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WAKE COUNTY NORTH CAROLINA BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR 97 DHC 14

THE NORTH CAROLINA STATE BAR,)	
Plaintiff)	
)	FINDINGS OF FACT
v.)	AND CONCLUSIONS OF LAW
)	AND ORDER OF DISCIPLINE
JOSEPH F. LYLES, ATTORNEY)	
Defendant)	

This matter was heard on the 25th day of July, 1997, before a hearing committee of the Disciplinary Hearing Commission composed of Joseph G. Maddrey, Chair; James R. Fox, and B. Stephen Huntley. The defendant, Joseph F. Lyles, represented himself. Fern Gunn Simeon represented the State Bar. Based upon the pleadings and the evidence introduced at the hearing, the hearing committee hereby enters the following:

FINDINGS OF FACT

1. The North Carolina State Bar, the plaintiff, 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 F. Lyles, was admitted to the North Carolina State Bar in 1987 and is, and was at all times referred to herein, an attorney at law licensed to practice law 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 times relevant hereto the defendant was actively engaged in the practice of law in Charlotte, North Carolina, and maintained a law office in Charlotte, North Carolina.
4. The defendant was properly served with process and the hearing was held with due notice to all parties.

5. In 1995, defendant agreed to represent Orlando Brown (Brown) in a personal injury case.

6. In July 1996, defendant settled Brown's claim. On July 8, 1996, defendant deposited the settlement proceeds of \$2,000.00 into his attorney trust account (trust account) at NationsBank, account number 001810027.

7. Defendant was supposed to pay \$672.00 to Keith Chiropractic Clinic (clinic) on Brown's behalf for services that the clinic provided to Brown.

8. On July 8, 1996, defendant spoke with Billie Scarboro, an employee of Keith Chiropractic Clinic. Defendant told Ms. Scarboro that he would send a check in the amount of \$672.00 to pay Orlando Brown's bill.

9. Defendant's trust account balance dropped below \$672.00 on September 10, 1996 and the account balance remained below the amount needed to pay the clinic until November 25, 1996, the date that defendant closed his trust account.

10. At all periods when defendant's trust account balance was below \$672.00, this amount should have been in his trust account on Brown's behalf since the clinic had not been paid the money due it.

11. Defendant did not have permission to use any part of the \$672.00 that he was to pay to the clinic on Brown's behalf.

12. Defendant appropriated Brown's money to his own use.

13. Defendant testified that he used Brown's money to travel to Florida in September 1996.

14. At the time that defendant misappropriated Brown's money, he had several financial obligations which totaled approximately \$87,000.00, including a substantial child support arrearage.

15. Defendant paid Brown's \$672.00 obligation to Dr. Keith on July 22, 1997, three days before the hearing.

16. Defendant failed to withdraw promptly his earned attorney's fees from his attorney trust account.

17. Defendant did not maintain the minimum records of funds he received and disbursed on behalf of clients. For example, defendant had only two trust account bank statements for 1995 and two trust account bank statements 1996. Defendant did not have his trust account checkbook or register. He did not maintain ledgers for his clients' funds.

18. Defendant did not reconcile the trust account balances of client funds at least quarterly.

19. Defendant did not file timely his state income tax returns for 1991 through 1995.

20. Defendant testified that he filed his state income tax returns for 1991 through 1995 in April of 1997.

21. Defendant has not paid his state income tax liability for 1991 through 1995.

22. Defendant did not file timely his federal income tax return for 1995.

23. Defendant testified that he filed his federal income tax return for 1995 in April of 1997.

24. Defendant has not paid his federal income tax liability for 1995.

25. In 1994, the Internal Revenue Service (IRS) levied a tax lien against defendant for unpaid taxes.

26. Defendant testified that he did not maintain a personal or business bank account because he believed that the IRS would levy against his personal funds.

27. Defendant placed his personal funds (such as attorney's fees he had earned) in an account called Guerrilla Consulting Inc. so as to conceal his income from the IRS.

28. Defendant testified that he knew he could file his state and federal income tax returns, although he did not have the money to pay the tax liability at the time of filing.

29. Defendant's failure to file his state and federal income tax returns was willful and intentional.

30. In late 1994, defendant agreed to represent Jerry Hill (Hill) in a tort claims action before the North Carolina Industrial Commission captioned, Jerry Lee Hill v. N.C. Department of Human Resources/Henderson County Department of Social Services (Hill case).

31. Assistant Attorney General Richard L. Griffin (Griffin) represented the N. C. Department of Human Resources and the Henderson County Department of Social Services.

32. On April 24, 1995, Griffin gave defendant written notice of his intention to take the deposition of a medical doctor on May 16, 1995.

33. Defendant did not tell Hill about the scheduled deposition of the medical doctor.

34. Neither defendant nor Hill appeared for the deposition.

35. Defendant and Griffin were ordered by the Industrial Commission to prepare a pre-trial agreement in the Hill case.

36. Defendant did not participate in the preparation of the pre-trial agreement.

37. On or about May 23, 1996, Griffin filed a motion for summary judgment in the Hill case. Griffin served defendant with the motion for summary judgment.

38. Defendant did not tell Hill about the motion for summary judgment or the scheduled hearing on the motion.

39. Neither defendant nor Hill appeared at the summary judgment motion hearing.

40. The Industrial Commission allowed the State's motion for summary judgment.

41. Defendant did not tell Hill that the State's motion for summary judgment was allowed by the Industrial Commission.

42. Defendant testified that he did not have an alcohol or drug problem.

43. Defendant testified that he believes he has suffered from depression since the summer of 1993. However, he has never been diagnosed as suffering from any mental illness.

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 and the subject matter.

2. The defendant's 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 failing to preserve funds received in a fiduciary capacity separate and apart from his funds in a trust account, defendant violated Rule 10.2(a) and (c).

b. By failing to disburse the funds he received in a fiduciary capacity for the benefit of Brown as directed by Brown, defendant violated Rule 10.2(e).

c. By failing to disburse promptly the money due to the clinic on Brown's behalf, defendant violated Rule 6(b)(3).

d. By failing to withdraw promptly his attorney's fees from his trust account when he had earned the fees, defendant has commingled his money with client money and failed to maintain client funds separate from his funds, in violation of Rule 10.1(a) and (c).

e. By failing to maintain adequate minimum records of funds he received and disbursed on behalf of clients, defendant violated Rule 10.2(b) and (c).

f. By failing to reconcile the trust account balances of funds belonging to all clients at least quarterly, defendant violated Rule 10.2(d).

g. By not filing timely federal and state income tax returns and by not paying federal and state income taxes, defendant has committed a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects in violation of Rule 1.2(b); engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 1.2(c).

h. By failing to communicate adequately with Hill about his case, defendant failed to communicate with a client in violation of Rule 6(b)(1).

i. By failing to represent Hill diligently and promptly in his case, defendant neglected a client matter in violation of Rule 6(b)(3), failed to seek the lawful objectives of a client in violation of Rule 7.1(a)(1), failed to carry out a contract of employment entered into with a client for professional services in violation of Rule 7.1(a)(2), and prejudiced or damaged a client during the course of the professional relationship in violation of Rule 7.1(a)(3).

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

- a. prior discipline - a reprimand issued by the Grievance Committee in 1993;
- b. dishonest or selfish motive;
- c. pattern of misconduct;
- d. multiple offenses;
- e. substantial experience in the practice of law; and


- f. two letters of warning issued by the Grievance Committee in 1995 and 1997.
2. The defendant's misconduct is mitigated by the following factors:
 - a. full disclosure to the hearing committee; and
 - b. personal or emotional problems.
3. The aggravating factors outweigh the mitigating factors.

Based upon the foregoing aggravating and mitigating factors and the arguments of the parties, 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 North Carolina 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.
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 chair with the consent of the other hearing committee members, this the 14 day of August, 1997.


Joseph G. Maddrey
Hearing Committee Chair