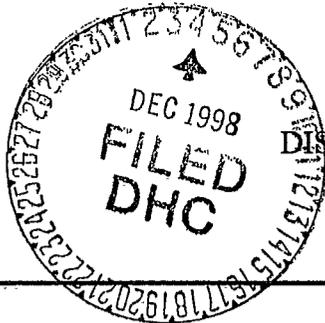


NORTH CAROLINA
WAKE COUNTY



20556

BEFORE THE
DISCIPLINARY HEARING COMMISSION
NORTH CAROLINA STATE BAR.
98 DHC 21

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
v.)
R. THORNTON McDANIEL, JR., Attorney,)
Defendant)

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND
ORDER OF DISCIPLINE

This matter came on to be heard on November 6, 1998 before a hearing committee of the Disciplinary Hearing Commission composed of Fred H. Moody, Jr., Chair; Kenneth M. Smith, and Robert B. Frantz. A. Root Edmonson represented the North Carolina State Bar and the defendant, R. Thornton McDaniel, Jr. appeared pro se. Based upon the pleadings, the stipulations of the parties and the evidence presented at the hearing, the hearing committee makes the following:

FINDINGS OF FACT

1. The 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. The defendant, R. Thornton McDaniel, Jr. (hereinafter McDaniel), was admitted to the North Carolina State Bar on June 23, 1994 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 relevant periods, McDaniel was a member of the North Carolina State Bar. McDaniel was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the city of Oxford, Granville County, North Carolina through May 31, 1996.

4. McDaniel was properly served with process and the hearing was held with due notice to all parties.

5. On October 12, 1994, McDaniel accepted an offer of employment as an associate in the Oxford, NC law office of Royster, Royster & Cross (hereinafter RR&C).

6. Pursuant to his employment contract with RR&C, McDaniel was to receive forty percent of the fees that he generated as compensation for his services. Because it was anticipated that it would be difficult for McDaniel to generate enough income to meet his needs for a few months, McDaniel was allowed to take a draw from RR&C of \$4,166.67 per month as an advance to be repaid from his future earnings. If McDaniel left RR&C, the amount which his drawing account exceeded his earnings was to become a debt payable on demand.

7. McDaniel did not generate the fees that he and the firm anticipated that he would earn. After receiving credit for work performed but not billed, McDaniel's drawing account exceeded his earnings account at the end of 1995. Beginning in 1996, the employment contract between McDaniel and RR&C was altered so that McDaniel would only draw forty percent of his collected fees.

8. In April of 1996, McDaniel and RR&C mutually terminated their relationship to become effective May 31, 1996.

9. During May of 1996, McDaniel was seldom in the firm's offices when the two partners were present. McDaniel was not in the office on a full time basis. However, RR&C partner James Cross (hereinafter Cross) left McDaniel several messages advising him that he needed to meet with the partners to discuss McDaniel's debt to the firm and the status of his pending cases.

10. Two of the cases that McDaniel had pending at the beginning of May, 1996 were the personal injury claims of Karen K. Johnson and her minor daughter, Molly, arising out of an accident occurring on June 19, 1995.

11. McDaniel notified Karen Johnson and her husband, Richard, that he was leaving RR&C and moving to Florida. He further advised that, since efforts to settle Karen's and Molly's claims with the adjuster for Integon Insurance Company (hereinafter Integon), the insurance carrier for the potential defendant, had been unsuccessful, he would need to refer their cases to another lawyer outside RR&C. McDaniel gave the Johnsons the names of several local attorneys.

12. On or before May 23, 1996, Karen Johnson called McDaniel and advised him that she wanted him to attempt to settle the claims rather than refer them to a new attorney.

13. On May 23, 1996, McDaniel called a representative of Integon and advised the representative that his clients would settle the two Johnson claims for \$20,000.

14. On or before May 24, 1996, with the consent of his clients, McDaniel settled Karen Johnson's claim with the adjuster for Integon for \$11,000 and settled Molly Johnson's claim for \$400.

15. On May 24, 1996, McDaniel left a memo for Cross which, among other things, advised that all files (other than those discussed earlier in the memo) had been settled, closed, dismissed, or referred to other lawyers. McDaniel's memo made no mention of the Johnsons' cases or his efforts to settle them.

16. McDaniel did not receive the Integon checks prior to May 30, 1996.

17. On or about May 30, 1996, McDaniel had Karen Johnson endorse the \$11,000 Integon check and had Karen and Richard Johnson endorse Molly Johnson's \$400 Integon check. The Johnsons also signed appropriate releases and a closing statement prepared by McDaniel.

18. McDaniel did not deposit the Integon checks representing the Johnsons' settlement funds into RR&C's trust account or into any other trust or fiduciary account. Instead, McDaniel went to a Wachovia Bank in Durham where McDaniel exchanged the two Integon settlement checks for two cashier's checks. One of the cashier's checks was made payable to Karen K. Johnson for \$8,550 and the other was payable to Thornton McDaniel for \$2,850.

19. At the time he received the \$2,850 as an attorney fee for representing the Johnsons, McDaniel knew that, pursuant to his employment contract with RR&C, he was not entitled to keep the fee. McDaniel received the \$2,850 in a fiduciary capacity for the benefit of RR&C.

20. McDaniel did not advise either of the partners, or anyone else at RR&C, that he had settled the Johnson cases before he left for Florida.

21. On June 3, 1996, RR&C's computer generated a bill for \$41.22 in costs in the Johnson matters. Believing that the Johnson cases had been referred to another lawyer, Cross instructed an employee of RR&C to send the Johnsons the bill so that RR&C could recover its costs.

22. On June 6, 1996, Karen Johnson called an employee at RR&C and advised that McDaniel had told the Johnsons that the firm's costs had been absorbed in the attorney fee McDaniel had received when the two Johnson claims were settled on May 30, 1996.

23. On June 13, 1996, T. S. Royster, Jr. (hereinafter Royster), a partner in RR&C, wrote McDaniel a letter expressing his concern with McDaniel's handling of the Johnsons' settlements, expressing particular concern about whether the settlement funds had been handled outside a trust account.

24. On June 17, 1996, McDaniel purchased a cashier's check in the amount of \$2,850 at SunTrust Bank in Key Biscayne, FL and deposited the cashier's check into a trust account he had opened on the afternoon of June 14, 1996 at Barnett Bank in Key Biscayne, FL.

25. On June 18, 1996, McDaniel sent the partners at RR&C a memo in response to Royster's letter indicating that at the time of the Johnsons' settlement the agreed attorney fee

went into his trust account. That memo would lead a reasonable person to believe that McDaniel had deposited the attorney fee portion of the Johnson proceeds into his trust account immediately upon his arrival in Florida, which was a false representation.

26. The North Carolina State Bar did not prove by clear, cogent and convincing evidence that McDaniel intended to appropriate the attorney fee he had received in the Johnsons' cases which he received in a fiduciary capacity for RR&C to his own use.

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 McDaniel and the subject matter.
2. McDaniel's conduct, as set out above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:
 - (a) By failing to deposit the Integon checks received in settlement of the Johnsons' cases into a trust account, McDaniel failed to deposit funds received for or on behalf of a client in a lawyer trust account in violation of Rule 10.1(c).
 - (b) By representing to the partners at RR&C in his June 18, 1996 memo that the Johnsons' attorney fee had been deposited into his trust account immediately upon his arrival in Florida, McDaniel engaged in conduct involving misrepresentation in violation of Rule 1.2(c).

BASED UPON the foregoing Findings of Fact and Conclusions of Law and upon the arguments of the parties concerning the appropriate discipline, the hearing committee hereby makes additional:

FINDINGS OF FACT REGARDING DISCIPLINE

1. McDaniel's misconduct is aggravated by the following factors:
 - (a) multiple offenses;
 - (b) submission of false evidence, false statements, or other deceptive practices during the disciplinary process; and
 - (c) substantial experience in the practice of law.
2. McDaniel's misconduct is mitigated by the following factors:

- (a) absence of a prior disciplinary record;
- (b) existence of some emotional, personal or family problems;
- (c) timely good faith efforts to rectify the consequences of his misconduct.

BASED UPON the foregoing aggravating and mitigating factors and the arguments of the parties, the hearing committee hereby enters the following:

ORDER OF DISCIPLINE

(1) McDaniel's license to practice law in North Carolina is suspended for a period of two years.

(2) The above referenced suspension is stayed for two years upon the following conditions:

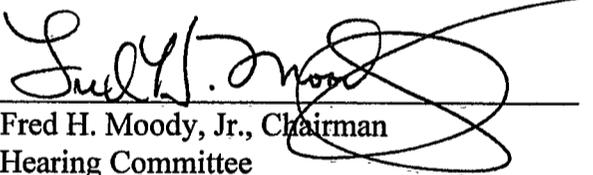
(a) Within six months of the entry of this order, McDaniel must attend and complete a course on trust accounts given or sponsored by the North Carolina State Bar.

(b) During each of the two years of the stay, McDaniel must attend, pay for, and complete a three-hour ethics block in addition to whatever other Continuing Legal Education (CLE) requirements that he may be subject to. If McDaniel is required by the CLE Board's rules to take the three-hour block during either of the two years of the stay, he will have to take two separate three hour blocks during that year.

(c) McDaniel must not violate any of the Rules of Professional Conduct during the period of the stay.

(d) McDaniel must pay the costs of this proceeding as assessed by the Secretary within ninety (90) days of service of this order.

Signed this the 4th day of December, 1998 with the knowledge and consent of the other members of the hearing committee.


Fred H. Moody, Jr., Chairman
Hearing Committee