

NORTH CAROLINA  
WAKE COUNTY

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
88 DHC 16

THE NORTH CAROLINA STATE BAR, )  
 )  
 Plaintiff )  
 )  
 vs. )  
 )  
 GEORGE W. BROWN, )  
 )  
 Defendant )

ORDER OF DISCIPLINE

THIS CAUSE was heard by a hearing committee of the Disciplinary Hearing Commission consisting of John B. McMillan, Chairman, Fred Folger, Jr. and Sam L. Beam on Thursday, December 15, 1988. The plaintiff was represented by Carolin Bakewell and the defendant was represented Joseph B. Cheshire, V. In addition to the findings of fact previously made, the committee makes the following additional:

FINDINGS OF FACT

1. During the time defendant committed the acts of misconduct found in this case, he was addicted to cocaine.
2. Defendant's cocaine addiction was a significant factor in causing defendant to commit the acts of misconduct previously found.
3. From August 8, 1988 through September 8, 1988, defendant participated in the inpatient program at the CHAPS Koala Center in Durham, North Carolina and has participated in the continuing care treatment program of that center since his discharge.
4. Defendant regularly attends NA and AA meetings.
5. Subsequent to the institution of these charges, the money which had been misappropriated by defendant was repaid.
6. On May 3, 1988, Joseph B. Cheshire, Jr., Chairman of the Grievance Committee of the North Carolina State Bar issued a private reprimand to the defendant for misconduct.
7. At its regular quarterly meeting on October 22, 1986, the Grievance Committee of the North Carolina State Bar authorized the issuance of a public censure against the defendant for prior misconduct which public censure subsequently issued by Joseph B. Cheshire, Jr.
8. The defendant voluntarily stopped practicing law on July 1, 1988.

BASED UPON THE FINDINGS OF FACT AND CONCLUSIONS OF LAW entered in this cause, the evidence presented relative to the appropriate disciplinary sanction, the hearing committee enters this Order of Discipline:

1. The defendant George W. Brown, Sr. is hereby disbarred from the practice of law in North Carolina.

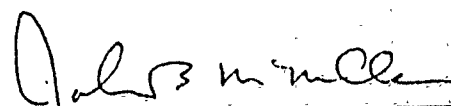
2. The defendant George W. Brown, Sr. shall forthwith surrender his license and permanent membership to the Secretary of the North Carolina State Bar.

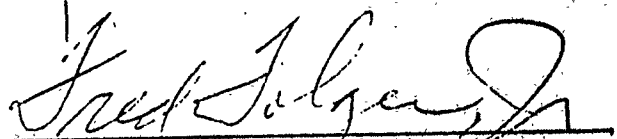
3. The defendant George W. Brown, Sr. shall comply with the provisions of Section 24 of Article IX of the Rules and Regulations of the North Carolina State Bar.

4. The defendant George W. Brown, Sr. is hereby taxed with the costs of this action.

5. The effective date of this disbarment shall be the date George W. Brown, Sr. voluntarily ceased practicing law, to wit July 1, 1988.

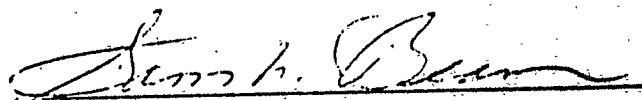
This the 11<sup>th</sup> day of January, 1989.

  
\_\_\_\_\_  
John B. McMillan, Chairman

  
\_\_\_\_\_  
Fred Folger, Jr.

DISSENT:

Although I concur with the Findings and Conclusions as found and concluded by the other members of the panel, I believe that a more appropriate discipline in this case would be a three year suspension and for that reason I dissent from the decision to disbar the defendant.

  
\_\_\_\_\_  
Sam L. Beam

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FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

THIS CAUSE was heard by a hearing committee of the Disciplinary Hearing Commission consisting of John B. McMillan, Chairman, Fred Folger, Jr. and Sam L. Beam on Thursday, December 15, 1988. The plaintiff was represented by Carolin Bakewell and the defendant was represented by Joseph B. Cheshire, V. Based upon the admissions contained in the pleadings and the stipulations of the parties, 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, George W. Brown, Sr. (hereafter Brown) was admitted to the North Carolina State Bar in 1975 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 Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During all of the periods referred to herein, Brown 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.

CLAIMS INVOLVING GENNETT LANGSTON

4. In January, 1987, Brown undertook to represent Gennett Langston (hereafter Langston) respecting property damage and personal injury Langston suffered in an automobile accident on January 15, 1987.

5. In 1987, Brown received a total of \$8,220.00 in settlement of Ms. Langston's claims.

6. Brown disbursed \$3,978.51 of the total settlement to Ms. Langston.

7. Brown retained \$2,399.99 of the settlement as his legal fees.

8. Ms. Langston directed Brown to pay the remaining \$1,841.50 to the following medical care providers in the following amounts:

(A) Duke Medical Center	- \$687.00
(B) Dr. James R. Brown	- \$710.00
(C) Dr. James E. Thomas	- \$180.00
(D) Duke Patient Diagnostic Center	- \$154.50
(E) Durham Ambulance Service	- \$110.00

9. As of July 13, 1987, Brown had paid Drs. Thomas and Brown in full.

10. After paying Drs. Brown and Thomas, Brown should have retained \$951.50 in his trust account on Ms. Langston's behalf.

11. Despite Ms. Langston's instructions prior to the filing of the Complaint in this proceeding, Brown had not paid Duke Medical Center, Duke Patient Diagnostic Center or Durham Ambulance Service, but instead had misappropriated said funds and converted them to his own use.

12. Included in the \$8,220.00 received by Brown on behalf of Ms. Langston was a check for \$1,000.00 in payment of Ms. Langston's med-pay claim.

13. Although the med-pay claim was not contested, Brown retained one-third of the \$1,000.00 med-pay claim as his attorney fee.

14. Brown has failed to maintain the following records pertaining to his representation of Ms. Langston:

- (A) a deposit slip for the \$6,200.00 settlement check received from Nationwide Mutual Insurance Company on Ms. Langston's behalf;
- (B) trust account statements from NCNB for August, September, November and December, 1987 and January-March, 1988 and May, 1988; and
- (C) a file or ledger stating accurately the current balance of funds held in Brown's trust account for Ms. Langston.

15. On March 14, 1988, Brown was served with a Letter of Notice from the Chairman of the Grievance Committee concerning Brown's representation of Ms. Langston. Brown failed to respond to the Letter of Notice.

16. On May 27, 1988, Brown was served with a subpoena ordering him to appear and produce his files relating to Ms. Langston. Brown failed to appear and produce the records as directed by the subpoena.

17. In 1985, Brown undertook to represent Wesley B. Allen respecting injuries Allen suffered in an automobile accident on February 7, 1985.

18. In May, 1987, Brown received a \$5,500.00 check from State Farm Mutual Automobile Insurance Company in settlement of Allen's claim.

19. In May, 1987, Brown disbursed \$1,500.00 of the proceeds to Allen and paid himself an attorney fee of \$2,500.00.

CLAIMS RELATING TO WESLEY B. ALLEN

20. Allen directed Brown to pay the remaining \$1,500.00 to Dr. Edward H. Washington, Jr. for chiropractic services provided by Washington to Allen.

21. At the time of the filing of the Complaint in this action, Brown had not paid any portion of the \$1,500.00 to Dr. Washington, despite repeated requests for payment by Dr. Washington and despite Allen's directions Brown misappropriated said funds and converted them to his own use.

22. Brown has failed to maintain the following records pertaining to his representation of Allen:

- (A) a copy of the deposit slip for the \$5,500.00 settlement check received from State Farm Mutual Insurance Company on Allen's behalf; and
- (B) a file or ledger stating accurately the current balance of funds held in Brown's trust account for Allen.

23. On May 9, 1988, Brown was served with a Letter of Notice from the Chairman of the Grievance Committee relating to his representation of Wesley B. Allen. Brown has not responded to the Letter of Notice.

CLAIM RELATING TO LINDA LYONS

24. In 1986, Brown undertook to represent Linda Lyons respecting an automobile accident in which Ms. Lyons was involved.

25. In March, 1987, Brown received \$2,550.00 in settlement of Ms. Lyons' claims.

26. Ms. Lyons agreed to pay Brown one-third of her recovery in payment of Brown's attorney fees and instructed him to pay health care providers.

27. On March 9, 1987, Brown disbursed \$1,000.00 of the \$2,550.00 settlement to himself and \$752.00 to Ms. Lyons.

28. On March 12, 1987, Brown disbursed \$778.00 to Dr. James Brown, who had rendered health care services to Ms. Lyons.

29. Brown has failed to remit the remaining \$20.00 to Ms. Lyons but has misappropriated it and converted it to his own use.

CLAIM RELATING TO CHREATTA TURNER

30. In 1986, Brown undertook to represent Chreatta Turner respecting an automobile accident in which Ms. Turner had been involved.

31. In April, 1986, Brown received \$5,500.00 in settlement of Ms. Turner's claims.

32. Ms. Turner agreed to pay Brown one-third of the recovery as his attorney fee.

33. On April 24, 1987, Brown disbursed \$1,800.00 to himself and disbursed \$2,920.07 to Ms. Turner.

34. Brown has failed to remit the remaining \$779.93 to Ms. Turner but has misappropriated said funds and converted them to his own use.

CLAIM RELATING TO NORMAN HANNER

35. In 1987, Brown undertook to represent Norman Hanner respecting an automobile accident in which Hanner had been involved.

36. Brown received \$7,500.00 in settlement of Hanner's claims, of which sum \$2,000.00 was in payment of Hanner's undisputed med-pay claim.

37. Hanner agreed to pay Brown one-third of the recovery as Brown's attorney fee and instructed Brown to pay various health care providers.

38. Brown disbursed \$3,154.84 to Hanner in June and July, 1987 and paid himself \$2,500.00.

39. Despite Hanner's instructions, Brown failed to pay any health care providers, but has misappropriated said funds and converted them to his own use.

CLAIM RELATING TO BURNELL JONES

40. In 1987, Brown undertook to represent Burnell Jones respecting an automobile accident in which Jones was involved.

41. On July 27, 1987, Brown received \$1,503.00 in settlement of Jones' med-pay claims.

42. Brown retained one-third of the med-pay check as his attorney fee and disbursed the remaining \$1,003.00 to Jones on July 29, 1987.

43. The med-pay claim was not contested.

CLAIM RELATING TO RAUL STUART

44. In 1987, Brown undertook to represent Raul Stuart respecting an automobile accident in which Stuart was involved.

45. Stuart authorized Brown to retain one-third of the recovery as Brown's attorney fee.

46. On September 21, 1987, Brown received \$4,125.00 in payment of Stuart's claim.

47. Brown disbursed \$1,391.67 to himself and \$1,332.33 to Stuart on September 21, 1987.

48. Brown misappropriated and converted to his own use the remaining \$1,401.00.

CLAIM RELATING TO KAREN CATES

49. In 1987, Brown undertook to represent Karen Cates respecting an automobile accident in which Ms. Cates was involved.

50. Ms. Cates authorized Brown to retain one-third of the recovery as his attorney fee.

51. On November 11, 1987, Brown received \$2,850.00 in settlement of Ms. Cates' claim.

52. Brown disbursed \$1,300.00 to himself in payment of his attorney's fees and \$1,088.00 to Ms. Cates.

53. Brown misappropriated and converted to his own use the remaining \$462.00.

CLAIM RELATING TO PERRY AND MARY FOX

54. In 1988, Brown undertook to represent Perry and Mary Fox in connection with an automobile accident.

55. The Foxes agreed to pay Brown one-third of the total recovery in payment of Brown's attorney fee.

56. On Mary 30, 1988, Brown received \$7,000.00 in settlement of the Foxes claim.

57. Brown disbursed \$2,233.32 to himself in payment of his attorney fee, \$2,373.68 to the Foxes and \$1,764.00 to Dr. E. L. Brown, who had provided health care to the Foxes.

58. Brown misappropriated and converted to his own use the remaining \$264.00.

CLAIM RELATING TO BROWN'S PRIOR SUSPENSION

59. On November 2, 1987, Brown was suspended from the practice of law by the North Carolina State Bar, for failure to pay his annual dues to the North Carolina State Bar. Brown was notified of the order of suspension and has not been reinstated.

60. Brown engaged in activity constituting the practice of law following November 2, 1987.

BASED UPON THE FOREGOING FINDINGS OF FACT, the committee makes the following Conclusions of Law:

1. By misappropriating client funds, Brown committed criminal acts that reflect adversely on his honesty, trustworthiness and fitness as a lawyer in other respects, in violation of Rule 1.2(B), and has engaged in conduct

involving dishonesty, fraud, deceit and misrepresentation in violation of Rule 1.2(C).

2. By failing to pay his clients' medical bills as directed, Brown has failed to promptly pay or deliver to the clients or to third persons funds belonging to the clients to which the clients were entitled in the possession of the lawyer, in violation of Rule 10.1(E).

3. By charging contingent fees for collecting undisputed medical pay claims, Brown has charged a clearly excessive fee, in violation of Rule 2.6(A).

4. Brown has failed to maintain the minimum records of funds received and disbursed, in violation of Rules 10.1(B) and 10.2(C).

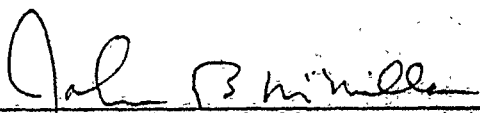
5. Brown practiced law while his license was suspended by the North Carolina State Bar and engaged in the practice of law in violation of the regulations of the North Carolina State Bar, contrary to Rule 3.1(B).

6. By charging a contingent fee for collecting undisputed medical pay claims, Brown charged clearly excessive fees in violation of Rule 2.6(A).

7. Grounds for discipline exist pursuant to N. C. Gen. Stat. 84-28(b)(3) in that Brown failed to answer a formal inquiry of the North Carolina State Bar in a disciplinary matter.

8. Grounds for discipline exist pursuant to N. C. Gen. Stat. 84-28(b)(3) in that Brown practiced law in violation of an order of the North Carolina State Bar and is in contempt of the North Carolina State Bar.

Signed by the undersigned Chairman with the full accord and consent of the other members of the hearing committee. This the 11<sup>th</sup> day of January, 1989.

  
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John B. McMillan, Chairman