

NORTH CAROLINA
WAKE COUNTY

APR 91 8:15

1797

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
90 DHC 20

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

JEFFREY M. GULLER, 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, Frank E. Emory, Jr., and J. Richard Futrell on Friday, March 22, 1991. A. Root Edmonson represented the North Carolina State Bar and James R. Carpenter represented the Defendant, Jeffrey M. Guller. Based upon the pleadings, prehearing stipulations, and evidence presented at the hearing, 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, Jeffrey M. Guller, was admitted to the North Carolina State Bar on September 27, 1966, 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 Gastonia, Gaston County, North Carolina.
4. Defendant and his wife owned an office condominium at 212 E West Second Avenue (hereinafter Unit E) in Gastonia, North Carolina where his law office was located.
5. Defendant and his wife contracted to purchase the adjoining office condominium at 212 D West Second

00655

Avenue (hereinafter Unit D) from M. B. Realty Company.

6. Defendant and his wife obtained a loan from Home Federal Savings and Loan (hereinafter Home Federal) in the sum of \$142,500 to finance the purchase of Unit D and refinance Unit E. A deed of trust securing this loan was to be executed covering both parcels.
7. Prior to the closing of the Home Federal loan, Defendant asked a local attorney, Ralph C. Gingles, Jr., to sign the certificate of title to Home Federal and all other closing documents necessary for the transaction to close, as an accommodation to Defendant.
8. Implicit in Defendant's request for Gingles to sign the necessary closing documents as an accommodation to Defendant was the representation that the closing documents would be correct and that all disbursements would be made as listed in those closing documents. Based upon this representation, Defendant had a responsibility to make sure the disbursements were made.
9. On December 3, 1987, Home Federal prepared its check for \$142,500 payable to Jeffrey M. Guller and Jean H. Guller and Ralph Gingles, Attorney. This check was endorsed by all payees and, on December 4, 1987, deposited into Defendant's Real Estate Trust Account at NCNB, account number 629108527.
10. On or after December 4, 1987, a closing statement was prepared by Defendant's office which showed a payoff to NCNB in the sum of \$72,687.69 to pay off the existing mortgage on Unit E. This was presented to Ralph Gingles for his signature.
11. An opinion of title was prepared in Defendant's office showing that the existing deed of trust to NCNB on Unit E was to be cancelled of record. This opinion on title was presented to Ralph Gingles for his signature.
12. Since Defendant had solicited Gingles' accommodation in signing the closing documents, and since Defendant's office prepared the loan closing documents and received the \$142,500 in proceeds from Home Federal, Defendant had a fiduciary duty to Gingles and Home Federal to disburse the funds as listed in the closing statement. Home Federal was a "client" of Defendant's for this purpose.
13. Although Gingles was lead to believe that the loan to NCNB would be paid off from the loan proceeds and the deed of trust securing that loan would be cancelled of record, the loan was only partially paid off and the deed of trust was not cancelled.

14. Defendant's wife was employed in Defendant's office at the time of this loan and handled the disbursements of the loan proceeds.
15. While there was not clear and convincing evidence that Defendant knew that his wife had not disbursed the loan proceeds appropriately, Defendant did not make any effort to ensure that the loan proceeds were disbursed appropriately although he had a responsibility to do that as set out above.
16. Defendant, having signed the loan closing statement showing the disbursements which needed to be made and subsequently knowing that some of the funds were returned to Home Federal to be escrowed until improvements were made, such return of funds not being reflected in the closing statement, had reason to question the disbursement of funds from the loan proceeds.
17. Defendant did not seek to independently examine the disbursements.
18. The deeds of trust on the condominium property were subsequently foreclosed and the Gullers filed bankruptcy.
19. As a result, on March 7, 1990, Gingles received a letter from an attorney for Home Federal requesting that Gingles pay the \$23,998.14 balance of the NCNB loan he had certified would be cancelled of record since Home Federal had to pay off the NCNB note to protect its interests after they had initiated a foreclosure proceeding on their \$142,500 deed of trust. This is the first Gingles knew that the NCNB note had not been paid and the deed of trust cancelled of record.
20. On December 18, 1989, Defendant's wife, Jean Harper (Guller), wrote a check to Defendant in the sum of \$10,000 on her bank in Clover, South Carolina.
21. On December 20, 1989, Defendant deposited this check into his attorney account at Southern National Bank, account number 321-572060.
22. Defendant wrote checks on his attorney account at Southern National Bank which were paid from the deposit of his wife's check.
23. Defendant's wife's check was subsequently returned for insufficient funds.
24. As a result of having given Defendant credit for his December 20, 1989 deposit of \$10,000, and subsequently not getting the checks paid by Ms. Harper's Clover, South Carolina bank, Southern National Bank lost \$4,568.01.
25. At the time Defendant deposited his wife's check

into his Southern National Bank account, Defendant knew or should have known that her check was not good.

26. Defendant's wife had testified in a May 1989 deposition, in a June, 1985 disciplinary hearing and in a November, 1989 criminal sentencing hearing that she had no access to funds from a trust she was a beneficiary of in England. She testified to other efforts to get money to cover her defalcations in the matter addressed in 89 DHC 3. She also testified to having lied to various people about her handling of funds of others. Defendant was aware of all of her testimony.
27. Even though he had reason to, as set out above, Defendant made no effort to independently verify his wife's story that she had received funds from a benefactor in England by wire before writing checks to be covered by that deposit.
28. By getting his checks paid based upon credit for a deposit which he knew or should have known was made with a worthless check, Defendant obtained property under false pretenses in violation of N. C. Gen. Stat. Sec. 14-100 or obtained property in return for a worthless check, draft or order in violation of N. C. Gen. Stat. Section 14-106.
29. The claims alleged in the Third Claim for Relief in the Complaint in this matter were not pursued by the Plaintiff, and the Plaintiff failed to prove the allegations contained in the Fourth Claim for Relief by clear, cogent, and convincing evidence.

BASED UPON the foregoing Findings of Fact, the Committee makes the following:

CONCLUSIONS OF LAW

Defendant's conduct, as set out above, constitutes grounds for discipline pursuant to N. C. Gen. Stat. Section 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

- a) By failing to ensure that funds his office held in a fiduciary capacity for the purpose of paying off the existing lien on Unit E at NCNB were in fact used for that purpose, when in fact there were not, Defendant failed to preserve funds held in a fiduciary capacity in a trust account separately from the lawyer's property in violation of Rules 10.1(A) and (C); and failed to pay or deliver funds to third persons (NCNB) as directed by the client in violation of Rule 10.2(E).
- b) By asking attorney Gingles to sign the title opinion and other closing documents showing

that the loan to NCNB would be paid off as an accommodation to Defendant, thus implicitly representing that the North Carolina National Bank loan would be paid off, and not ensuring that the loan was paid off, Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C).

- c) By obtaining credit at Southern National Bank for a deposit of his wife's \$10,000 check which he knew, or should have known, was worthless, Defendant committed a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 1.2(B) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C);

Signed by the undersigned chairman with the full knowledge and consent of all of the other members of the hearing committee, this the 23 day of April, 1991.



Robert C. Bryan Chairman
Hearing Committee

[17]

00659