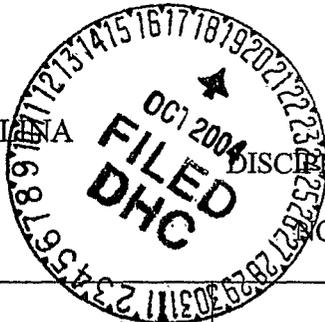


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STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
03 DHC 20

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

WILLIAM C. SHUMWAY, Attorney,

Defendant

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

This matter was heard on the 10th day of September, 2004, before a hearing committee of the Disciplinary Hearing Commission composed of Charles M. Davis, Chair, Elizabeth Bunting, and Betty Ann Knudsen, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). The plaintiff was represented by Jennifer A. Porter. The Defendant represented himself. Based upon the pleadings and the evidence introduced at the hearing, the hearing committee hereby enters 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, William C. Shumway (hereinafter, Shumway), was admitted to the North Carolina State Bar on November 4, 1986, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Revised Rules of Professional Conduct.

3. During the times relevant to this complaint, Shumway was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the city of Hendersonville, North Carolina.

4. In or about March 2000 Defendant was hired by Marietta Walls (hereinafter "M. Walls") to aid her after the death of her husband William E. Walls (hereinafter "decedent"). Decedent's assets were held in a revocable trust, for which M. Walls acted as successor trustee. The primary personal property assets in the trust consisted of stocks and mutual funds. The beneficiaries of the trust were M. Walls and

decedent's children, Jerry A. Walls, Daniel E. Walls, and Cynthia L. Konopa (hereinafter "children beneficiaries").

5. The children beneficiaries were not satisfied with how the distribution of assets occurred and filed grievances against Defendant.

6. On or about November 21, 2001 Defendant received a Letter of Notice from the Chair of the Grievance Committee of the North Carolina State Bar regarding the grievance filed by the children beneficiaries against him. Pursuant to 27 N.C.A.C. 1B § .0112(c), Defendant was required to respond to the Letter of Notice within 15 days of receipt. Defendant did not respond to the Letter of Notice within the 15 day period as required.

7. On January 24, 2002 the Secretary of the North Carolina State Bar issued a subpoena to Defendant commanding him to appear at the State Bar on February 20, 2002 to respond to the grievance filed by the children beneficiaries. Defendant was served with the subpoena on February 1, 2002 by certified mail. Defendant failed to appear as commanded by the subpoena.

8. During the times relevant to this complaint, Shumway maintained an attorney trust account at First Citizens Bank, account number 005611412533 (hereinafter, trust account).

9. On or about April 19, 2001 the North Carolina State Bar was notified by First Citizens Bank that Defendant's trust account had insufficient funds on or about April 16, 2001 to process a check for \$39,815.40.

10. On or about May 8, 2001 the North Carolina State Bar sent Defendant a letter by certified mail, which Defendant received on May 11, 2001. The letter asked Defendant to explain why his trust account had insufficient funds on or about April 16, 2001 to process the check for \$39,815.40 and to provide supporting documentation within two weeks of receipt of the letter. Defendant did not respond.

11. On or about August 22, 2001 the North Carolina State Bar sent Defendant another letter by certified mail, which Defendant received on August 27, 2001, referencing the May 8, 2001 request for information and asking for a response within ten (10) days of receipt of the letter. Defendant did not respond.

12. On or about December 6, 2001 the North Carolina State Bar sent Defendant another letter by certified mail, which Defendant received on December 10, 2001, referencing the two prior requests for information dated May 8, 2001 and August 22, 2001 and asking for a response within ten (10) days of receipt of the letter. Defendant did not respond.

13. The North Carolina State Bar opened a grievance file based on this information regarding Defendant's trust account and his failure to respond to the State Bar. On February 20, 2002 Defendant received a letter of notice from the State Bar asking for his explanation regarding the insufficient funds in his trust account and his

failure to respond to the State Bar. Defendant was required to respond within fifteen (15) days. Defendant did not respond to the letter of notice, nor to subsequent letters asking for his response.

14. On February 20, 2002, Defendant also received a subpoena for cause audit requiring him to produce records by February 27, 2002. Defendant produced some but not all of the records described and required by the subpoena by February 27, 2002. Defendant was mistaken regarding the scope of the records being subpoenaed and corrected the mistake upon being notified by the State Bar of his error.

15. Defendant responded to subsequent requests by the State Bar for documents and provided trust account records, client ledgers, HUD statements, and other documents, except as otherwise noted herein. Defendant kept in contact with Mr. Frederick, investigator for the State Bar.

16. On or about April 15, 2002 the North Carolina State Bar was notified by First Citizens Bank that Defendant's trust account had insufficient funds on or about April 11, 2002 to process a check for \$79,657.31.

17. On or about May 20, 2002 the State Bar sent Defendant a letter by certified mail, which Defendant received on May 28, 2002. The letter asked Defendant to explain why his trust account had insufficient funds on or about April 11, 2002 to process the check for \$79,657.31 and to provide supporting documentation within two weeks of receipt of the letter. Defendant did not respond.

18. On September 4, 2002 the State Bar requested records showing Defendant's reconciliations of his trust account. Defendant is required by Rule 1.15-3(c) of the North Carolina Revised Rules of Professional Conduct to reconcile his trust account quarterly. Defendant was reminded of this requirement during the course of random audits of his trust account, conducted by the State Bar's auditor in 1991 and 1995. In response to the 1995 audit report, Defendant pledged to do monthly reconciliations of his trust account and maintain those records for six years. Defendant failed to produce any records of any reconciliations of his trust account, monthly or quarterly.

19. Defendant has failed to conduct quarterly reconciliations of his trust account as required by Bar Rule.

20. On or about March 4, 2003, Defendant received another Letter of Notice from the Chair of the Grievance Committee of the North Carolina State Bar regarding the grievance filed by the State Bar against him concerning his trust account. Pursuant to 27 N.C.A.C. 1B § .0112(c), Defendant was required to respond to the Letter of Notice within 15 days of receipt. Defendant did not respond to the Letter of Notice within the 15 day period as required, nor did he respond after a subsequent letter was sent to him, dated April 2, 2003, requesting his response.

21. Examination of Defendant's trust account records for the period between February 1, 2001 through July 31, 2002 show Defendant disbursed money from his trust

account for clients in excess of the amount of money deposited for those clients in Defendant's trust account. Clients with respect to whom such overpayments occurred include the following: Mr. John D. Lewis, Mr. George L. Patterson, Ms. Carolyn Ruggles, Mr. Wiley Housley, Mr. Edward Leidheiser, Ms. Judy Burgess, Mr. David McCarthy, Mr. Roy Hetzler, Mr. Waddy Hudson, Mr. Anderson, and Mr. James D. Powell.

22. By writing checks for clients from his trust account, after already having expended the funds deposited in his trust account for such clients, Shumway appropriated entrusted funds of other clients that he held in a fiduciary capacity for a purpose that was not intended.

23. Defendant did not misappropriate client funds for 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 the Defendant and the subject matter of this proceeding.
2. The Defendant's conduct, as set out in the stipulated Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. §84-28(b)(2) as follows:
 - a. By failing to respond to the letters of notice issued by the Chair of the Grievance Committee within the deadline established by the rules, Defendant failed to timely respond to inquiries by the Bar in violation of Rule 8.1(b) of the Revised Rules of Professional Conduct and N.C. Gen. Stat. §84-28(b)(3).
 - b. By failing to appear in response to the State Bar's subpoena, Defendant failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b) of the Revised Rules of Professional Conduct, and engaged in contempt of the State Bar in violation of N.C. Gen. Stat. § 84-28(b)(3).
 - c. By failing to conduct quarterly reconciliations of his trust account, Defendant violated Rule 1.15-3(c) of the Revised Rules of Professional Conduct.
 - d. By disbursing more funds from his trust account than he had deposited in his trust account for certain clients, Defendant caused deficits in his trust account that affected the property of other clients whose funds he had deposited in his trust account, in violation of Rule 1.15-2, subsections (a) and (m).

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

Findings Of Fact Regarding Discipline

1. Defendant received a Reprimand dated 1 November 1996 from the Grievance Committee for failure to respond to an estate client's request for documents needed to settle her father's estate, failure to respond to the inquiries of the State Bar, failure to comply with a subpoena to appear before the North Carolina State Bar Counsel, failure to keep a client reasonably informed, failure to promptly comply with a client's reasonable requests for information, failure to act with reasonable diligence and promptness in representing the client, failure to seek the lawful objectives of a client, failure to carry out the contract of employment entered into with a client for professional services, withdrawing from a client's case without taking reasonable steps to avoid foreseeable prejudice to the client, and failure to comply with representations Defendant made to a subcommittee of the Grievance committee in violation of Rules 6(b)(1), 6(b)(3), 7.1(a)(1), 7.1(a)(2), 2.8(a)(2), and 1.1(b), of the [now superceded] Rules of Professional Conduct.

2. Defendant received an Admonition dated 17 May 1999 from the Grievance Committee for failure to respond to inquiries of the State Bar in violation of Rule 8.1(b) of the North Carolina Revised Rules of Professional Conduct.

3. Defendant received a Reprimand dated 15 February 2000 from the Grievance Committee for failure to respond to inquiries of the State Bar in violation of Rule 8.1(b) of the North Carolina Revised Rules of Professional Conduct.

4. The prior discipline issued by the Grievance Committee was for conduct similar to the conduct involved in the instant proceeding.

5. Defendant was cautioned by Bruno DeMolli, an investigator with the State Bar, regarding proper maintenance of his trust account and his need to reconcile his trust account in 1991 and 1995.

6. Defendant has reimbursed his trust account in the amount of \$13,000 and is in litigation seeking to recover the approximate \$60,330.96 he overspent from the Hetzler transaction.

Based on the Findings of Fact and Conclusions of Law above and the additional Findings of Fact Regarding Discipline, the hearing committee makes the following

Conclusions With Respect To Discipline

1. The Defendant's misconduct is aggravated by the following factors:
 - a. prior disciplinary offenses similar in nature to those involved in the instant proceeding;
 - b. a pattern of misconduct; and
 - c. multiple offenses.

2. The Defendant's misconduct is mitigated by the following factors:
 - a. absence of a dishonest or selfish motive; and
 - b. full and free disclosure to the hearing committee or cooperative attitude toward proceedings.
3. The aggravating factors outweigh the mitigating factors.
4. Defendant's failure to respond to the Letters of Notice from the State Bar and failure to comply with the subpoena issued by the State Bar in the Walls matter interfered with the State Bar's ability to regulate attorneys and undermined the privilege of lawyers in this State to remain self-regulating.
5. The misappropriation of client funds for use on behalf of other clients caused by Defendant's overexpenditures and failure to reconcile his trust account posed a significant threat of harm to his clients and, if repeated, poses significant potential harm to future clients and the reputation of the profession.
6. Based upon the foregoing facts, entry of an order of discipline with a significant suspension of Defendant's law license that is stayed only as long as Defendant complies with reasonable conditions is necessary to protect the public.

Based upon the foregoing findings of fact and conclusions of law and the findings of fact and conclusion regarding discipline, the hearing committee enters the following

Order Of Discipline

1. The Defendant, William C. Shumway, is hereby suspended from the practice of law for five years, effective 30 days from service of this order upon Defendant.
2. The five-year suspension is stayed for a period of five years as long as Defendant complies, and continues to comply during the period of the stay, with the following conditions:
 - a. Defendant, at his own expense, will have his trust account audited by a Certified Public Accountant within thirty days of the signing of this Order. Defendant will provide the CPA's audit report to the State Bar within ten days of receipt. Defendant will remedy any deficiencies identified in the CPA's audit and will bring his trust account into compliance with the Revised Rules of Professional Conduct within thirty days of receipt of the audit report. Defendant will submit proof of any remedial action to the State Bar and to the CPA. The CPA will prepare a final audit report certifying that Defendant's trust account is in compliance with the Revised Rules of Professional Conduct without qualification or reservation to the Office of Counsel of the State Bar no later than December 20, 2004. All evaluations, reports, and services of the CPA will be at Defendant's expense;

- b. Defendant will maintain a ledger containing a record of receipts and disbursements for each person or entity from whom and for whom funds are received in his trust account that shows the current balance of funds held in the trust account for each such person or entity;
- c. Defendant will maintain these client ledgers on an ongoing basis, updating it contemporaneously with receipt or disbursement of trust account funds;
- d. Defendant will reconcile his general trust account, totaling the individual client balances shown on the above described ledgers and reconciling that balance with the current bank balance for the trust account as a whole on a monthly basis;
- e. Defendant will provide a copies of these client ledgers, his monthly reconciliation of his trust account, and the corresponding bank statements monthly to the State Bar Office of Counsel, such documents being due 15 days from the date on that month's bank statement beginning with the month of September 2004 (e.g., documents for September are due 15 days from the date on Defendant's September bank statement);
- f. During the period of the stay, Defendant will pay all Membership dues and Client Security Fund assessments and will comply with all Continuing Legal Education requirements on a timely basis;
- g. By December 30, 2004, Defendant will, at his own expense, complete a course in law office financial management of at least 8 hours of instruction, focusing primarily on trust account management and record-keeping, approved in advance by the Office of Counsel, and will implement the procedures recommended during this course;
- h. During the period of the stay, 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;
- i. Defendant will not violate any of the Revised Rules of Professional Conduct in effect during the period of the stay;
- j. Defendant will not violate any laws of the State of North Carolina or of the United States during the period of the stay;
- k. Defendant will pay all costs of this proceeding as assessed by the Secretary within 30 days after service of the statement of costs on him; and
- l. Defendant will pay reimburse his trust account in the amount of the unintentional misappropriation of \$60,330.96 no later than November

1, 2004 and provide proof of reimbursement to the State Bar no later than November 15, 2004.

3. If at any point during the period of time the suspension is stayed Defendant fails to comply with any one or more conditions stated in paragraph 2 above, the stay of the suspension of his law license may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

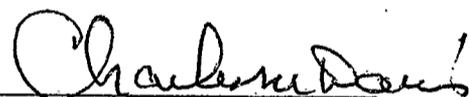
4. If the stay of the suspension is lifted and the suspension is activated for any reason, the DHC may enter an Order providing for such conditions it deems necessary for reinstatement of Defendant's license at the end of the five-year suspension. Furthermore, Defendant will comply with each of the following conditions precedent to reinstatement:

- 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 North Carolina State Bar Discipline and Disability Rules on a timely basis; and
- c. Defendant will have complied with paragraphs 2 (a) – (m) of this Order.

5. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of the stayed suspension.

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

This the 18 day of October 2004.



Charles M. Davis, Chair
Disciplinary Hearing Committee