

9251

WAKE COUNTY
NORTH CAROLINA



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
05 DHC 47

THE NORTH CAROLINA STATE BAR)	
Plaintiff)	FINDINGS OF FACT
)	CONCLUSIONS OF LAW
v.)	AND ORDER OF
)	DISCIPLINE
DAVID L. HARRIS, ATTORNEY)	
Defendant)	

THIS MATTER came on to be heard and was heard on Feb. 13, 2006 before a hearing committee composed of Rick Kane, Chair, Karen Eady-Williams and Donald G. Willhoit. Carolin Bakewell represented the State Bar. The Defendant, David L. Harris, did not appear nor was he represented by counsel.

Based upon the evidence produced at the hearing and the pleadings herein, the hearing committee enters 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, David L. Harris, ("Harris"), was admitted to the North Carolina State Bar in 1980 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 and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.
3. During all of the periods relevant hereto, Harris was engaged in the practice of law in Alamance County North Carolina.
4. In late 2005, Harris was served with the State Bar's summons and complaint herein by publication in the Alamance News, a newspaper of general

circulation in the area in which Harris resides. Harris' answer was due no later than Jan. 9, 2006.

5. Thereafter, the State Bar obtained a new address for Harris and served him with the summons and complaint by certified mail on Jan. 14, 2006.

6. Harris did not answer the complaint and his default was entered by the Secretary of the N.C. State Bar on Feb. 6, 2006.

7. A notice advising Harris of the time and date of the hearing herein was sent to Harris at his Elon address on Feb. 6, 2006.

8. In April 2002, Harris served as closing attorney for the purchase of a home by James and Rhonda Sessoms ("Mr. & Mrs. Sessoms").

9. Pursuant to his clients' instructions, Harris was to hold \$11,400.24 of the closing proceeds in trust pending completion of the construction on the home.

10. At all times on and after the April 2002 closing, Harris should have maintained at least \$11,400.24 in his attorney trust account for Mr. & Mrs. Sessoms' benefit.

11. Between January 2003 and January 2005, Harris knowingly withdrew \$11,100 of the trust funds that he should have maintained intact for Mr. & Mrs. Sessoms and used the funds for his own benefit without the Sessoms' knowledge and consent.

12. Harris has failed to reimburse any portion of the funds that he misappropriated from Mr. & Mrs. Sessoms.

13. Between March 2003 and June 2004, Harris also knowingly withdrew \$1,902.75 in client funds from his trust account by writing checks to Investors Title and misappropriating the proceeds of those checks.

14. Harris did not have the consent of the owners of the funds to use the proceeds of the checks for his own use and benefit.

15. Harris has not reimbursed any portion of the \$1,902.75 in client funds that he removed from his trust account.

Based upon the foregoing findings of fact, the hearing committee enters the following:

CONCLUSIONS OF LAW

1. The parties are properly before the hearing committee and the committee has jurisdiction over the person of the Defendant, David L. Harris, and the subject matter herein.

2. Harris had proper notice of the hearing herein.

3. Harris' 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 knowingly withdrawing \$11,100 of the funds that he should have held intact in his trust account for Mr. & Mrs. James Sessoms and converting those funds for his own benefit without the Sessoms' knowledge and consent, Harris engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and engaged in criminal conduct in violation of Rule 8.4(b).

Based upon the foregoing Findings of Fact and Conclusions of Law and based upon the evidence and arguments of the parties concerning the appropriate discipline, the hearing committee hereby finds by clear, cogent and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. The Defendant's misconduct is aggravated by the following factors:
 - a. Harris' misconduct was motivated by a dishonest and selfish motive.
 - b. Harris has failed to make restitution.
 - c. Harris engaged in a pattern of misconduct.
 - d. Harris has substantial experience in the practice of law.
2. The Defendant's conduct is mitigated by the absence of a prior disciplinary record.
3. The aggravating factors outweigh the mitigating factors.
4. An order calling for discipline short of disbarment will not sufficiently protect the public and the standing of the legal profession for the following reasons:
 - a. Harris' misconduct has caused substantial harm to his clients, Mr. & Mrs. Sessoms.

- b. Harris has failed to provide any evidence that he has attempted to rehabilitate himself and indeed, has refused to participate in any of the proceedings herein. The Committee therefore finds that there is a risk that he would continue to engage in misconduct if permitted to retain his law license.
- c. Entry of an order imposing less severe discipline would fail to acknowledge the seriousness of the offense which Harris committed, would be inconsistent with the orders of discipline entered by the Commission in similar cases and would send the wrong message to the public and to attorneys regarding the conduct expected of members of the Bar of this state.

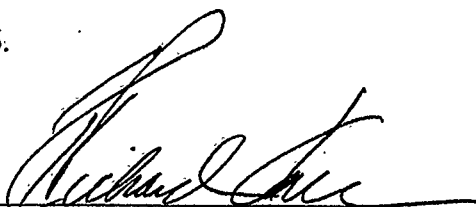
Based upon the foregoing factors the hearing committee hereby enters the following:

ORDER OF DISCIPLINE

1. The defendant, David L. Harris, is hereby disbarred.
2. The defendant shall pay the costs of this proceeding within 30 days of service of notice of the statement of costs.
3. The defendant shall comply with the provisions of 27 NCAC 1B .0124.
4. Prior to seeking any reinstatement of his law license, Harris must present evidence to the State Bar that he has either made restitution to Mr. & Mrs. Sessoms in the amount of \$11,100, or has reimbursed the Client Security Fund for any amounts paid to Mr. & Mrs. Sessoms and, if necessary, has reimbursed Mr. & Mrs. Sessoms so that they have received a total of \$11,100.

Signed by the Chair of the Hearing Committee with the consent of the other hearing committee members.

This the 20th day of February, 2006.



T. Richard Kane, Chair
Hearing Committee