

NORTH CAROLINA
WAKE COUNTY

APR 91 10:07

9648

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
90 DHC 21

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

JAMES TRAPP, JR. ATTORNEY,
Defendant

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

This cause was heard by a Hearing Committee of the Disciplinary Hearing Commission consisting of Karen P. Boyle, Chairman; John Shaw and Donald Osborne on Friday, Feb. 1, 1991. The Defendant was represented by Gene Sigmon. R. David Henderson and Carolin Bakewell represented the Plaintiff. Based upon the stipulations, pleadings and the evidence, the Committee makes 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, James Trapp Jr., (hereafter, Trapp), was admitted to the North Carolina State Bar in 1981, 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 part of the relevant periods referred to herein, Trapp was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Newton, Catawba County, North Carolina.
4. In late September, 1987, Trapp agreed to serve as attorney for the estate of Cora Lee Cochran, who died on Sept. 28, 1987.
5. Prior to Dec. 10, 1987, Trapp also agreed to serve as administrator CTA of the Cochran estate.

00642

6. Trapp opened a separate checking account for the Cochran estate on Dec. 17, 1987.

7. On Nov. 30, 1987, Trapp removed \$700 from his attorney trust account by writing a check to himself. Although Trapp indicated on the check that the check related to the Cochran estate, no money belonging to the estate or any of the Cochran heirs was ever deposited into Trapp's attorney trust account.

8. The \$700 which Trapp removed from his trust account on Nov. 30, 1987 belonged to other clients of Trapp. Trapp used at least a portion of the proceeds of the \$700 check for his own benefit.

9. Between Dec. 17, 1987 and May 24, 1988, Trapp withdrew a total of \$13,500 from the Cochran estate account by writing five checks to himself. Trapp did not seek or obtain approval of the Cochran heirs or the Catawba County Clerk of Court prior to removing the funds from the estate account. Trapp used the \$13,500 for his own benefit.

10. Trapp did not perform any duties for the Cochran estate which would have entitled him to an attorney fee pursuant to N.C. Gen. Stat. 28A-23-4.

11. The maximum amount to which Trapp would have been entitled as a commission for his work as administrator CTA of the Cochran estate was \$9,085.44, based on 5% of the receipts and disbursements in the estate, pursuant to N.C. Gen. Stat. Sec. 28A-23-3.

12. At the time Trapp removed the \$13,500 from the Cochran estate checking account, he could not have known what the total amount of the receipts and disbursements in the Cochran estate would be.

13. In May, 1988, Trapp closed his law practice in Newton and moved to New Orleans, La. to work for a family-owned business there.

14. On June 28, 1988, after Trapp had moved to Louisiana, he sent a letter and an "accounting" to the Cochran heirs, along with a partial distribution of the estate assets. The accounting falsely stated that \$118,897.05 remained in the Cochran estate account at the time of the accounting. The accounting also failed to reveal that Trapp had removed \$13,500 from the estate account between Dec. 17, 1987 and May 24, 1988.

15. Trapp stated in his June 28, 1988 accounting that he had collected, inter alia, \$1,880 in rent and dividends on behalf of the estate. The \$1,880 was never placed in the Cochran estate account or Trapp's attorney trust account nor was the money paid over to the Cochran heirs.

16. Trapp filed the 90-day inventory for the Cochran estate

in late August, 1988. Thereafter, he failed to communicate adequately with the heirs about the estate and did not respond to efforts of the Catawba County Clerk of Superior Court to discuss the estate with him.

17. While serving as administrator CTA, Trapp failed to file the necessary tax returns for the Cochran estate on a timely basis and the estate was assessed a penalty.

18. Trapp attempted to file a final accounting for the estate in early 1989, but the accounting was incorrect and was returned to him by the Catawba County Clerk of Court. Trapp did not attempt to correct the accounting or to complete the estate work.

19. The Catawba County Clerk of Court removed Trapp as the administrator CTA in August, 1989 and appointed a substitute administrator.

20. Trapp had not repaid any part of the \$13,500 to the Cochran estate as of the date of hearing.

21. In 1985, Trapp undertook to represent Marilyn Bruner regarding a dispute between Bruner and Allgood Construction Co. over construction of a swimming pool.

22. On May 6, 1988, Trapp deposited \$10,427 belonging to Ms. Bruner into his attorney trust account. Trapp endorsed the back of the check and was aware that it had been placed into his trust account. No other funds belonging to Ms. Bruner were ever deposited into Trapp's attorney trust account.

23. Trapp agreed to immediately disburse \$9,000 of the \$10,427 to Empire Acceptance Co. to settle Ms. Bruner's dispute with Allgood Construction Co. Trapp was instructed to hold \$1,000 in escrow pending satisfactory completion of repairs to the pool.

24. Trapp was instructed to disburse the remaining \$427 to Catawba Pediatrics on Ms. Bruner's behalf in an unrelated matter.

25. Trapp disbursed \$9,000 to the attorneys for Empire Acceptance Co. on or about Oct. 12, 1988.

26. Trapp did not retain \$1,000 in escrow pending the pool repairs nor did he disburse \$427 to Catawba Pediatrics.

27. On Aug. 31, 1988, Trapp wrote himself a \$200 check drawn on his attorney trust account. On May 20, 1988, Trapp wrote himself a \$1,500 check drawn on his attorney trust account. Both checks indicated that they were for fees in the Bruner matter and Trapp endorsed the back of each check.

28. By withdrawing a total of \$1,700 from his attorney trust account for his own use in defiance of his agreement with Ms.

Bruner, Trapp misappropriated \$1,427 belonging to Ms. Bruner.

29. Trapp had not returned any portion of the \$1,427 to Ms. Bruner as of the time of trial.

30. In March, 1988, Trapp undertook to assist Mr. and Mrs. Charles Shook obtain visitation rights with their grandchildren.

31. Mr. and Mrs. Shook paid Trapp a \$300 fee to handle the visitation matter.

32. Trapp did not place the \$300 fee into his attorney trust account and no other funds belonging to the Shooks were ever deposited into his trust account.

33. On Aug. 9, 1988, Trapp removed \$525 from his trust account which he designated as a fee in the Shooks' case. On Oct. 17, 1988, Trapp disbursed a \$35 check to the Catawba County Clerk of Court drawn on his attorney trust account to pay a filing fee for the Shooks.

34. Trapp filed a petition for visitation rights on the Shooks' behalf in Catawba County District Court in October, 1988.

35. Trapp failed to take any other effective action on the Shooks' behalf and failed to communicate adequately with the Shooks about the status of their case.

36. The Shooks' petition was set for hearing on or about Aug. 14, 1989. Trapp failed to appear in court on the Shooks' behalf and failed to notify them to be present.

37. The court dismissed the Shooks' petition for failure to prosecute on August 14, 1989.

38. Trapp returned the fee to the Shooks prior to the hearing but after he was aware that the State Bar was investigating this matter.

39. In August, 1986, James Causby hired Trapp to represent him respecting an automobile accident in which Causby was injured in July, 1986.

40. Causby paid Trapp \$200 for costs and filing fees and agreed to pay him one-third of any recovery obtained in the case.

41. Trapp filed a complaint on Causby's behalf on Dec. 31, 1987.

42. Trapp did not take any other effective action to resolve Causby's case, nor did he communicate adequately with Causby about the case after Trapp moved to Louisiana.

43. Causby's case was set for trial on or about Dec. 12, 1988. Trapp failed to appear in court on Causby's behalf and did

not notify Causby of the trial date.

44. On Dec. 12, 1988, the court dismissed Causby's complaint for failure to prosecute.

45. Trapp failed to refund to Causby the unused portion of the \$200 he received for costs.

Based upon the foregoing findings of fact, the Committee makes the following

Conclusions of Law

1. By misappropriating \$13,500 belonging to the Cochran estate and \$1,427 belonging to Marilyn Bruner, Trapp engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C).

2. By sending an accounting to the Cochran heirs in June 1988 which misstated the amount of funds held in the estate account and which failed to reveal that he had taken \$13,500 belonging to the estate, Trapp engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C).

3. By failing to file the required accountings and failing to file tax returns for the Cochran estate in a timely fashion, Trapp failed to act with reasonable diligence and promptness in representing the estate, in violation of Rule 6(B)(3).

4. By failing to communicate adequately with the Shooks about the status of their case and by failing to notify them of the August 14, 1989 court hearing, Trapp violated Rule 6(B)(1) of the Rules of Professional Conduct.

5. By failing to take effective action on the Shooks' behalf and by failing to appear on their behalf on Aug. 14, 1989, Trapp neglected a matter in violation of Rule 6(B)(3).

6. By failing to communicate adequately with Causby about the status of his case and by failing to tell Causby about the December 12, 1988 court date, Trapp violated Rule 6(B)(1) of the Rules of Professional Conduct.

7. By failing to take effective action on Causby's behalf, and by failing to appear in court on his behalf on Dec. 12, 1988, Trapp neglected a matter in violation of Rule 6(B)(3).

This the 12th day of March, 1991.

Signed by the Chairman with the consent of all Committee

members.

Karen P. Boyle
Karen P. Boyle, Chairman
Disciplinary Hearing Committee

00647

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
90 DHC 21

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

JAMES TRAPP, JR., ATTORNEY,
Defendant

ORDER OF DISCIPLINE

This cause was heard by a Hearing Committee of the Disciplinary Hearing Commission consisting of Karen P. Boyle, Chairman; John Shaw and Donald Osborne on Friday, Feb. 1, 1991. Based upon the evidence at trial and the arguments of counsel the the Hearing Committee enters the following:

FINDINGS OF FACT

1. The Defendant first began using marijuana while he was in the U.S. Marine Corps during the Vietnam War. The Defendant had not used any illegal drugs prior to that time.
2. The Defendant began using cocaine during the breakup of his marriage.
3. The Defendant became addicted to cocaine by 1987 and was using illegal drugs at the time of the misconduct set out in the previous findings of fact.
4. The Defendant's addiction to cocaine was a substantial factor in causing the misconduct set out in the previous findings of fact.
5. The Defendant's cocaine use was not so extensive that it prevented him from realizing the nature of his misconduct or distinguishing right from wrong.
6. Although the Defendant's cocaine use explains much of the motivation for his misconduct, such drug use is itself a separate violation of the Rules of Professional Conduct and does not mitigate the seriousness of the offenses which the Defendant committed.
7. In January, 1990, the Defendant voluntarily submitted to treatment for alcohol and drug abuse. The Defendant has not used cocaine since January, 1990, but smoked marijuana on one occasion

00648

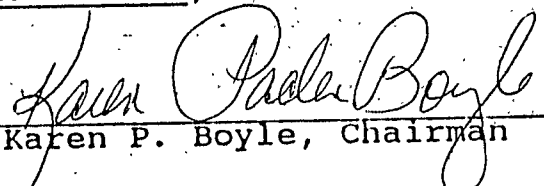
in July 1990. The Defendant was continuing to consume alcohol as of the date of the hearing.

Based upon the Findings of Fact and Conclusions of Law entered in this cause and the evidence presented relating to the appropriate discipline, the Hearing Committee enters the following:

ORDER OF DISCIPLINE

1. The Defendant is hereby disbarred.
2. The Defendant shall pay the costs of this proceeding.

Signed by the Chairman with the consent of all Committee members on the 12th day of March, 1991.



Karen P. Boyle, Chairman