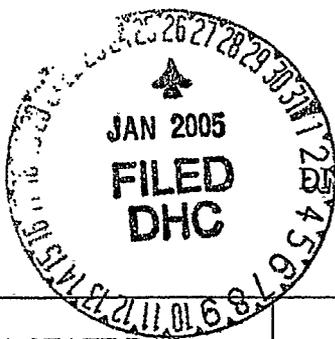


NORTH CAROLINA
WAKE COUNTY



23795

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
04 DHC 29

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

CAREY L. EWING, Attorney,

Defendant

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

This matter was heard on the 7th day of January, 2005, before a hearing committee of the Disciplinary Hearing Commission composed of the Chair, F. Lane Williamson, and members Tommy W. Jarrett and H. Dale Almond, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). The plaintiff was represented by Jennifer A. Porter and Margaret T. Cloutier. The defendant was represented by Alan M. Schneider. Based upon the pleadings, the stipulated facts, and the evidence introduced at the hearing, 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, Chapter 1 of Title 27 of the North Carolina Administrative Code ("NCAC").
2. Defendant Carey L. Ewing was admitted to the North Carolina State Bar in 1997, 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 hereto, Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in Durham, Durham County, North Carolina.
4. On or about December 17, 1999, Defendant issued check number 5455 drawn on her attorney trust account at First Citizens Bank in the amount of \$20,000.00 made payable to Fred Chapman.
5. Defendant issued check number 5455 to Fred Chapman at the request of Patricia Moon. Fred Chapman owned a business called Animal Quacker and Moon was a manager employed by Chapman. Moon indicated to Defendant that Moon needed to repay Chapman money and that Moon did not want Chapman to know the source of the funds.
6. Check number 5455 was dated December 17, 1999 and was received by Moon on Friday, December 17, 1999.

7. On December 20, 1999 check number 5455 for \$20,000.00 was paid from Defendant's attorney trust account.

8. On Friday, December 17, 1999, contemporaneously with receipt of the \$20,000.00 check from Defendant's trust account, Moon provided Defendant's office a check dated December 17, 1999 in the amount of \$20,000.00. This check was number 6006 and was drawn against a bank account belonging to Chapman's business, Animal Quacker.

9. Check number 6006 was deposited into Defendant's attorney trust account on December 31, 1999.

10. Check number 6006 was not paid from the Animal Quacker account by its bank. The check was stamped "STOP PAYMENT." As a result, \$20,000.00 was charged back against Defendant's trust account by Defendant's bank.

11. The credit to Ewing's trust account for \$20,000 was reversed by Ewing's bank on or about January 5, 2000.

12. On or about January 13, 2000, Moon provided Ewing with a replacement check for \$20,000 from a third party and Ewing deposited the \$20,000 into her attorney trust account on that date.

13. At the time check number 5455 was issued by Defendant on December 17, 1999 and at the time the check was paid by Defendant's bank on December 20, 1999, Defendant's attorney trust account did not contain funds for or on behalf of Moon or Chapman.

14. The funds from which the bank paid check number 5455 to Chapman on December 20, 1999 belonged to various other clients of Defendant.

Based upon the foregoing Findings of Fact, which were stipulated to, 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: by disbursing client funds to Chapman where the clients had not authorized such disbursement and where such disbursement was not done on behalf of the clients, Ewing failed to safeguard entrusted funds in violation of Rule 1.15-1(a) and failed to deliver client property to the client or as directed by the client in violation of Rule 1.15-2(h)¹.

¹ The original Rules 1.15-1 to 1.15-3 of the Revised Rules of Professional conduct concerning trust accounts were adopted effective July 24, 1997 and remained in effect until May 4, 2000. It is this version of the trust account rules that applies to Defendant's conduct in this case and to which citation is made.

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the evidence admitted at the hearing, the hearing committee hereby makes additional

Findings Of Fact Regarding Discipline

1. Defendant and Moon met each other in 1994. Defendant worked part-time for Animal Quacker during 1995 and 1996 prior to being admitted to the North Carolina State Bar in 1997. Defendant and Moon became friends during the period when Defendant worked for Animal Quacker, and continued to remain friends after Defendant left the employ of Animal Quacker and resumed law practice.

2. Defendant graduated law school in 1982, and became licensed to practice law in the States of Texas and Florida in 1983. She actively engaged in the practice of law from 1983 to 1994, when she moved to North Carolina. She resumed the practice of law upon being admitted to practice in North Carolina in 1997. At the time of the events at issue, Defendant had a solo practice concentrating on real estate law.

3. After Defendant was licensed to practice in North Carolina, Animal Quacker occasionally engaged Defendant to provide legal advice or perform other legal services relating to the business affairs of Animal Quacker. Moon generally contacted Defendant on behalf of Animal Quacker in connection with legal matters, although Chapman sometimes contacted Defendant directly. On at least one occasion in July of 1999, Defendant advised Chapman and his wife personally concerning the sale of their home. Although Defendant billed Animal Quacker for legal services only sporadically or not at all, she clearly had an ongoing attorney-client relationship with Animal Quacker at the time of the transaction at issue.

4. Defendant agreed with Moon to disburse funds through her trust account to Chapman in order to hide from Chapman the source of the funds. The Committee did not find the evidence sufficient to establish by clear, cogent and convincing evidence actual knowledge on the part of Defendant that Moon intended to defraud Animal Quacker by providing Defendant with a check for the funds drawn on Animal Quacker's own account. The evidence did establish, however, that Defendant knowingly failed to abide by the provisions of the Good Funds Settlement Act, N.C.G.S. Chap. 45A, and RPC 191. Defendant as a real estate law practitioner was well aware of the restrictions on disbursement from her trust account of uncredited or provisionally credited funds, and knew that to disburse funds from her trust account without first being satisfied that proper credit had been made to her trust account was both illegal and unethical. By failing to adhere to these restrictions, Defendant allowed herself to be duped into abetting Moon's fraudulent scheme.

5. The Defendant's misconduct is aggravated by the following factors listed in 27 N.C.A.C. 1B § .0114(w): substantial experience in the practice of law.

6. Although the Committee did not find the evidence presented sufficient to prove by clear, cogent, and convincing evidence that Defendant agreed to receive and disburse funds on behalf of Moon through her trust account knowing that Moon was attempting to deceive or defraud Chapman and thereby engaged in conduct in violation of Rule 8.4(c), the Committee finds that Defendant's conduct was at least wantonly negligent and led to the facilitation of a felony, to wit the \$20,000.00 written by Moon from the Animal Quacker account. The Committee finds this to be an aggravating factor.

7. The Committee further finds that, whether or not Moon was Defendant's client or Chapman was Defendant's client, due to Defendant's ongoing attorney-client relationship with Animal Quacker there was a conflict of interest and a divided loyalty in facilitating this transaction with the receipt and disbursement of \$20,000.00 the way it was structured. The Committee finds this to be an aggravating factor.

8. As an additional aggravating factor, the Committee finds that Defendant allowed her friendship with Moon to severely compromise her judgment and finds that Defendant exercised extremely poor judgment in the handling of this matter.

9. The Defendant's misconduct is mitigated by the following factors listed in 27 N.C.A.C. 1B § .0114(w):

- a. Absence of a prior disciplinary record;
- b. Full and free disclosure to the Hearing Committee or cooperative attitude toward the proceedings;
- c. Good character and reputation; and
- d. Remorse.

10. The Committee declines to make a finding regarding the weight of the aggravating factors versus the mitigating factors.

11. Defendant's conduct facilitated Moon's fraudulent scheme and caused significant potential harm to a client, Animal Quacker, and to a member of the public, Fred Chapman.

12. Defendant caused other clients' funds in her trust account to be paid to Chapman when she issued a check from her trust account to Chapman at a time when she had no funds in her trust account for Chapman and when she failed to deposit the check provided to her to fund the check to Chapman until December 31, 1999, two weeks after issuing the check to Chapman. This misappropriation of client funds to support the trust account check to Chapman, though apparently unintentional, posed a significant threat of harm to Defendant's clients and, if repeated, poses significant potential harm to future clients and the reputation of the profession.

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. Under N.C. Gen. Stat. § 84-28, a public censure is defined as a written form of discipline more serious than a reprimand issued in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct and has caused significant harm or potential significant harm to a client, the administration of justice, the profession, or members of the public, but the protection of the public does not require a suspension of the attorney's license.

2. Defendant has violated two provisions of the Revised Rules of Professional Conduct and has caused significant potential harm to clients, the profession, and members of the public as discussed above. In light of such significant potential harm, the Committee finds that discipline of less than a public censure would not sufficiently protect the public. The Committee finds that a censure will be sufficient to protect the public and that harsher discipline, such as a suspension of Defendant's license, is not necessary based upon the facts as recited herein.

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, Carey L. Ewing, is hereby censured.
2. The Defendant shall pay the costs in this matter within 30 days of service upon her of a statement of the costs.

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

This the 24th day of January, 2005.


F. Lane Williamson, Chair
Disciplinary Hearing Committee