

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
93 DHC 14

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
vs.)
DALTON H. LOFTIN, ATTORNEY)
Defendant)

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This matter coming on to be heard and being heard on October 15, 1993 before a hearing committee of the Disciplinary Hearing Commission composed of Paul L. Jones, Chairman; Rebecca W. Blackmore; and A. James Early, III; with James B. Maxwell representing the Defendant, and Harriet P. Tharrington representing the North Carolina State Bar; and based upon the pleadings, the Stipulation on Prehearing Conference, the exhibits admitted into evidence and the testimony of the witnesses, the hearing committee finds the following to be supported by clear, cogent and convincing evidence:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar, is a body duly organized under the law of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 in the General Statutes of North Carolina and the Rules and Regulations of the North Carolina State Bar Promulgated there under.
2. Dalton H. Loftin is a citizen and resident of Orange County, North Carolina, and was admitted to the North Carolina State Bar in 1959.
3. At all times referred to in this proceeding Dalton H. Loftin was licensed as an attorney at law in North Carolina and maintained a principal office in Hillsborough, North Carolina.
4. That in February of 1982, Mr. Loftin opened an interest-bearing attorney trust account with Central Carolina Bank and Trust Company in Hillsborough, North Carolina designated as account number 04010309593 (hereafter, trust account).
5. That from 1982 until approximately June 1992, the trust account earned nine thousand, eight hundred sixty-six dollars and sixty-one cents (\$9,866.61) in interest.

6. That between February and July 10, 1993, Mr. Loftin did not disburse that interest to clients, nor was the interest paid to the Interest on Lawyer's Trust Account (hereafter, IOLTA program of the North Carolina State Bar).
7. In February 1988, Mr. Loftin removed three thousand four hundred dollars (\$3,400) of the interest in his trust account by two checks, one in the amount of two thousand four hundred dollars (\$2,400) and one in the amount of one thousand dollars (\$1,000) one thousand dollars, which funds were used for personal reasons and to pay office expenses and overhead, including employee salaries and utility payments.
8. In June 1992, the North Carolina State Bar selected Dalton H. Loftin's trust account for a random audit and that audit took place in July 1992 under the direction of Bruno DeMolli.
9. DeMolli discovered during the audit that Loftin had been earning interest on his trust account. DeMolli advised Loftin of the rules and regulations in regard to interest on trust accounts.
10. Loftin wrote a check from his trust account in the amount of nine thousand eight hundred sixty-six dollars and six-one cents (\$9,866.61) on July 10, 1992 (check no. 3546) made payable to IOLTA.
11. Since that time all interest earned on his trust account has been paid over to IOLTA, pursuant to the Rules and Regulations of the North Carolina State Bar.
12. The North Carolina State Bar Newsletter and Quarterly had been published once each quarter throughout the year since prior to 1982. Copies of both these publications are mailed to each member of the North Carolina State Bar at the member's address on file with the North Carolina State Bar.
13. That prior to this proceeding, Loftin has had no grievances nor any discipline interposed against him.
14. That Dalton H. Loftin enjoys an outstanding reputation for honesty and integrity within his community.
15. That the State Bar failed to show by clear, cogent and convincing evidence the Dalton H. Loftin's conduct involved dishonesty, fraud, deceit or misrepresentation.

BASED UPON the foregoing Findings of Fact, the hearing committee makes the following:

CONCLUSIONS OF LAW

The conduct of Defendant, as set forth 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:

1. By failing to pay to his clients or the IOLTA program of the North Carolina State Bar the \$9,866.61 in interest earned on Client Funds from February 1982 through July 1992, defendant violated Rule 10.2(E) and Rule 10.3 of the Rules of Professional Conduct.
2. That the conduct of Dalton H. Loftin did not involve dishonesty, fraud, deceit or misrepresentation.

Signed by the undersigned chairman with the full knowledge and consent of the other hearing committee members, this the 28th day of October, 1993.



Paul L. Jones, Chairman
Hearing Committee

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NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
93 DHC 14

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
v.)
DALTON H. LOFTIN, ATTORNEY)
Defendant)

ORDER OF DISCIPLINE

This cause was heard on October 15, 1993 by a duly appointed hearing committee of the Disciplinary Hearing Commission consisting of Paul L. Jones, Chairman; Rebecca W. Blackmore; and A. James Early, III.

AGGRAVATING FACTORS

- 1. Substantial experience in the practice of law.

MITIGATING FACTORS

- 1. Absence of a prior disciplinary record.
- 2. Absence of a dishonest or selfish motive.
- 3. Personal or emotional problems.
- 4. Timely good faith efforts to make restitution.
- 5. Full and free disclosure to the hearing committee.
- 6. Character or reputation.

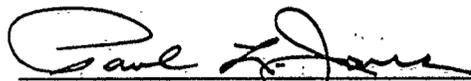
Based upon the findings of facts and conclusions of law and the above aggravating and mitigating factors the committee hereby enters the Order of Discipline.

- 1. Defendant, Dalton H. Loftin, is hereby reprimanded for violation of Rule 10.2(E) and Rule 10.3 of the Rules of Professional Conduct.
- 2. Defendant shall pay all the costs of the proceeding.
- 3. Defendant shall undergo two random audits within a year of this Order. The first audit shall be conducted during the first six months of the twelve month period. The

second audit shall be conducted during the following six month period.

4. Within the first six months after this Order is entered, Defendant shall consult with Nancy Byerly Jones in her capacity as Director and Practice Management Counsel of the Law Practice Assistance Program for proper trust account management and record keeping.

Signed by the Chairman with the consent of all the committee members.


Paul L. Jones, Chairman

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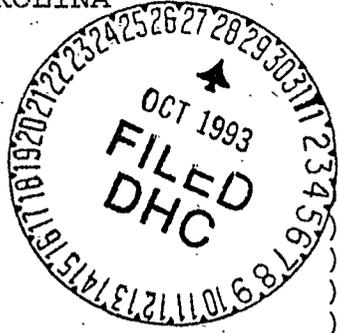
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STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE MATTER OF

Dalton H. Loftin
ATTORNEY AT LAW



BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
93 DHC 14

REPRIMAND

This reprimand is delivered to you pursuant to Sec. 23A of Article IX of the Rules and Regulations of the N. C. State Bar as ordered by a Hearing Committee of the Disciplinary Hearing Commission.

In February 1982, you opened an interest bearing trust account at Central Carolina Bank with an account number of 0401030953 (hereafter, trust account). You did not disburse interest earned on the client funds in the trust account to clients. You also did not disburse interest earned on the client funds in the trust account to the N.C. State Bar Interest on Lawyers Trust Account (IOLTA) program prior to July 1992. In February 1988, you removed \$3,400 of the accrued interest in the trust account and used it for personal benefit.

By failing to remit the interest earned on client funds in your trust account to either clients or, in the alternative, to the IOLTA program and by withdrawing \$3,400 of the accrued interest to use for your own purposes, you violated Rule 10.2(E) and Rule 10.3 of the Rules of Professional Conduct.

You are hereby reprimanded by the North Carolina State Bar for violation of the Rules of Professional Conduct set out above.

The Disciplinary Hearing Committee trusts that this reprimand will be heeded by you, that it will be remembered by you, and that it will be beneficial to you. This committee trusts that you will never again allow yourself to depart from the adherence to the high ethical standards of the legal profession. In order to remain a respected member of the legal profession whose conduct may be relied upon without question, you must in the future carefully weigh your responsibility to the public, your clients, your fellow attorneys and the courts. The Disciplinary Hearing Committee expects that no professional misconduct will occur in the future.

Signed by the Chairman with the consent of all Committee members.

This 28th day of October, 1993.

Paul L. Jones
Chairman

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