

3058

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
83 DHC 6

THE NORTH CAROLINA STATE BAR, )  
Plaintiff, )  
-vs- )  
JOSEPH R. MONROE, JR., ATTORNEY AT LAW, )  
Defendant. )

ENTRY OF JUDGMENT BY DEFAULT  
AND FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

This cause came on to be heard by the undersigned, duly appointed Hearing Committee of the Disciplinary Hearing Commission of The North Carolina State Bar on Friday, January 27, 1984, upon the Plaintiff's motion for default judgment which was filed on December 19, 1983. The Plaintiff was represented by L. Thomas Lunsford, II, and the Defendant did not appear and was unrepresented. The record in the cause showed that the Summons and Complaint were served on the Defendant on November 19, 1983. Having made no appearance in the cause, the Defendant's default was duly entered on December 19, 1983 upon motion of the Plaintiff. Based upon the record, the Hearing Committee hereby enters judgment by default and makes the following FINDINGS OF FACT relative to the Plaintiff's First Claim for Relief:

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, Joseph R. Monroe, Jr., was admitted to The North Carolina State Bar on September 5, 1967, and is and was at all times referred

to herein, an Attorney at Law, licensed to practice law in the State of 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) At and during all of the times hereinafter referred to, the Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the Village of Pinehurst, Moore County, North Carolina.

4) During the period between July 1, 1981, and August 31, 1983, the Defendant maintained a checking account incident to his law practice at the North Carolina National Bank in Southern Pines, North Carolina. Said account was denominated "Joseph R. Monroe, Jr., Trust Account," was numbered 321003832, and is hereinafter referred to as the "trust account."

5) Sometime prior to July 31, 1981, the Defendant was employed by Donald V. Hankinson and wife, Virginia M. Hankinson, to represent them in their acquisition of a certain parcel of real property in Moore County known as Lot 739 of Unit 1 of Phase 1 of Pine Meadows Place Subdivision from Edmond J. Maguire and Wife, Susan D. Maguire.

6) The aforesaid representation contemplated the Defendant's examining the title to the subject property and rendering an opinion concerning the title to the Hankinsons. The representation also contemplated the Defendant's handling of the closing of the transaction on July 31, 1981, at which time the Defendant was to receive the sum of \$45,379.47 from his clients in trust to be disbursed by him in accordance with a settlement statement which was prepared by the Defendant and signed by the Hankinsons and the Maguires.

7) On or about July 31, 1981, the Defendant received the sum of \$45,379.47 from his clients for disbursement by him in closing the subject transaction. This money was deposited into the Defendant's trust account.

8) Among the disbursements for which the Defendant was responsible were prepayments of ad valorem taxes for 1981 assessed by the Village of Pinehurst in the amount of \$190.68, and by Moore County in the amount of \$355.94. These taxes, which became due on September 1, 1981, were prorated between the buyers and the sellers on the settlement statement referred to above.

9) The Defendant failed to prepay the subject ad valorem taxes to either the Village of Pinehurst or Moore County.

10) The Defendant failed to pay the subject ad valorem taxes to the Village of Pinehurst or Moore County when those taxes became due on September 1, 1981.

11) The Defendant never paid the subject ad valorem taxes.

12) In February 1982, Donald V. Hankinson was informed by Edmond J. Maguire that the subject real property was advertised for sale in a local newspaper to satisfy a tax lien in favor of the Village of Pinehurst.

13) Shortly thereafter, Donald V. Hankinson, hereinafter referred to as Hankinson, informed his realtor, Richard Pockmeier, of the situation and Pockmeier paid the Pinehurst taxes on behalf of Hankinson as an accommodation. Hankinson later reimbursed Pockmeier for this expenditure.

14) On February 18, 1982, Hankinson, having determined that the Moore County taxes were also unpaid, directed First Security Savings and Loan Association, holder of the first mortgage on the subject property, to pay the Moore County taxes out of an amount which had been escrowed for payment of 1982 taxes.

15) During the Spring of 1982, Hankinson tried repeatedly to reach the Defendant by telephone seeking an explanation for the Defendant's failure to pay the taxes and to secure reimbursement for payment of the taxes made in the aforesaid manner. In every instance, Hankinson left messages with the secretary of the Defendant so that she might inform the Defendant of the purpose of the call. The Defendant failed to return any of Hankinson's telephone calls. Hankinson was told by the Defendant's secretary that checks payable to the Village of Pinehurst and Moore County for the subject taxes had been inadvertently sent to the Housing Investment Corporation in Florida, hereinafter referred to as HIC, in a contemporaneous closing of a condominium conveyance with respect to which the Hankinson's were the sellers, and that these checks had been negotiated by HIC.

16) On April 15, 1982, the Defendant wrote Hankinson concerning the subject real property transaction and indicated that the matter of the payment of the 1981 taxes would be "straightened out within the next few days." The Defendant also stated that, "[I] will see that HIC gets the refund in the mail as they had previously promised to do."

17) On May 18, 1982, Hankinson received a copy of a letter dated May 17, 1982, that the Defendant apparently wrote to HIC concerning the subject real property transaction and demanding from that corporation a sum of money equivalent to the tax obligations attributable to the Hankinson property.

18) On May 18, 1982, the Defendant finally called Hankinson on the telephone concerning the matter of the 1981 taxes.

19) On May 19, 1982, Hankinson wrote the Defendant a letter referring to the telephone call of May 18, 1982, and demanding payment in the amount of \$562.65 plus interest since February 17, 1982, as reimbursement for the taxes that Hankinson had paid or caused to be paid for 1981.

20) Having heard nothing further from the Defendant, Hankinson filed suit against the Defendant in the Small Claims Court of Moore County on June 24, 1982, 82 CvM 795, seeking to recover from the Defendant the sum of \$562.65 plus interest since February 17, 1982.

21) On July 7, 1982, the small claims action between Hankinson and the Defendant came on for hearing and judgment was rendered in the absence of the Defendant in favor of Hankinson in the amount of \$562.65.

22) On July 8, 1982, Hankinson received a letter dated July 3, 1982, from the Defendant transmitting the Defendant's trust account check number 2445 in the amount of \$573.65 representing repayment to Hankinson for taxes and interest and court costs.

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

The Defendant, by failing to immediately pay the 1981 taxes attributable to the subject real property and/or by failing to immediately reimburse his client for personal funds expended by the client to satisfy the taxes, engaged in professional conduct that adversely reflects on his fitness to practice law in violation of Disciplinary Rule 1-102(A)(6) of the North Carolina Code of Professional Responsibility, neglected a legal matter entrusted to him in violation of Disciplinary Rule 6-101(A)(3) of the North Carolina Code of Professional Responsibility, failed to carry out a contract of employment entered into with a client for professional services in violation of Disciplinary Rule 7-101(A)(2) of the North Carolina Code of Professional Responsibility, prejudiced and damaged his client during the course of the professional relationship in violation of Disciplinary Rule 7-101(A)(3) of the North Carolina Code of Professional Responsibility, and failed to promptly pay funds in his possession to a third party as requested by his client in

violation of Disciplinary Rule 9-102(B)(4) of the North Carolina Code of Professional Responsibility.

Relative to the Plaintiff's Second Claim for Relief, the Hearing Committee makes the following FINDINGS OF FACT:

1) Sometime prior to July 1, 1982, John Hagle, Jr. and wife, Evelyn G. Hagle employed the Defendant to represent them in connection with their acquisition of a certain parcel of real property located at 34 Thunderbird Circle in Pinehurst, North Carolina from Betty Salce and Victoria M. Salce.

2) The aforesaid representation contemplated the Defendant's examining the title to the subject property and rendering an opinion concerning the title to the Hagels. The representation also contemplated the Defendant's handling of the closing of the transaction on July 1, 1982, at which time the Defendant was to receive the sum of \$129,300.82 from his clients in trust to be disbursed by him in accordance with closing statements he had prepared for the buyers and sellers.

3) On or about July 1, 1982, the Defendant received the sum of \$129,300.82 from his clients for disbursement by him in closing the subject transaction. This money was deposited into the Defendant's trust account.

4) Among the disbursements for which the Defendant was responsible were prepayments of ad valorem taxes for 1982 assessed by the Village of Pinehurst in the amount of \$324.56, and by Moore County in the amount of \$636.19. These taxes, which became due on September 1, 1982, were prorated between the buyers and the sellers as reflected upon the closing statements referred to above.

5) The Defendant did not pay the subject ad valorem taxes to either the Village of Pinehurst or Moore County immediately upon receipt of his client's money at the closing.

6) The defendant did not pay the subject ad valorem taxes to either the Village of Pinehurst or Moore County when those taxes became due on September 1, 1982.

7) On March 2, 1983, the Hagles discovered that the ad valorem taxes due the Village of Pinehurst for the year 1982 had not been paid by the defendant when they noticed that their property was being advertised by the Village of Pinehurst in a local newspaper for sale to satisfy a tax lien. Upon further inquiry, they also ascertained that the ad valorem taxes due Moore County relative to the subject real property for 1982 had not been paid by the defendant.

8) Shortly thereafter, the Hagles questioned the defendant concerning the matter and were informed by him that the taxes had been paid and that he would clear up any misunderstanding. In fact, the taxes had not been paid.

9) On March 7, 1983, the defendant submitted trust account check number 2465 to the Moore County Tax Collector to pay the 1982 ad valorem taxes attributable to the subject real property. This check, which was made payable to Moore County in the amount of \$674.69 and was signed by the defendant, was subsequently dishonored because there were insufficient funds on deposit in the defendant's trust account to cover the check.

10) On March 7, 1983, the defendant also submitted a trust account check to the Village of Pinehurst in satisfaction of ad valorem taxes attributable to the subject real property for 1982 in the amount of \$349.22. This check was also dishonored because of a lack of sufficient funds present in the defendant's trust account to cover the check.

11) On March 25, 1983, the Village of Pinehurst caused there to be initiated a criminal prosecution, 83 Cr 3249, for the worthless check described in paragraph 16 above.

12) On June 16, 1983, the defendant waived his court appearance in 83 Cr 3249, pled guilty and paid the amount of the check and court costs to the Clerk of Court of Moore County.

13) On April 22, 1983, Moore County caused there to be initiated a criminal prosecution, 83 Cr 3946, based upon the worthless check described in paragraph 9 above.

14) On June 23, 1983, the defendant appeared in the District Court of Moore County in 83 Cr 3946, pled guilty to the offense of issuing a worthless check and was sentenced to 30 days in jail, which sentence was suspended on the condition that the defendant pay the court costs and make restitution to Moore County. This the defendant did on June 23, 1983.

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

The defendant, by failing to immediately pay the 1982 taxes attributable to the subject real property, engaged in professional conduct that adversely reflects on his fitness to practice law in violation of Disciplinary Rule 1-102(A)(6) of the North Carolina Code of Professional Responsibility, neglected a legal matter entrusted to him in violation of Disciplinary Rule 6-101(A)(3) of the North Carolina Code of Professional Responsibility, failed to carry out a contract of

employment entered into with the client for professional services in violation of Disciplinary Rule 7-101(A)(2) of the North Carolina code of Professional Responsibility, prejudiced his clients during the course of the professional relationship in violation of Disciplinary Rule 7-101(A)(3) of the North Carolina Code of Professional Responsibility, and failed to promptly pay funds belonging to his clients in his possession to third parties as requested by the clients in violation of Disciplinary Rule 9-102(B)(4) of the North Carolina Code of Professional Responsibility; and, by misappropriating funds entrusted to him by his clients for the payment of certain obligations incident to the subject real property transaction, engaged in professional conduct that was prejudicial to the administration of justice in violation of Disciplinary Rule 1-102(A)(5) of the North Carolina Code of Professional Responsibility.

Relative to the plaintiff's Third Claim for Relief, the Hearing Committee makes the following FINDINGS OF FACT:

1) By deposit ticket dated June 10, 1982, the Defendant deposited into the trust account a check from his mother-in-law, Rosa Lee Rimmer, in the amount of \$1,055.72, which check represented personal funds belonging to the Defendant which had been given to the Defendant by his mother-in-law to assist the Defendant in paying certain medical bills.

2) By deposit ticket dated January 31, 1983, the Defendant deposited into the trust account a check from the Town of Vass made payable to the Defendant in the amount of \$1,092.95. This check represented payment to the Defendant by the Town of Vass for legal fees and as such was the personal property of the Defendant.

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

The Defendant, by depositing funds into his trust account which belonged solely to himself and not to his clients, engaged in conduct violative of Disciplinary Rule 9-102(A) of the North Carolina Code of Professional Responsibility which requires that all funds of clients paid to a lawyer be deposited in one or more identifiable bank accounts maintained in the state in which the law office is situated and that no funds belonging to the lawyer shall be deposited therein.

Relative to the Plaintiff's Fourth Claim for Relief, the Hearing Committee makes the following FINDINGS OF FACT:

1) On April 19, 1983, Mrs. Evelyn G. Hagle filed a grievance with The North Carolina State Bar charging the Defendant with ethical misconduct.

2) On May 3, 1983, Mrs. Betty Salce filed a grievance with The North Carolina State Bar charging the Defendant with ethical misconduct.

3) On May 31, 1983, the Chairman of the Grievance Committee of The North Carolina State Bar issued a Letter of Notice to the Defendant concerning the grievances referred to above pursuant to Rule 12 of the Discipline and Disbarment Rules. Also on May 31, 1983, the Chairman of the Grievance Committee issued a Subpoena to the Defendant pursuant to Rule 28(2) of the said Rules, commanding the Defendant to appear before the Grievance Committee at The North Carolina State Bar Building in Raleigh, North Carolina on the 28th day of June, 1983, at 10:00 a.m., to testify concerning the grievances of Hagle and Salce and to produce certain financial records pertaining to his handling of their legal affairs. The Letter of Notice and the Subpoena, along with a Substance of the Grievances, were served upon the Defendant by Registered Mail on June 3, 1983.

4) The Defendant failed to respond to the Letter of Notice within fifteen days from the date of service and failed to appear pursuant to Subpoena as directed on June 28, 1983, and made no effort to explain his failure to respond in a timely fashion to these formal inquiries of The North Carolina State Bar.

5) On July 12, 1983, the Defendant submitted a letter dated July 9, 1983, addressed to Counsel for the Plaintiff in which he responded to the allegations contained in the Substance of Grievance.

6) On September 1, 1983, Counsel for the Plaintiff spoke to the Defendant on the telephone and again requested his records concerning the Salce/Hagle transaction, his bank statements for his trust account for May 1982 through March 1983, all cancelled checks and memoranda of deposit relating to those bank statements, a written explanation of his failure to respond in a timely fashion to the Letter of Notice and his failure to appear pursuant to the Subpoena, and copies of the two trust checks he alleged in his

response to the Letter of Notice were negotiated without endorsement by HIC.

The Defendant indicated that he would produce said material by the end of the following week. The Defendant failed to produce the material and information requested and never communicated further with The North Carolina State Bar concerning this matter.

7) On September 22, 1983, Counsel for The State Bar sent the accused a letter by certified mail, return receipt requested, renewing The State Bar's request for previously solicited material and information. This letter was received by Defendant on September 26, 1983.

8) The Defendant never responded to the letter of September 22, 1983, referred to in the previous paragraph.

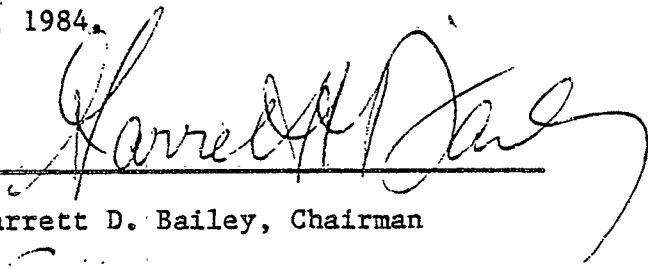
9) On October 2, 1983, the Chairman of the Grievance Committee issued another Subpoena to the Defendant directing the Defendant to appear before the Grievance Committee on October 18, 1983, to testify concerning the Salce and Hagle grievances and to produce various records relating to his handling of their real property transaction. On October 3, this Subpoena was transmitted by certified mail, return receipt requested, to the Defendant along with a letter from Counsel for the Plaintiff relating to the Subpoena. Service of the Subpoena and the letter upon the Defendant by certified mail was accomplished on October 5, 1983.

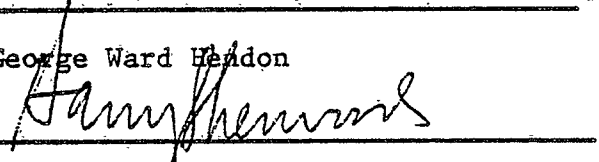
10) The Defendant did not appear before the Grievance Committee as directed by Subpoena on October 18, 1983. He has not communicated with The North Carolina State Bar prior to or since the 18th day of October, 1983, concerning his failure to appear.

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

The Defendant, by failing to answer the Letter of Notice in a timely fashion as required by Rule 12 of the Discipline and Disbarment Rules and by failing to appear pursuant to Subpoena as required by law, failed to answer the formal inquiries of The North Carolina State Bar in a disciplinary matter in violation of North Carolina General Statute §84-28(b)(3), and engaged in professional conduct that adversely reflects on his fitness to practice law in violation of Disciplinary Rule 1-102(A)(6) of the North Carolina Code of Professional Responsibility.

This the 22 day of February, 1984.

  
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Garrett D. Bailey, Chairman

George Ward Hendon  
  
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Harry Sherwood

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
83 DHC 6

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THE NORTH CAROLINA STATE BAR,  
Plaintiff,  
  
-vs-  
  
JOSEPH R. MONROE, JR.,  
Defendant.

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ORDER IMPOSING DISCIPLINE

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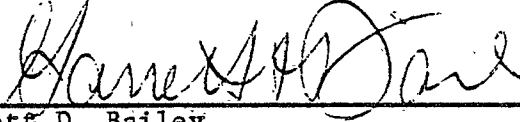
This cause was heard by the undersigned, duly appointed Hearing Committee of the Disciplinary Hearing Commission of The North Carolina State Bar on Friday, January 27, 1984. Based upon the FINDINGS OF FACT and CONCLUSIONS OF LAW entered in this cause and the evidence presented relevant to the discipline to be imposed, including all aggravating and mitigating evidence, the Hearing Committee enters the following ORDER IMPOSING DISCIPLINE:

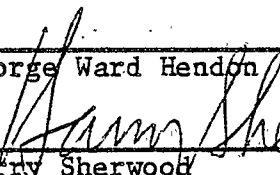
1) The Defendant is hereby suspended from the practice of law for a period of three years commencing thirty days after service of this Order upon the Defendant or affirmation of this Order on appeal or Order dismissing any appeal.

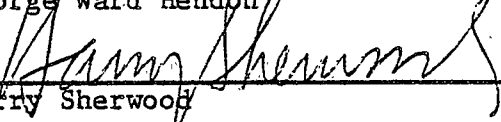
2) The Defendant shall surrender his license and membership card to the Secretary of The North Carolina State Bar who will maintain them in his possession for the duration of the suspension.

3) The costs of the proceedings shall be taxed to the Defendant.

This the 22 day of February, 1984.

  
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Garrett D. Bailey

  
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George Ward Hendon

  
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Harry Sherwood