

NORTH CAROLINA

WAKE COUNTY

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

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
vs.)
FRED W. HARRISON, ATTORNEY,)
Defendant)

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This matter being before the hearing committee of the Disciplinary Hearing Commission composed of John B. McMillan, Chairman, Fred Folger, Jr. and Harry Sherwood by consent of the parties to an order of discipline; with the North Carolina State Bar being represented by A. Root Edmonson and Fred W. Harrison being represented by Robert D. Rouse, Jr.; and based upon the pleadings in this matter and the consent of the parties, the hearing committee makes the following findings 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, Fred W. Harrison, was admitted to the North Carolina State Bar on September 10, 1956, 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, 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 Kinston, Lenoir County, North Carolina.
4. In January, 1983, Defendant and Leland M. Heath, Jr. became partners in the practice of law in Kinston, North Carolina.
5. In June, 1986, Defendant's partner, Leland M. Heath, Jr., advised Defendant that he had misappropriated funds from the firm's trust account and the account did not have sufficient

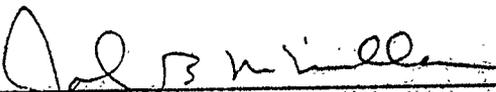
funds to make disbursements in a closing Heath indicated he was doing for a client named Snyder.

6. Defendant knew that Heath's misappropriation was a violation of the Rules of Professional Conduct that raised a substantial question as to Heath's honesty, trustworthiness, and fitness as a lawyer in other respects.
7. On or about June 5, 1986, Defendant personally borrowed \$35,000 from Wachovia Bank and Trust Company to cover the necessary disbursements in the Snyder closing.
8.
 - a. From June of 1986 until about June of 1987, Defendant paid the interest on the \$35,000 loan to Wachovia Bank and Trust Company and charged the interest against Leland M. Heath, Jr.'s drawing account with the firm of Harrison and Heath, a partnership.
 - b. From June of 1987 until March of 1988 or until the time that Leland M. Heath, Jr. left the firm, Defendant made the regular monthly payments due on said \$35,000.00 loan and charged the same against the drawing account of Leland M. Heath, Jr. with the firm of Harrison and Heath, a partnership.
 - c. From March of 1988 through September 30, 1988, Defendant paid the monthly payments on said note and charged the same against the interest of Leland M. Heath, Jr. in the firm of Harrison and Heath, a partnership.
 - d. On September 30, 1988 Leland M. Heath, Jr. had to his credit in the Harrison and Heath firm's books the sum of \$310.00. Defendant applied that sum against the payment of \$382.67 and personally paid the difference.
 - e. On October 28, 1988 and December 6, 1988 the Defendant personally paid a payment of \$382.67 and on March 2, 1989 Defendant paid the balance of the note in the sum of \$34,302.22.
 - f. Leland M. Heath, Jr. has never made regular payments on this loan. The regular payments were charged to him. However, in April of 1988, after having been out of the firm for approximately one month, he did deliver to Defendant \$1,000.00 in cash and that has been the only payment that Heath has made personally.
9. Defendant failed to report Heath's misappropriation to the North Carolina State Bar or any other appropriate authority prior to inquiries first being made of him in April 1988 by the District Attorney for the Eighth Judicial District which covers Kinston, North Carolina.
10. Defendant subsequently cooperated in the North Carolina State Bar's investigation of Heath.
11. Other than the Defendant's personal loss, no individual suffered any financial loss by virtue of the Defendant's failure to report to the North Carolina State Bar.

CONCLUSIONS OF LAW

Defendant's conduct, as set forth above, is grounds for discipline pursuant to N.C. Gen. Stat. Sec. 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct by having knowledge that another lawyer had committed a violation of the Rules of Professional Conduct that raised a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects and failing to inform the North Carolina State Bar or other appropriate authority in violation of Rule 1.3(A).

Signed by the undersigned chairman with the full knowledge and consent of the other members of the hearing committee this the 15th day of June, 1989.



John B. McMillan, Chairman
Disciplinary Hearing Committee

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CONSENT
ORDER OF DISCIPLINE

Based upon the Findings of Fact and Conclusions of Law of even date herewith, and with the consent of the parties, the hearing committee finds the following:

PRELIMINARY STATEMENT

A lawyer's failure to report another lawyer's misappropriation of trust funds of which the lawyer has unprivileged knowledge constitutes misconduct and grounds for suspension. This is due to the risk to the public that a lawyer who has engaged in misappropriation may do so again if prompt action is not taken to prevent subsequent misappropriation. This should serve as notice to the lawyers of North Carolina of their duty to report found in Rule 1.3(A) and the possible consequences of failing to make such a report.

FINDINGS OF MITIGATION

The hearing committee finds the following mitigating factors as they apply to this matter:

1. No lawyer has previously been prosecuted for violation of Rule 1.3(A).
2. Fred W. Harrison regarded as real a threat made by Leland M. Heath, Jr. to commit suicide at the time of Heath's disclosure to Fred W. Harrison of his misappropriation.
3. Fred W. Harrison paid \$35,000 of his personal funds to protect the client (Snyder) from Heath's misappropriation.
4. Fred W. Harrison has not been reimbursed by Heath for a substantial portion of the money Fred W. Harrison paid to protect the client from Heath's misappropriation.
5. Fred W. Harrison was not motivated by personal gain in failing to report Heath to the North Carolina State Bar.
6. Fred W. Harrison has no prior disciplinary record.

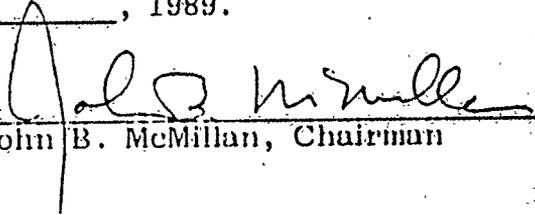
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7. Fred W. Harrison fully cooperated with the North Carolina State Bar during the Bar's investigation of Heath and during the State Bar's investigation in this matter.
8. Fred W. Harrison's character and reputation in his community is excellent.
9. Other than the Defendant's personal loss, no individual suffered any financial loss by virtue of the Defendant's failure to report to the North Carolina State Bar.

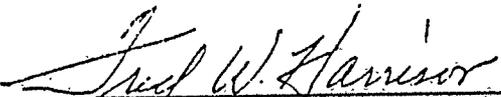
THEREFORE, the hearing committee enters the following ORDER OF DISCIPLINE:

1. The appropriate discipline to be imposed in this case is the issuance of a Private Reprimand.
2. The content of the Preliminary Statement in this order may be published by the North Carolina State Bar.
3. The costs of this action are taxed against Fred W. Harrison as assessed by the Secretary.

Signed by the undersigned Chairman with the full knowledge and consent of the other members of the hearing committee, this the 15th day of June, 1989.


John B. McMillan, Chairman

Consented to:


Fred W. Harrison


Robert D. Rouse, Jr.


A. Root Edmonson