim settlement above the \$13,333.33 fee and the expenses paid to the private investigator as fees in the criminal case and for services to Fowler's brother.

27. In November, 1980, the Defendant accepted the Complaint in the civil wrongful death action filed against Fowler by the administratrix of the estate of Tony Holland arising from the incident for which the Defendant was representing Fowler on the criminal charges. The document was delivered to him by Fowler's father. The Defendant did not advise either Fowler's father or Fowler that he would not represent him in the civil action at that time or prior to the criminal trial. Defendant accepted employment in the civil wrongful death action and the relationship of attorney and client was established between the Defendant and Billy Wayne Fowler with respect to the defense of such action.

28. The Defendant did not advise Fowler that he would not represent him on the civil action. The Defendant did not file any responsive pleadings on Fowler's behalf in the civil action. The Defendant did not respond to the inquiries of opposing counsel as to what his intentions were. Fowler believed the Defendant was handling the civil action appropriately.

29. A default judgment was entered against Fowler in the civil action for \$200,000.00. After an execution was served, Fowler obtained new counsel and has moved to set the judgment aside. That motion is still pending.

30. On or about August 24, 1982, Fowler filed a grievance with the Grievance Committee of The North Carolina State Bar concerning the conduct of the Defendant.

31. The Chairman of the Grievance Committee issued a Letter of Notice pursuant to Rule 12(2) of the Discipline and Disbarment Rules to the Defendant regarding the grievance filed by Fowler.

32. The Defendant received the Chairman's Letter of Notice on October 5, 1982. The Defendant had, pursuant to Rule 12(3) of the Discipline and Disbarment Rules, 15 days to respond to the Letter of Notice with a full and fair disclosure of all the facts and circumstances concerning the grievance.

33. The Defendant did not respond to the Letter of Notice.

34. On March 23, 1983, the Defendant was served with a subpoena issued by the Chairman of the Grievance Committee to testify and to produce his records with regard to his representation of Fowler. The subpoena directed his appearance on April 6, 1983.

35. The Defendant failed to appear in response to the subpoena or make any other response to the Grievance Committee prior to April 6, 1983.

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

#### CONCLUSIONS OF LAW

1. The Hearing Committee has personal and subject matter jurisdiction of this cause.

2. The Defendant did not engage in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Disciplinary Rule 1-102(A)(4) of the Code of Professional Responsibility of the North Carolina State Bar.

3. By failing to file a responsive pleading or otherwise take action on behalf of Fowler in the civil wrongful death action, the Defendant has neglected a legal matter entrusted to him and has intentionally failed to carry out a contract of employment in violation of Disciplinary Rules 6-101(A)(3) and 7-101(A)(2) of the Code of Professional Responsibility of The North Carolina State Bar.

4. The Defendant has failed to maintain complete records of the funds received on Fowler's behalf and render appropriate accountings to Fowler in violation of Disciplinary Rule 9-102(B)(3) of the code of Professional Responsibility of The North Carolina State Bar.

5. By failing to respond to both the Letter of Notice and the subpoena, the Defendant has failed to respond to a formal inquiry of The North Carolina State Bar in violation of N.C.G.S. §84-28(b)(3) and has engaged in conduct adversely reflecting upon his fitness to practice law in violation of Disciplinary Rule 1-102(A)(6) of the Code of Professional Responsibility of The North Carolina State Bar.

6. The Defendant's conduct in violation of the Disciplinary Rules and the statute constitutes grounds for discipline under N.C.G.S. §84-28(a) and (b).

This the 17<sup>th</sup> day of October, 1983.

Frank B. Wyatt  
Frank B. Wyatt, Chairman

George Ward Hendon  
George Ward Hendon

Alice W. Penny  
Alice W. Penny

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ORDER OF DISCIPLINE

Based upon the FINDINGS OF FACT and CONCLUSIONS OF LAW entered in this cause and based upon the additional evidence in aggravation and mitigation of the discipline to be imposed, the Hearing Committee of the disciplinary Hearing Commission enters the following ORDER OF DISCIPLINE:

ORDER OF DISCIPLINE

1. The Defendant is suspended from the practice of law for three (3) years. This suspension is to become effective on either October 15, 1983; thirty days after service of this ORDER upon the Defendant; or thirty days after affirmation of this ORDER on appeal, whichever event is last to occur.
2. The Defendant is to surrender his license and membership card to the Secretary-Treasurer of The North Carolina State Bar to be held for the period of suspension.
3. The Defendant is to comply with Rule 24 of the discipline and Disbarment Rules of The North Carolina State Bar as to notice to clients and the winding down of his practice. The Defendant shall not engage in the unauthorized practice of law during the period of suspension.
4. The Defendant is taxed with the costs of this proceeding.

This the 17<sup>th</sup> day of October, 1983.

Frank B. Wyatt  
Frank B. Wyatt, Chairman

George Ward Hendon  
George Ward Hendon

Alice W. Penny  
Alice W. Penny