



15867

WAKE COUNTY

NORTH CAROLINA

BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR 98 DHC 7

THE NORTH CAROLINA STATE BAR,	)	
Plaintiff	)	
v.	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
DAVID M. GODWIN, ATTORNEY,	)	AND ORDER OF DISCIPLINE
Defendant	)	

This matter came before a Hearing Committee of the Disciplinary Hearing Commission composed of James R. Fox, Chair, Fred H. Moody, Jr. and Robert Frantz, pursuant to Section .0114 of the Discipline and Disability Rules of the North Carolina State Bar (hereinafter "Bar Rules") on September 2-3, 1998. The Defendant, David M. Godwin, was represented by Bruce H. Jackson, Jr. The plaintiff was represented by Douglas J. Brocker. Based upon the stipulations, and the evidence presented, the hearing committee hereby enters the following:

**FINDINGS OF FACT**

1. 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. Defendant, David M. Godwin (hereinafter "Godwin"), was admitted to the North Carolina State Bar on August 19, 1988 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 the times relevant to this complaint, Godwin actively engaged in the practice of law in the State of North Carolina and maintained a law office in the city of Wilmington, New Hanover County, North Carolina.

4. Since at least November 1994 and at all times relevant to this complaint, Godwin has maintained a trust account at First Citizens Bank and Trust Company (formerly Peoples Federal Savings Bank, hereinafter collectively referred to as "First Citizens), account number 112304, in which all client or fiduciary funds handled by Godwin were supposed to be held in trust (hereinafter "trust account").

5. At all times relevant to this complaint, Godwin also maintained the following two accounts from which Godwin generally met his law firm's operating or business expenses: (1) account number 112312 at First Citizens, out of which general business expenses, other than payroll, generally were paid (hereinafter "operating account"); and (2) account number 142251 at First Citizens, out of which payroll expenses for Godwin's employees generally were paid (hereinafter "payroll account").

#### Trust Account Violations

6. Beginning on April 30, 1995, Godwin had insufficient funds in his trust account to cover all the money he was supposed to be holding in trust for all his clients.

7. From April 30, 1995 until April 30, 1997, when the State Bar enjoined him from handling client funds (hereinafter "defalcation period"), Godwin never had sufficient funds in his trust account to cover all the money he was supposed to be holding in trust for all his clients.

8. During this entire two year defalcation period, Godwin never reconciled his trust account balances of funds belonging to all clients.

9. On at least six different occasions during the defalcation period, checks made payable to Godwin were issued out of Godwin's trust account and deposited into either Godwin's operating or payroll account.

10. Specifically, the following checks were drawn from Godwin's trust account and made payable to Godwin in the following amounts:

- (1) On December 11, 1995, check number 2278 for \$1,000;
- (2) On December 21, 1995, check number 2283 for \$170;
- (3) On February 1, 1996, check number 2287 for \$500;
- (4) On February 8, 1996, check number 2288 for \$400;
- (5) On July 3, 1996, check number 2303 for \$200; and

(6) On November 1, 1996, check number 2205 for \$300.

11. These six checks did not represent fees to which Godwin was entitled. Moreover, Godwin did not have permission to use any part of the funds held in trust for the benefit of himself or any third party, other than his clients.

12. In all six instances, the funds from Godwin's trust account were used to pay Godwin's law firm operating and business expenses, including Godwin's payroll.

13. At the time these six checks were withdrawn from Godwin's trust account and deposited into his operating or payroll account, Godwin had insufficient funds in the respective operating or payroll account to pay his or his law firm's bills or obligations out of the funds in those accounts.

14. Additionally, on April 19, 1996, check number 2295 was issued from the trust account made payable to Ryan Broussard in the amount of \$1,323.49.

15. At the time check number 2295 was issued, the balance in the trust account was \$75.80. First Citizens honored the check but issued a NSF notice to Godwin's office and included a NSF charge on Godwin's next bank statement for his trust account.

16. After check number 2295 was issued to Broussard and the NSF charge was made, the balance of Godwin's trust account was -\$1,269.69.

17. On April 24, 1996, a check was issued from Godwin's operating account and deposited into his trust account in the amount of \$1,270. The check from Godwin's operating account was issued after the Broussard check to reimburse the trust account and to return the account to a positive balance.

18. On April 25, 1996, First Citizens dishonored the \$1,270 check from Godwin's operating account.

19. On April 30, 1996, the \$1,270 check from Godwin's operating account was resubmitted to First Citizens for deposit into the trust account and honored.

20. At the time the Broussard check was presented for payment to First Citizens, Godwin did not have on file with First Citizens a directive requiring First Citizens to report to the North Carolina State Bar when any check drawn on his trust account was presented for payment against insufficient funds.

21. All of the above-mentioned checks issued from and deposits into Godwin's trust, operating or payroll accounts were done by Godwin's legal assistant, (hereafter referred to as "LA").

22. Godwin employed LA as a legal assistant in his office beginning in July 1995. LA was employed by Godwin until August 1997.

23. Shortly after he hired her, Godwin authorized LA to issue and sign checks on and make deposits into his trust, operating and payroll accounts.

24. During the period in which Godwin gave LA authority to issue and sign checks on and make deposits into his trust, operating and payroll accounts, Godwin failed to make reasonable efforts to ensure that his law firm had in effect measures that would provide reasonable assurance that LA's actions were compatible with his professional responsibilities and obligations.

Burton Matter

25. Billy E. Burton (hereinafter "Burton") retained Godwin in approximately December 1995 to represent him on a personal injury matter.

26. On approximately July 11, 1996, Godwin received medical payments in the amount of \$2,613.87 from the opposing parties in Burton's personal injury claim. These payments were made under a liability insurance contract providing for the payment of Burton's medical expenses without regard to fault.

27. Godwin took a one-third fee from the medical payments in the amount of \$871.29, and disbursed the remainder, \$1,742.58, to Burton.

28. On or about September 26, 1996, Godwin received a check for the settlement of Burton's personal injury suit in the amount of \$9,000. Godwin took a one-third fee of \$3,000, retained \$2,577 in his trust account to pay various of Burton's medical expenses, and disbursed the remaining \$3,423 to Burton.

29. As of January 21, 1997, almost four months after settling Burton's personal injury case, Godwin had not paid Burton's medical bills from the funds he withheld from settlement.

30. Burton and his wife applied for a loan for a new vehicle on approximately January 21, 1997, and discovered that the medical bills, which Godwin was supposed to have paid, had not been paid and had been referred as overdue accounts on the Burtons' credit report.

31. On the same day, Burton and his wife came to Godwin's office and were informed by Godwin's employee, Dave Perry, that there were insufficient funds in the trust account to pay Burton's medical bills.

32. Godwin subsequently became involved in the conversation with the Burtons. After the Burtons told Mr. Godwin that the medical bills had not been paid and that Dave Perry had told them that there were insufficient funds in the trust account to pay the medical bills, Godwin told the Burtons that there were sufficient funds in the trust account to cover Burton's medical expenses. In fact, there were not sufficient funds in the trust account to cover Burton's medical expenses at the time of Godwin's conversation with the Burtons.

33. As of January 21, 1997, the balance in the trust account was \$115.99. Consequently, at the time Godwin talked to the Burtons, he reasonably should have known that there were not sufficient funds in the trust account to pay Burton's medical bills.

34. As of January 21, 1997, the amount that Godwin should have been holding in his trust account for all his clients was \$4,073.21. Consequently, there was a defalcation in the trust account in the amount of \$3,957.22 on that date.

35. The primary reasons that there were insufficient funds in Godwin's trust account to pay Burton's medical bills were: (a) the issuance of the six specific checks from his trust account to his operating and payroll accounts by his legal assistant LA, set forth in Count I above, and (b) LA's issuance of check number 2208 from Godwin's trust account to a third party.

36. Specifically, on or about September 25, 1996, LA issued check number 2208 on Godwin's trust account in the amount of \$2,000 and made payable to Jay Khajanchi.

37. On September 25, 1996, when check number 2208 was drawn on the trust account, Godwin was not holding any funds in his trust account for Jay Khajanchi. In fact Godwin was not holding any funds in his trust account for Jay Khajanchi at any time during the two year defalcation period.

38. Consequently, the issuance of check number 2208 exacerbated an already existing defalcation in the trust account.

39. As of September 25, 1996, the amount Godwin should have been holding in the trust account for existing clients was \$10,298.88. After check number 2208 was drawn, the balance of the account was \$6,770.66. Thus, the defalcation in the account after Check number 2208 was drawn on the account on September 25, 1996 was -\$3,528.22.

40. After Godwin became aware that Burton's medical bills had not been paid, he paid Burton's medical providers from his own funds.

**41. Godwin also reimbursed or made reasonable attempts to reimburse all clients whose funds were misappropriated from his trust account without his knowledge or direction.**

Marlowe Closing

**42. In 1997, Godwin agreed to conduct a closing of a refinancing loan for a client, Ron Marlowe (hereafter "Marlowe").**

**43. In connection with that closing, on or about March 13, 1997, Godwin received from the lender, Branch Banking and Trust ("BB&T"), a cashier's check in the amount of \$64,900, representing the proceeds of the loan.**

**44. On or about March 26, 1997, Godwin had Marlowe sign and execute the necessary documents for the loan closing (hereinafter "dry closing").**

**45. Godwin did not deposit the \$64,900 cashier's check from BB&T into his trust account until April 3, 1997.**

**46. As of April 30, 1997, Godwin had failed to disburse the proceeds of the loan to the appropriate parties.**

**47. As a result of Godwin's failure to disburse the loan proceeds by April 30, 1997, Marlowe's guaranteed loan rate expired and had to be re-negotiated with BB&T, and a second loan closing had to be conducted by another attorney on June 9, 1997. As a result of the delay, Marlowe incurred additional charges on the loan in the amount of \$1,305.72.**

**48. Godwin paid \$500 of the additional interest charges at the time of the second closing on June 9, 1997.**

**49. As early as February 1998, Godwin was aware that Marlowe had foregone an additional \$805.72, that he should have received at the original loan closing, but did not because of the additional interest charges.**

**50. Godwin did pay the additional \$805.72. However, Godwin did not reimburse Marlowe for these funds, until 2 weeks before the hearing in this matter, on the advice of his attorney.**

## Representations to State Bar

51. After the State Bar's audit of Godwin's trust account, Godwin entered into an agreement with the State Bar on March 21, 1997 ( hereinafter "March 21 Agreement"). Pursuant to the March 21 Agreement, Godwin, among other things, was required to reimburse five clients for funds which he had received from them in trust. The aggregate amount Godwin was required to disburse to all these clients was \$1,087.

52. Godwin subsequently issued checks drawn on his trust account to these clients. At the time Godwin issued these five checks out of the trust account, there were still insufficient funds in the trust account to cover the checks and Godwin's obligations to his other clients.

53. The State Bar subsequently requested information regarding whether Godwin had reimbursed these five clients. After receiving information that Godwin had issued checks to these five clients, the State Bar questioned why Godwin issued the checks without depositing sufficient funds into the trust account to cover these checks.

54. In response, Godwin told State Bar Investigator David J. Frederick that a \$641.61 deposit on March 21, 1997, identified on the trust account bank statement, was a deposit Godwin made of his personal funds to cover a portion of those checks.

55. In fact, the \$641.61 deposit represented funds of another client, C.A. Joyce.

56. At the time Godwin represented to Investigator Frederick that the \$641.61 was a corrective deposit of his funds to cover the above-mentioned five checks to clients, Godwin had not made any corrective deposits to the trust account to cover the five checks he issued.

57. At that time, Godwin was the only signatory on all of his accounts. If such a corrective deposit had been made, Godwin would have had to issue the check to be deposited into his trust account.

58. Thus, at the time he made the above-mentioned representations to Investigator Frederick, Godwin knew that the \$641.61 deposit was not a corrective deposit.

59. Godwin knowingly and intentionally made a false misrepresentation of material fact to Investigator Frederick in response to an inquiry in a disciplinary matter.

Conflict in Domestic Matter

60. In approximately July 1995, Godwin began representing Mrs. B in domestic matters against her then-husband, Mr. B.

61. On February 14, 1996, Godwin, on behalf of Ms. B, filed a complaint against Mr. B in New Hanover County District Court. The complaint alleged claims for relief for divorce from bed and board, equitable distribution and alimony and sought post-separation support.

62. In November 1996, Godwin began dating Ms. B.

63. In approximately January 1997, Godwin began a sexual relationship with his client, Ms. B.

64. As of January 1997, when Godwin began a sexual relationship with Ms. B, Ms. B's claim for alimony against Mr. B was still outstanding.

65. Godwin continued to represent Ms. B on her outstanding claims for alimony and unpaid post-separation support after he began a sexual relationship with her. **Godwin filed and responded to various motions in the matter and appeared in court after he began a sexual relationship with Ms. B.**

66. On or about August 5, 1997, Godwin received a letter and proposed motion to disqualify Godwin as counsel for Ms. B from Mr. B's attorney.

67. The basis for the proposed motion to disqualify Godwin was that Godwin was having an ongoing sexual relationship with Ms. B and that he would likely be called as a witness to testify as to that relationship in the alimony trial.

68. The letter stated that if Godwin did not agree to withdraw as Ms. B's counsel, the motion would be filed.

69. **Mrs. B's claim for alimony was on a trial calendar for the August 4, 1997 session of court.**

70. **Godwin signed and returned the letter agreeing to withdraw as Mrs. B's attorney and to continue Mrs. B's alimony claim until another session of court. Godwin had not withdrawn from representing Mrs. B previously.**

71. The alimony trial subsequently was scheduled for October 21, 1997. Prior to hearing the alimony matter, the court held a hearing on Ms. B's separate motion to show cause for Mr. B's failure to pay post-separation support.

72. At the show cause hearing, both Godwin and Ms. B were called as witnesses for Mr. B and were compelled to testify about the nature and extent of their sexual relationship. Another attorney represented Ms. B at this hearing.

73. After the hearing on the show cause motion, in which Godwin and Ms. B were compelled to testify about their sexual relationship, Ms. B dismissed her alimony claim against Mr. B.

#### Post-Separation Support Claim

74. On April 19, 1996, following a hearing, the presiding Judge ordered Mr. B to pay \$250 per month in post-separation support to Ms. B.

75. Godwin was responsible for drafting the order for post-separation support.

76. Godwin failed to have a final written order for post-separation support entered until June 23, 1997, more than a year after the hearing.

77. Mr. B failed to pay post-separation support to Ms. B as ordered by the court.

78. Godwin, on behalf of Ms. B, was unsuccessful in enforcing and collecting the post-separation support payments from Mr. B until months after Godwin got the final written order for post-separation support entered on June 23, 1997.

#### Equitable Distribution Claim and Tax Proceeds

79. In approximately October 1995, Godwin received a check issued jointly to Mr. and Ms. B in the amount of \$734.52 from the North Carolina Department of Revenue, which check represented a tax refund (hereinafter "tax refund check").

80. Godwin deposited the tax refund check into his trust account.

81. Mr. and Ms. B disputed the ownership of tax refund check proceeds, and these proceeds became one of the items that the court had to resolve in the equitable distribution claim.

82. The equitable distribution claim was heard on October 11, 1996.

83. At the October 11, 1996 hearing on equitable distribution, the court ordered that the tax refund check proceeds be divided equally between and distributed to Mr. and Ms. B.

84. At the end of the hearing, the court directed Godwin to draft the judgment of equitable distribution.

85. On several occasions thereafter, Mr. B requested Godwin to draft the equitable distribution judgment and disburse to him his share of the tax refund check proceeds.

86. Notwithstanding Mr. B's requests and the October 11, 1996 court order, Godwin did not file the equitable distribution judgment and did not release to Mr. B his half of the tax refund check proceeds. Godwin held Mr. B's one half of the tax refund check as long as he possibly could.

87. On February 7, 1997, Mr. B filed a pro se motion requesting the court to order Godwin to file the equitable distribution judgment.

88. On February 10, 1997, the court entered an order directing Godwin to prepare and serve Mr. B with a proposed equitable distribution judgment not later than February 14, 1997.

89. Godwin failed to comply with the court's order to prepare and serve the equitable distribution judgment by February 14, 1997.

90. On February 28, 1997, Mr. B filed another pro se motion to compel Godwin to file the equitable distribution judgment and disburse to Mr. B his share of the tax refund check proceeds.

91. On March 18, 1997, over five months after the hearing on equitable distribution and over one month after he had been order to file the order, Godwin presented and filed a written judgment of equitable distribution in the B matter.

92. In a court order filed on June 23, 1997, the court found that Mr. B had been inconvenienced and incurred expenses as a result of Godwin's delay in filing the equitable distribution order.

93. Accordingly, the court reduced the amount of post-separation support Mr. B owed to Godwin's client, Ms. B, by \$250 as compensation to Mr. B for the expense and inconvenience caused by Godwin's delay.

94. Prior to March 1997, the North Carolina State Bar conducted an audit of Godwin's trust account, in connection with its investigation of the matters set forth in paragraphs 1-41.

95. On March 21, 1997, Godwin entered into an agreement with the North Carolina State Bar which, among other things, required Godwin to disburse to Mr. B his share of the tax refund check proceeds within 3 days.

96. Notwithstanding this agreement and the court's prior orders, Godwin did not disburse to Mr. B his share of the tax refund proceeds until approximately April 21, 1997.

Based upon the consent of the parties and 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 Godwin and the subject matter of this proceeding.

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

a. Godwin failed to hold and maintain client funds in his trust account and separate client funds from personal funds or property in violation of Rules of Professional Conduct 10.1(a) and (c) by allowing his non-lawyer assistant to disburse client funds to his other general accounts and to other third parties.

b. By allowing his non-lawyer assistant to make the above mentioned disbursements, Godwin failed to make reasonable efforts to ensure that his law firm had in effect measures that would provide reasonable assurance, and failed to make reasonable efforts, to ensure that his non-lawyer assistant's actions were compatible with his professional obligations in violation of Rule 3.3(a)-(c).

c. Godwin failed to reconcile his trust account balances of funds belonging to all clients on a quarterly basis in violation of Rule 10.2(d);

d. Godwin failed to have a directive on file with the bank at which his trust account was maintained requiring it to report to the North Carolina State Bar when any check drawn on his trust account was presented for payment against insufficient funds in violation of Rule 10.2(f).

e. Godwin failed to act with reasonable diligence and promptness in the payment of his client Burton's medical providers, as directed by

Burton, from funds Godwin retained in trust from Burton's settlement proceeds in violation of Rules 6(b)(3) and 10.2(e);

f. With respect to his representation of Ron Marlowe, Godwin failed to act with reasonable diligence and promptness in: (a) depositing the proceeds of his client loan into his trust account, (b) disbursing the proceeds prior to the loan rate expiring, and (c) completing the loan transaction, to the prejudice of his client, in violation of Rules 6(b)(3), 7.1(2) & (3) and 10.2 (e);

g. Godwin knowingly and intentionally made a materially false misrepresentation of fact to State Bar Investigator David Frederick regarding an alleged corrective deposit of his funds into the trust account to repay clients in violation of Rule 1.1(a) and 1.2(c).

h. Godwin continued to represent his current client, Ms. B, with whom he had a sexual relationship, after July 24, 1997, in violation of Revised Rule of Professional Conduct 1.18(a);

i. Before July 24, 1997, Godwin represented his client, Ms. B, after his own personal interest in his sexual relationship with her materially limited or adversely affected his representation of her in violation of Rule 5.1(b);

j. Godwin failed to act with reasonable diligence and promptness in filing the written order for post separation support in Mrs. B's case in violation of Rule 6(b)(3);

k. Godwin failed to distribute money he was holding in trust for Mr. B that he was ordered by a court to distribute to him, in violation of Rule 1.2(d); and

l. Godwin failed to draft and file the judgment of equitable distribution in Mrs. B's case in a reasonably prompt and diligent manner and despite a court order to do so, to the prejudice of his client, in violation of Rules 1.2(d), 6(b)(3) and 7.1(a)(3).

Based upon the consent of the parties, the hearing committee also enters the following:

#### FINDINGS OF FACT REGARDING DISCIPLINE

1. Godwin's misconduct is aggravated by the following factors:
  - a. Pattern of misconduct;
  - b. Multiple offenses;
  - c. Substantial experience in the practice of law; and
  - d. Issuance of a letter of warning to Godwin within three years immediately preceding the filing of the complaint;
2. Godwin's misconduct is mitigated by the following factors:
  - a. Mental disability or impairment;
  - b. Personal or emotional problems; and
  - c. Character or reputation
3. The aggravating factors outweigh the mitigating factors.

Based upon the foregoing findings of fact and conclusions of law and the findings regarding discipline and based upon the consent of the parties, the hearing committee enters the following:

## ORDER OF DISCIPLINE

1. Godwin is hereby suspended from the practice of law for a period of five years, effective 30 days from service of this order upon Godwin.

2. After no less than 1 year following the effective date of the order, Godwin may file a verified petition for a stay of the remaining period of the suspension in accordance with the requirements of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0125(b) of the N.C. State Bar Discipline & Disability Rules ("Discipline Rules"). Godwin's remaining suspension may be stayed if he establishes by clear cogent and convincing evidence the following conditions:

a. Godwin has complied with all the requirements of Discipline Rule .0124;

b. Godwin has complied with all the requirements of Discipline Rule .0125(b);

c. Godwin shall attend a seminar conducted by Bruno DeMolli dealing with the operation and management of trust accounts and provide written documentation to the State Bar demonstrating attendance at this seminar;

d. Godwin shall have completed participation in a lawyers management assistant program, approved by the State Bar, at his own expense;

e. Godwin shall pay all costs assessed by the Secretary in connection with this proceeding within 90 days of service of those costs;

f. Godwin shall violate no Federal or State laws;

g. Godwin shall violate no provisions of the Revised Rules of Professional Conduct of the North Carolina State Bar; and

h. Godwin shall submit a certification from his treating psychiatrist certifying that: (1) he is following all recommendations for treatment of any diagnosed psychological conditions, including Depression and Attention Deficit Disorder with Hyperactivity (hereafter "ADD"); and (2) in the psychiatrist's opinion, Godwin's psychological conditions will not prevent Godwin from adequately performing the responsibilities of an attorney or pose a threat to the public, if he is allowed to practice law.

3. Upon the entry of an order staying the remaining term of Godwin's suspension and the reinstatement of Godwin's license to practice law, such order of stayed suspension may continue in effect for the balance of the term of the suspension only upon compliance with all of the following conditions:

a. With respect to his Trust and Operating accounts,

(i) Godwin must retain a Certified Public Accountant, approved by the State Bar, who will conduct audits of Godwin's Operating and Trust Accounts and provide a written audit report to the State Bar every quarter. These reports and accounting fees shall be at Godwin's expense, and under no circumstances shall the State Bar be responsible for such expenses or fees.

The report provided by the CPA must meet the minimum requirements as set forth in the Guidelines for Outside Audit Reports on Attorney Trust Accounts, attached hereto.

The CPA's reports must be received by the State Bar according to the following schedule for every year in which the suspension is stayed:

- (A) April 30 for January - March;
- (B) July 30 for April - June;
- (C) October 30 for July - September;
- (D) January 30 for October - December of the previous year;

(ii) For the remaining period of the suspension, Godwin is subject to periodic random audits of his trust and operating accounts by the North Carolina State Bar. Godwin's failure to produce the records requested during such an audit, which records he is required to maintain under the Revised Rules, will permit the State Bar to activate his remaining suspension, without a hearing, until such time as a hearing to show cause can be heard by a panel of the DHC.

b. Only Godwin may be a signatory on his trust and operating account(s). Godwin must sign all instruments disbursing funds from or depositing funds into his trust and operating account(s);

c. Godwin must pay all costs assessed by the Secretary in connection with his verified petition for a stay within 90 days of service of the costs;

d. Godwin shall violate no Federal or State laws;

e. Godwin shall violate no provisions of the Rules of Professional Conduct of the North Carolina State Bar; and

f. Godwin shall provide reports from his treating psychiatrist on a bi-annual basis certifying that for the past six months: (1) he has followed all recommendations for treatment of any diagnosed psychological conditions, including Depression and ADD; and (2) in the psychiatrist's opinion, Godwin's psychological conditions will not prevent Godwin from adequately performing the responsibilities of an attorney or pose a threat to the public, if he is allowed to practice law.

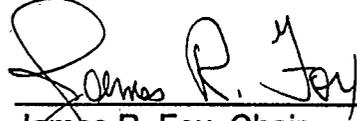
These reports shall be provided no later than January 30 and July 31 of each year the suspension is stayed. Godwin is solely responsible for providing these reports on a timely basis .

4. During the term of the stay, if Godwin violates any of the conditions set forth in paragraph 3 above, the entire suspension remaining, at the time the order staying the suspension was entered, will be activated, regardless of when during the stay Godwin violated any of the above mentioned conditions.

5. If no part of the suspension is stayed, Godwin must petition the DHC at the end of the five year suspension and establish by clear cogent and convincing evidence all the conditions set forth in paragraph 2 above before his license to practice law is reinstated.

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

This the 25<sup>th</sup> day of September 1998.

  
\_\_\_\_\_  
James R. Fox, Chair  
Hearing Committee

GUIDELINES FOR OUTSIDE AUDITORS  
PROVIDING REPORTS ON LAWYERS' TRUST ACCOUNTS

PURPOSE

These guidelines are designed to set forth the minimum standards or requirements for a State Bar approved CPA (hereafter, "outside auditor") providing audit reports to the State Bar.

STANDARDS AND REQUIREMENTS

For each reporting period, the outside auditor shall provide the following sections and analysis in the audit report:

1. Summary

On the first page of the report, the outside auditor shall provide a summary of the findings of the audit for that period, specifically indicating any potential or actual misappropriation, commingling, or any other irregularity in the audited accounts.

2. Maintaining Trust or Fiduciary Account Records

The outside auditor shall ensure that the following records have been maintained by the attorney for all trust or fiduciary accounts:

- A. all bank receipts or deposit slips listing the source of the deposit, the deposit amount, the client name, and the date of receipt;
- B. all canceled instruments drawn on the trust account;
- C. any notices for insufficient funds for instruments drawn on the trust account;
- D. all bank statements on the trust account;
- E. accurate, current ledgers on each person, firm or corporation for whom the attorney holds money in a fiduciary capacity (hereafter "client ledgers");

- F. a report or other indication demonstrating that the attorney has reconciled on at least a quarterly basis the client ledgers with the trust account bank statement balances for that quarter.

3. Trust Account Analysis

The Outside Auditor must provide an analysis of receipts and disbursements of funds during the reporting period in the trust account, including a comparison, on a daily basis, of the amounts held in the trust account versus the amount the attorney was required to be holding in trust. The form for this analysis must be that set forth in Exhibit 1 or another form approved by the State Bar. Any indication of a misappropriation or potential misappropriation of client funds must be included in the summary section noted above.

The outside auditor must also determine whether:

- (1) any instruments were written to cash or bearer; and
- (2) any instruments written payable to the attorney did not include the name of the client.

If there are any instances of instruments being issued as set forth paragraphs one and two above, the outside auditor must include these in the summary section.

4. Other Account Summaries

If the outside auditor is required to report on accounts other than the trust account, the analysis should determine whether any client funds were deposited into these non-trust accounts. Client funds would not include funds for earned fees or reimbursement of paid expenses. Client funds would include: (1) funds representing client proceeds; (2) funds representing both client proceeds and attorney fees, and (3) funds for filing fees or expenses not yet disbursed by the attorney. Any deposit of client funds into an account other than a trust or fiduciary account must be noted in the summary section of the audit report.

PLAINTIFF'S EXHIBIT  
1  
(7pp.)

	A	B	C	D	E	F	G	H	I	J
1										
2			TRUST ACCOUNT SUMMARY							
3										
4		ATTORNEY:	DAVID M. GODWIN - 97G0241(I)							
5		ACCOUNT NUMBER:	PEOPLES SVG 112304/FCB 112304							
6		PERIOD:	10/31/94 - 4/30/97							
7										
8	DATE	PAYEE/SOURCE	DEP AMT	CK NO	CK AMT	-	CLIENT	ACCT BAL	CLNT BAL	DEFALC
9	10/31/94	BALANCE						95.24		
10	11/25/94		1,800.00				BARBOUR	1,895.24	1,800.00	95.24
11	11/28/94	THOMAS BARBOUR		2240	1,200.00		BARBOUR	695.24	600.00	95.24
12	11/30/94	SVC CHG			10.00			685.24	600.00	85.24
13	12/02/94	DMG		2241	600.00		BARBOUR	85.24	0.00	85.24
14	12/09/94		8,500.00				CLEWIS	8,585.24	8,500.00	85.24
15	12/13/94	FANNIE CLEWIS		2243	5,650.00		CLEWIS	2,935.24	2,850.00	85.24
16	12/13/94	DMG		2244	1,500.00		CLEWIS	1,435.24	1,350.00	85.24
17	12/31/94	SVC CHG			10.00			1,425.24	1,350.00	75.24
18	01/18/95	PROVIDENT LIFE - MED		2245	1,350.00		CLEWIS	75.24	0.00	75.24
19	01/31/95	SVC CHG			10.00			65.24	0.00	65.24
20	02/15/95	NSF CHG			20.00			45.24	0.00	45.24
21	02/16/95	DMG	980.00					1,025.24	0.00	1,025.24
22	02/16/95	DMG - GEN ACCT		2246	1,000.00			25.24	0.00	25.24
23	02/16/95	PROCESSING FEE			5.00			20.24	0.00	20.24
24	02/23/95		500.00				GREEN	520.24	500.00	20.24
25	02/27/95	STEVE DAVENPORT		2249	400.00		GREEN	120.24	100.00	20.24
26	02/28/95	SVC CHG			10.00			110.24	100.00	10.24
27	03/06/95	TIMOTHY GREEN		2250	100.00		GREEN	10.24	0.00	10.24
28	03/16/95	CASH	100.00				PRIDGEN	110.24	100.00	10.24
29	03/27/95	INEZ PRIDGEN		2251	100.00		PRIDGEN	10.24	0.00	10.24
30	03/31/95	SVC CHG			10.00			0.24	0.00	0.24
31	04/07/95		1,323.49				BROUSSARD	1,323.73	1,323.49	0.24
32	04/25/95	SQUIRES	100.00				PRIDGEN	1,423.73	1,423.49	0.24
33	04/30/95	SVC CHG			10.00			1,413.73	1,423.49	(9.76)
34	05/05/95	INEZ PRIDGEN		2252	100.00		PRIDGEN	1,313.73	1,323.49	(9.76)
35	06/02/95		100.00				PRIDGEN	1,413.73	1,423.49	(9.76)
36	06/22/95		200.00				SAWYER	1,613.73	1,623.49	(9.76)
37	06/19/95	INEZ PRIDGEN		2253	100.00		PRIDGEN	1,513.73	1,523.49	(9.76)
38	07/03/95		6,500.00				BALDWIN	8,013.73	8,023.49	(9.76)
39	07/05/95	DMG - GEN ACCT		2254	2,168.45		BALDWIN	5,847.28	5,857.04	(9.76)
40	07/06/95		1,200.00				BONEY	7,047.28	7,057.04	(9.76)
41	07/07/95	KATHERINE BONEY		2256	748.00		BONEY	6,299.28	6,309.04	(9.76)
42	07/07/95	DMG - GEN ACCT		2257	434.00		BONEY	5,865.28	5,875.04	(9.76)
43	07/10/95	LAKIETTA BALDWIN		2260	4,024.68		BALDWIN	1,840.60	1,850.36	(9.76)
44	07/18/95		5,200.00				McALISTER	7,040.60	7,050.36	(9.76)
45	07/18/95	LONZO McALISTER		2261	4,600.00		McALISTER	2,440.60	2,450.36	(9.76)
46	07/19/95	SOUTH WILM CHIRO		2259	330.32		BALDWIN	2,110.28	2,141.49	(31.21)
47	07/20/95	DMG		2262	600.00		McALISTER	1,510.28	1,541.49	(31.21)
48	07/21/95		8,463.27				EANES	9,973.55	10,004.76	(31.21)
49	07/27/95		400.00				DAVIS	10,373.55	10,404.76	(31.21)
50	08/01/95	DMG		2264	245.00		EANES	10,128.55	10,159.76	(31.21)
51	08/02/95	JAMES SUGG		2265	400.00		DAVIS	9,728.55	9,759.76	(31.21)
52	08/03/95	SURGICAL MEDICAL		2258	35.00			9,693.55	9,759.76	(66.21)
53	08/08/95	EDWARD EANES		2263	8,218.27		EANES	1,475.28	1,541.49	(66.21)
54	09/06/95		3,625.00				MARSHALL	5,100.28	5,166.49	(66.21)
55	09/06/95	DMG		2268	1,207.13		MARSHALL	3,893.15	3,959.36	(66.21)
56	09/06/95	RHEA MARSHALL		2269	1,702.87		MARSHALL	2,190.28	2,256.49	(66.21)
57	09/14/95	COASTAL CHIRO		2267	715.00		MARSHALL	1,475.28	1,541.49	(66.21)
58	09/15/95		954.00				GRAINGER	2,429.28	2,495.49	(66.21)
59	09/19/95	JAMES GRAINGER		2270	477.00		GRAINGER	1,952.28	2,018.49	(66.21)
60	09/19/95	ANITA GRAINGER		2271	477.00		GRAINGER	1,475.28	1,541.49	(66.21)
61	10/17/95		85.00				CHADWICK	1,560.28	1,626.49	(66.21)
62	11/10/95		734.52				GRAINGER	2,294.80	2,361.01	(66.21)
63	11/14/95		3,966.00				WATSON	6,260.80	6,327.01	(66.21)
64	11/14/95	DMG		2273	991.50		WATSON	5,269.30	5,335.51	(66.21)
65	11/15/95		60.00				LEE	5,329.30	5,395.51	(66.21)
66	11/16/95	JANET WATSON		2272	2,974.50		WATSON	2,354.80	2,421.01	(66.21)
67	11/20/95	BRUNSWICK CSC		2274	60.00		LEE	2,294.80	2,361.01	(66.21)

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