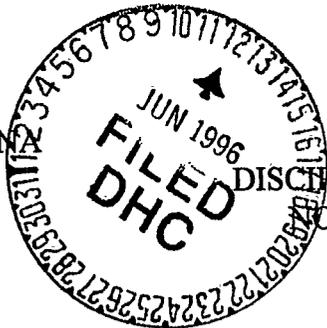


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NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
NORTH CAROLINA STATE BAR
96 DHC 1

THE NORTH CAROLINA STATE BAR,)
)
Plaintiff)
)
v.)
)
WILLIAM WAYNE NICHOLS,)
Attorney)
)
Defendant)

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This matter was heard on the 23rd day of May, 1996, before a hearing committee of the Disciplinary Hearing Commission composed of Robert B. Smith Jr., chairman; James R. Fox, and B. Stephen Huntley. The North Carolina State Bar was represented by Fern E. Gunn. The defendant, William Wayne Nichols, was represented William J. Thomas II. Based upon the pleadings and the evidence presented at the hearing, the hearing committee hereby enters the following:

FINDINGS OF FACT

1. The North Carolina State Bar, the 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. William Wayne Nichols, the defendant, was admitted to the North Carolina State Bar in 1989, 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, the defendant was actively engaged in the practice of law in North Carolina and maintained a law office in Durham, North Carolina.

4. On September 18, 1995, the defendant pled guilty to possession of cocaine, a felony, in Durham County Superior Court. The defendant was found guilty of that

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offense and was given a suspended sentence and placed on supervised probation for 12 months. He was ordered to pay the costs of court.

5. The criminal offense for which defendant was convicted is a serious crime as defined in section .0103(40) of the Discipline and Disability Rules of the North Carolina State Bar.

6. The defendant was arrested on March 9, 1995 for possession with intent to manufacture, sell and deliver cocaine. On or about March 10, 1995, the defendant was interviewed by a reporter from the Raleigh News and Observer Newspaper. The defendant stated that the drugs were planted on him and he accused the Durham police of targeting him because he defended people charged with drug offenses. A newspaper article containing the defendant's statement appeared in the March 11, 1995 edition of the Raleigh News and Observer.

7. The defendant lied to the newspaper reporter about the Durham police planting drugs on him.

8. In April 1993, Raymond Lilley hired the defendant to handle a traffic ticket case. On or about April 9, 1993, Mr. Lilley gave the defendant a check in the amount of \$235.00. A part of the \$235.00 was for the defendant's attorney's fee and a part of the \$235.00 was to pay any fine and court costs.

9. On April 16, 1993, the defendant deposited Mr. Lilley's check in the amount of \$235.00 into the defendant's business bank account, account number 2372-652679, at Wachovia Bank.

10. The defendant did not deposit into his trust account any portion of the \$235.00 which was supposed to pay a fine or court costs in Mr. Lilley's case. He also did not deposit into his trust account any part of the attorney's fee which was unearned at the time that Mr. Lilley gave him the check in the amount of \$235.00.

11. On July 6, 1993, the defendant disbursed check number 696 in the amount of \$85.00 to the "Durham County Clerk of Court". This check was for the fine owed in Mr. Lilley's traffic ticket case. Check number 696 was written on the defendant's business account.

12. During the following periods, the balance in the defendant's business account dropped below \$85.00: 4-26-93 to 4-28-93; 4-30-93 to 5-12-93; 5-18-93 to 5-23-93; 5-27-93 to 5-31-93; 6-10-93 to 6-14-93; 6-16-93 to 6-20-94; and 6-23-93 to 6-29-93.

13. At all periods when the defendant's business account balance dropped below \$85.00, this amount should have been in his business account on behalf of Mr. Lilley since the defendant had not paid the fine to the court.

14. The defendant testified that he may have spent Mr. Lilley's fine and costs money for his (the defendant's) personal expenses, but later replaced Mr. Lilley's money from another source.

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15. The defendant misappropriated all or part of the \$85.00 which represented Mr. Lilley's fine for defendant's benefit or that of third parties, without Mr. Lilley's knowledge or permission.

16. The defendant handled a number of traffic, criminal and domestic cases for clients. He often did not place money which he held for his clients to pay fines, court costs, and filing fees in his trust account as required by the Rules of Professional Conduct. The defendant put the money intended to pay the fines, court costs, and filing fees in the client's file, his business bank account or some other location pending payment of those obligations to the court. In addition, the defendant often deposited his money into his trust account and wrote checks from his trust account for personal obligations and made payable to "cash".

17. In November 1992, Tonya M. Cecil hired the defendant to handle a traffic ticket. On or about November 12, 1992, Ms. Cecil gave the defendant a check in the amount of \$300.00. A part of the \$300.00 was for the defendant's attorney's fee and a part of the \$300.00 was to pay any fine and court costs.

18. The defendant did not deposit Ms. Cecil's money into his trust account.

19. On or about November 24, 1992, the defendant disbursed check number 633 in the amount of \$70.00 to the "Durham County Clerk of Court." This check was for the fine owed in Ms. Cecil's traffic ticket case. Check number 633 was written on the defendant's business account.

20. The defendant did not deposit any funds belonging to Ms. Cecil into his business account.

21. The defendant cannot account for Ms. Cecil's \$70.00 from the time she paid defendant on or about November 12, 1992 until defendant paid the fine on November 24, 1992. The defendant testified that he may have spent Ms. Cecil's fine and costs money, although he replaced the money from another source.

22. The defendant misappropriated all or part of the \$70.00 which represented Ms. Cecil's fine for the defendant's benefit or that of third parties, without Ms. Cecil's knowledge or permission.

23. In February 1993, Thomas M. Smith hired the defendant to handle a traffic ticket. On or about February 29, 1993, Mr. Smith gave the defendant a check in the amount of \$235.00. A part of the \$235.00 was for the defendant's attorney's fee and a part of the \$235.00 was to pay any fine and court costs.

24. The defendant did not deposit Mr. Smith's money into the defendant's trust account.

25. The defendant disbursed check number 663 in the amount of \$85.00 to the Durham County Clerk of Court. This check was for the fine owed in Mr. Smith's traffic ticket case. Check number 663 was written on the defendant's business account.

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26. The defendant did not deposit any funds belonging to Mr. Smith into the defendant's business account.

27. The defendant cannot account for Mr. Smith's \$85.00 from the time Mr. Smith paid the defendant in late February 1993 until the defendant paid the fine on March 17, 1993.

28. The defendant misappropriated all or part of the \$85.00 which represented Mr. Smith's fine for the defendant's benefit or that of third parties, without Mr. Smith's knowledge or permission.

29. The defendant was addicted to cocaine. He testified that his cocaine habit was expensive and he admitted that he would spend up to \$200.00 at a time for his purchase of cocaine.

30. On several occasions, the defendant gave checks drawn on his trust account to drug dealers to hold as "security" in return for defendant's payment of cocaine purchases. The defendant testified that the checks were never negotiated because he would pay the drug dealer in cash shortly after giving him the trust account check.

31. On or about April 26, 1994, the defendant wrote check number 0505 on his trust account to "Johnny Walker" in the amount of \$100.00. The defendant testified that Johnny Walker was actually a drug dealer from whom the defendant bought drugs. Check number 0505 was one of the several checks that the defendant wrote on his trust account to drug dealers to hold as "security" in return for his purchase of drugs. From April 4, 1994 to May 3, 1994, the defendant had enough money in his trust account to pay check number 0505.

32. On February 17, 1996, Henry C. Babb Jr., chairman of the Disciplinary Hearing Commission, entered an order which suspended the defendant from the practice of law pending the disposition of this disciplinary proceeding, pursuant to Rule .0115(a) and (d) of the Discipline and Disability Rules of the North Carolina State Bar.

Based upon the foregoing Findings of Fact, the hearing committee enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee and the committee has jurisdiction over the defendant and the subject matter.

2. The defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. Section 84-28(b)(1) and (2) as follows:

(a) By pleading guilty and being convicted of possession of cocaine, defendant has committed a criminal offense which reflects adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects in violation of Rule 1.2(b).

(b) By lying to the press about the circumstances of his arrest, defendant

engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 1.2(c) and engaged in conduct prejudicial to the administration of justice in violation of Rule 1.2(d).

(c) By misappropriating Mr. Lilley's funds in the amount of \$85.00, defendant has violated Rule 10.1(a) and (c) and Rule 1.2(c) of the Rules of Professional Conduct.

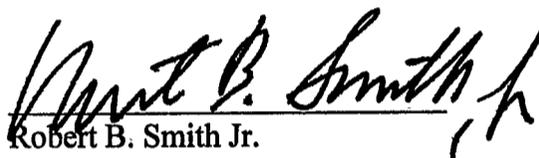
(d) By misappropriating the funds of Ms. Cecil (\$70.00) and Mr. Smith (\$85.00), defendant has violated Rule 10.1(a) and (c) and Rule 1.2(c) of the Rules of Professional Conduct.

(e) By not depositing his clients' money (unearned attorney's fees and money designated to pay fines, court costs, and filing fees) into his trust account until he had earned the attorney's fee and paid the fines, court costs, and filing fees, defendant has violated Rule 10.1(a) and (c) of the Rules of Professional Conduct.

(f) By using the funds held in his trust account as collateral or security to purchase drugs from a drug dealer, defendant has violated Rule 10.1(d) of the Rules of Professional Conduct.

Signed by the undersigned chairman with the consent of the other hearing committee members.

This the 11 day of June, 1996.



Robert B. Smith Jr.
Chairman
Hearing Committee

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NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
NORTH CAROLINA STATE BAR
96 DHC 1

THE NORTH CAROLINA STATE BAR,)
)
Plaintiff)
)
v.)
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WILLIAM WAYNE NICHOLS,)
Attorney)
)
Defendant)

ORDER OF DISCIPLINE

Based upon the foregoing Findings of Fact and Conclusions of Law entered herein, and upon the evidence and arguments of the parties concerning the appropriate discipline, the hearing committee hereby makes the additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. The defendant's misconduct is aggravated by the following factors:
 - (a) a dishonest and selfish motive;
 - (b) a pattern of misconduct;
 - (c) multiple offenses;
 - (d) refusal to acknowledge the wrongful nature of his conduct; and
 - (e) substantial experience in the practice of law.

2. The defendant's misconduct is mitigated by the following factors:
 - (a) absence of a prior disciplinary record;
 - (b) a full and free disclosure to the hearing committee; and
 - (c) a cooperative attitude towards the disciplinary proceedings.

3. The defendant has a substance abuse problem. He sought assistance for his problem within a reasonable time after he recognized his addiction to cocaine.

4. The aggravating factors outweigh the mitigating factors.

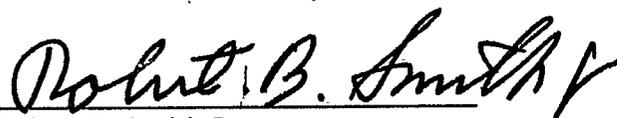
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Based upon the foregoing evidence of aggravating and mitigating factors and the arguments of the parties, the hearing committee hereby enters the following

ORDER OF DISCIPLINE

1. The defendant is hereby disbarred from the practice of law effective retroactively to February 17, 1996, the date of the order of interim suspension entered by Henry C. Babb Jr.
2. The defendant shall immediately submit his law license and membership card to the Secretary of the North Carolina State Bar.
3. Prior to the defendant seeking reinstatement of his law license, he shall:
 - (a) obtain an assessment of his substance abuse problem from a medical doctor or other mental health professional and follow the prescribed course of treatment during the period of his disbarment;
 - (b) participate in the Law Management Assistance Program of the North Carolina State Bar or, if it no longer exists, attend at least three hours of a comparable continuing legal education program regarding handling an attorney trust account.
4. The defendant shall violate no provisions of the Rules of the North Carolina State Bar during his disbarment.
5. The defendant shall violate no state or federal law during his disbarment.
6. The defendant shall fully comply with the provisions of Rule .0124 of the Discipline and Disability Rules of the North Carolina State Bar.
7. The defendant shall pay the costs of this proceeding.

Signed by the undersigned chairman with the full knowledge and consent of the other members of the hearing committee, this the 11 day of June 1996.


Robert B. Smith Jr.
Chairman
Hearing Committee

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