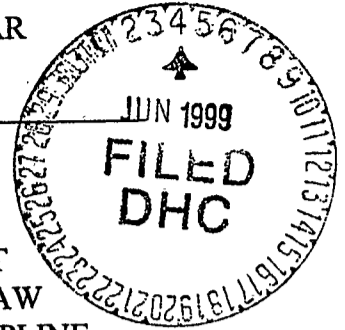


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WAKE COUNTY  
NORTH CAROLINA

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
99 DHC 4



THE NORTH CAROLINA STATE BAR )  
PLAINTIFF )  
v. )  
JAMES FINCH, ATTORNEY )  
DEFENDANT )

FINDINGS OF FACT  
CONCLUSIONS OF LAW  
AND ORDER OF DISCIPLINE

This matter was heard on the 4<sup>th</sup> day of June, 1999 before a hearing committee of the Disciplinary Hearing Commission composed of James R. Fox, Chair; Franklin E. Martin and Anthony E. Foriest. The Defendant, James Finch, did not appear nor was he represented by counsel. Carolin Bakewell represented the North Carolina State Bar. Based upon the pleadings and the evidence presented by the Plaintiff, 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, James Finch (hereafter, Finch), was admitted to the North Carolina State Bar in 1981 and is, and was at all relevant times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the rules, regulations and Rules of Professional Conduct, Revised Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During all periods relevant hereto, Finch maintained an office for the practice of law in the City of Gastonia, Gaston County, N.C.

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

5. Prior to October 1991, Finch undertook to represent Humphrey's Chapel AME Zion Church (hereafter, the Church), respecting property (hereafter, the Property)

adjoining the Church's property on West Main Street in Dallas, N.C., which the Church desired to purchase.

6. Between October 1991 and Jan. 31, 1997, Finch took some steps to contact the various owners of the Property and to purchase their interests in the Property on behalf of his client, the Church.

7. As of Jan. 31, 1997, however, Finch had not completed his task for the Church.

8. On or about Jan. 31, 1997, the Church delivered \$4,821.55 to Finch, which sum was to be held in Finch's attorney trust account pending disbursement to the remaining owners of the Property.

9. Finch was not authorized to use any portion of the \$4,821.55 for his own benefit or the benefit of any person or entity other than the Church.

10. On or about Jan. 31, 1997, the \$4,821.55 belonging to the Church (hereafter, the Church Funds) was deposited into Finch's attorney trust account number 2070660252983 at First Union National Bank (hereafter FU trust account).

11. On or about June 19, 1997, Finch withdrew \$725 of the Church Funds from his FU trust account by issuing check number 1523 made out to himself as payee without the knowledge and consent of the Church.

12. On or about June 23, 1997, Finch withdrew \$725 of the Church Funds from his FU trust account by issuing check number 1525 made out to himself as payee, without the knowledge and consent of the Church.

13. On or about July 8, 1997, Finch withdrew \$1,500 of the Church Funds from his FU trust account by issuing check number 1535 made out to himself as payee, without the knowledge and consent of the Church.

14. Finch misappropriated the proceeds of check numbers 1523, 1525, 1535 for his own benefit or the benefit of third parties other than the Church without the knowledge and consent of the Church.

15. On or about March 13, 1998, the Church filed a grievance against Finch with the 27A Judicial District Grievance Committee. On March 18, 1998, the 27A Judicial District Grievance Committee notified Finch of the Church's grievance and directed him to respond to it within 30 days.

16. Finch did not respond to the 27A Judicial Grievance Committee.

17. On or about Aug. 14, 1998, substantially after he learned of the Church's complaint, Finch refunded \$4,722 to the Church. Finch used trust funds of other

individuals, including Deborah Pigford and James Crawford, to provide the refund to the Church, without the knowledge and consent of the other individuals.

18. After approximately December 1994, Finch failed and refused to respond to the reasonable requests of the Church for information concerning his efforts to purchase the Property for the Church.

19. On or about Jan. 28, 1997, Finch undertook to represent Deborah Pigford (hereafter, Pigford) respecting a personal injury claim arising out of an accident on Jan. 23, 1997.

20. On or about Oct. 29, 1997, Finch settled Pigford's personal injury claim for \$3,800 (hereafter, Pigford settlement funds).

21. On Oct. 29, 1997, the Pigford settlement funds were deposited into Finch's FU trust account.

22. Between Oct. 29, 1997 and Nov. 10, 1997, Finch disbursed all but \$1,112.33 of Pigford's settlement funds to himself or to Pigford.

23. Finch did not disburse any other sums from his FU trust account to or on behalf of Pigford after Nov. 10, 1997.

24. At all times on and after Nov. 10, 1997, Finch should have held at least \$1,112.33 in his FU trust account for Pigford.

25. The balance in Finch's FU trust account fell below \$1,112.33 from Aug. 14, 1998 to Sept. 8, 1998 and from Sept. 11, 1998 to Sept. 30, 1998.

26. Finch used all or a portion of the funds which he should have held in trust for Pigford for the benefit of himself or third parties without the knowledge and consent of Pigford.

27. As of the date of the hearing herein, Finch had not reimbursed all sums which are owed to Pigford.

28. On or about July 27, 1993, Finch was appointed to serve as commissioner respecting the sale of real property owned by the estate of Ruby Crawford and James A. Crawford (hereafter, Crawford) as tenants in common.

29. On or about Jan. 4, 1996, in his capacity as commissioner, Finch sold the real property to Russell and Diana Rucker for a total sales price of \$9,500.

30. The final order regarding the Jan. 4, 1996 sale directed Finch to disburse the \$9,500 in sale proceeds by 1) deducting the costs of the sale; 2) paying himself a \$1,000

commission and 3) dividing the remaining proceeds between the estate of Ruby Crawford and Crawford.

31. Between Feb. 2, 1996 and March 20, 1997, Finch disbursed \$1,000 to himself as a commission, remitted \$1,769.95 to the estate of Ruby Crawford and made other disbursements totaling \$3,860.09.

32. After Finch paid the costs of the sale, deducted his \$1,000 commission from the sales proceeds and remitted \$1,769.95 to the estate of Ruby Crawford, a total of at least \$2,877.96 should have remained in his attorney trust account for the benefit of Crawford and/or the estate of Ruby Crawford.

33. Finch did not disburse any sums to or for the benefit of James A. Crawford or the estate of Ruby Crawford after March 20, 1997.

34. The balance in Finch's trust account dropped below \$2,877.96 on a number of occasions after March 20, 1997, including Aug. 14, 1998 to Sept. 8, 1998 and Sept. 11, 1998 to Sept. 30, 1998.

35. Finch misappropriated all or a portion of the \$2,877.96 which he should have held in trust for James A. Crawford and/or the estate of Ruby Crawford without the knowledge and consent of Crawford, the clerk of court, or the representative of the Crawford estate.

36. As of the date of the hearing herein, neither James A. Crawford nor the estate of Ruby Crawford had received the funds to which they are entitled.

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 person of James Finch and the subject matter of this proceeding.

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 misappropriating all or a portion of the funds which he should have held in trust for Humphrey's Chapel AME Zion Church, Deborah Pigford, James Crawford and the Ruby Crawford Estate without the knowledge and consent of the Church, Pigford, Crawford and the administrator of the Ruby Crawford estate, Finch engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(c) of the Rules of Professional Conduct and Rule 8.4(c) of the Revised Rules of Professional Conduct, committed criminal acts which reflect adversely upon his honesty,

trustworthiness or fitness as a lawyer in other respects in violation of Rule 1.2(b) of the Rules of Professional Conduct and Rule 8.4(b) of the Revised Rules of Professional Conduct and failed to hold client funds in trust in violation of Rule 10.1(a) of the Rules of Professional Conduct and Rule 1.15-1(a) of the Revised Rules of Professional Conduct.

(b) By failing to respond to reasonable requests for information from Humphrey's Chapel concerning his efforts to purchase the Property for the Church, Finch failed to communicate with a client in violation of Rule 6(b)(1) of the Rules of Professional Conduct and Rule 1.4 of the Revised Rules of Professional Conduct.

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

#### FINDINGS OF FACT REGARDING DISCIPLINE

1. The defendant's misconduct is aggravated by the following factors:
  - a. Prior action taken by the State Bar against Finch for mishandling client funds
  - b. Indifference to restitution
  - c. Pattern of misconduct
  - d. Multiple offenses
  - e. Substantial experience in the practice of law
  - f. Dishonest or selfish motive
2. There are no mitigating factors.
3. The aggravating factors outweigh the mitigating factors.

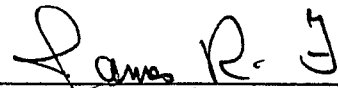
Based upon the foregoing aggravating and mitigating factors and the arguments of the parties, the hearing committee hereby enters the following:

#### ORDER OF DISCIPLINE

1. The defendant, James Finch, is hereby disbarred from the practice of law beginning 30 days from the service of this order upon the defendant.
2. The defendant shall submit his license and membership card to the Secretary of the N.C. State Bar no later than 30 days following service of this order upon the defendant.
3. The defendant shall pay the costs of this proceeding as assessed by the Secretary.

4. The defendant shall comply with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0125(b) of the North Carolina State Bar Discipline & Disability Rules.

Signed by the Chair with the consent of the other hearing committee members,  
this the 4th day of June, 1999.



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James R. Fox, Chair  
Disciplinary Hearing Committee