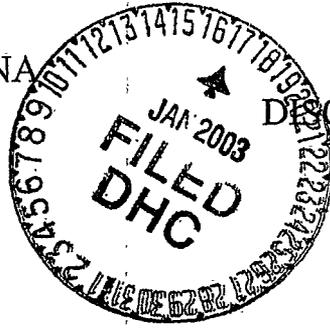


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NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
98 DHC 14

THE NORTH CAROLINA STATE BAR,
PLAINTIFF

v.

DOUGLAS S. HARRIS, ATTORNEY,
DEFENDANT

ORDER OF DISCIPLINE

This matter was heard on 19, 20, and 21 September 2002 and 16 and 18 November 2002 before a hearing committee of the Disciplinary Hearing Commission composed of Richard T. Gammon, Chair; Fred H. Moody, Jr.; and H. Dale Almond. The defendant, Douglas S. Harris, represented himself. The plaintiff, the North Carolina State Bar, was represented by David R. Johnson. Based upon the pleadings, stipulations, and evidence introduced 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. The Defendant, Douglas S. Harris (hereafter Defendant), was admitted to the North Carolina State Bar in August 1981 and is, and was at all times referred to herein, an attorney at law licensed to practice law 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 or most of the periods referenced herein, Defendant was engaged in the practice of law in North Carolina and maintained a law office in the city of Greensboro, Guilford County, North Carolina.

4. At all times relevant to this proceeding, Defendant maintained an office operating bank checking account with Central Carolina Bank (hereafter CCB), account number 372210073 (hereafter "operating account"). This account was not established as an attorney trust account for the deposit of client funds and Defendant regularly deposited his personal funds into and paid his business expenses from this account. The Defendant had a line of credit on this account of \$5,500. Defendant also maintained a separate attorney trust checking account with CCB, account number 371068196 (hereafter "trust account").

5. Brenda Capps (hereafter Capps) hired Defendant on or about 17 January 1996, to represent her in a personal injury claim arising from an automobile accident that occurred on or about 4 January 1996. The Defendant agreed to a 25% contingency fee as his attorney fee for the case.

6. The driver of the other vehicle in the automobile accident was insured by Allstate Company (hereafter "Allstate"). Allstate conceded the liability of its insured to Capps.

7. By letter dated 5 August 1996, Defendant submitted a settlement package and made the first demand to Allstate for settlement of Capps' personal injury claim in the amount of \$15,500. The adjuster for Allstate, Keith Harvey (hereafter "Harvey"), received the settlement package from the Defendant on 12 August 1996.

8. On 16 August 1996, Capps wrote a letter to the Defendant discharging him as her attorney for her personal injury claim. The Defendant received the letter on 19 August 1996 and admits that he considered himself discharged by that letter.

9. Capps engaged a new attorney to represent her in the claim, James M. Snow of High Point (hereafter Snow). Capps consulted with Snow on or about 16 August 1996 and signed an employment agreement with Snow on 20 September 1996.

10. By letter dated 22 August 1996, Snow notified Defendant that he was representing Capps. Snow asked Defendant, *inter alia*, to notify the insurance carrier that Defendant was discharged and to provide him with the relevant medical bills and other documentation from Capps' records in Defendant's office. Defendant did not respond to Snow, comply with Snow's request, or notify the insurance carrier that he had been discharged.

11. On 23 August 1996, after Defendant knew he no longer represented her, Defendant negotiated with Harvey by telephone conference and orally agreed to receive a settlement draft from Allstate in favor of Capps in the amount of \$12,000.00. Defendant did not inform Harvey at any time that he had been discharged by Capps.

12. Pursuant to the telephone conference with Harvey, Defendant received a draft from Allstate, numbered 86610491, dated 23 August 1996 and made payable to "Brenda Capps and Douglas S. Harris Atty." in the amount of \$12,000.00 as the full and final settlement proceeds of Capps' claim on 23 August 1996 or shortly thereafter. The draft was accompanied by an Allstate document entitled "Release of All Claims" intended for execution by Capps. Defendant did not inform the insurance company after receipt of the draft and release that he had been discharged by Capps. Defendant kept the draft and release at his office and did not return them to Allstate.

13. The Defendant received the Allstate draft and release as a fiduciary. Allstate considered Defendant responsible for overseeing the proper execution of the release and proper endorsement of the draft before presenting the draft for payment at any bank and Defendant held them in trust for that purpose.

14. Defendant states that Capps met with him at his office on Saturday, 18 January 1997 and executed the "Release of All Claims" and authorized acceptance of the settlement from Allstate and deposit of the draft. Upon acceptance of the settlement from Allstate represented by the \$12,000 draft, Capps was entitled to receive \$8,900.00 as her net proceeds from the \$12,000 Allstate draft after deducting the 25% contingency fee to Defendant and reimbursement of a \$100 advance of expenses by Defendant.

15. Defendant states that he then issued a check from his operating account to Capps in the amount of \$8,900 and delivered it to her personally at that time. At no time did Capps authorize Defendant to receive, use, or borrow any of her net proceeds from this settlement draft for any personal or business expenses or use of the Defendant.

16. On Tuesday, 21 January 1997, Defendant deposited the Allstate \$12,000.00 settlement draft for Capps' claim into his operating account, rather than his trust account. Defendant states he did so because that was the account from which he contends that he issued the \$8,900 check to Capps.

17. As of the beginning of the banking day on 21 January 1997, Defendant had at least twenty-four (24) checks drawn on his CCB operating

account that were outstanding and subject to presentment at CCB at any time. The sum of these checks was \$13,644.50, the vast majority of which consisted of amounts payable to the Internal Revenue Service and the North Carolina Department of Revenue.

18. The outstanding checks as of the beginning of the banking day on 21 January 1997 were presented against Defendant's CCB operating account and paid in due course.

19. As of the end of the banking day on 21 January 1997, there were insufficient funds in Defendant's operating account, including the \$5,500 line of credit on that account, to pay all of Defendant's outstanding checks on the account and \$8,900.00 to Capps.

20. Between 21 January 1997 and 20 May 1997, the account balance in Defendant's CCB operating account remained below \$8,900 at all times and Defendant could not have paid Capps \$8,900 from this account without drawing on Defendant's personal line of credit on that account or transferring funds from other accounts of Defendant to the operating account.

21. All or part of the \$8,900 net proceeds of the Allstate check to which Capps was entitled and to which the Defendant was not entitled were used on or after 21 January 1997 to pay the outstanding checks drawn on Defendant's operating account for the Defendant's personal or business obligations in due course.

22. No check or other instrument payable to Capps drawn on Defendant's CCB operating account, or any other account of the Defendant's, in the amount of \$8,900.00 was ever presented to or paid by Defendant's bank.

23. Defendant did not forward the "Release of All Claims" to Allstate on 21 January 1997 or shortly thereafter, nor did Defendant inform Allstate that the settlement had been completed at that time.

24. On 6 March 1997, Snow wrote a letter to Harvey wanting to review the settlement package previously submitted by Defendant in anticipation of Snow's negotiations with Allstate. Upon receipt of this letter, Harvey contacted Defendant and asked what had happened to the settlement draft that had been issued in August of 1996.

25. Defendant informed Harvey that the prior settlement with Capps had been accepted, the settlement check cashed, and Capps had signed the "Release of All Claims." Defendant forwarded the signed, original "Release of All Claims" to

Harvey by letter dated 23 March 1997. The "Release of All Claims" showed Capps' signature dated 18 January 1997, the Saturday before the Martin Luther King holiday, with a notary acknowledgement of the same date.

26. Although Capps denies signing the "Release of All Claims," there was insufficient evidence presented to rebut the presumption created by the Notary jurat that the release was executed by Capps on the date indicated.

27. Defendant represented Ruth Tisdale (hereafter Tisdale) in a personal injury claim. Defendant settled Tisdale's claim for \$2,200.00 in October 1996.

28. In October 1996, Defendant disbursed the following checks from his CCB trust account with respect to Tisdale's settlement:

- | | |
|--|------------|
| a. Check Number 3818 to Tisdale | \$1,000.00 |
| b. Check Number 3819 to Dr. Russell Cobb | \$800.00 |
| c. Check Number 3821 to Defendant | \$350.00 |

29. Defendant had not deposited the \$2,200 settlement check for Tisdale into his trust account at the time he disbursed the above checks. The checks were paid from his CCB trust account in due course shortly after they were issued by Defendant in October 1996.

30. Defendant represented Leigh Fincannon (hereafter Fincannon) in a personal injury claim. In July 1996, Defendant received a check dated 19 July 1996 in the amount of \$2,000.00 from Nationwide Insurance as full and final payment of Fincannon's claim.

31. In October and November, 1996, Defendant disbursed the following checks from his CCB trust account with respect to Fincannon's settlement amount:

- | | |
|-------------------------------------|------------|
| a. Check Number 3860 to Fincannon | \$500.00 |
| b. Check Number 3861 to Cobb Clinic | \$1,000.00 |
| c. Check Number 3863 to Defendant | \$400.00 |

32. Defendant had not deposited the \$2,000.00 settlement check for Fincannon into his trust account at the time he disbursed the checks to himself,

Fincannon, and the Cobb Clinic. The checks were paid from his CCB trust account in due course shortly after they were issued in October and November 1996.

33. Defendant's failure to deposit the settlement checks for Tisdale and Fincannon was not intentional.

34. Richard A. Harris is Defendant's brother. Richard Harris is the sole or controlling shareholder and chief executive officer of a close corporation named Castle McCulloch, Inc. Defendant maintained \$20,000 belonging to either Richard Harris personally or Castle McCulloch, Inc. in Defendant's CCB trust account for several years.

35. Defendant lent or advanced a substantial portion of the \$20,000 maintained in his trust account belonging to his brother or Castle McCulloch, Inc. to at least three of Defendant's clients for living, medical, or other expenses not constituting litigation expenses, specifically as follows: a) \$600.00 to Alan Morton to pay for surgery; b) \$1,000.00 to Natasha Nelson to pay her rent and car note; and c) \$13,500.00 to Pamela Moffitt to pay for surgery, medical expenses, and travel to doctors.

36. Defendant did not keep a file or ledger with a record for each client from whom or for whom trust money was received and disbursed that accurately maintained the current balance of funds held in the trust account for that person.

37. Defendant did not maintain a proper journal of all trust funds showing the date and source of receipts, the date and recipient of disbursements, and the client balance against which each instrument was drawn.

38. Defendant did not reconcile the trust account balances of funds belonging to clients at least quarterly during calendar years 1995, 1996 and 1997.

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 Douglas S. Harris 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. § 84-28(b)(2) as follows:

- a. By not depositing the Allstate draft into his trust account and by not maintaining a sufficient balance in his operating account to cover any

instrument payable to Capps for her net proceeds of \$8,900 from the draft at all times after depositing the draft into his operating account, the Defendant failed to maintain funds belonging to a client in violation of Rule 10.1(a) and (c) of the Rules of Professional Conduct.

- b. By depositing the Allstate draft into his operating account in which he also deposited his personal funds and paid his business expenses, the Defendant commingled client and personal funds in violation of Rule 10.1(a) of the Rules of Professional Conduct.
- c. By not withdrawing from representation of Capps in August 1996 after she had discharged him, the Defendant failed to withdraw from employment when discharged by a client in violation of Rule 2.8(b)(4) of the Rules of Professional Conduct.
- d. By failing to deposit insurance settlement checks received on behalf of clients Tisdale and Fincannon into his trust account, the Defendant failed to promptly deposit client funds into a trust account in violation of Rule 10.1(c) of the Rules of Professional Conduct.
- e. By lending money belonging to his brother's company held in his trust account to clients for non-litigation expenses, Defendant engaged in actions in which he had a conflict of interest in violation of Rule 5.1(b) of the Rules of Professional Conduct and advanced financial assistance to clients in violation of Rule 5.3(b) of the Rules of Professional Conduct.
- f. By not maintaining adequate records, journals, and ledgers from which all client funds could be accounted for, the Defendant did not maintain complete records of all funds belonging to clients received by him in violation of Rule 10.2(b) of the Rules of Professional Conduct and did not maintain the minimum records required under Rule 10.2(c) of the Rules of Professional Conduct.
- g. By not reconciling his trust account balances over calendar years 1995, 1996, and 1997, the Defendant failed to reconcile trust account balances at least quarterly in violation of Rule 10.2(d) of the Rules of Professional Conduct (and Rule 1-15-3(c) of the Revised Rules of Professional Conduct with respect to his obligation to reconcile after the effective date of those rules - 24 July 1997).

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

Findings of Fact Regarding Discipline

1. The Defendant received a Reprimand in 1987 in a matter relating to the improper use of a power of attorney to endorse a client's name to a check and an admonition in 1997 in a matter relating to the failure to refund client funds held in trust intended to cover deposition expenses after discharge by the client before the depositions took place.

2. The Defendant has a reputation for good character within the community.

3. The Defendant has paid Capps substantially more than \$12,000 in settlement of a civil claim against him arising from this same matter.

4. This is a rehearing of a matter considered by the DHC originally in 1998 which resulted in an order of disbarment. The Defendant successfully appealed that decision. The Defendant was suspended from the practice of law for a period of two years pending appeal of the prior hearing of this matter.

Based on the foregoing Findings of Fact and Conclusions of law and the additional Findings of Fact Regarding Discipline, the hearing committee concludes:

1. The Defendant's misconduct is aggravated by:

- a. Prior disciplinary offenses;
- b. A pattern of misconduct in this matter;
- c. Multiple offenses and multiple rules violated in this matter; and
- d. Substantial experience in the practice of law.

2. The Defendant's misconduct is mitigated by:

- a. Good character or reputation; and
- b. Imposition of other penalties and sanctions from his conduct.

3. The Hearing Committee concludes that mitigating factors outweigh the aggravating factors. The Hearing Committee considers the prior discipline to carry less weight because of time or circumstances.

Based upon Findings of Fact and Conclusions of Law and the foregoing aggravating and mitigating factors and the arguments of the parties, the hearing committee hereby enters the following:

Order of Discipline

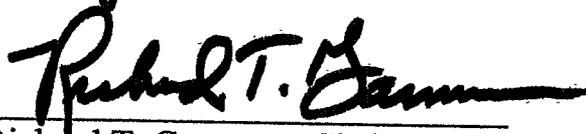
1. The Defendant's license to practice law is suspended for two years.
2. The suspension is stayed for a period of five years upon compliance with the following terms and conditions:
 - a. By 18 May 2003, Defendant will have fully cooperated with the North Carolina State Bar in the resolution of the determination of the proper recipient of all funds remaining in his trust account, including provision of adequate records or documentation to support any claim of his personal entitlement to any remaining funds;
 - b. Defendant will not use any powers of attorney to execute any releases, endorse any settlement checks, or execute any other documents on behalf of a client in any transaction in which he has an interest, including entitlement to a fee from the proceeds received on behalf of a client;
 - c. Defendant will have a licensed CPA conduct an audit of his receipt and disbursement of funds or property belonging to clients or received in a fiduciary capacity of any type on a quarterly basis at his own expense, including any trust account he may maintain, and direct the CPA to provide a copy of each audit report to the Office of Counsel of the North Carolina State Bar within thirty (30) days of the last day of each calendar quarter. The first such report will be provided by 30 April 2003 and cover the period from 18 November 2002 through 31 March 2003;
 - d. By 18 November 2003, Defendant will complete a course in law office finances, including trust account management and record-keeping, approved by the Office of Counsel of the North Carolina State Bar;
 - e. Defendant will comply with all present and future orders of a court involving this matter;
 - f. Defendant will pay all State Bar dues and Client Security Fund assessments and will comply with all Continuing Legal Education requirements on a timely basis;

- g. Defendant will keep his address of record with the North Carolina State Bar current, will accept all certified mail from the North Carolina State Bar, and will respond to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication;
 - h. Defendant will not violate any of the Revised Rules of Professional Conduct;
 - i. Defendant will not violate any local, state, or federal laws; and
 - j. Defendant will pay all costs of this proceeding, except for the costs related to the Capps deposition in Florida, as assessed by the Secretary within 30 days after service of the bill of costs on him.
3. If the stay of the suspension is lifted and the suspension is activated for any reason, Defendant will comply with the following conditions precedent to reinstatement following the completion of the suspension:
- a. Defendant will have submitted his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days from the effective date of the order activating his suspension;
 - b. Defendant will have complied with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the N.C. State Bar Discipline & Disability Rules on a timely basis;
 - c. Defendant will have fully cooperated with the North Carolina State Bar in the resolution of the determination of the proper recipient of all funds remaining in his trust account, including provision of adequate records or documentation to support any claim of his personal entitlement to any remaining funds;
 - d. Defendant will have completed a course in management of law office finances, including trust account management and record-keeping, approved by the Office of Counsel of the North Carolina State Bar;
 - e. Defendant will have complied with all orders of a court involving this matter;
 - f. Defendant will not have engaged in the practice of law or violated any of the Revised Rules of Professional Conduct in any capacity during the suspension;
 - g. Defendant will not have violated any local, state, or federal laws; and

- h. Defendant will have paid all costs of this proceeding, except for the costs related to the Capps deposition in Florida, as assessed by the Secretary.

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

This the 16th day of January 2003.


Richard T. Gammon, Chair
Disciplinary Hearing Committee