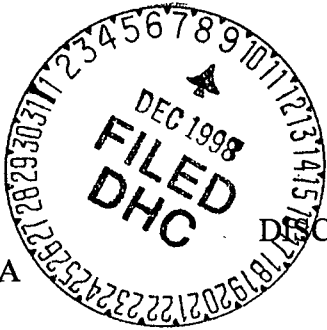


6655



WAKE COUNTY  
NORTH CAROLINA

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
98 DHC 22

THE NORTH CAROLINA STATE BAR )  
Plaintiff )  
v. )  
CURTIS HARRIS, ATTORNEY )  
Defendant )

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW  
AND ORDER OF DISCIPLINE

THIS MATTER came on to be heard and was heard by a hearing committee of the Disciplinary Hearing Commission composed of Franklin E. Martin, Chair; Michael L. Bonfoey and B. Stephen Huntley on Friday, Oct. 30, 1998. Carolin Bakewell represented the N.C. State Bar. Curtis O. Harris, the Defendant, appeared on his own behalf. Based upon the pleadings herein, including the entry of the Defendant's default by the Secretary of the N.C. State Bar, 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, Curtis Harris, (hereafter, Harris) was admitted to the North Carolina State Bar in 1975, 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 of the relevant periods referred to herein, Harris was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Gastonia, Gaston County, North Carolina.

4. The State Bar filed its summons and complaint against Harris on Aug. 12, 1998.

4. Harris was personally served with the State Bar's summons and complaint by the Gaston County Sheriff's Department on Aug. 18, 1998.

5. Harris' answer was due no later than Sept. 8, 1998.

6. Harris did not file an answer or other responsive pleading with the N.C. State Bar.

7. On Sept. 9, 1998, on motion of the State Bar, the Secretary of the N.C. State Bar entered an order of default against Harris.

8. On Sept. 9, 1998, the State Bar served Harris with its motion for entry of default, entry of default, motion for order of discipline, notice of hearing and grounds for personal jurisdiction by depositing copies of the motions and orders into the U.S. Mail directed to Harris at his last known address on file with the State Bar.

9. The notice of hearing sent to Harris on Sept. 9, 1998 provided that a hearing would be held in room G22 of the old Education Building, 114 W. Edenton St., Raleigh, N.C. at 10 a.m. on Friday, Oct. 30, 1998 to determine the appropriate discipline to be entered against Harris, based upon the admissions established by Harris' default.

10. Harris was properly served with notice of the time, date and location of the hearing herein.

11. On the morning of trial, Harris moved to set aside the default entered against him. Harris failed to show good cause, however, and his motion to set aside the default was denied.

12. The State Bar took a voluntary dismissal on the morning of trial respecting the Third Claim for Relief in the State Bar's Complaint respecting the Riley Cabiness estate.

13. Prior to April 1995, Harris undertook to represent Drennan Rhyne and Ashland Rhyne, her minor child, respecting an accident in which the Rhynes were injured.

14. On or about April 5, 1995, Harris settled the claims of Ashland and Drennan Rhyne for \$7,600. The settlement funds were deposited into Harris' attorney trust account number 1601079204 at Branch Banking & Trust (hereafter, trust account).

15. Between April 5, 1995 and May 11, 1995, Harris disbursed a total of \$3,457 from the settlement funds for Drennan and Ashland Rhyne to Rhyne and to Werran Chiropractor.

16. On April 5, 1995, Harris disbursed \$3,032 to himself as a fee in the Rhynes' matter.

17. After deducting his fee and the disbursements which he made to the Rhynes and their medical care provider, Harris should have maintained at least \$1,111.00 in his attorney trust account on the Rhynes' behalf after May 11, 1995.

18. On or about Sept. 10, 1996, Harris disbursed \$751 from his general account at Wachovia Bank, account no. 3241-178875 (hereafter, general account) to Dr. William Crawford on Drennan Rhyne's behalf.

19. Harris has not disbursed any other sums on behalf of the Rhynes.

20. Harris should have maintained a balance of at least \$360 in his trust account on the Rhynes' behalf at all times after Sept. 10, 1996.

21. The balance in Harris' trust account dropped below \$1,110 on a number of occasions after May 11, 1995 and before Sept. 10, 1996, including Nov. 3, 1995 - Nov. 28, 1995; Dec. 28, 1995 to Jan. 11, 1996; Feb. 28, 1996 - April 1, 1996; April 9, 1996 - April 14, 1996; May 3, 1996 - May 13, 1996; May 31 - June 30, 1996; July 1, 1996 - Sept. 10, 1996.

22. The balance in Harris' trust account dropped below \$360 on a number of occasions after Sept. 10, 1996, including Sept. 10 - Nov. 21, 1996; Jan. 3, 1997 - Jan. 22, 1997; May 14 - July 14, 1997; July 16 - 24, 1997; July 28 - Sept. 14, 1997; Oct. 2, 1997 - Dec. 14, 1997; Jan. 21, 1998 - Feb. 27, 1998.

23. Harris misappropriated all or a portion of the settlement funds which should have remained in his trust account on behalf of the Rhynes and disbursed such sums for the benefit of himself or third parties without his clients' knowledge and consent.

24. Prior to April 1995, Harris undertook to represent Crystel Day (hereafter, Day), respecting Day's personal injury claim.

25. On or about April 17, 1995, Harris deposited \$16,776.05 in settlement funds belonging to Day into Harris' trust account.

26. On or about April 19, 1995, Harris deposited \$17,223.95 in additional settlement funds belonging to Day into his trust account.

27. Between April 18, 1995 and Aug. 4, 1995, Harris disbursed a total of \$14,000 in settlement proceeds to Day.

28. Between April 17, 1995 and May 15, 1995, Harris disbursed a total of \$15,679.90 from Day's settlement funds to himself or third parties, by writing checks payable to cash drawn on his attorney trust account.

29. Harris did not make any disbursements after Aug. 4, 1995 to Day or on her behalf.

30. At all times on and after Aug. 4, 1995, Harris should have maintained at least \$2,320.10 in his trust account for Day's benefit.

31. The balance in Harris' trust account dropped below \$2,320.10 on a number of occasions after Aug. 4, 1995, including Nov. 3 - Dec. 5, 1995; Dec. 5 - Dec. 18, 1995, Dec. 20 - Dec. 21, 1995; Dec. 26, 1995; Dec. 28, 1995 - Jan. 11, 1996; Feb. 23 - March 31, 1996; April 9, 1996; May 3, 1996; May 31 - Nov. 21, 1996; Nov. 27 - Dec. 10, 1996; Jan. 3, 1997 - Jan. 22, 1997; March 31 - July 14, 1997; July 16 - July 24, 1997; July 28 - Sept. 14, 1997; Oct. 2 - Dec. 14, 1997; Jan. 13, 1998 - Feb. 27, 1998.

32. Harris misappropriated all or a portion of the \$2,320.10 belonging to Day by disbursing all or a portion of the funds to himself or third parties without Day's knowledge and consent.

33. Prior to Jan. 23, 1996, Harris undertook to represent Maurice Hinton (hereafter, Hinton), respecting a personal injury action.

34. On Jan. 23, 1996, Harris deposited \$23,000 in settlement funds belonging to Hinton into his trust account.

35. Between Jan. 23, 1996 and March 12, 1996, Harris disbursed all but \$3,498.64 of Hinton's settlement funds.

36. Harris did not disburse any part of Hinton's settlement to Hinton or third parties on Hinton's behalf after March 12, 1996.

37. At all times after March 12, 1996, Harris should have maintained \$3,498.64 in his attorney trust account on Hinton's behalf.

38. The balance in Harris' trust account dropped below \$3,498.64 on a number of occasions after March 12, 1996, including March 12, 1996 - April 1, 1996; April 9, 1996 - April 14, 1996; May 2, 1996 - May 13, 1996; May 31, 1996 - Dec. 10, 1996; Dec. 31, 1996 - Jan. 22, 1997; March 31, 1997 - July 14, 1997; July 16, 1997 - July 24, 1997; July 28, 1997 - Sept. 14, 1997; Oct. 2, 1997 - Dec. 14, 1997; and Jan. 13, 1998 - Feb. 27, 1998.

39. Prior to December 1996, Harris undertook to represent the estate of Carnetha Williams Jennings (hereafter, Jennings estate).

40. On or about Dec. 11, 1996, Harris deposited \$25,000 belonging to the Jennings estate into Harris' trust account.

41. Between Dec. 12, 1996 and Jan. 3, 1997, Harris disbursed all but \$2,833.00 of the \$25,000 which he had received on behalf of the Jennings estate.

42. Harris did not disburse any other amounts to or on behalf of the Jennings estate after Jan. 3, 1997.

43. At all times after Jan. 3, 1997, Harris should have maintained at least \$2,833 in his trust account for the benefit of the Jennings estate or the heirs of the estate.

44. The balance in Harris' attorney trust account dropped below \$2,833 on a number of occasions after Jan. 3, 1997, including Jan. 3 - Jan. 22, 1997; March 31, 1997 - July 14, 1997; July 16, 1997 - July 24, 1997; July 28, 1997 - Sept. 14, 1997; Oct. 2, 1997 - Dec. 14, 1997; Jan. 13 - Feb. 27, 1998.

45. Harris misappropriated all or a portion of the \$2,833 which he should have maintained in his trust account for the Jennings estate or the heirs of the estate by disbursing all or a portion of these sums to himself or to third parties, without the knowledge and consent of the Jennings estate, the heirs or the clerk of court.

Based upon the foregoing Findings of Fact, the hearing committee hereby makes the following:

#### CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee and the committee has jurisdiction over the person of Curtis Harris and the subject matter of this proceeding.

2. Harris' 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 client funds which he should have held in trust for the benefit of Drennan Rhyne, Crystel Day, Maurice Hinton and the estate of Carnetha Williams Jennings, Harris engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 1.2(c) of the Rules of Professional Conduct, Rule 8.4(c) of the Revised Rules of Professional Conduct and committed criminal acts that reflect adversely on his honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 1.2(b) of the Rules of Professional Conduct, Rule 8.4(b) of the Revised Rules of Professional Conduct; and failed to hold a client funds in

trust in violation of Rule 10.2(e) of the Rules of Professional Conduct and Rule 1.15-2(h) of the Revised Rules of Professional Conduct

(b) By drawing checks payable to cash on his attorney trust account, Harris violated Rule 10.2(c)(2) of the Rules of Professional Conduct and Rule 1.15-2(f) of the Revised Rules of Professional Conduct.

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

#### FINDINGS OF FACT REGARDING DISCIPLINE

1. Harris's misconduct is aggravated by the following factors:
  - a. Harris has prior discipline, having received a private reprimand in 1989 and two reprimands in 1997.
  - b. Harris was motivated by dishonest and selfish motives.
  - c. Harris engaged in multiple violations of the Rules of Professional Conduct.
  - d. Harris engaged in a pattern of violations of the Rules of Professional Conduct.
  - e. Harris has displayed an indifference toward making restitution.
  - f. Harris has substantial experience in the practice of law.
  - g. Harris engaged in bad faith obstruction of the disciplinary proceedings by failing to produce all records relating to his operating and trust account and by failing to respond to the State Bar's letters of notice.
3. The Committee does not find that there are any mitigating factors present.
4. The aggravating factors outweigh the mitigating factors.

Based upon the foregoing aggravating and mitigating factors and the argument of State Bar counsel, the hearing committee hereby enters the following:

ORDER OF DISCIPLINE

1. The defendant, Curtis O. Harris, is hereby disbarred from the practice of law in North Carolina.

2. The defendant shall surrender his license and membership card to the Secretary of the State Bar within 30 days of the effective date of this order.

3. The defendant shall pay the costs of this action, including all costs incurred by the State Bar in obtaining copies of the defendant's bank account records.

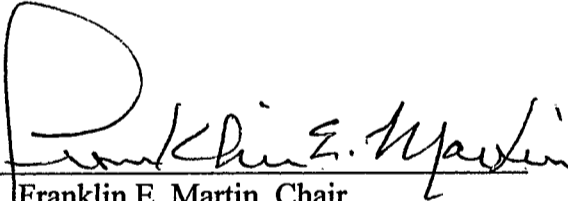
4. The defendant shall comply with the wind-down provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the N.C. State Bar Discipline & Disability Rules. As part of the wind down of defendant's practice, defendant shall deliver to the State Bar all of the client files relating to the first, second, fourth and fifth claims in the State Bar's complaint within 30 days from the service of this order upon the defendant.

5. Prior to seeking reinstatement of his license to practice law, the defendant shall make full restitution to clients Rhyne, Day, Hinton and Jennings of all amounts alleged to be owed in the State Bar's complaint.

6. As a condition of seeking reinstatement of his license to practice law, the defendant shall cooperate fully with the N.C. State Bar in any investigation which it may conduct into any misappropriation by defendant of funds of any other client and shall make full restitution of all amounts shown by the N.C. State Bar to be owed to such other client.

Signed by the Chair with the knowledge and consent of the other committee members.

This the 8<sup>th</sup> day of December, 1998.

  
Franklin E. Martin, Chair  
Disciplinary Hearing Committee