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BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR

95 DHC 6

THE NORTH CAROLINA STATE BAR,	)	
Plaintiff	)	FINDINGS OF FACT
vs.	)	AND
BARRY S. STANBACK, ATTORNEY,	)	CONCLUSIONS OF LAW
Defendant	)	

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This cause was heard by a hearing committee of the Disciplinary Hearing Commission comprised of Stephen T. Smith, Jr., Chairperson, Richard L. Doughton, and Anthony E. Foriest, on Friday, June 9, 1995. Plaintiff was represented by R. David Henderson and defendant was represented by Fred J. Williams. Based upon the consent of the parties, the committee makes the following:

FINDINGS OF FACT

1. The North Carolina State Bar (hereafter "plaintiff") 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. Barry S. Stanback (hereafter "Stanback") was admitted to the North Carolina State Bar on September 9, 1983, 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, Stanback was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the

City of Greensboro, Guilford County, North Carolina.

4. During the relevant times herein, Stanback had a trust account with First Union National Bank, account number 2000000157760 ("the trust account").

5. Tammy Johnson hired Stanback to represent her with a personal injury claim. Stanback deposited $9,500 in settlement proceeds in his trust account on May 27, 1993.

6. From July 29, 1993 through August 2, 1993, the trust account balance was less than the amount Stanback was supposed to be holding in trust for Ms. Johnson.

7. Yolanda Johnson hired Stanback to represent her with a personal injury claim. Stanback deposited $617.10 in med-pay insurance in his trust account on September 7, 1993, and $2,350 in settlement proceeds into his trust account on October 8, 1993.

8. From September 27, 1993 through October 7, 1993, the trust account balance was less than the amount Stanback was supposed to be holding in trust for Ms. Johnson.

9. In the following instance, Stanback failed to promptly withdraw his attorney's fees from funds deposited in his trust account: Balance of fee in the amount of $100.10 for work on behalf of Yolanda Johnson.

10. In the following instance, Stanback deposited personal funds into the trust account: Rental income from the Democratic Party on August 17, 1993, in the amount of $275.

11. Stanback issued the following trust account checks to himself without designating the purpose of the check:

a. Check number 101 in the amount of $400 which cleared the trust account on March 11, 1993.

b. Check number 105 in the amount of $2,000 which cleared the trust account on March 31, 1993.

c. Check number 112 in the amount of $5,000 which cleared the trust account on April 14, 1993.

d. Check number 215 in the amount of $100 which cleared the trust account on January 10, 1994.

e. Check number 218 in the amount of $75 which cleared the trust account on January 24, 1994.

f. Check number 219 in the amount of $58 which cleared the trust account on February 16, 1994.

12. Stanback disbursed the following amounts from his trust account without prior deposits of funds into the trust account designated for the payee.

a. On March 18, 1993, and May 20, 1993, Stanback disbursed a total of $8.50 on behalf of D. Dorman.

b. On April 21, 1993, Stanback disbursed $8.00 on behalf of D. Andrews.

c. On May 3, 1993, Stanback disbursed $104.90 to Ronald Carter.

d. On May 3, 1993, Stanback disbursed $150.00 on behalf of P. Little.

e. On May 4, 1993, Stanback disbursed $8.00 on behalf of J. Walters.

f. On May 24, 1993 and May 25, 1993, Stanback disbursed a total of $55.00 on behalf of C. Nickerson.

g. On June 24, 1993, Stanback disbursed $58.00 on behalf of S. Hairston.

h. On June 24, 1993, Stanback disbursed $25.25 on behalf of J. Murphy.

i. On July 21, 1993, Stanback disbursed $100.00 to Marty York.

j. On July 22, 1993, Stanback disbursed $194 on behalf of Susan Mahnke.

k. On July 23, 1993, Stanback disbursed $193 on behalf of Robert Moon.

l. On August 30, 1993, Stanback disbursed $127.00 on behalf of Fouche.

m. On September 15, 1993 and September 17, 1993, Stanback disbursed a total of $251.20 from the trust account on behalf of Hettie Dees.

n. On September 29, 1993, Stanback disbursed $10.00 on behalf of Peoples.

13. Stanback failed to maintain adequate records for the trust account. Stanback did not keep ledgers for every client whose money was in the trust account. Stanback failed to reconcile the trust account on a quarterly basis.

Based upon the foregoing Findings of Fact, the committee makes the following:

CONCLUSIONS OF LAW

1. By allowing the trust account balance to drop below what should have been held in trust for Ms. Tammy Johnson, Stanback failed to maintain client funds in his trust account in violation of Rules 10.1(A) and (C).

2. By allowing the trust account balance to drop below what should have been held in trust for Ms. Yolanda Johnson, Stanback failed to maintain client funds in his trust account in violation of Rules 10.1(A) and (C).

3. By failing to withdraw his attorney's fees in the Yolanda Johnson matter when earned, Stanback failed to maintain client funds separate from defendant's funds in violation of Rules 10.1(A) and (C).

4. By depositing funds belonging to Stanback in his trust account, Stanback failed to maintain his funds separate from client funds in violation of Rules 10.1(A) and (C).

5. By issuing trust account checks to himself without designating the purpose of the checks, Stanback violated Rule 10.2(C)(2).

6. By disbursing funds from his trust account without prior deposits of funds into

the trust account designated for the payee, Stanback failed to segregate his personal funds from client funds in violation of Rules 10.1(A) and (C), and failed to maintain client funds in his trust account as required by Rule 10.1(C) and 10.2(E).

7. By failing to keep client ledgers for the clients whose money he held in a fiduciary capacity which he deposited into his trust account and by failing to reconcile his trust account on a quarterly basis, Stanback violated Rules 10.2(C)(3) and (D).

Signed by the hearing committee members, this the 9th day of June, 1995.

Stephen T. Smith, Chairperson

Richard L. Doughton

Anthony E. Feriest

WE CONSENT:

Barry S. Stanback
Defendant

Fred J. Williams
Attorney for Defendant

R. David Henderson
Attorney for Plaintiff

JUL 1995
FILED
DHC

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR

95 DHC 6

THE NORTH CAROLINA STATE BAR, Plaintiff	)	
vs.	)	ORDER OF DISCIPLINE
BARRY S. STANBACK, Defendant	)	

Based upon the foregoing Findings of Fact and Conclusions of Law, and further based upon the evidence and arguments presented by the parties concerning the appropriate discipline, the hearing committee finds the following facts:

1. That there are no aggravating factors in this case.

2. That there are seven (7) mitigating factors in this case:
   (a) the absence of a prior disciplinary record;
   (b) the absence of a dishonest or selfish motive;
   (c) the timely good faith effort to rectify the consequences of his conduct;
   (d) the full and free disclosure to the hearing committee;
   (e) the cooperative attitude toward the proceedings;
   (f) the good character and reputation of the defendant; and
   (g) the defendant's remorse.

Based upon the evidence and arguments presented and the above mitigating factors, the hearing committee enters the following Order of Discipline:

1. The defendant, Barry S. Stanback, is hereby censured .

2. Defendant shall pay the costs of this proceeding.

Signed by the Chair with the consent of the other committee members, this the 29 day of June, 1995.

Stephen T. Smith

Stephen T. Smith