

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
87 DHC 2

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
vs.)
CALVIN W. CHESSON,)
Defendant)

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This matter coming on to be heard and being heard on September 25, 1987 before a hearing committee of the Disciplinary Hearing Commission composed of John B. McMillan, Chairman, and L. P. Hornthal, Jr., and Donald L. Osborne, with A. Root Edmonson representing the North Carolina State Bar and Robert N. Robinson representing the defendant; and based upon the stipulations entered into by the parties and the evidence presented at the hearing, the hearing committee finds the following to be supported by clear, cogent, and convincing evidence:

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, Calvin W. Chesson, was admitted to the North Carolina State Bar on September 10, 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 Charlotte, Mecklenburg County, North Carolina.

As pertains to the First Claim for Relief set out in the Complaint, the hearing committee makes the following FINDINGS OF FACT:

4. During all times relevant to the First Claim for Relief, defendant maintained accounts at First Union National Bank (formerly Northwestern Bank), account number 0451 0910 69, and United Carolina Bank, account number 11-013-994-1, which were not designated as trust accounts.

5. Defendant represented Lillian Metzenthin in a claim for personal injuries suffered in a fall at Cafe Eugene which occurred on February 5, 1983.

6. Defendant settled the personal injury claim with Cafe Eugene's insurer, Aetna Insurance Company, receiving a draft from Aetna numbered 87507977 dated November 7, 1985 in the sum of \$20,000 which his client endorsed.

7. Defendant deposited this draft into his account at First Union National Bank (hereinafter FUNB) on November 8, 1985 along with \$13,014.12 in other funds.

8. On November 11, 1985, defendant wrote check number 1045 to Cash in the sum of \$50,238.58 on his account at FUNB which was not authorized by his client, Metzenthin.

9. When check number 1045 was paid, the proceeds from the Aetna draft constituted a portion of the funds in defendant's account from which such check was paid.

10. On December 12, 1985 after inquiries from the Metzenthin's about Ms. Metzenthin's settlement proceeds, defendant wrote check number 1064 from his account at FUNB in the sum of \$15,000.00 to Lillian Metzenthin when his balance in the FUNB account was less than \$15,000.00. This check was designated as settlement proceeds-Cafe Eugene.

11. To insure payment of checks written by him, defendant initiated a check writing scheme between his FUNB and United Carolina Bank (hereinafter UCB) accounts as hereinafter described.

12. All checks in the scheme were written payable to Calvin W. Chesson and were signed by the defendant.

13. To cover his check number 1064, defendant wrote checks 317 and 318 on his UCB account dated December 12, 1985 in the sums of \$7,250 and \$6,750 respectively, and deposited these checks with \$311.60 in other funds into his FUNB account on December 12, 1985.

14. Also on December 12, 1985, defendant wrote checks 1065 and 1066 on his FUNB account in the sums of \$7,250 and \$6,750 respectively, and deposited these into his UCB account. This deposit was credited to his UCB account prior to the previously written checks numbered 317 and 318 being presented to UCB.

15. Defendant wrote checks 323, 324, and 325 on his UCB account on December 16, 1985 for \$4,485, \$4,900, and \$4,610 respectively which he deposited into his FUNB account on that date to cover checks 1065 and 1066 previously described.

16. On December 17, 1985 defendant wrote checks 1067, 1068, and 1069 on his FUNB account in the respective sums of \$4,785, \$4,900, and \$4,820 which he deposited into his UCB account on that date to cover checks numbered 323, 324, and 325 previously described.

17. On December 18, 1985 defendant wrote checks numbered 330, 331, and 332 on his UCB account in the respective sums of \$4,775, \$4,895, and \$4,815 which he deposited into his FUNB account on that date to cover checks numbered 1067, 1068, and 1069 previously described.

18. On December 19, 1985 defendant wrote checks numbered 1070, 1071, and 1072 on his FUNB account in the respective sums of \$4,770, \$4,885, and \$4,825 which he deposited into his UCB account on that date with other funds to cover checks 330, 331, and 332 previously described.

19. On December 20, 1985 defendant wrote checks numbered 333, 334, and 335 on his UCB account in the respective sums of \$4,770, \$4,885, and \$4,825 which he deposited into his FUNB account on that date to cover checks 1070, 1071, and 1072 previously described.

20. On December 23, 1985 defendant wrote checks numbered 1073, 1074, and 1075 on his FUNB account in the respective sums of \$4,750, \$4,850, and \$4,390 which he deposited into his UCB account on that date with other funds to cover checks 333, 334, and 335 previously described.

21. On December 24, 1985 defendant wrote checks numbered 336, 337, and 338 on his UCB account in the respective sums of \$4,745, \$4,855, and \$4,385 which he deposited on that date into his FUNB account to cover checks 1073, 1074, and 1075 previously described.

22. On December 27, 1985 defendant wrote checks numbered 1076, 1077, and 1078 on his FUNB account in the respective sums of \$4,700, \$4,800, and \$4,275 which he deposited on that date into his UCB account with other funds to cover checks 336, 337, and 338 previously described.

23. On December 30, 1985 defendant wrote checks numbered 343, 344, and 345 on his UCB account in the respective sums of \$4,690, \$4,795, and \$4,265 which he deposited on that date into his FUNB account with other funds to cover checks 1076, 1077, and 1078 previously described.

24. On December 31, 1985 defendant wrote checks numbered 1079, 1080, and 1081 on his FUNB account in the respective sums of \$4,685, \$4,790, and \$4,260 which he deposited on that date into his UCB account with other funds to cover checks 343, 344, and 345 previously described.

25. On January 2, 1986 defendant wrote checks numbered 350, 351, and 352 on his UCB account in the respective sums of \$4,885, \$4,980, and \$4,805 which he deposited on that date into his FUNB account to cover checks 1079, 1080, and 1081 previously described.

26. On January 3, 1986 defendant wrote checks numbered 1082, 1083, and 1084 on his FUNB account in the respective sums of \$5,885, \$4,975, and \$4,090 which he deposited on that date into his UCB account to cover checks 350, 351, and 352 previously described.

27. On January 6, 1986 defendant wrote checks numbered 361, 362, and 363 on his UCB account in the respective sums of \$4,880, \$4,970, and \$5,085 which he deposited on that date into his FUNB account to cover checks 1082, 1083 and 1084 previously described.

28. Also on January 6, 1986, defendant wrote check number 1085 on his FUNB account in the sum of \$1,725 for which there were insufficient funds in his account to cover. A new check kiting scheme was initiated to cover this sum.

29. On January 7, 1986 defendant wrote checks numbered 1086, 1087 and 1088 on his FUNB account in the respective sums of \$4,875, \$4,980, and \$5,330 which he deposited into his account at UCB on that date to cover checks 361, 362, and 363 previously described.

30. Also on January 7, 1986, defendant wrote check number 364 on his UCB account in the sum of \$600 for which there were insufficient funds in his account to cover.

31. Also on January 7, 1986, defendant wrote check number 366 on his UCB account in the sum of \$1730 which he deposited into his account at FUNB on that date to cover check number 1085 previously described.

32. On January 8, 1986, defendant wrote checks numbered 367, 368, and 369 in the respective sums of \$5,875, \$4,975, and \$5,325 which he deposited into his account at FUNB on that date to cover checks 1086, 1087, and 1088 previously described.

33. Also on January 8, 1986, defendant wrote check number 1089 on his FUNB account in the sum of \$1750 which he deposited into his account at UCB on that date to cover check number 366 previously described.

34. Also on January 8, 1986, defendant wrote check number 1090 on his FUNB account in the sum of \$600 which he deposited into his UCB account on that date to cover check number 364 previously described.

35. On January 9, 1986 defendant wrote checks numbered 1091, 1092, and 1093 on his FUNB account in the respective sums of \$5,870, \$4,970, and \$5,325 which he deposited with other funds into his UCB account on that date to cover checks 367, 368, and 369 previously described.

36. Also on January 9, 1986 defendant wrote check number 371 on his UCB account in the sum of \$2,300 which he deposited with other funds into his FUNB account to cover checks 1089 and 1090 previously described.

37. On January 10, 1986 defendant wrote checks numbered 372, 373, and 375 on his UCB account in the respective sums of \$5,865, \$4,965, and \$5,320 which he deposited into his FUNB account on that date to cover checks 1091, 1092, and 1093 previously described.

38. Also on January 10, 1986, defendant wrote checks numbered 1094, 1095, and 1096 on his FUNB account in the respective sums of \$750, \$785, and \$765 which he deposited individually into his UCB account on that date to cover check 371 previously described.

39. On January 13, 1986 defendant wrote checks numbered 1097, 1098, and 1099 on his FUNB account in the respective sums of \$5,855, \$4,970, and \$5,325 which he deposited into his UCB account on that date to cover checks 372, 373, and 375 previously described.

40. Also on January 13, 1986 defendant wrote check number 377 on his UCB account in the sum of \$2,300 which he deposited into his FUNB account on that date to cover checks 1094, 1095, and 1096 previously described.

41. On January 14, 1986 defendant wrote checks numbered 379, 380, and 381 on his UCB account in the respective sums of \$5,850, \$4,975, and \$5,320 which he deposited into his FUNB account on that date to cover checks 1097, 1098, and 1099 previously described.

42. Also on January 14, 1986, defendant wrote check number 1100 on his FUNB account in the sum of \$2,700 which he deposited into his UCB account on that date to cover check 377 previously described.

43. On January 15, 1986 defendant wrote checks numbered 1101, 1102, and 1103 on his FUNB account in the respective sums of \$5,870, \$4,980, and \$5,820 which he deposited into his UCB

account on that date to cover checks 379, 380, and 381 previously described.

44. Also on January 15, 1986, defendant wrote check number 383 on his UCB account in the sum of \$2,695 which he deposited into his FUNB account on that date to cover check 1100 previously described.

45. On January 16, 1986, UCB returned checks numbered 379, 380, and 381 in the total sum of \$16,145.00 to FUNB stamped NSF even though they gave defendant's account credit for the \$16,670 deposit made that day from the deposit of checks 1101, 1102, and 1103. A fourth check was also returned by UCB for insufficient funds on that date from defendant's account.

46. On January 16, 1986, UCB also returned check 383 to FUNB for insufficient funds.

47. On January 17, 1986 upon receiving checks numbered 379, 380, and 381 which were returned to FUNB by UCB for insufficient funds, FUNB returned checks numbered 1100, 1101, 1102, and 1103, to UCB as uncollected funds.

48. On January 20, 1986 UCB returned checks numbered 385, 386, and 387 to FUNB.

49. Also on January 20, 1986, FUNB returned checks numbered 1104, 1105, and 1106 to UCB for insufficient funds.

50. As a net result of all the checks returned, defendant's account at FUNB was overdrawn by a sum in excess of \$18,700.

51. Defendant paid and reimbursed FUNB for the overdraft by deposit to his account of certified funds in the amount of \$18,721.33.

Based upon the FINDINGS OF FACT pertaining to the First Claim for Relief as set out in the Complaint, the hearing committee makes the following CONCLUSIONS OF LAW:

The conduct of the defendant, as set forth in paragraphs 4 through 51 constitutes grounds for discipline pursuant to N. C. Gen. Stat. §84-28(b)(2) in that the defendant violated the Rules of Professional Conduct as follows:

- (a) By (1) placing the proceeds of the settlement draft in his account which constituted a portion of the funds in his account to pay check number 1045, (2) having checks returned for insufficient funds on his accounts at FUNB and UCB, particularly checks numbered 1064 and 1085 from his FUNB account and check number 364 on his UCB account, and (3) engaging in check writing scheme to insure payment of checks written by him, the

defendant engaged in acts that reflect adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in violation of Rule 1.2(B) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 1.2(C).

- (b) By failing to promptly pay Ms. Metzenthin her share of the settlement proceeds, defendant failed to promptly pay to the client funds belonging to the client in violation of Rule 10.2(E).
- (c) By disbursing settlement proceeds out of an office account rather than a trust account, defendant failed to preserve the identity of funds of a client separately from the lawyer's property deposited in a trust account in violation of Rule 10.1(A) and (C).

As pertains to the Second Claim for Relief as set out in the Complaint, the hearing committee makes the following FINDINGS OF FACT:

52. Defendant represented Charles and Elizabeth Crain in the purchase of a house from Thomas E. and Pamela C. Arthur. Defendant undertook to do all the necessary tasks of an attorney in a real estate closing, including disbursing all of the funds at closing.

53. The Arthur/Crain closing was conducted by defendant on August 1, 1986. At that closing, defendant received \$89,469.97 which was to be disbursed in accordance with the closing statement defendant prepared for the closing.

54. On August 1, 1986, defendant deposited the \$89,469.97 into an account at Security Bank, account number 140257589201, which was not a trust account.

55. Defendant did not pay either the first mortgage loan to Wachovia in the sum of \$16,139.98 or the Arthur's Line One Equity Account at NCNB in the sum of \$36,303.77 until September 15, 1986.

56. Defendant's account at Security Bank dropped below the amount necessary to pay the mortgage balances as early as August 11, 1986.

57. Defendant wrote himself a check in the sum of \$35,000 on July 25, 1986 which was returned for insufficient funds when first presented for payment on July 28, 1986, but was paid when again presented on August 4, 1986.

58. Defendant wrote check number 0140 on July 30, 1986 on his account at Security Bank in the sum of \$17,854.09 to Wachovia

Mortgage. This check was not authorized by the Johns or Grains.

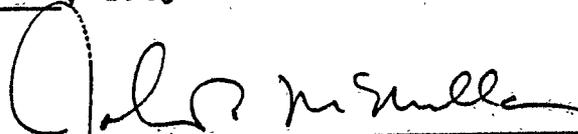
59. Funds held to make disbursements in the Arthur/Crain closing constituted a portion of the funds in defendant's account from which check number 0140 was paid.

Based upon the FINDINGS OF FACT to the Second Claim for Relief as set out in the Complaint, the hearing committee makes the following CONCLUSIONS OF LAW:

The conduct of the Defendant, as set forth in paragraphs 52 through 59 above, constitutes grounds for discipline pursuant to N. C. Gen. Stat. §84-28(b)(2) in that the defendant violated the Rules of Professional Conduct as follows:

- (a) By having funds from the Arthur/Crain closing in his account which constituted a portion of the funds used to pay check number 0140, defendant engaged in an act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in violation of Rule 1.2(B) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 1.2(C).
- (b) By failing to maintain the \$89,469.97 in closing funds in a trust account, defendant failed to preserve the funds of a client separately from the lawyer's property in a trust account in violation of Rule 10.1(A) and (C).
- (c) By failing to promptly pay off the Arthur's first and second mortgage loans after closing, the defendant failed to promptly pay or deliver to third persons as directed by the client the funds in the possession of the lawyer in violation of Rule 10.2(E).

Signed by the undersigned Chairman with the full accord and consent of the other members of the hearing committee this the 5th day of July, 1988.



John B. McMillan, Chairman

Mortgage. This check was not authorized by the Johns or Crains.

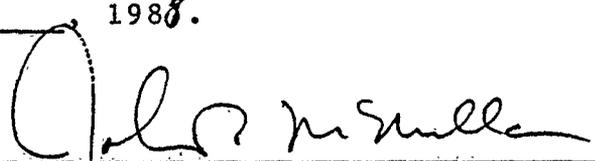
59. Funds held to make disbursements in the Arthur/Crain closing constituted a portion of the funds in defendant's account from which check number 0140 was paid.

Based upon the FINDINGS OF FACT to the Second Claim for Relief as set out in the Complaint, the hearing committee makes the following CONCLUSIONS OF LAW:

The conduct of the Defendant, as set forth in paragraphs 52 through 59 above, constitutes grounds for discipline pursuant to N. C. Gen. Stat. §84-28(b)(2) in that the defendant violated the Rules of Professional Conduct as follows:

- (a) By having funds from the Arthur/Crain closing in his account which constituted a portion of the funds used to pay check number 0140, defendant engaged in an act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in violation of Rule 1.2(B) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 1.2(C).
- (b) By failing to maintain the \$89,469.97 in closing funds in a trust account, defendant failed to preserve the funds of a client separately from the lawyer's property in a trust account in violation of Rule 10.1(A) and (C).
- (c) By failing to promptly pay off the Arthur's first and second mortgage loans after closing, the defendant failed to promptly pay or deliver to third persons as directed by the client the funds in the possession of the lawyer in violation of Rule 10.2(E).

Signed by the undersigned Chairman with the full accord and consent of the other members of the hearing committee this the 5th day of July, 1988.



John B. McMillan, Chairman

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
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NORTH CAROLINA STATE BAR
87 DHC 2

THE NORTH CAROLINA STATE BAR,)
Plaintiff)

vs.)

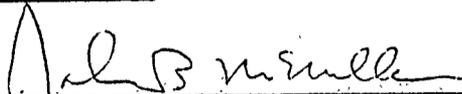
CALVIN W. CHESSON,)
Defendant)

ORDER OF DISCIPLINE

This matter coming on to be heard and being heard on September 25, 1987 before a hearing committee composed of John B. McMillan, Chairman, L. P. Hornthal, Jr., and Donald L. Osborne; and based upon the FINDINGS OF FACT and CONCLUSIONS OF LAW entered by the hearing committee of even date herewith; and further based upon the evidence and arguments presented in the second phase of the hearing, the hearing committee enters the following ORDER OF DISCIPLINE:

- 1) The defendant, Calvin W. Chesson, is hereby DISBARRED from the practice of law in North Carolina.
- 2) The defendant, Calvin W. Chesson, shall forthwith surrender his license and permanent membership card to the Secretary of the North Carolina State Bar.
- 3) The defendant, Calvin W. Chesson, shall comply with the provisions of §24 of Article IX of the Rules and Regulations of the North Carolina State Bar.
- 4) The defendant, Calvin W. Chesson, is hereby taxed with the costs of this action.

Signed by the undersigned Chairman with the full accord and consent of the other members of the hearing committee this the 5th day of July, 1988 nunc pro tunc to the 25th day of September, 1987.



John B. McMillan, Chairman.