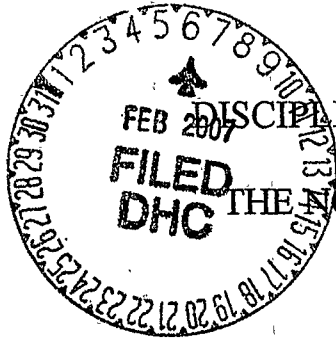


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NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF
THE NORTH CAROLINA STATE BAR
05 DHC 45

The North Carolina State Bar,
Plaintiff,

v.

Teresa L. Smallwood, Attorney,
Defendant.

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

This matter was heard on January 11-13, 2007 by a Hearing Committee of the Disciplinary Hearing Commission composed of F. Lane Williamson, Chair, Charles M. Davis and H. Dale Almond. Katherine E. Jean and Jennifer A. Porter represented plaintiff, the North Carolina State Bar. Eric C. Michaux represented defendant, Teresa L. Smallwood. Ms. Smallwood and her attorney, Mr. Michaux, were present for the first two days of the hearing and appeared at the beginning of the third day of the hearing, but did not remain for the entire hearing. Based upon the admissions contained in the pleadings and upon the evidence presented at the hearing, this Hearing Committee hereby makes by clear, cogent and convincing evidence 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 promulgated thereunder.

2. Defendant, Teresa L. Smallwood (hereinafter "defendant" or "Smallwood"), was admitted to the North Carolina State Bar on 23 August 1986, and is, and was at all times referred to herein, an attorney at law licensed to practice 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 a portion of the relevant periods referred to herein, defendant was actively engaged in the private practice of law in the town of Windsor, Bertie County, North Carolina.
4. During all of the relevant periods referred to herein, defendant had a law partnership arrangement with attorney Tonza Ruffin (hereafter "Ruffin").
5. Defendant and Ruffin were both signatories on an attorney trust account maintained at Southern Bank in Windsor, North Carolina, account # 5331706013 (hereafter "account #6013").
6. At some point before late July 2002, Ruffin obtained a new home mortgage loan commitment from St. Luke Credit Union (hereafter "St. Luke") in the amount of \$150,000 to refinance her existing mortgage loan from CitiFinancial Mortgage (hereafter "CitiFinancial").
7. Ruffin asked defendant to conduct the closing transaction for her new mortgage from St. Luke.
8. As part of the closing transaction for Ruffin's new mortgage loan, defendant received closing instructions from St. Luke requiring defendant to place St. Luke in a first lien position on Ruffin's real property that Ruffin had pledged as security.
9. Defendant closed Ruffin's new mortgage loan on or about August 2, 2002.
10. St. Luke delivered the new mortgage loan proceeds of \$150,000 to defendant contemporaneous with the closing. The proceeds were deposited in defendant's trust account.

11. As settlement agent at the closing, defendant prepared a HUD-1 Settlement Statement showing the receipts and disbursements of the proceeds of Ruffin's new mortgage loan and provided St. Luke with a copy of the HUD-1 Settlement Statement. By law, the HUD-1 Settlement Statement is required to accurately reflect all receipts and disbursements in a residential mortgage loan transaction.
12. At the time of the closing, defendant had not obtained from CitiFinancial a statement of the specific amount of funds required to pay off the existing mortgage. Defendant elected to close the new mortgage and indicated on the HUD-1 Settlement Statement an amount that she estimated was required to pay off CitiFinancial. The amount defendant estimated as due CitiFinancial to pay off the existing mortgage was \$120,397.41.
13. On or about August 2, 2002, defendant issued a trust account check in the amount of \$120,397.41 to CitiFinancial. On or about August 6, 2002, CitiFinancial informed defendant that the correct payoff amount on the loan at that time was \$123,554.09. On or about August 8, 2002, defendant issued a second trust account check to CitiFinancial in the amount \$1,843.84 to supplement the August 2, 2002 check. Shortly thereafter, CitiFinancial informed defendant that CitiFinancial had not received the first check.
14. On August 21, 2002, defendant issued another trust account check to CitiFinancial in the amount of \$120,297.41 to pay off Ruffin's existing mortgage. CitiFinancial returned that check and the check for \$1,843.84 to defendant, indicating that the combined amounts of those checks were insufficient to satisfy the payoff amount on Ruffin's account.
15. After a series of communications between defendant and/or Ruffin and CitiFinancial concerning the correct payoff amount, defendant issued another trust account check payable to CitiFinancial in the amount of \$122,241.25 on or about October 23, 2002.
16. CitiFinancial had not presented or negotiated the October 23, 2002 check by December 13, 2002.
17. On December 13, 2002, defendant directed her bank to stop payment on the October 23, 2002 check in the amount of \$122,241.25 to CitiFinancial.

18. Defendant did not inform CitiFinancial she had issued a stop payment order on the \$122,241.25 check.
19. On December 20, 2002, defendant caused to be issued from trust account #6013 a check payable to The Smallwood Law Firm in the amount of \$122,241.25.
20. The \$122,241.25 was the total balance remaining of Ruffin's refinance mortgage loan proceeds in trust account #6013.
21. The \$122,241.25 belonged to St. Luke or to Ruffin and was being held in trust for the benefit of St. Luke or Ruffin to satisfy Ruffin's obligations to CitiFinancial under the original deed of trust.
22. Pursuant to the closing instructions issued to defendant by St. Luke, defendant was obligated to apply the \$122,241.25 to satisfy all outstanding deeds of trust on Ruffin's property so as to ensure that St. Luke's deed of trust occupied a first lien position on Ruffin's property.
23. Defendant deposited the \$122,241.25 check drawn on trust account #6013 into a bank account she maintained at First Citizens Bank, account #003102306994 (hereafter "account #6994"). Account #6994 was not denominated or maintained as an attorney trust account.
24. Account #6994 was in the name of the "Law Offices of Teresa L Smallwood & Ass" [sic] with a Durham, North Carolina address.
25. Defendant did not inform Ruffin, CitiFinancial or St. Luke that she had withdrawn all of the proceeds from Ruffin's mortgage loan transaction from the trust account and deposited the funds into her First Citizens Bank non-trust account.
26. After depositing the \$122,241.25 into account #6994, defendant used the funds to pay off a mortgage loan on which defendant's aunt was obligated, for investments for herself, for expenses of the law partnership, and for her own personal expenses.
27. Defendant did not have any authorization from Ruffin or from St. Luke to use the \$122,241.25 for defendant's personal benefit or the benefit of others.

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28. Prior to December 20, 2002, defendant asked Ruffin on at least two occasions if Ruffin would allow defendant to use the \$122,241.25 to pay defendant's personal expenses and to pay her aunt's mortgage loan.
29. On each occasion when defendant asked Ruffin for permission to use the \$122,241.25 for defendant's personal and family financial obligations, Ruffin unequivocally told defendant that Ruffin would not give such permission.
30. St. Luke did not give defendant permission to use the \$122,241.25 for defendant's personal and family financial obligations.
31. Defendant knowingly and willfully converted and embezzled the \$122,241.25 without Ruffin's or St. Luke's knowledge, consent, or authorization.
32. In late January or early February 2003, CitiFinancial notified defendant that it was accepting the payoff represented by the trust account check in the amount of \$122,241.25 which defendant had written on trust account #6013.
33. Defendant did not inform CitiFinancial that a stop payment order had been issued on the check.
34. CitiFinancial presented the check for payment and canceled its deed of trust on record at the Register of Deeds.
35. On or about February 14, 2003, defendant's bank returned the \$122,241.25 trust account check to CitiFinancial after it was presented, on grounds of defendant's stop payment order.
36. CitiFinancial made demand for payment to Ruffin and defendant. Defendant did not disclose to either Ruffin or CitiFinancial that she had withdrawn the \$122,241.25 from trust account #6013 or that she had used those funds for her own benefit and for the benefit of third parties.
37. CitiFinancial sued Ruffin to recover its loan. Defendant represented Ruffin in defense of the suit.

38. After the court entered an order in favor of Ruffin, Ruffin asked defendant about the location of the \$122,241.25.
39. Defendant told Ruffin that the \$122,241.25 had been invested in a certificate of deposit for safekeeping.
40. When Ruffin asked defendant to provide evidence of the certificate of deposit, defendant admitted to Ruffin that she had removed the \$122,241.25 from the trust account and had used the money for her own personal and family financial obligations.
41. Defendant told Ruffin that she had intended to repay the money to the trust account before Ruffin discovered that it was missing.
42. Defendant knowingly and willfully misapplied and converted to her own use the \$122,241.25 held in the firm trust account by her as a fiduciary.
43. Beginning before October 1, 2002, defendant represented Dorothy Harris in a personal injury case.
44. Defendant, on behalf of the law firm, reached an agreement with Dorothy Harris pursuant to which the law firm was entitled to receive as its fee one-third of any recovery realized on behalf of Dorothy Harris in the personal injury case.
45. On October 1, 2002, settlement proceeds in Dorothy Harris' case totaling \$100,000 were received by the law firm and were deposited into trust account #6013.
46. The \$100,000 was received by defendant in trust for the benefit of Dorothy Harris.
47. No later than August 26, 2002, defendant had notice that Medicaid had a subrogation claim upon proceeds of Dorothy Harris' personal injury settlement.
48. On October 2, 2002, check #5174 payable to Tonza Ruffin in the amount of \$5000 was issued from account #6013 drawn on the funds being held for the benefit of Dorothy Harris.

49. On October 3, 2002, check #5175 payable to The Smallwood Law Firm in the amount of \$18,333.00 was issued from account #6013 drawn on the funds being held for the benefit of Dorothy Harris.
50. On October 3, 2002, check #5176 payable to Teresa L. Smallwood in the amount of \$10,000 was issued from account #6013 drawn on the funds being held for the benefit of Dorothy Harris.
51. The funds disbursed by checks #s 5174, 5175 and 5176 constituted the entire fee to which the firm, defendant and/or Ruffin were entitled from the proceeds of Dorothy Harris' settlement.
52. The firm, defendant and Ruffin were obligated to hold the remaining funds from the Harris settlement in trust account #6013 in trust for the benefit of Dorothy Harris.
53. On October 24, 2002, check #5187 payable to Dorothy Harris in the amount of \$33,335.00 was issued by defendant and/or Ruffin from Dorothy Harris' entrusted funds being held by the firm in trust account #6013.
54. On October 2, 2002, funds remaining in account #6013 for the benefit of Dorothy Harris totaled \$33,335.00.
55. Defendant informed Dorothy Harris that after defendant paid Medicaid the amount Medicaid had paid for Mrs. Harris' medical bills, defendant would send the balance of the settlement proceeds to Mrs. Harris.
56. Prior to October 30, 2002, Defendant learned that the amount of Medicaid's subrogation claim against Dorothy Harris' personal injury settlement proceeds would be approximately \$29,000.00.
57. On October 30, 2002, check #5188 payable to The Smallwood Law Firm in the amount of \$4,000.00 was issued from account #6013 drawn against the funds being held in trust for the benefit of Dorothy Harris.

58. Defendant deposited check #5188 into a bank account maintained by defendant at Southern Bank, account # 5331711904. Account # 5331711904 is not denominated or maintained as an attorney trust account.
59. Dorothy Harris did not authorize the firm, defendant and/or Ruffin to pay this additional \$4,000.00 to the Smallwood Law Firm.
60. The firm, defendant and Ruffin were not entitled to receive the \$4,000.00 disbursed to the firm by check #5188.
61. Dorothy Harris did not authorize the firm, defendant or Ruffin to utilize the \$4,000.00 for any purpose other than payment of Medicaid's subrogation claim and disbursement to Dorothy Harris.
62. Defendant knowingly and willfully misapplied and converted to her own use the \$4,000.00 held in the firm trust account by her as a fiduciary.
63. On November 25, 2002, defendant issued check #5228 payable to Teresa L. Smallwood in the amount of \$29,335.00 from account #6013 drawn on the funds being held in trust for the benefit of Dorothy Harris.
64. Defendant signed check #5228.
65. On November 22, 2002, defendant negotiated check #5228 at Southern Bank, where she utilized its proceeds as follows:
 - i. Defendant purchased a cashier's check in the amount of \$18,184.19 payable to "USDA" with which to pay the outstanding balance on a loan owed by defendant's aunt to the United States Department of Agriculture.
 - ii. Defendant purchased a cashier's check in the amount of \$2,900.00 payable to "Taft" with which defendant paid for office furniture which was delivered to defendant's office for defendant's use.
 - iii. Defendant purchased a cashier's check in the amount of \$2,100.00 payable to "Tim Phelps" with which defendant paid Phelps for services Phelps

provided in removing debris from a lot defendant inherited from her mother.

iv. Defendant received \$6,150.81 in cash.

66. Defendant did not deliver any portion of the \$6,150.81 in cash to Dorothy Harris or to any other person or entity for Dorothy Harris' benefit.
67. After Defendant negotiated check #5228, no funds belonging to Dorothy Harris remained in account #6013 or in any other trust or fiduciary account maintained by the firm, by defendant and/or by Ruffin.
68. Dorothy Harris did not authorize defendant to disburse the \$29,335.00 being held in trust for Dorothy Harris' benefit to Teresa L. Smallwood or to any party other than Medicaid, as necessary to satisfy the Medicaid subrogation claim, or to Dorothy Harris.
69. The State Bar issued a Subpoena for Cause Audit to defendant, requiring defendant to produce bank records, client files and trust account records, including ledger cards, for clients including Dorothy Harris.
70. Defendant produced to the State Bar a ledger card for Dorothy Harris representing that check #5228 was written to "Medical Lien."
71. Defendant did not disburse the \$29,335.00 to satisfy a medical lien for Dorothy Harris.
72. When several months passed without her receiving any further funds from defendant, Dorothy Harris began telephoning defendant's office seeking a status report about defendant's payment of Harris' medical bills and seeking an explanation from defendant about why Harris had not received any more money from the settlement.
73. Defendant did not return any of Dorothy Harris' telephone calls and has never explained to Dorothy Harris what happened to the funds defendant was holding in trust for Dorothy Harris' benefit.
74. Dorothy Harris has not received any funds from the settlement of her case after the initial \$33,335.00 received in October, 2002.

75. Medicaid has never received any payment from the firm, from defendant or from Ruffin on Dorothy Harris' account.
76. The ledger entry referenced above was false.
77. The ledger entry referenced above was made by defendant intentionally, in order to deceive Dorothy Harris and/or the State Bar.
78. Defendant was not entitled to receive the \$29,335.00 disbursed to Teresa L. Smallwood by check #5228.
79. Defendant knowingly and willfully misapplied and converted the \$29,335.00 held in the firm trust account by her as a fiduciary.
80. Prior to, during and after September, 2002, defendant represented the Estate of Clotee Gillam (hereafter "the Estate.")
81. Defendant held in trust account #6013 funds which belonged to the Estate and which were held by defendant in trust for the benefit of the Estate.
82. On September 26, 2002, defendant issued check number #5173 payable to Teresa L. Smallwood in the amount of \$2,454.67 from account #6013.
83. The memo line for check #5173 reads "Escrow Funds to Open Estate Acct - Clotee Gilliam [sic]."
84. Defendant filed a final accounting with the Clerk of Superior Court in the Estate file representing to the Clerk of Court that check #5173 was for "funeral bill."
85. Defendant cashed check #5173.
86. Defendant did not apply the proceeds of check #5173 to pay a funeral bill related to the Estate and did not apply the proceeds of check #5173 for the benefit of the Estate.
87. Defendant knowingly and willfully misapplied and converted the \$2,454.67 held in the firm trust account by her as a fiduciary.
88. On June 2, 2003, defendant filed a civil lawsuit on behalf of Donald and Teresa Swindle.

89. During the course of the civil litigation, opposing counsel, M. H. Ellis, noticed the Swindles' depositions to occur on July 30, 2003.
90. The Swindles had a scheduling conflict based upon Mr. Swindle's work schedule that prevented them from being able to attend depositions on July 30, 2003.
91. The Swindles notified defendant of the scheduling conflict and that the conflict was caused by work commitments approximately two weeks in advance of the date scheduled for their depositions.
92. Defendant spoke to the Swindles concerning their work conflict with the deposition date approximately two weeks prior to the date set for deposition.
93. When defendant spoke with the Swindles approximately two weeks prior to the deposition, defendant told the Swindles that the date "was not set in stone" and that she did not see any problem having the date changed.
94. Defendant did not contact opposing counsel to reschedule the depositions prior to the date set for the depositions.
95. Defendant did not otherwise file pleadings or make arrangements to reschedule the Swindles' depositions and did not notify the Swindles that the depositions had not been rescheduled.
96. On July 30, 2003, defendant's secretary contacted Mrs. Swindle at her residence.
97. Defendant's secretary told Mrs. Swindle that defendant was running late but would be there for the depositions.
98. When Mrs. Swindle responded that she thought the deposition date had been changed, defendant's secretary said it had not been.
99. Mrs. Swindle told defendant's secretary that they could not come to the depositions because Mr. Swindle was at work and she could not drive for medical reasons.
100. Defendant's secretary said she would let defendant know.

101. Defendant's secretary asked Mrs. Swindle if she would be able to attend if defendant picked Mrs. Swindle up and brought her to the deposition. Mrs. Swindle said she would.
102. Mrs. Swindle asked that she be called if there was a problem and if defendant was not able to get the depositions postponed.
103. Neither defendant nor her office called Mrs. Swindle back on July 30, 2003.
104. Neither defendant nor her office called Mrs. Swindle and made arrangements to transport Mrs. Swindle to the deposition.
105. The Swindles did not receive any other communication that day from defendant or her staff.
106. On July 30, 2003, defendant knew that the Swindles could not attend their depositions scheduled for that day and knew that the conflict was caused by Mr. Swindle's work commitment.
107. On July 30, 2003, defendant spoke to the opposing counsel who had noticed the Swindles' depositions.
108. Defendant told opposing counsel on July 30, 2003 that the Swindles would not appear for their depositions because they were out of town.
109. Defendant indicated the Swindles intentionally left town despite knowing of the scheduled depositions.
110. Defendant told opposing counsel that she could not believe the Swindles were ignoring the deposition but she had no way of controlling that.
111. When she made these statements to opposing counsel, defendant knew that Mr. Swindle was at work and Mrs. Swindle was at home.
112. When defendant made these statements to opposing counsel about the Swindles' failure to appear at the depositions, she knew opposing counsel intended to make a record of the non-appearance of the Swindles at the deposition.

113. Opposing counsel made comments on the record at the deposition reciting that defendant had represented that the Swindles had the notice of deposition, that they were out of town, and that she could not believe that they were ignoring the deposition but that she could not control that.
114. These comments were later transcribed by the court reporter and labeled "Certificate of Non Attendance of Donald & Theresa Swindle."
115. Opposing counsel filed a motion to dismiss the Swindles' case based upon their failure to appear at their depositions on July 30, 2003.
116. Opposing counsel filed the "Certificate of Non Attendance of Donald & Theresa Swindle" in support of the motion to dismiss.
117. Approximately one week after July 30, 2003, defendant told the Swindles that she would arrange another date for the depositions.
118. Defendant did not contact opposing counsel to reschedule the depositions or otherwise make arrangements to reschedule the depositions.
119. Defendant wrote the Swindles a letter dated August 19, 2003 and enclosed a copy of the opposing party's motion to dismiss.
120. When the Swindles learned about the motion to dismiss, they attempted to contact defendant. She failed to return their telephone messages or respond to their e-mail.
121. When the Swindles were finally able to talk with defendant, they asked what had happened and why a motion to dismiss was filed.
122. In response to the Swindles' questions, defendant told the Swindles that they should have appeared for their depositions.
123. The Swindles reminded defendant that they could not attend due to a work conflict and asked who had provided the inaccurate information that they were out of town.
124. Defendant told the Swindles that defendant had provided the information that the Swindles were out of town and thus would not attend the depositions.

125. The Swindles asked defendant why she provided this inaccurate information about why they were not at the depositions.
126. Defendant responded that she said they were out of town because that way the Swindles would not have to appear and explain what had happened.
127. On November 13, 2003, defendant wrote a letter to Trial Court Administrator Judy Stallings regarding the Swindle case.
128. In her November 13, 2003 letter, defendant noted that the opposing party had filed a motion to dismiss. Defendant then stated that she had contacted opposing counsel and they were going to try to set a new date for the depositions.
129. Defendant had not contacted opposing counsel prior to November 13, 2003 and defendant and opposing counsel had not tried to reschedule the depositions.
130. Defendant never contacted opposing counsel, tried to reschedule the Swindles' depositions or offered to pay the costs of the July 30, 2003 deposition session.
131. Defendant knew that the opposing parties' motion to dismiss was scheduled for hearing on April 12, 2004.
132. Defendant knew well in advance of April 12, 2004 that she had court commitments in different counties on the morning of April 12, 2004.
133. Defendant notified the Swindles that motions in their case would be heard on April 12, 2004 but told them they did not need to attend.
134. Defendant did not make arrangements to appear for the Swindles to defend against the motion to dismiss on April 12, 2004 at 10:00 a.m.
135. Prior to April 12, 2004, defendant did not notify the Court of any conflict in her schedule that would prevent her from appearing on April 12, 2004 at 10:00 a.m. for the Swindles.

136. On April 12, 2004, defendant faxed a letter to the Court informing the Court of her conflicts and asking that the matter be held open until she got through with her cases in Hertford County Superior Court and Gates County District Court. She further requested that if she did not appear at all that date, the case be continued.
137. Defendant's fax to the court did not constitute an appropriate method by which to resolve conflicting court obligations or to protect her clients' interests.
138. Defendant did not appear in court for the Swindles until 4:00 p.m. on April 12, 2004.
139. In her absence, the Court called the Swindles' case and granted the opposing parties' motion to dismiss. The Court entered and signed the order dismissing the case on April 12, 2004.
140. On April 14, 2004, defendant wrote the Swindles a letter notifying them that their case had been dismissed. She did not explain why the case was dismissed.
141. The Swindles e-mailed defendant, asking why their case was dismissed.
142. Eventually defendant talked to the Swindles regarding the dismissal. Defendant blamed the dismissal on the Swindles' failure to appear at the deposition.
143. In her explanation to the Swindles regarding why their case was dismissed, defendant failed to discuss her failure to reschedule the Swindles' depositions upon their advance notification of their scheduling conflict, her misrepresentations to opposing counsel on July 30, 2003 as to why the Swindles were not in attendance, her failure to attempt to reschedule the depositions or otherwise reach an agreement with opposing counsel that would have allowed the Swindles' case to move forward, or her failure to appear at the hearing.
144. On April 19, 2004, defendant wrote to the Honorable J. Richard Parker, the judge who had entered the order dismissing the Swindles' case.
145. Defendant did not send a copy of the letter to opposing counsel.

146. In her April 19, 2004 letter to Judge Parker, defendant objected to the Court stating in its order that she had not appeared at the depositions or at the hearing on the motion to dismiss.
147. Defendant further stated in her April 19, 2004 letter that she had no real objection to the dismissal but that the dismissal should not have been with prejudice.
148. The Grievance Committee of the North Carolina State Bar sent defendant a letter of notice concerning her conduct in the Swindles' case on or about July 20, 2004.
149. Defendant responded to the State Bar by letter dated August 4, 2004.
150. In her response to the Grievance Committee of the State Bar, defendant indicated that she first learned the Swindles could not attend the depositions on July 30, 2003 when her office called the Swindles on July 30, 2003.
151. In her response, defendant stated that her office offered to pick Mrs. Swindle up and bring her to the deposition and that Mrs. Swindle declined.
152. In her response, defendant stated that she attempted to reschedule the Swindles' depositions and offered to pay the costs but opposing counsel would not reschedule.
153. Defendants' statements to the Grievance Committee of the State Bar referenced above were false and were material.
154. Defendant knew when she made the false statements described above that the statements were false.
155. Defendant never corrected the false statements she had made to the Grievance Committee.

Based upon the preceding findings of fact, this Hearing Committee makes the following

CONCLUSIONS OF LAW

1. By knowingly and willfully misapplying and converting the \$122,241.25 balance of proceeds from the Ruffin loan that she was holding in trust as a fiduciary and by using those funds for her own personal benefit and for the benefit of third persons without authorization from Ruffin or from St. Luke and in violation of the express prohibition of Ruffin and of the closing instructions of St. Luke, defendant used entrusted property for her own personal benefit and for the benefit of third parties without authorization in violation of Rule 1.15-2(j); engaged in criminal conduct, embezzlement, that reflects adversely on her honesty, trustworthiness, or fitness to practice law in violation of Rule 8.4(b); and engaged in conduct involving fraud, deceit, dishonesty, or misrepresentation in violation of Rule 8.4(c) of the Revised Rules of Professional Conduct.
2. By failing to inform CitiFinancial that she had made a stop payment order on the \$122,241.25 trust account check issued to CitiFinancial, defendant engaged in conduct involving fraud, deceit, dishonesty, or misrepresentation in violation of Rule 8.4(c) of the Revised Rules of Professional Conduct.
3. By knowingly and willfully misapplying and converting the \$4,000.00 and the \$29,335.00 disbursed by checks #s 5188 and 5228, which she was holding in trust as a fiduciary for the benefit of Dorothy Harris, and by using those funds for her own personal benefit and for the benefit of third persons without authorization from Dorothy Harris, defendant used entrusted property for her personal benefit and for the benefit of third parties without authorization in violation of Rule 1.15-2(j); engaged in criminal conduct, embezzlement, that reflects adversely on her honesty, trustworthiness, or fitness to practice in violation of Rule 8.4(b); and engaged in conduct involving fraud, deceit, dishonesty, or misrepresentation in violation of Rule 8.4(c) of the Revised Rules of Professional Conduct.
4. By preparing and submitting to the State Bar a ledger card purporting to reflect that check #5228 was written to pay a medical lien when in fact no such lien was paid and when in fact defendant had knowingly and willfully misapplied the \$29,335.00, defendant

engaged in conduct involving fraud, deceit, dishonesty, or misrepresentation in violation of Rule 8.4(c) of the Revised Rules of Professional Conduct.

5. By knowingly and willfully misapplying and converting the \$2,454.67 disbursed by check # 5173 that she was holding in trust as a fiduciary for the benefit of the Estate of Clotee Gillam, and by using those funds for her own personal benefit or the benefit of third persons without authorization from the Estate, defendant utilized entrusted funds for her own benefit or for the benefit of third persons without authority in violation of Rule 1.15-2(j); engaged in criminal conduct, embezzlement, that reflects adversely on her honesty, trustworthiness, or fitness to practice law in violation of Rule 8.4(b); and engaged in conduct involving fraud, deceit, dishonesty, or misrepresentation in violation of Rule 8.4(c) of the Revised Rules of Professional Conduct.
6. By preparing and submitting to Clerk of Superior Court a final accounting falsely representing that check #5173 was issued for "funeral expenses" of the Estate of Clotee Gilliam when defendant actually misappropriated the \$2454.67, defendant engaged in conduct involving fraud, deceit, dishonesty, or misrepresentation in violation of Rule 8.4(c) of the Revised Rules of Professional Conduct.
7. By failing to reschedule the Swindles' depositions upon advance notice of their conflict, failing to attempt to reschedule the depositions after they were missed but before the case had been dismissed, failing to appear for the hearing on the motion to dismiss, and failing to take appropriate steps to resolve her scheduling conflicts and protect her clients' ability to defend against the motion to dismiss, defendant neglected a client matter in violation of Rule 1.3 of the Revised Rules of Professional Conduct.
8. By failing to respond to the Swindles' telephone calls and e-mail on a timely basis, failing to discuss her failures to protect their interests in the deposition matter and in defending the motion to dismiss and failing to tell the Swindles she had failed to appear at the hearing on the motion to dismiss, defendant failed to promptly comply with the clients' reasonable requests for information, failed to keep the clients reasonably informed about the status of the matter, and failed to explain matters to the extent

reasonably necessary to permit the clients to make informed decisions regarding the representation in violation of Rule 1.4 of the Revised Rules of Professional Conduct.

9. By sending her April 19, 2004 letter to Judge Parker without sending a copy to opposing counsel, defendant engaged in *ex parte* communication with a judge in violation of Rule 3.5(a)(3) of the Revised Rules of Professional Conduct.
10. By falsely stating to the Grievance Committee of the North Carolina State Bar that she had not received advance notice of the Swindles' unavailability for the scheduled deposition date due to work conflict, that her office had offered to transport Mrs. Swindle to the deposition and Mrs. Swindle declined, and that she attempted to reschedule the depositions and offered to pay costs but opposing counsel would not reschedule, defendant knowingly made false statements of material fact in violation of Rule 8.1 and N.C. Gen. Stat. § 84-28(b)(3) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c) of the Revised Rules of Professional Conduct.
11. By falsely stating to opposing counsel that the Swindles were out of town and thus would not attend the deposition and by indicating to opposing counsel that the Swindles knew of their obligation to attend the depositions and were ignoring that obligation, defendant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c) of the Revised Rules of Professional Conduct.
12. By falsely stating to the Court in her November 13, 2003 letter that she had contacted opposing counsel to reschedule the depositions and that they were trying to set a new date for the depositions, defendant made a false statement of material fact to a tribunal in violation of Rule 3.3 and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c) of the Revised Rules of Professional Conduct.
13. By failing to appear on behalf of the Swindles on April 12, 2004 at 10:00 a.m. without following proper procedures to notify the Court and opposing counsel and to resolve her scheduling conflicts, defendant engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

Based upon the foregoing findings of fact and conclusions of law, the Hearing Committee makes by clear, cogent, and convincing evidence, the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. Defendant's misconduct is aggravated by the following factors:
 - a. dishonest or selfish motive;
 - b. a pattern of misconduct;
 - c. multiple offenses;
 - d. refusal to acknowledge wrongful nature of conduct;
 - e. vulnerability of victims Harris and Swindles;
 - f. substantial experience in the practice of law; and
 - g. indifference to making restitution.
2. Defendant's misconduct is mitigated by the following factors:
 - a. absence of a prior disciplinary record; and
 - b. good reputation.
3. The aggravating factors outweigh the mitigating factors.
4. Defendant's misconduct significantly harmed the legal profession. Defendant's neglect and failure to communicate with the Swindles caused the Swindles to feel their trust had been betrayed. The Swindles expressed a sense of distrust of the legal profession in general due to defendant's misconduct. Additionally, defendant's dishonesty with her fellow attorney, Mr. Ellis, also constitutes harm to the profession. Attorneys have a duty to deal honestly with each other. When attorneys do not do so they engender distrust among fellow lawyers, thereby harming the profession as a whole.
5. Defendant's misconduct resulted in significant harm to her clients and to others. Defendant's theft of Mrs. Harris' funds has left her with an outstanding claim of over \$29,000.00 due to Medicaid. Defendant's theft of funds from the Estate of Clotee Gillam denied the proper beneficiaries of the stolen funds. Defendant's failure to reschedule the depositions of the Swindles, both prior to the scheduled date of deposition upon notice of

Mr. Swindle's work conflict and after the scheduled date of the deposition, ultimately resulted in dismissal of the Swindles' case and precluded the Swindles from pursuing their claim. Defendant's theft of the funds from Ruffin's refinance loan caused a significant risk of financial harm to both Ruffin and St. Luke.

6. Defendant's false statements to the Grievance Committee of the North Carolina State Bar interfered with the State Bar's ability to regulate attorneys and undermined the privilege of lawyers in this State to remain self-regulating.
7. Defendant's false statement to the Court in the Swindles' case and her failure to appear for the Swindles without having followed proper procedures for notifying the Court and opposing counsel of conflicting court obligations caused prejudice to the administration of justice.
8. This Hearing Committee has considered all alternatives and finds that no discipline other than disbarment will adequately protect the public, the judicial system and the profession given the clear demonstration of multiple misappropriations of multiple clients' funds, the pattern of dishonesty established by the evidence, and defendant's failure to acknowledge the wrongfulness of her misconduct. Furthermore, entry of an order imposing discipline less than disbarment would fail to acknowledge the seriousness of the offenses committed by defendant and would send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

Based upon the foregoing findings of fact, conclusions of law and additional findings of fact regarding discipline, the Hearing Committee hereby enters the following

ORDER OF DISCIPLINE

1. Teresa L. Smallwood is hereby DISBARRED from the practice of law.
2. Smallwood shall surrender her law license and membership card to the Secretary of the State Bar no later than 30 days from service of this order upon her.
3. Smallwood shall pay the costs of this proceeding as assessed by the Secretary of the N.C. State Bar, including DHC costs and including costs of the transcription and depositions taken in this case as follows: court reporter costs; videographer and videotaping costs;

transcription costs; shipping, handling, and transmittal costs; and witness costs. Defendant must pay the costs within 90 days of service upon her of the statement of costs by the Secretary.

4. Smallwood shall comply with all provisions of 27 NCAC 1B § .0124 of the North Carolina State Bar Discipline & Disability Rules ("Discipline Rules").

Signed by the Chair with the consent of the other hearing committee members, this the 13th day of February, 2007.



F. Lane Williamson
Chair, Disciplinary Hearing Committee