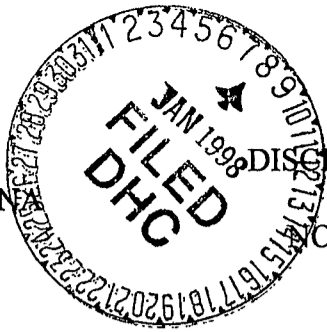


WAKE COUNTY
NORTH CAROLINA



12489

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
97 DHC 24

THE NORTH CAROLINA STATE BAR
PLAINTIFF

v.

RANDY MEARES, ATTORNEY
DEFENDANT

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

THIS MATTER was heard on the 14th day of November, 1997 before a hearing committee of the Disciplinary Hearing Commission composed of Henry C. Babb, Jr., Chair; R. B. Smith and Robert Frantz. The defendant, Randy Meares, was represented by Roger Smith, Hill Allen IV and Paul Ridgeway. Carolin Bakewell represented the Plaintiff. Based upon the pleadings 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, Randy Meares, (hereafter, Meares) was admitted to the North Carolina State Bar in 1984, 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, Meares was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Raleigh, Wake County, North Carolina.

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

5. Between Jan. 13, 1997 and Feb. 28, 1997, Meares wrote to himself eight checks totaling \$34,200 drawn on Meares' attorney trust account number 421040316 at Central Carolina Bank (hereafter, CCB trust account).

6. Meares deposited the proceeds of the eight trust account checks into his operating account number 421046212 at Central Carolina Bank (hereafter CCB operating account).

7. The proceeds of the eight trust account checks represented funds belonging to Meares' clients.

8. After the proceeds of the eight trust account checks were deposited into his operating account, Meares transferred a total of \$34,230 from his operating account into his personal checking account at Branch Banking & Trust Co. (hereafter, BB&T), by writing to himself 10 checks between Jan. 17, 1997 and March 21, 1997.

9. Meares used the client funds which he removed from his trust account and which were ultimately deposited into his personal account at BB&T for the benefit of himself and his family members without the knowledge or consent of his clients.

10. Between Jan. 21, 1997 and Feb. 28, 1997, Meares issued to himself 17 checks drawn on his CCB trust account. Each of these checks was earmarked as representing the fee relating to a particular client's real estate closing. At the time the checks were issued and negotiated, however, none of the clients referred to on the checks had any funds on deposit in Meares' CCB trust account. Consequently, the 17 checks were drawn on funds belonging to other clients of Meares, who did not know of or consent to disbursement of their funds to Meares.

11. Meares used the proceeds of the so-called "early fee" checks referred to in paragraph 10, which totaled more than \$7,000, for his own benefit. No client permanently lost money as a result of this activity, however, as Meares ultimately deposited settlement funds into the trust account on behalf of the 17 clients whose names appeared on the "early fee" checks.

12. On March 21, 1997, Meares received a fee totaling more than \$65,000 which he had earned in a personal injury case. On the same day, Meares deposited approximately \$55,000 of the fee into a new business account which he had opened at CCB, assigned account number 421056607 (hereafter, CCB business account). Meares deposited the remaining portion of the fee into his older CCB operating account number 421046212.

13. On March 19, 1997, Meares was served with a subpoena for cause audit, letter of notice and substance of grievance by the North Carolina State Bar. The subpoena for cause audit commanded Meares to produce to the State Bar records relating to his attorney trust account, including his monthly bank statements, canceled checks, deposit slips and deposited items.

14. On April 2, 1997, after he was on notice that the State Bar intended to audit his trust account, Meares withdrew \$35,000 from his CCB business account and used the funds to purchase a \$35,000 bank check.

15. That same day, Meares deposited the \$35,000 bank check into his CCB trust account, thereby replacing the \$34,200 in client funds he had previously embezzled from the account.

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 Defendant, Randy Meares, and the subject matter.

2. Meares' 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 withdrawing \$34,200 in client funds from his attorney trust account and using those funds for the benefit of himself and/or his family, without the clients' knowledge and consent, Meares committed criminal acts which reflect adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rule 1.2(b), engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 1.2(c), failed to maintain client funds in trust separate and apart from his own funds in violation of Rule 10.1(a) and failed to promptly pay or deliver to his clients funds belonging to the clients in violation of Rule 10.2(e).

(b) By writing to himself 17 checks totaling over \$7,000 in January and February 1997 which were earmarked as fees for designated clients when those clients had no funds in the trust account, with the result that other clients' funds were temporarily misappropriated for Meares' benefit, without the knowledge or consent of the clients, Meares committed criminal acts which reflect adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rule 1.2(b), engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 1.2(c), failed to maintain client funds in trust separate and apart from his own funds in violation of Rule 10.1(a) and failed to promptly pay or deliver to his clients funds belonging to the clients in violation of Rule 10.2(e).

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

FINDINGS OF FACT REGARDING DISCIPLINE

1. On April 17, 1997, Meares consented to the entry of an order of preliminary injunction, forbidding him from handling client funds until further order of the Wake County Superior Court. The order found that funds belonging to Meares' clients had been mishandled.

2. On May 5, 1997, Meares filed an application for a salesman's license with the N.C. Real Estate Commission. Question 16 of that application required Meares to disclose, inter alia, whether there were "currently any charges pending against [him] in connection with any real estate or other professional license [he] hold[s]."

3. Meares failed to disclose to the N.C. Real Estate Commission that he had been served with a letter of notice and substance of grievance and subpoena for cause audit by the N.C. State Bar on March 19, 1997 respecting a grievance filed by a client named Johnny Myatt. Meares also failed to disclose that he had consented to the entry of an order of preliminary injunction in Wake County Superior Court on April 17 which forbade him from handling client or fiduciary funds until further order of the court.

4. Meares met with the N.C. State Bar's investigator, Edward White, on March 19 and April 1, 1997, to discuss issues related to the grievance filed by Johnny Myatt and the audit which the State Bar was conducting of Meares' attorney trust account. During the March 19 meeting, Meares falsely told White that he had taken a fee designated for a particular client when that client had no funds in the account on only one occasion and that he had done so as a result of a clerical error by a staff member. At the meeting on April 1, 1997, Meares falsely told White that he had taken so-called "early fees" on a number of occasions, but had only done so in January and February 1997, because he was experiencing a cash flow problem as a result of the break up between Meares and his former law partner, Kevin Byrd. In fact, Meares had taken so-called "early fees" on 12 other occasions in November and December 1996, substantially before the break up of the partnership between Byrd and Meares.

5. When Meares initially produced records in response to the State Bar's March 19, 1997 subpoena, he intentionally withheld copies of the eight CCB trust account checks whereby he had removed the \$34,200 in client funds from the trust account. Those checks were not produced to the N.C. State Bar until approximately April 19, 1997, after a second subpoena was served upon Meares and after he retained counsel to represent him.

6. Immediately prior to and during January and February 1997, when Meares was misappropriating client funds, he expended substantial sums of money on items such as jewelry, automobiles and clothing for himself.

7. Although Meares testified at the hearing that he took client funds as a result of panic brought on by the dissolution of his partnership with Byrd and the prospect of being unable to meet the expenses of his law practice, Meares failed to present convincing evidence that he had incurred any extraordinary business expenses at the time of the defalcations. Moreover, Meares presented no evidence that he attempted to find other, legitimate sources of funds prior to resorting to misappropriating client funds.

8. Meares presented the testimony of four character witnesses during the second phase of the disciplinary hearing herein. These witnesses, three of whom were attorneys and one of whom was a builder, all testified that they believed Meares was an honest and competent attorney and that the misconduct in which he had engaged was out of character.

9. The defendant's misconduct is aggravated by the following factors:

- (a) The defendant was actuated by a dishonest or selfish motive.
- (b) The defendant engaged in a pattern of misconduct.
- (c) The defendant engaged in multiple violations of the Rules of Professional Conduct.
- (d) The defendant engaged in bad faith attempts to obstruct the State Bar's investigation.
- (e) The defendant had substantial experience in the practice of law at the time of the misconduct.

10. The defendant's misconduct is mitigated by the following factors:

- (a) The defendant has no prior disciplinary record.
- (b) The defendant made full and free disclosure to the Disciplinary Hearing Commission at the disciplinary hearing herein.
- (c) The defendant produced evidence of good character or reputation.
- (d) The defendant expressed remorse for his misconduct at the disciplinary hearing herein.

11. The Committee did not consider, nor did it rely upon evidence presented by the N.C. State Bar regarding the handling or disposition of funds of a client named Richard Williams.

12. The aggravating factors outweigh the mitigating factors.

Based upon the foregoing Findings of Fact and Conclusions of Law, and upon the aggravating and mitigating factors, the hearing committee hereby enters the following

ORDER OF DISCIPLINE

1. The defendant is hereby disbarred from the practice of law beginning 30 days from 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 no later than 30 days following service of this order upon the defendant.

4. The defendant shall comply with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the N.C. State Bar Discipline & Disability Rules.

Signed by the committee chair with the express consent of the other committee members.

This the 5 day of January, 1998.


Henry C. Babb, Jr., Chair
Disciplinary Hearing Committee