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NORTH CAROLINA

WAKE COUNTY

FILED

1985 OCT 18 AM 9:31

R. E. JAMES, SEC
THE N. C. STATE BAR

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
85 DHC 16

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

DENNIS WAYNE GADDY,
Defendant

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This cause was heard by a duly appointed Hearing Committee of the Disciplinary Hearing Commission on Friday, September 27, 1985. The North Carolina State Bar was represented by Fern E. Gunn. The Defendant was represented by Leonard T. Jernigan. The parties presented stipulated Findings of Fact. The Hearing Committee accepts the Stipulations of the parties and adopts them as its own. Based on the Stipulations of the parties, the Hearing Committee makes the following Findings of Fact:

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, Dennis Wayne Gaddy, was admitted to the North Carolina State Bar on December 21, 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, Canons of Ethics, and Code of Professional Responsibility of the North Carolina State Bar and of the laws of the State of North Carolina.

3. During all of the periods referred to herein, the Defendant 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. The Defendant was employed to represent Vance G. Byars as the administrator of the estate of Juanita Waddell Byars.

5. In the course of that representation, on or about May 8, 1985, the Defendant received three checks from various banks. These checks were in the amounts of: (1) \$3,003.12, (2) \$1,634.44, and (3) \$4,562.72. The three checks represented the amounts the decedent Juanita Waddell Byars had on deposit at the time of her death with the banks.

6. The administrator of the Juanita Waddell Byars' estate, Vance G. Byars, had instructed the Defendant to deposit the three checks totalling \$9,200.28 into the estate account at First Federal bank.

7. As a matter of convenience to the Defendant, on May 8, 1985, the Defendant deposited these three checks, totalling \$9,200.28, into his trust account at United Carolina Bank.

8. On May 8, 1985, the Defendant wrote a trust check (number 129) to himself in the amount of \$3,500. The Defendant used the \$3,500.00 from the estate funds for his personal use and without the express or implied permission of the administrator.

9. On May 9, 1985, the Defendant wrote trust check number 131 in the amount of \$5,200.00 to the estate of Juanita Waddell Byars.

10. On May 10, 1985, the administrator of the Juanita Waddell Byars estate, Vance Byars, telephoned the Defendant and questioned the amount of funds on deposit in the estate account.

11. On May 10, 1985, the Defendant wrote trust check number 132 in the amount of \$4,000.00 to be deposited in the estate of Juanita Waddell Byars. At the time trust check number 132 was written, the Defendant knew that there were insufficient funds in his trust account to cover the check.

12. The Defendant's trust account check number 132, in the amount of \$4,000.00, was returned for insufficient funds.

13. On May 21, 1985, the Defendant deposited and replaced the \$3,500.00 estate funds into the estate account of Juanita Waddell Byars.

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

CONCLUSIONS OF LAW

1. The Disciplinary Hearing Commission has subject matter jurisdiction of the cause and personal jurisdiction over the Defendant.

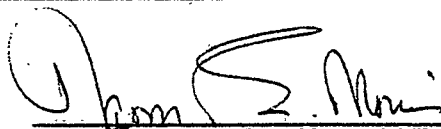
2. The Defendant has engaged in conduct constituting grounds for discipline under N. C. Gen. Statute §84-28(a) and (b)(2) as violations of the Disciplinary Rules of the Code of

Professional Responsibility in effect at the time of his actions in that:

- (a) By using the funds belonging to the estate of Virginia Waddell Byars for his personal use and gain, the Defendant has engaged in conduct involving fraud, deceit, dishonesty, or misrepresentation in violation of Disciplinary Rule 1-102(A)(4); has engaged in illegal conduct involving moral turpitude in violation of Disciplinary Rule 1-102(A)(3); has engaged in conduct that adversely reflects on his fitness to practice law in violation of Disciplinary Rule 1-102(A)(6); has failed to pay the funds of a client as directed by the client in violation of Disciplinary Rule 9-102(B)(5); and has failed to preserve the identity of all funds of clients paid to the lawyer in violation of Disciplinary Rule 9-102(A).
- (b) By issuing a trust account check for which there were insufficient funds to the estate account, the Defendant has engaged in illegal conduct involving moral turpitude in violation of Disciplinary Rule 1-102(A)(3); engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Disciplinary Rule 1-102(A)(4); and failed to promptly pay or deliver as directed by the client the funds in the possession of the lawyer in violation of Disciplinary Rule 9-102(B)(5).

Pursuant to Discipline and Disbarment Procedures of the North Carolina State Bar, §14(20), the Committee has authorized the Chairman to sign on behalf of all members.

This the 11th day of October, 1985.



The Honorable Naomi E. Morris
Chairman, Hearing Committee

NORTH CAROLINA
WAKE COUNTY

FILED
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S.E. JAMES, CLERK
COURT HOUSE
Raleigh, N.C.

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
85 DHC 16

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
vs.)
DENNIS WAYNE GADDY,)
Defendant)

ORDER OF DISCIPLINE

This cause was heard by the undersigned duly appointed members of a Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar on Friday, September 27, 1985. The Plaintiff, the North Carolina State Bar was represented by Fern E. Gunn. The Defendant was represented by Leonard T. Jernigan.

Based on the FINDINGS OF FACT and CONCLUSIONS OF LAW and the evidence presented for purposes of discipline, the Hearing Committee enters the following ORDER OF DISCIPLINE:

1. The Defendant is suspended from the practice of law for a period of two (2) years, effective thirty (30) days after service of this ORDER or thirty (30) days after affirmance of this order on appeal.
2. The Defendant shall surrender his license and membership card to the Secretary of the North Carolina State Bar by the effective date of this order.
3. If the Defendant should petition the North Carolina State Bar for reinstatement and if reinstatement is allowed, the Defendant must comply with the following conditions upon reentering the practice of law:
 - a. The Defendant's trust account shall be audited every six months at the Defendant's expense. Such audits of the Defendant's trust account are to be reported to the North Carolina State Bar for as long as the State

Bar deems it is necessary and in the public's best interest; and

- b. The Defendant's law practice must be monitored by a law firm that is approved by the North Carolina State Bar's counsel. The Defendant's law practice shall be monitored by the law firm for three years from the date that the Defendant begins to practice law.
4. As a condition precedent to reinstatement, the Defendant shall successfully pass the Multi-State Professional Responsibility examination or the comparable ethics examination that is required by the North Carolina State Bar Board of Law Examiners for admission into the North Carolina State Bar.
5. The Defendant shall comply with the provisions of section 24 of the Discipline and Disbarment Rules of the North Carolina State Bar regarding the winding down of his practice.
6. The Defendant is taxed with the costs of this proceeding which shall be paid as a condition precedent to the filing of any petition for reinstatement.

Pursuant to Discipline and Disbarment Procedures of the North Carolina State Bar, §14(20), the Committee has authorized the Chairman to sign on behalf of all members.

This the 11th day of October, 1985.



The Honorable Naomi E. Morris
Chairman, Hearing Committee