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APR 91 8:15

NORTH CAROLINA
WAKE COUNTY

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

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

WAYNE E. CRUMWELL, ATTORNEY
Defendant

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

THIS CAUSE was heard by a hearing committee of the Disciplinary Hearing Commission consisting of Maureen D. Murray, Chairman, Fred Folger, Jr., and Frank L. Boushee on Friday, April 12, 1991. A. Root Edmonson represented the North Carolina State Bar. Daniel C. Higgins and Lacy M. Presnell, III represented the Defendant, Wayne E. Crumwell. 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, Wayne E. Crumwell, was admitted to the North Carolina State Bar on September 13, 1976, 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, Code of Professional Responsibility or 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 Reidsville, Rockingham County, North Carolina.
4. Beginning before 1983, Defendant began to commingle funds from his insurance and investment businesses with his clients' funds in his trust account.
5. Defendant also commingled personal funds with his

clients' funds in his trust account.

6. Defendant's commingling of personal and business funds with clients' funds in his trust account became more extensive in 1984 after Defendant declared personal bankruptcy.
7. Defendant's commingling of personal and business funds with funds of clients continued at least into 1989.
8. During the time the commingling occurred, Defendant failed to keep adequate records of clients' funds in his possession.
9. Defendant relied on his secretary to advise him when he had no further personal and business funds in his trust account. He also relied on her to make appropriate disbursements from this trust account after he directed her to do so.
10. In November, 1983, Defendant conducted a real estate closing for Jim H. Smith and wife, Nellie C. Smith.
11. On or about November 29, 1983, Defendant deposited \$21,636.74 into his trust account at First Citizens Bank, account number 2662583481, from which to make the disbursements on behalf of the Smiths. First Citizens Bank credited the deposit on November 30, 1983.
12. Rockingham County property taxes were due on the property being purchased by the Smiths for tax years 1979 through 1982. The tax owed for those years totalled \$1,407.68, plus interest.
13. Defendant received funds from the Smiths at closing which included \$1,648.81 for payment of the taxes. Those funds were included in the total deposit made into the trust account for the Smiths.
14. The Smiths directed Defendant to pay the taxes.
15. Defendant failed to pay the property taxes to the Rockingham County tax office for the Smiths prior to being contacted by the Smiths in May 1989.
16. Defendant was unaware that the Smith's property taxes had not been paid by his secretary or that they had not been retained in the trust account.
17. On January 27, 1984, Defendant conducted a real estate closing for Rev. Allandus Wright, and his wife, who were purchasing property from Leonard Southard.
18. On that date, Defendant deposited \$1,000 in escrow

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money received at closing from the realtor, \$4,945.02 received from Rev. Wright, and \$59,700 in loan proceeds from Heritage Federal Savings and Loan into his trust account maintained at First-Citizens Bank, account number 2662583481.

19. Disbursements to be made from the money deposited into the trust account included \$5,900 to satisfy federal tax liens assessed against the seller. Defendant was directed by his clients to make all appropriate disbursements, including the money due the Internal Revenue Service.
20. Defendant failed to pay the \$5,900 to the Internal Revenue Service for the Southard tax liens until December 10, 1986.
21. Defendant was unaware that the tax lien had not been paid by his secretary or that it had not been retained in the trust account.
22. Defendant represented George L. Broadnax in a personal injury claim arising out of an accident that occurred on February 27, 1986.
23. The Broadnax case was settled on or about August 29, 1986 for \$14,000. Defendant deposited the settlement check into his trust account at First Citizens Bank, account number 2662583481.
24. Defendant withheld \$558 of the settlement proceeds to pay Broadnax's medical providers.
25. Defendant was directed by his client, Broadnax, to pay those medical providers.
26. Defendant failed to pay the medical providers until June of 1990.
27. Defendant was unaware that Broadnax's medical providers had not been paid by his secretary or that it was not retained in the trust account.

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 commingling business and personal funds with funds of clients in his trust account, Defendant violated DR9-102(A) of the Code of Professional Responsibility (for conduct

occurring prior to October 7, 1985) and Rules 10.1(A) and (C) of the Rules of Professional Conduct (for conduct occurring on or after October 7, 1985.)

- b) By failing to maintain complete records of all funds of clients coming into his possession, Defendant violated DR9-102(B)(3) of the Code of Professional Responsibility (for conduct occurring prior to October 7, 1985) and Rule 10.2(B) of the Rules of Professional Conduct (for conduct occurring on or after October 7, 1985.)
- c) By failing to keep the funds held for the Smiths in a fiduciary capacity segregated from Defendant's funds in a trust account, Defendant failed to preserve funds of a client paid to the lawyer in a trust account in violation of DR9-102(A).
- d) By failing to pay the Smiths' property taxes as directed by the Smiths within a reasonable time after the closing conducted on November 29, 1983, Defendant neglected a legal matter entrusted to him in violation of DR6-101(A)(3);
- e) By failing to keep funds he held in a fiduciary capacity to pay to the IRS for the tax lien segregated from Defendant's funds in a trust account, Defendant failed to preserve funds of a client paid to the lawyer in a trust account in violation of DR9-102(A).
- f) By failing to pay the Southard federal tax lien as directed by his clients, the Wrights, within a reasonable time after the closing conducted on January 27, 1984, Defendant neglected a legal matter entrusted to him in violation of DR6-101(A)(3);
- g) By failing to keep the funds he held for Broadnax in a fiduciary capacity segregated from Defendant's funds in a trust account, Defendant failed to preserve property he had received in a fiduciary capacity preserved in a trust account in violation of Rule 10.1(C).
- h) By failing to pay Broadnax's medical providers within a reasonable time after the settlement on or about August 29, 1986, Defendant failed to act with reasonable diligence and promptness in representing his client in violation of Rule 6(B)(3).
- i) The other violations alleged in the Complaint are dismissed.

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Signed by the chairman with the express consent of all members of the Disciplinary Hearing Committee.

This the 24th day of April, 1991.

Maureen D. Murray
Maureen D. Murray, Chairman
Hearing Committee

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THE NORTH CAROLINA STATE BAR,
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vs.

WAYNE E. CRUMWELL, ATTORNEY
Defendant

ORDER OF DISCIPLINE

BASED UPON the Findings of Fact and Conclusions of Law entered of even date herewith, and based upon the evidence presented in the first phase of this hearing and the arguments of counsel, the hearing committee finds the following:

AGGRAVATING FACTORS

1. Defendant was guilty of multiple offenses in this matter.
2. There was a pattern of commingling that Defendant was aware of which led to the other offenses.

MITIGATING FACTORS

1. Defendant has no prior disciplinary record.
2. Defendant made a timely good faith effort to make restitution or rectify the consequences of his misconduct.
3. Defendant made a full and free disclosure to the North Carolina State Bar and had a cooperative attitude toward these proceedings.
4. Defendant enjoys a good character and reputation in his community.
5. There was a lengthy delay between the time the amounts should have been disbursed until it was discovered that the funds had not been disbursed. The Smiths' taxes should have been paid in late 1983, and it was not discovered that they had not been paid until 1989. It was not discovered that the other matters had not been paid until the State Bar did its audit in 1990.

BASED UPON the foregoing findings, the hearing committee enters the following:

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ORDER OF DISCIPLINE

1. The Defendant, Wayne E. Crumwell, is suspended from the practice of law in North Carolina for a period of three years.
2. The suspension is stayed for a period of three years on the following conditions:
 - a) Defendant is not to violate the Rules of Professional Conduct.
 - b) Defendant is to employ a CPA to propose procedures for the proper handling of clients' funds which must be submitted to the North Carolina State Bar for its approval by July 1, 1991.
 - c) Defendant is to employ a CPA at his own expense to audit his trust account to ensure it is being maintained in compliance with Canon X of the Rules of Professional Conduct. The CPA is to certify Defendant's compliance to the North Carolina State Bar every six months.
3. Defendant is taxed with the costs of this matter as assessed by the Secretary.

Signed with the knowledge and consent of the other members of the hearing committee, this the 24th day of April, 1991.

Maureen D. Murray
Maureen D. Murray, Chairman
Hearing Committee