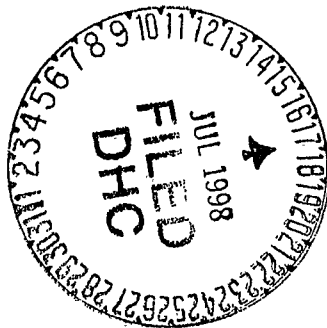


WAKE COUNTY  
NORTH CAROLINA



15530  
BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
97 DHC 21

THE NORTH CAROLINA STATE BAR,  
Plaintiff

vs.

CLIFFORD LEON LEE, II, Attorney,  
Defendant

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

This matter was calendared for trial and heard on the 7th day of November, 1997 before a duly appointed committee of the Disciplinary Hearing Commission consisting of Michael L. Bonfoey, Chair, Joseph G. Maddrey, and Anthony E. Foriest. The Plaintiff was represented by Clayton W. Davidson III, Deputy Counsel. The Defendant was represented by Ronnie M. Mitchell.

BASED on the evidence presented at the trial of this matter, and the pleadings and pre-trial stipulations of record, the committee makes the following:

#### FINDINGS OF FACT

1. The Plaintiff, the North Carolina State Bar (the "State Bar") is a body duly organized under the laws of the State of North Carolina and is the proper body to bring this proceeding under the authority granted to it in Chapter 84 of the General Statutes of North Carolina and the rules and regulations of the State Bar promulgated pursuant thereto (the "State Bar Rules and Regulations").
2. The Defendant, Clifford Leon Lee, II, (the "Defendant") was admitted to the State Bar in 1988, and is, and was at all times referred to herein, an attorney at law licensed to practice

in North Carolina subject to the State Bar Rules and Regulations and the Rules of Professional Conduct of North Carolina.

3. During all or a part of the relevant periods referred to herein, Defendant was engaging in the practice of law in the State of North Carolina and maintained a law office in Cumberland County, North Carolina.

4. The Defendant maintained a trust account in United National Bank in Fayetteville, North Carolina, account number 56 1192350 (The "Trust Account"). The Defendant also maintained as a fiduciary an additional account at United National Bank in Fayetteville, account number 56 1432202 (the "Barton & Lee Trust Account").

5. The Trust Account contains funds of multiple clients of the Defendant. The Defendant has not maintained ledger cards for all of the funds maintained as a fiduciary and did not maintain other records at the time of deposit of funds into the Trust Account or the Barton & Lee Trust Account to adequately ascertain what funds were held, deposited, or disbursed on behalf of what clients or taken by or received by the Defendant prior to, at the time of or subsequent to such deposit.

6. On or about March 13, 1995, the Defendant entered into a retainer agreement with Bernetha G. Long, (hereafter "Long") pursuant to which the Defendant agreed to act as attorney for Long in a personal injury claim. The Defendant mailed a letter concerning the retention to Long on March 16, 1995. The letter contains a notation "Our File: LA1089" which reflects the file number assigned by the Defendant to this matter.

7. No funds were paid as part of the retainer agreement, and no funds were deposited into the Trust Account on behalf of Long.

8. Beginning on or about September 14, 1995, the Defendant began issuing checks to The Lee Law Firm, P.A. which were drawn on the trust account and which contained a notation "For LA1089." The checks drawn on the trust account were as follows:

<u>NUMBER</u>	<u>DATE</u>	<u>AMOUNT</u>
1152	September 14, 1995	\$2,000.00
1223	November 2, 1995	2,000.00
1428	February 9, 1996	1,500.00
1496	March 21, 1996	5,000.00
1497	March 25, 1996	1,000.00

The checks totaled \$11,500.00, and all bore the signature of the Defendant. All checks were negotiated and cleared the bank within three days of their issuance.

9. At the time of the issuance of these checks, no funds had been deposited into the Trust Account on behalf of Long. The Defendant was therefore using funds belonging to persons other than Long in drawing and cashing these checks without their knowledge or consent.

10. On or about June 19, 1996, The Ohio Casualty Group issued a check to Bernetha G. Long & Gilmer Long Individually & as Husband & Wife & their attorney C. Leon Lee III in the amount of \$36,352.59. The check contained the notation stating that it was "In Settlement of All claims against Jerry A. Dowless, Jr."

11. On or about July 3, 1996, the Defendant deposited into the Trust Account a check in the amount of \$36,352.59.

12. On or about July 5, 1996, check # 1722 was written on the trust account by the Defendant in the amount of \$616.00. The check bore the notation "LA1089".

13. On or about July 11, 1996, Long signed a sheet titled "disbursements" which authorized the Defendant to disburse the funds, and which contained an authorization by The

Defendant to disburse funds in the amount of \$12,116.00 to the Lee Law Firm, P.A. for attorneys fees.

14. The total of the checks listed in paragraph 8 of these findings and check #1722 is \$12,116.00 dollars, the same amount indicated on the disbursement sheet that was payable to the Defendant as attorneys fees.

15. The Defendant engaged in a pattern and practice of withdrawing fees either from his trust account on behalf of clients or otherwise prior to the time that the requisite funds were deposited into his trust account to cover the fees, or prior to the time that he was entitled to have, withdraw or take such funds in payment of fees. The amounts of such fees withdrawn or appropriated by the Defendant were in amounts equal to or substantially equivalent to the fees either subsequently earned, or anticipated to be derived from the case as fees. The instances in which fees were withdrawn on behalf of a client prior to the time that the deposit was made, include, but are not limited to the following:

<u>CLIENT</u>	<u>CLIENT NUMBER</u>	<u>SHORTFALL</u>
Kassem R. Saleh	LA1165	\$12,000.00
Jacqueline Bryley	LA1188	9,000.00
Lee Melvin	LSS820	5,000.00
Alexander Graham	LSS831	4,000.00
Erica Thomas	LF214	3,000.00
Angela McNeil	LA1157	2,500.00
Lawrence Sherlock	LA1134	2,000.00
Donald R. Johnson	LA1162	1,000.00
Shawn L. Irby	LA1183	1,000.00
Leacy I. Bostic	LA1184	1,000.00
Elizabeth Blue	LA1117	500.00
John Troy	LA1138	500.00
Eric Boye	LA1137	500.00
	TOTAL	<u>\$42,000.00</u>

16. The shortfalls reflect payments made to the Lee Law Firm.

BASED UPON the foregoing Findings of Fact, the hearing committee makes the following:

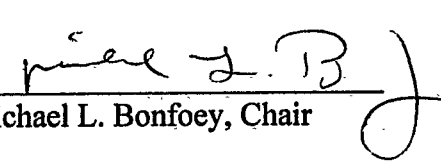
**CONCLUSIONS OF LAW**

1. All parties are properly before the Hearing Committee and the committee has jurisdiction over the Defendant, Clifford Leon Lee, II.
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) in that the Defendant has violated the North Carolina Rules of Professional Conduct as follows:

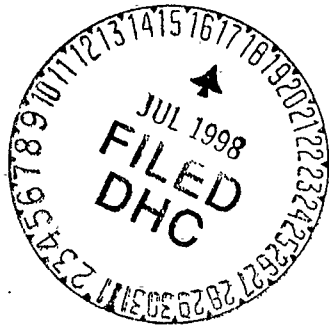
(a) By failing to preserve funds in a fiduciary capacity and by failing to disburse funds accordance with the Rules of Professional Conduct, the Defendant violated Rule 10.1.

(b) By failing to disburse funds that he received in a fiduciary capacity for the benefit of his clients and as directed by his clients, and by failing to keep adequate records to sufficiently identify funds held in a fiduciary capacity, the Defendant violated Rule 10.2.

Signed by the undersigned chair with the full knowledge and consent of all other members of the hearing committee this 17 day of July, 1998.

  
Michael L. Bonfoey, Chair

WAKE COUNTY  
NORTH CAROLINA



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
97 DHC 21

THE NORTH CAROLINA STATE BAR,  
Plaintiff

vs.

CLIFFORD LEON LEE, II, Attorney,  
Defendant

ORDER OF DISCIPLINE

This matter was calendared for trial and heard on the 7th day of November, 1997 before a duly appointed committee of the Disciplinary Hearing Commission consisting of Michael L. Bonfoey, Chair, Joseph G. Maddrey, and Anthony E. Foriest. The Plaintiff was represented by Clayton W. Davidson III, Deputy Counsel. The Defendant was represented by Ronnie M. Mitchell.

Based upon the Findings of Fact and Conclusions of Law entered by the hearing committee at the first phase of the hearing and based upon the evidence and arguments presented in the second phase of the hearing, the hearing committee makes the following additional:

**FINDINGS OF FACT CONCERNING DISCIPLINE**

1. The Defendant's conduct is aggravated by the following factors:
  - a. Multiple offenses
  - b. Substantial experience in the practice of law
2. The Defendant's conduct is mitigated by the following factors:
  - a. Absence of a prior disciplinary record
  - b. Full and free disclosure to the hearing committee and a cooperative attitude toward the proceedings
  - c. Good character or reputation
  - d. Remorse.
3. The mitigating factors do not outweigh the aggravating factors.

BASED UPON the foregoing Findings of Fact Concerning Discipline, the hearing committee makes the following:

## ORDER OF DISCIPLINE

1. The Defendant, Clifford Leon Lee, II, is hereby suspended from the practice of law for a period of three years. The suspension shall become effective ninety (90) days after the date of the service of this order upon the Defendant. Except as to the alteration of the time period of the effective date of this order, this paragraph shall not be deemed to alter the Defendant's obligations pursuant to the Rules and Regulations of the North Carolina State Bar, including but not limited to the provisions of 27 Admin. Code Chapter 1 Subchapter B § .0124. The Parties have consented and it is hereby ordered that neither party shall apply to the Superior Court of Wake County to lift or dissolve the consent preliminary injunction (the "Injunction") that was entered in the matter of The North Carolina State Bar v. Clifford Leon Lee, 96 CVS 10584 (Wake County Superior Court); however, the parties may seek to modify the injunction to allow the distribution of funds to the clients whose funds are being held pursuant to the injunction.

2. The last two years of the suspension shall be stayed for the balance of the term of the suspension upon the following conditions:

a. The Defendant shall make restitution for all amounts wrongfully taken from his trust account, and shall present evidence to the Office of Counsel of the North Carolina State Bar that all clients have received all funds or had funds paid on their behalf that were retained or required to be retained by Defendant in a fiduciary capacity as of the date of this order. The provisions of this paragraph may be satisfied by the distribution of funds to the clients whose funds are being held pursuant to the Injunction.

b. The Defendant shall satisfy all Continuing Legal Education requirements contained in the Rules and Regulations of the North Carolina State Bar.

c. The Defendant shall submit proof to the North Carolina State Bar that he has received at least two days of training from a certified public accountant, who is approved by the Office of Counsel of the North Carolina State Bar, and which training shall cover the proper procedures for the maintenance of a trust account in accordance with the North Carolina Revised Rules of Professional Conduct. This requirement shall be in addition to the requirements of subparagraph b above.

d. The Defendant shall pay any and all costs assessed against the Defendant in this matter.

3. During the period of any stay of the suspension, as continuing conditions of the stay of the suspension, the Defendant shall comply with the following conditions:

a. The Defendant, at the expense of the Defendant shall have his trust account audited by a Certified Public Accountant approved by the Office of Counsel of the North Carolina State Bar at least quarterly during the first year of suspension, and once a year after that. A report of the audit shall be received by the Secretary of the North Carolina State Bar on or

before the last day of March, June, September, and December of the first year that the stay remains in effect, and by the first day of October of each additional year that the stay remains in effect.

b. The Defendant shall comply with the Revised Rules of Professional Conduct, and all provisions of the Rules and Regulations of The North Carolina State Bar, including but not limited to the provisions of 27 Admin. Code Chapter 1 Subchapter B § .0124. Any violation of the Rules following the date of this order may be grounds for denial of or lifting of the stay.

c. The Defendant shall not violate the laws of the United States, or the any State of the United States.

4. If the Defendant fails to petition for or meet the requirements for any stay of the suspension, or in the event that any stay of the suspension is lifted, and the suspension is re-activated, as a condition of reinstatement, the Defendant must meet the requirements of subparagraphs a, b, c, and d of paragraph 2 above as well as the provisions of subparagraph b of paragraph three above. This requirement is in addition to, and shall not be deemed to limit the provisions of 27 N.C. Admin. Code Chapter 1 Subchapter B § .0125.

5. The Defendant shall pay the costs of this proceeding within thirty days of service of notice of the amount of costs as assessed by the Secretary. The costs in this matter shall include the costs of taking the deposition of the Defendant.

Signed by the undersigned chair with the full knowledge and consent of all other members of the hearing committee this 17 day of July, 1998.

  
Michael L. Bonfoey, Chair