

NORTH CAROLINA
WAKE COUNTY



2814
BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
93 DHC 31

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

RICHARD A. LUCEY, ATTORNEY,
Defendant

)
)
) FINDINGS OF FACT
) AND
) CONCLUSIONS OF LAW
)
)
)

This matter coming on to be heard and being heard on February 25, 1994 before a hearing committee of the Disciplinary Hearing Commission composed of Samuel J. Crow, Chairman; Stephen T. Smith; and William H. White; with Richard A. Elkins representing the Defendant, 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 makes the following:

FINDINGS OF FACT

1. All parties are properly before the Hearing Committee and the Hearing Committee has jurisdiction over the Defendant and the subject matter.
2. Prior to November 29, 1990, Defendant undertook to represent Michael Schaefer regarding various legal matters.
3. On or about November 29, 1990, Schaefer entrusted \$69,450 to Defendant. Schaefer directed Defendant to hold these funds in trust until Schaefer directed Defendant to disburse the funds.
4. On or about November 29, 1990 Defendant deposited the \$69,450 belonging to Schaefer in Defendant's attorney trust account number 1506336 at North Carolina National Bank (hereafter, attorney trust account).
5. On or about December 7, 1990, Defendant wrote himself check number 4207 in the amount of \$2,500 drawn on his attorney trust account.
6. Defendant withdrew the \$2,500 from funds which Defendant was holding for Schaefer without Schaefer's knowledge or permission.

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7. On or about January 7, 1991, Defendant wrote himself check number 4242 in the amount of \$1,000 drawn on his attorney trust account.
8. Defendant withdrew the \$1,000 from funds which Defendant was holding for Schaefer without Schaefer's knowledge or permission.
9. At the time Defendant took Schaefer's funds, Schaefer owed Defendant a substantial amount in fees.
10. The disbursements which Defendant made at Schaefer's direction between December 3, 1991 and January 7, 1991 from the \$69,450 totalled \$64,156.07.
11. As of January 8, 1991, Defendant should have held a total of \$5,293.93 in his attorney trust account for Schaefer's benefit.
12. On or about January 11, 1991, Schaefer requested that Defendant give him \$3,500 out of the trust fund monies being held for him.
13. Defendant wrote Schaefer check number 4243 in the amount of \$3,500 drawn on his attorney trust account knowing there were insufficient funds in the account to cover the check.
14. To prevent check number 4243 referred to in the paragraph above from being returned for insufficient funds, Defendant wrote checks between January 11, 1991 and February 13, 1991 between his attorney trust account, his business account number 7048245461 at First Union National Bank (hereafter First Union business account) and his personal checking account at Republic Bank account number 1212765 (hereafter Republic personal account).
15. To cover check number 4243 from his attorney trust account, Defendant wrote check number 2700 dated January 11, 1991 on his Republic personal account and deposited it into his attorney trust account in the amount of \$4,100.
16. On January 14, 1991, Defendant wrote check number 1696 on his First Union business account in the amount of \$4,250 and deposited it into his Republic personal account to cover check number 2700 previously described.
17. On January 15, 1991, Defendant wrote check number 4244 on his attorney trust account in the amount of \$4,200 and deposited it into his First Union business account to cover check number 1696 previously described.

18. On January 16, 1991, Defendant wrote check number 2704 on his Republic personal account in the sum of \$3,400 and deposited it and \$839.24 in other funds into his attorney trust account to cover check number 4244 previously described.
19. On January 17, 1991, Defendant wrote check number 1698 on his First Union business account in the amount of \$3,550.00 and deposited it into his personal account at Republic to cover check number 2704 previously described.
20. Defendant wrote check number 4245 on January 18, 1991 on his attorney trust account in the amount of \$2,100 and deposited it and \$1,749.15 in other funds into his First Union business account to cover check number 1698 previously described.
21. On January 22, 1991, Defendant wrote check number 2710 on his Republic account in the amount of \$2,150 and deposited it into his attorney trust account to cover check number 4245 previously described.
22. On January 23, 1991, Defendant wrote check number 1702 on his First Union business account in the amount of \$2,450 and deposited it into his Republic personal account to cover check number 2710 previously described.
23. On January 24, 1991, Defendant wrote check number 4247 on his attorney trust account in the amount of \$2,300 and deposited it into his First Union business account to cover check number 1702 previously described.
24. On January 25, 1991, Defendant wrote check number 2713 on his personal account at Republic in the amount of \$2,325 and deposited it into his attorney trust account to cover check number 4247 previously described.
25. On January 28, 1991, Defendant wrote check number 1707 on his First Union business account in the amount of \$2,600 and deposited it into his Republic account to cover check number 2713 previously described.
26. On January 29, 1991, Defendant wrote check number 4251 on his attorney trust account in the amount of \$3,000 and deposited it into his business account at First Union to cover check number 1707 previously described.
27. On January 30, 1991, Defendant wrote check number 2718 on his personal account at Republic in the amount of \$2,950 and deposited it into his attorney trust account to cover check number 4251 previously described.

28. On January 31, 1991, Defendant wrote check number 1710 on his business account at First Union in the amount of \$3,000 and deposited it into his personal account at Republic to cover check number 2718 previously described.
29. On February 1, 1991, Defendant wrote check number 4253 on his attorney trust account in the amount of \$3,100 and deposited it into his business account at First Union to cover check number 1710 previously described.
30. On February 4, 1991, Defendant wrote check number 2724 on his personal account at Republic in the amount of \$3,200 and deposited it into his attorney trust account to cover check number 4253 previously described.
31. On February 5, 1991, Defendant wrote check number 1715 on his business account at First Union in the amount of \$4,050 and deposited it into his personal account at Republic to cover check number 2724 previously described.
32. On February 6, 1991, Defendant wrote check number 4256 on his attorney trust account in the amount of \$4,600 and deposited it into his business account at First Union to cover check number 1715 previously described.
33. On February 7, 1991, Defendant wrote check number 2727 on his personal account at Republic for \$4,650 and deposited it into his attorney trust account at NCNB to cover check number 4256 previously described.
34. On February 8, 1991, Defendant wrote check number 1718 on his First Union business account for \$4,800 and deposited it into his personal account at Republic to cover check number 2727 previously described.
35. On February 11, 1991, Defendant wrote check number 2733 on his personal account at Republic for \$4,700 and deposited it into his attorney trust account at NCNB to cover check number 1718 previously described.
36. On February 13, 1991, Defendant wrote check number 1720 on his business account to First Union in the amount of \$4,650 and deposited it into his personal account at Republic to cover check number 2733 previously described.
37. On March 24, 1993, Donald H. Jones, an investigator for the North Carolina State Bar, met with Lucey to discuss a complaint that had been filed against Lucey.
38. Defendant provided Jones with the trust account records that Defendant had available at that time. Defendant has cooperated with the North Carolina State Bar throughout the investigation of this matter.

39. Defendant is a vital part of the Mecklenburg County Juvenile Court system where he has handled very difficult cases involving abused and neglected children.
40. Defendant is presently in-house counsel to the Roman Catholic Diocese of Charlotte. The Diocese allows him to continue his work with abused and neglected children in Mecklenburg County Juvenile Court.
41. The Defendant's misconduct occurred three years prior to the hearing of this matter. There is no evidence that Defendant engaged in any other misconduct or violations of the Rules of Professional Conduct after February 1991.
42. The United States attorney's office was aware of the facts upon which this disciplinary action was based and declined to prosecute Defendant for any violation of the criminal laws.
43. The Honorable Jane V. Harper, Mecklenburg County District Court Judge, testified that Defendant is a vital part of the Mecklenburg County Juvenile Court system and that he has handled a number of very difficult cases involving abused and neglected children. Judge Harper testified that it would be devastating to the Mecklenburg County juvenile system if Defendant would lose his law license.
44. The Honorable Fritz Y. Mercer, Mecklenburg County District Court Judge, testified that Defendant has an excellent character and a reputation for honesty and truthfulness in Mecklenburg County.
45. The hearing committee finds that Defendant has demonstrated exceptional dedication to clients in domestic and juvenile cases.
46. Defendant freely admitted his wrongdoing during the hearing of this matter.
47. Defendant voluntarily repaid all sums owed to Schaefer by January 11, 1991, which was prior to the date on which Defendant received the State Bar's letter of notice. No client other than Schaefer was harmed by Defendant's misconduct.
48. Defendant has no prior discipline with the North Carolina State Bar since he was licensed in 1971.
49. In December 1990 and January 1991 when Defendant removed Schaefer's funds from his attorney trust account, Defendant had just undergone open heart surgery and was still suffering from the physical effects of the procedure. The Defendant was also

suffering from extreme anxiety regarding his finances and whether he would be able to support his large family.

50. The Hearing Committee finds that Defendant's misconduct represents an isolated incident in an otherwise unblemished legal career.
51. As in-house counsel for the Catholic Diocese of Western North Carolina, Defendant does not handle client funds and does not maintain a trust account.

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. Sec. 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

(1) By removing funds belonging to Michael Schaefer from his attorney trust account without Schaefer's knowledge or consent, Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C) and failed to maintain funds of a client held in a fiduciary capacity separate from his own funds in violation of Rule 10.1(A) and Rule 10.1(C).

(2) By engaging in a check writing scheme involving writing checks from his trust account, business account and personal account to cover worthless checks, Defendant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 1.2(C).

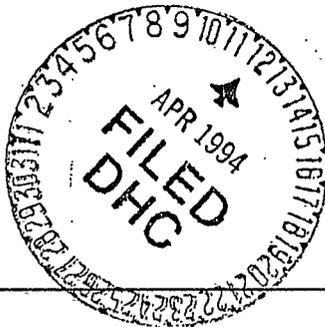
Signed by the undersigned chairman with the full knowledge and consent of the other hearing committee members, this the 17th day of April, 1994.



Samuel Jerome Crow, Chairman
Hearing Committee

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THE NORTH CAROLINA STATE BAR,)
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RICHARD A. LUCEY, ATTORNEY)
Defendant)

ORDER OF DISCIPLINE

This cause was heard by a hearing committee of the Disciplinary Hearing Commission composed of Samuel Jerome Crow, Chair; Stephen T. Smith, and William H. White; on February 28, 1994. After entering the Findings of Fact and Conclusions of Law in this matter, the committee received evidence and considered arguments of counsel concerning the appropriate discipline to be imposed. Based upon the evidence and arguments presented, the committee finds the following aggravating and mitigating factors:

AGGRAVATING FACTORS

1. Dishonest or selfish motive;
2. Multiple offenses
3. Submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
4. Substantial experience in the practice of law.

MITIGATING FACTORS

1. Absence of prior disciplinary record;
2. Timely good faith efforts to make restitution or to rectify consequences of conduct;
3. Full and free disclosure to the Hearing Committee;
4. Exemplary and excellent character;
5. Exceptional dedication in representing indigent clients in domestic and juvenile cases.

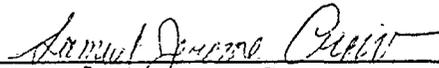
The hearing committee further finds that the mitigating factors outweigh the aggravating factors.

Based upon the Findings of Fact and Conclusions of Law and the above aggravating and mitigating factors, the committee hereby enters this

ORDER OF DISCIPLINE

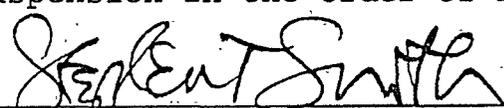
1. Defendant is hereby suspended from the practice of law for a period of three years.
2. Two years and nine months of the suspension is stayed for a period of five years on the following conditions:
 - a. During the first year of the stayed period, Defendant shall attend a seminar conducted by Bruno DeMolli dealing with the operation and management of trust accounts. Defendant shall provide written documentation demonstrating compliance with this condition no later than one week after Defendant completes the seminar.
 - b. If Defendant has or opens an attorney trust account during the period of the stayed suspension, Defendant shall employ a certified public accountant at his own expense to audit his trust account on a quarterly basis to ensure it is being maintained in compliance with Canon X of the Rules of Professional Conduct.
 - c. If Defendant has an attorney trust account during this period of the stayed suspension, Defendant shall properly handle his trust account and maintain correct and current trust account records.
 - d. Defendant shall violate no provisions of the Rules of Professional Conduct during the active and stayed periods of suspension.
4. Defendant is taxed with the costs of this proceeding.

Signed by the Chair of the hearing committee with the full knowledge and consent of all parties and the other members of the hearing committee this the 11th day of April, 1994.



Samuel Jerome Crow
Chair, Disciplinary Hearing Committee

As to the period of suspension in the Order of Discipline I dissent.



Stephen T. Smith
Disciplinary Hearing Committee Member