

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
89 DHC 35

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

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

This cause was heard by a Hearing Committee of the Disciplinary Hearing Commission consisting of Robert C. Bryan, Chairman, Karen Boyle and Samuel Beam on Friday, June 15, 1990. The Defendant was represented by Robert Beason, and the Plaintiff was represented by Carolin Bakewell. Based upon the pleadings, pretrial stipulations and the evidence, the Committee makes the following:

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, (hereafter, Troy), was admitted to the North Carolina State Bar in 1962, and is, and except where otherwise stated, was at all times referred to herein, an Attorney at Law licensed to practice in North Carolina, subject to the rules, regulations, Code of Professional Responsibility and the Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During the relevant periods referred to herein, Troy was engaged in the practice of law in the State of North Carolina and maintained a law office in the city of Durham, N.C.

4. In October, 1983, Troy undertook to serve as attorney for Ronald H. Massey, the administrator of the estate of Patricia Massey Bland. Ms. Bland died in March, 1983.

5. Troy agreed to do the legal work for the estate and collect payments owed the estate by Phil McLamb. Troy did not charge a fee for this work.

6. Prior to her death, Ms. Bland sold a piece of real property to the

Church of Angels and took back a purchase money deed of trust for \$16,000. Thereafter, McLamb purchased the property and assumed payments on the purchase money deed of trust.

7. McLamb was to pay Ms. Bland \$150 per month for the land.

8. Beginning in March, 1984, McLamb remitted his payments on the purchase money deed of trust to Troy, as attorney for the administrator of the Bland estate.

9. On or about March 8, 1984, McLamb tendered a \$450 cashier's check to Troy to be applied to McLamb's debt to the Bland estate. Troy endorsed the back of the check and the check was negotiated.

10. On or about October 4, 1985, McLamb tendered to Troy a \$150 cashier's check to be applied to McLamb's debt to the Bland estate. The \$150 cashier's check was never negotiated.

11. Between March, 1984 and January 31, 1986, Troy received 20 checks totalling \$3,450 from McLamb, including the \$450 check and the \$150 check.

12. Prior to January, 1986, Troy failed to deposit any of the checks he received from McLamb in a bank account. At least some of the checks were kept in a file in Troy's office.

13. At the time he was receiving the payments from McLamb, Troy had little office help and his records were in disarray.

14. Prior to Jan. 31, 1986 Troy was absent from his office for substantial periods of time owing to his alcoholism. In late 1985 he voluntarily underwent treatment for alcoholism.

15. On or about Jan. 31, 1986, Troy opened a savings account in the name of the Bland estate at North Carolina National Bank in Durham.

16. On Jan. 31, 1986, Troy deposited \$2,850 into the NCNB account. Neither the \$450 check dated March 8, 1984 nor the \$150 check dated October 5, 1985 was deposited into the NCNB account at any time.

17. Troy failed to retain deposit slips and accurate records respecting the date and amount of receipt of funds received from McLamb and failed to retain the statements received from NCNB respecting the Bland estate account.

18. Prior to learning of the Bar's investigation concerning the March, 1984 \$450 check and the October, 1985 \$150 check, Troy provided the Masseys with an accounting of funds received from McLamb, which acknowledged that he had received both checks from McLamb.

19. The Plaintiff failed to demonstrate by clear, cogent and convincing evidence that Troy intentionally misappropriated the proceeds of either the \$450 check or the \$150 check.

20. In April, 1985, Troy's law license was suspended by the N.C. State Bar in an unrelated matter. Troy's law license was reinstated on June 1, 1986.

21. Troy did not notify Massey or the heirs of the Bland estate that his license to practice law had been suspended, nor did he withdraw as attorney for Massey.

22. Troy continued to collect payments from McLamb on behalf of Massey and the Bland estate between April 1985 and approximately June 1, 1986.

Based on the foregoing Findings of Fact, the Committee makes the following:

CONCLUSIONS OF LAW

1. By failing to place the McLamb payments into a trust account promptly upon receipt and by failing to remit all payments to the estate or its representative, Troy violated DR 9-102(A) and Rules 10.1(C) and 10.2(E).

2. By failing to maintain complete, accurate records of funds received from McLamb and all bank statements regarding the Bland estate account, Troy violated Rule 10.2.

3. By failing to notify Ronald H. Massey that his law license had been suspended and by continuing to act as Massey's attorney after April, 1985, Troy engaged in the unauthorized practice of law in violation of DR 3-101(B) and Rule 3.1(B).

4. The majority of the panel found that the Plaintiff failed to prove by clear, cogent and convincing evidence that Troy intentionally misappropriated any funds belonging to the Bland estate.

5. The panel found that the Plaintiff failed to prove by clear, cogent and convincing evidence that Troy intentionally prejudiced a client, in violation of Rule 7.1(A)(3).

Signed by the Chairman with the full knowledge and consent of all members of the Committee.

This the 30 day of July, 1990.

Robert C. Bryan

Robert C. Bryan, Chairman
For the Committee

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MICHAEL C. TROY, ATTORNEY)
Defendant)

ORDER OF DISCIPLINE

This cause was heard by the undersigned, duly appointed Hearing Committee of the Disciplinary Hearing Commission of the N.C. State Bar on Friday, June 15, 1990. Based upon the evidence presented in the trial, the prehearing stipulations and the arguments of counsel for the parties relating to discipline, the Committee enters the following:

FINDINGS OF FACT

1. The Defendant's misconduct is mitigated by the following:
 - a. The N.C. State Bar delayed in prosecuting the disciplinary charges against him for approximately three years;
 - b. The Defendant's misconduct was not motivated by selfishness or dishonesty;
 - c. The Defendant was abusing alcohol during the period in which the misconduct occurred and the Defendant's alcohol abuse was causally related to the misconduct;
 - d. The Defendant was cooperative during the investigation by the N.C. State Bar;
 - e. The Defendant has demonstrated substantial rehabilitation in the interim between the misconduct and the trial of this matter.
 - f. The Defendant has a good reputation for truth and honesty among members of the Durham bar.
2. The Defendant's misconduct is aggravated by the following factors:
 - a. The Defendant had substantial experience in the practice of law at the time of the misconduct;
 - b. The Defendant has been disciplined by the Bar on two other occasions and his license had been suspended for one year at the time some

of the misconduct herein occurred;

c. The Defendant committed multiple violations of the Rules of Professional Conduct.

3. The Defendant indicated that he does not intend to resume the active practice of law or handle client funds in the future.

Based upon the Findings of Fact and Conclusions of Law entered in this case and the evidence presented relating to the appropriate discipline, the Hearing Committee enters the following:

ORDER OF DISCIPLINE

1. The Defendant is hereby suspended from the practice of law for a period of two years, commencing 30 days after service of this order upon the Defendant;

2. Before seeking reinstatement of his license, the Defendant shall present written proof to the Secretary of the N.C. State Bar that he has complied with all continuing legal education requirements of the N.C. State Bar for the year 1988 through the date of his application for reinstatement;

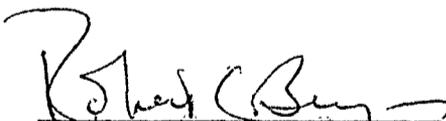
3. The Defendant shall not violate any of the Rules of Professional Conduct and laws of the State of North Carolina during the period of suspension;

4. The Defendant shall comply with all provisions of Section 24, Article IX of the Discipline & Disbarment Rules of the N.C. State Bar;

5. The Defendant shall pay the costs of this proceeding.

Signed by the Chairman with the express consent and agreement of the Committee.

This the 30 day of July, 1990.


Robert C. Bryan, Chairman
For the Committee