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NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
92 DHC 9

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

A. J. BLAKE, ATTORNEY
Defendant

CONSENT ORDER OF
DISCIPLINE

This matter, coming before the undersigned Hearing Committee of the Disciplinary Hearing Commission pursuant to section 14(H) of Article IX of the Discipline & Disbarment Procedures of the North Carolina State Bar; and it appearing that both parties have agreed to waive a formal hearing in this matter; and it further appearing that both parties stipulate and agree to the following Findings of Fact and Conclusions of Law recited in this Consent Order and to the discipline imposed, the Hearing Committee therefore enters 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, A. J. Blake, (hereafter, Blake) was admitted to the North Carolina State Bar in 1984, 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, Blake was actively engaged in the practice of law in the State of North Carolina and maintained a law office in Hope Mills, Cumberland County, North Carolina.

4. In January 1987, Blake transferred his non interest-bearing checking account at Southern National Bank to an interest bearing account. This account was designated as Blake's "escrow account" (hereafter, SNB escrow account).

5. Beginning in January 1987, Blake used the SNB escrow account to hold funds of clients and third parties for short periods of time. Blake maintained a separate, non-interest bearing account at Southern National Bank which he designated as a trust account, to hold client funds for longer periods of time.

6. Beginning in January 1987 and continuing through October 1990, Blake periodically removed from the interest bearing SNB escrow account the interest earned on the funds therein.

7. Between January 1987 and October 1990 Blake removed a total of \$16,625.01 in interest from the SNB escrow account. Blake used the interest for his personal benefit.

8. Blake did not remit any interest earned on client funds in the SNB escrow account to the IOLTA program of the N.C. State Bar or to the persons on whose funds the interest had accumulated between January 1987 and October 1990.

9. In May 1989, Blake undertook to represent James Van Valkenburg and Candy Buford respecting injuries they received in an automobile accident in April 1989.

10. In February 1990, Blake asked Van Valkenburg to sign a formal complaint, which Blake indicated would be filed in court later that week.

11. Thereafter, Blake falsely assured Van Valkenburg and his wife that the complaint had been filed.

12. In March 1990 Blake falsely told the Van Valkenburgs that trial of the case had been delayed at the request of Nationwide Mutual Insurance Company.

13. In September 1990 Blake falsely told the Van Valkenburgs that the case was on the trial calendar, but was one of the last cases on the calendar and probably would not be reached for that reason.

14. In fact Blake never filed a formal complaint on behalf of Ms. Buford or Van Valkenburg.

15. Blake failed to take effective action to resolve the claims of Van Valkenburg or Ms. Buford.

16. Throughout 1990, Blake deposited personal funds into his SNB escrow account.

Based upon the consent of the parties and the foregoing Findings of Fact, the Committee makes the following:

CONCLUSIONS OF LAW

1. By failing to pay to persons having funds in his escrow account or, alternatively, the IOLTA program of the N.C. State Bar, \$16,625.01 in interest earned on client funds in his SNB escrow account between January 1987 and October 1990, Blake misused interest belonging to clients and others in violation of Rule 10.1(D) of the Rules of Professional Conduct.

2. By falsely telling the Van Valkenburgs that he had filed a formal complaint on behalf of Van Valkenburg and Buford arising out of the April 1989 automobile accident and by later telling the Van Valkenburgs that trial of the matter had been delayed, Blake engaged in conduct involving misrepresentation in violation of Rule 1.2(C) of the Rules of Professional Conduct.

3. By failing to take timely, effective action to resolve the claims of Van Valkenburg and Ms. Buford, Blake neglected a legal matter entrusted to him, in violation of Rule 6(B)(3) of the Rules of Professional Conduct.

4. By placing his personal funds into the SNB escrow account in 1990, when the account contained client funds, Blake commingled personal and client funds in violation of Rule 10.1(A) of the Rules of Professional Conduct.

Based upon the consent of the parties and the foregoing Findings of Fact and Conclusions of Law, the Committee hereby enters the following:

ORDER OF DISCIPLINE

1. The Defendant, A. J. Blake, is hereby suspended from the practice of law for three years. Blake may seek reinstatement at any time after the end of the first year of active suspension of his law license provided that he has first satisfied the following conditions:

a. Blake successfully completes 12 hours of continuing legal education on the subject of law office management offered by a sponsor approved by the CLE Board of the N.C. State Bar.

b. Blake passes the Multistate Professional Responsibility Exam portion of the N.C. State Bar examination. Blake shall certify to the Secretary of the N.C. State Bar that he has passed the MPRE before applying for reinstatement.

c. Blake reads the current Rules of Professional Conduct and the ethics decisions of the N.C. State Bar printed in the State Bar newsletter since Jan. 1, 1988. Blake shall certify to the Secretary of the N.C. State Bar that he has complied with the foregoing conditions before applying for reinstatement.

d. Blake attends a workshop with Bruno DeMolli of the N.C. State Bar, or DeMolli's successor, dealing with the operation of attorney trust accounts.

e. Blake shall submit a written report from his treating psychologist evaluating Blake's condition and progress and verifying that he is fit to resume the practice of law.

2. Blake shall submit to random audits of his attorney trust account by the N.C. State Bar at any time during the remainder of the three year stay period. It shall not be necessary for the N.C. State Bar to show cause or apply for an order prior to conducting any such random audit.

3. Upon reinstatement, Blake shall retain a certified public accountant to provide extensive training, monitoring and reporting concerning any trust accounts maintained by him or his

office.

4. In the event that Blake maintains a trust account, this CPA shall propose procedures for the proper handling of clients' funds which must be submitted to the North Carolina State Bar within the first month of his reinstatement.

5. Upon reinstatement, in the event that Blake maintains a trust account, Blake's CPA is 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 Blake's compliance to the North Carolina State Bar every six months following the effective date of Blake's reinstatement for the remainder of the three year stay period.

6. Blake shall continue to receive psychological treatment and shall comply with any treatment plan recommended by his treating psychologist. On Jan. 1 of each year during the three year period following entry of this order, Blake shall submit written certification to the Secretary of the N.C. State Bar that he is complying with the treatment plan.

7. Blake shall repay \$16,625.01 to the IOLTA program of the N.C. State Bar in monthly installments as follows:

a. \$52.08 per month for the first 12 months after the effective date of this order;

b. \$666.67 per month for the second 12 months after the effective date of this order;

c. \$666.67 per month for the third 12 months after the effective date of this order.

Each monthly payment shall be received in the office of the IOLTA program of the N.C. State Bar no later than the 5th day of each month during the three-year stay period.

8. No later than one week after the effective date of this order, Blake shall execute a promissory note to the IOLTA program of the N.C. State Bar in the amount of \$16,625.01. The note shall state that the \$16,625.01 is due no later than Sept. 1, 1995 and shall be co-signed by John W. Blake, Jr.

9. If Blake does not seek reinstatement prior to the end of the three year stay period, Blake shall demonstrate compliance with the conditions set out in paragraphs 1(a) - (e) and 7 before resuming the practice of law.

10. Blake shall violate no other laws of the State of North Carolina and shall violate no provisions of the Rules of Professional Conduct during the three-year stay period.

11. Blake shall comply with all of the provisions of Section 24 of the Discipline & Disbarment Rules of the N.C. State Bar.

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12. Blake shall pay the costs of this proceeding.

This the 24 day of July, 1992.

Signed by the Chairman with the express consent of all parties and the members of the Hearing Committee.

Fred Folger, Jr.
Fred Folger, Chair
Disciplinary Hearing Committee

The attached Consent Order of Discipline has been seen and consented to:

A. J. Blake
A. J. Blake, Defendant

Joseph B. Cheshire, V
Joseph B. Cheshire, V
Attorney for the Defendant

Alan M. Schneider
Alan M. Schneider
Attorney for the Defendant

Carolyn Bakewell
Carolyn Bakewell
Attorney for the Plaintiff