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NORTH CAROLINA
WAKE COUNTY

FILED
1985 DEC -8 PM 3:52

BEFORE THE
DISCIPLINARY HEARING COMMISSION.
OF THE
NORTH CAROLINA STATE BAR
85 DHC 20

THE NORTH CAROLINA STATE BAR,)
Plaintiff)

vs.)

JOE C. WEATHERSPOON,)
Defendant)

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This matter coming on to be heard and being heard on December 6, 1985 before a hearing committee composed of Frank Wyatt, Chairman, James E. Ferguson, II, and Harry Sherwood; with A. Root Edmonson appearing for the North Carolina State Bar and James B. Maxwell appearing for the Defendant; and based upon the stipulations and the evidence offered at the hearing, the Committee finds the following by clear, cogent, and convincing evidence:

FINDINGS OF FACT

1. On May 16, 1983, Defendant agreed to represent Bobby Ray Gattis in a personal injury claim for injuries Gattis received in an accident that occurred on April 15, 1983.
2. On or before November 29, 1983, Defendant received \$25,000.00 from the insurance company that had insured the party who allegedly caused Mr. Gattis's injuries in full settlement of Mr. Gattis's claim.
3. Defendant deposited this \$25,000.00 into his trust account on November 29, 1983.
4. On November 29, 1983, Defendant removed his twenty-five percent contingency fee in the Gattis matter from his trust account in three consecutive checks as follows:

 - Check number 1245 in the amount of \$1550.00;
 - Check number 1246 in the amount of \$1500.00; and
 - Check number 1247 in the amount of \$3200.00.
5. On December 7, 1983, Defendant paid Bobby Ray Gattis \$4335.00 by trust account check number 1258.

6. At the time the Defendant paid his client, Mr. Gattis, the \$4,350.00, he indicated to him that the remaining \$14,400.00 was basically needed to cover outstanding medical bills due health care providers on Mr. Gattis' behalf, but that he would attempt to negotiate those to see if the health care providers would accept less than the full amount due and that some additional funds could, therefore, be realized by and for Mr. Gattis.

7. The file of Mr. Weatherspoon reflects a series of letters written to the health care providers by an associate then employed by Mr. Weatherspoon on December 27, 1983 and again on March 1, 1984.

8. That the associate subsequently left the employment of Mr. Weatherspoon in September, 1984 and the trust funds held had not been disbursed at that time to either the medical health care providers or Mr. Gattis.

9. Mr. Gattis attempted to contact Mr. Weatherspoon on at least two occasions between the period December, 1983 and March, 1985 (approximately 15 months) to inquire about the status of his funds that had been retained in Mr. Weatherspoon's Trust Account.

11. During the period December, 1983 through April, 1985, the Trust Account of the Defendant, Joe C. Weatherspoon, did not maintain a balance at all times in excess of \$14,400.00. The account was significantly below that level on several monthly statements.

12. That when Mr. Gattis' efforts to contact the Defendant to determine the status of his trust funds were unsuccessful, he filed the grievance leading to this proceeding on March 19, 1985.

13. When the Defendant was advised on April 2, 1985 that a grievance had been filed against him by Mr. Gattis, the Defendant took prompt steps to see that all claims then outstanding to the health care providers for Mr. Gattis were promptly paid and disbursed, and that as of the date of this hearing and prior to the filing of the Complaint in this action, all outstanding medical bills had been paid in full for Mr. Gattis and an additional sum of \$2,191.00 was disbursed to Bobby Ray Gattis on or about April 23, 1985.

14. That prior to April, 1985 and during the period November, 1983 until that date, the Defendant commingled his personal funds with those of his clients' in an account entitled "Joe C. Weatherspoon Attorney at Law - Trust Acct." This account was maintained at NCNB in Durham, North Carolina.

15. That subsequent to the grievance being filed and before the Complaint in this action was served, the Defendant, Joe C.

Weatherspoon, has developed a ledger and system for maintaining funds held by his clients in a Trust Account that is segregated from his personal accounts or other office accounts, and is for the use of and is a depository for funds held on behalf of his clients.

16. Defendant did not have the intent to deprive Gattis of his funds at any time that he removed funds from his trust account for personal purposes.

Based upon the foregoing FINDINGS OF FACT, the Hearing Committee makes the following:

CONCLUSIONS OF LAW

The conduct of Defendant as set forth above constitutes grounds for discipline pursuant to N.C.G.S. §84-28(b)(2) in that Defendant violated the Disciplinary Rules of the Code of Professional Responsibility as follows:

- (a) By removing the funds intended for the payment of Gattis's medical providers from his trust account before the payment of those medical providers, Defendant failed to preserve the identity of the funds of his client, Bobby Ray Gattis, in one or more identifiable bank accounts maintained in the state with no funds belonging to him deposited therein in violation of Disciplinary Rule 9-102(A) [for the conduct occurring after January 1, 1985, the conduct violated Disciplinary Rule 9-102(A)(3)].
- (b) By failing to promptly pay Mr. Gattis's medical providers and return the remainder to Mr. Gattis as directed, Defendant failed to promptly pay or deliver to the client or promptly pay or deliver as directed by the client the funds in his possession which his client was entitled to receive in violation of Disciplinary Rule 9-102(B)(4) [for the conduct occurring after January 1, 1985, the conduct violated Disciplinary Rule 9-102(B)(5).]
- (c) By failing to follow-up on the attempt to get Mr. Gattis's medical providers to accept reduced payments and by paying the bills in full, Defendant neglected a legal matter entrusted to him in violation of Disciplinary Rule 6-101(A)(3); failed to seek the lawful objectives of his client through reasonably available means in violation of Disciplinary Rule 7-101(A)(1); and prejudiced or damaged his client during the course of the professional relationship in violation of Disciplinary Rule 7-101(A)(3).

This the 17th day of December, 1985.

Frank Wyatt
Frank Wyatt, Chairman

James E. Ferguson, II
James E. Ferguson, II

Harry Sherwood
Harry Sherwood

NORTH CAROLINA
WAKE COUNTY

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CLERK OF SUPERIOR COURT
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
85 DHC 20

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
vs.) ORDER OF DISCIPLINE
JOE C. WEATHERSPOON,)
Defendant)

Based upon the FINDINGS OF FACT and CONCLUSIONS OF LAW of even date herewith; and based upon the evidence presented and arguments of Counsel, the Hearing Committee enters the following ORDER OF DISCIPLINE:

1. The Defendant, Joe C. Weatherspoon is suspended from the practice of law for a period of three years.
2. Thirty (30) months of said suspension shall be stayed upon Defendant's consent to and compliance with the following conditions:
 - (a) Defendant must successfully complete the Multi-State Professional Responsibility Exam (MPRE) before his reinstatement.
 - (b) Defendant must maintain a trust account within the rules promulgated by the Council of the North Carolina State Bar. To insure such compliance, Defendant must make his trust account records subject to inspection by a member of the Office of Counsel of the North Carolina State Bar or an auditor employed by the North Carolina State Bar for a period of three years after his reinstatement.
3. Defendant shall surrender his license and membership card to the Secretary of the North Carolina State Bar.
4. Defendant must comply with §24 of Article IX of the Rules and Regulations of the North Carolina State Bar.

5. Defendant is taxed with the costs of this action.
6. This Order shall be served upon Defendant on February 1, 1986.

This the 6th day of December, 1985.

Frank B. Wyatt

Frank Wyatt, Chairman

James E. Ferguson II

James E. Ferguson II

Harry Sherwood

Harry Sherwood