

- (b) using the funds belonging to a client to cover personal or business obligations or obligations to other clients;
- (c) issuing a check drawn on a bank account for which there were insufficient funds and by representing that the check was issued for reimbursement of the funds held by him on behalf of a client;
- (d) failing to produce the funds belonging to a client on demand by that client's attorney or any agent of that client;
- (e) failing to respond to a Letter of Notice from the Chairman of the Grievance Committee and failing to respond to a subpoena issued by said Chairman, each constituting a formal inquiry of the North Carolina State Bar.

5. William M. Patton has freely acknowledged that the material facts upon which the Complaint in 85 DHC 5 are predicated are true. That the material facts in the First Claim for Relief in the Complaint in 85 DHC 5 include the following:

- (a) In August, 1984, William M. Patton received \$55,000 from Margaret Ehlenbeck to be held in trust for use on Ms. Ehlenbeck's behalf to finance the purchase of a house located at 58 Pleasant Ridge Drive in Asheville, North Carolina. During all times referred to in this Order William M. Patton maintained a trust bank account for the deposit of client funds denominated an "escrow account" at First Citizens Bank in Asheville, North Carolina, account number 121-26-17-303.
- (b) William M. Patton endorsed Ms. Ehlenbeck's check but did not deposit the check in the "escrow account" maintained at First Citizens Bank in Asheville. Instead, the funds were deposited into an account maintained by the Defendant at North Carolina National Bank in Asheville, North Carolina, denominated a "Special Account," account number 439883117. The North Carolina National Bank Account was not an attorney trust account and the Defendant maintained funds belonging to him in the North Carolina National Bank account.
- (c) During September and October, 1984, the closing on the property was scheduled on several occasions by the Defendant but was cancelled or postponed on each occasion.
- (d) In Mid-October, 1984, Attorney William B. Cagle was contacted regarding the problems with the closing of the purchase of the property and on November 2, 1984, was employed to close the sale of the property by Ms. Ehlenbeck.
- (e) During the week of November 12, 1984, William B. Cagle contacted William M. Patton and requested that the \$55,000 Patton held in trust for Ms. Ehlenbeck be transferred to him by certified check on Monday, November 19, 1984, for purposes of closing the purchase of the property. The closing was

scheduled for 4:00 o'clock p.m. on November 19, 1984. Shortly before noon on November 19, 1984, William M. Patton called William B. Cagle and advised that the necessary funds were not in his trust account and could not be delivered to Cagle.

- (f) William M. Patton promised to deliver the funds he held in trust for the benefit of Ms. Ehlenbeck to Mr. Cagle on several occasions since November 19, 1984, but did not deliver those funds.
- (g) Concurrently with the requests from Cagle to deliver Ms. Ehlenbeck's funds to Cagle, William M. Patton issued a check drawn on his "escrow account" at First Citizens Bank payable to Ms. Ehlenbeck for return of the funds and mailed the check to Ms. Ehlenbeck. After William M. Patton's failure to deliver the funds to Cagle on November 19, 1984, the check sent to Ms. Ehlenbeck was presented for collection and was returned by the bank to Ms. Ehlenbeck as unpayable due to insufficient funds.
- (h) The Defendant used the funds held in trust on behalf of Ms. Ehlenbeck in the North Carolina National Bank account to pay personal and business obligations and to cover his use of funds held on behalf of other clients for his personal and business obligations. The Defendant failed to maintain sufficient funds at all times in either the First Citizens Account or the North Carolina National Bank Account to satisfy his fiduciary obligation of holding the funds of his clients in trust.
- (i) The Defendant has not delivered any funds to Ms. Ehlenbeck or any agent of Ms. Ehlenbeck. The Defendant has not offered any accounting of the funds to Ms. Ehlenbeck or any agent of Ms. Ehlenbeck.

6. William M. Patton has freely acknowledged that the material facts upon which the Complaint in 85 DHC 5 are predicated are true. The material facts set out in the Second Claim for Relief in the Complaint include the following:

- (a) On or about November 28, 1984, the Chairman of the Grievance Committee issued a Letter of Notice to the Defendant advising that the North Carolina State Bar had received information concerning the Defendant's alleged mishandling of the funds held on behalf of Ms. Ehlenbeck.
- (b) The Defendant received the Chairman's Letter of Notice on December 7, 1984. Under Section 12(3) of the Discipline and Disbarment Rules of the North Carolina State Bar, the Defendant had 15 days following receipt of the Letter of Notice to respond with a "full and fair disclosure of all of the facts and circumstances" concerning the allegations

outlined in the Letter of Notice. The Defendant did not respond to the Chairman's Letter of Notice.

- (c) Also on November 28, 1984, the Chairman issued a subpoena under Section 28 of the Discipline and Disbarment Rules of the North Carolina State Bar requiring the Defendant to produce all of his records concerning the receipt and disbursement of the funds belonging to Ms. Ehlenbeck. The Defendant was served with the subpoena on or about December 3, 1984, and required the production of the records on December 10, 1984. The Defendant did not respond or comply with the subpoena.

7. William M. Patton submitted his resignation because he knows he could not successfully defend against the charges of misconduct.

8. William M. Patton was given notice of the hearing before the Council with regard to his tender of surrender and was and is aware that the hearing would be held on April 12, 1985.

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

1. The affidavit of William M. Patton to tender the surrender of his license complies with Section 17 of Article IX of the Rules and Regulations of the North Carolina State Bar.

2. The matters under investigation constitute violations of N. C. Gen. Statute §84-28(a) and (b) and the Code of Professional Responsibility, particularly:

- (1) Disciplinary Rule 9-102(A) for failure to deposit the funds belonging to his client in a bank account separate from his own business or personal account;
- (2) by using the funds belonging to Ms. Ehlenbeck to cover personal or business obligations or obligations to other clients or both, 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); and has failed to pay the funds of a client as directed by the client in violation of Disciplinary Rule 9-102(B)(5) [DR9-102(B))(4) effective for conduct occurring prior to August 29, 1984];
- (3) by issuing a check drawn on the First Citizens Bank account for which there were insufficient funds and representing that the check was issued for reimbursement of the funds held by him on behalf of Ms. Ehlenbeck, the Defendant has engaged in illegal conduct involving moral turpitude in violation of Disciplinary Rule 1-102(A)(3) and engaged in conduct involving fraud, deceit, dishonesty, or misrepresentation in violation of Disciplinary Rule 1-102(A)(4);

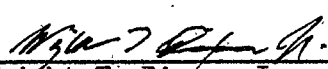
- (4) by failing to produce the funds belonging to Ms. Ehlenbeck on demand by Cagle or any agent of Ms. Ehlenbeck, the Defendant has failed to pay the funds of a client as directed by a client in violation of Disciplinary Rule 9-102(B)(5) [DR9-102(B)(4) effective for conduct occurring prior to August 29, 1984]; failed to provide a complete accounting for the funds held on behalf of the client in violation of Disciplinary Rule 9-102(B)(4) [DR9-102(B)(3) effective for conduct occurring prior to August 29, 1984]; and has engaged in conduct involving fraud, deceit, dishonesty, or misrepresentation in violation of Disciplinary Rule 1-102(A)(4);
- (5) by failing to respond to the Chairman's Letter of Notice, the Defendant failed to respond to a formal inquiry of the North Carolina State Bar in violation of N. C. Gen. Stat. §84-28(b)(3) and engaged in professional conduct adversely reflecting on his fitness to practice law in violation of Disciplinary Rule 1-102(A)(6);
- (6) by failing to respond to the subpoena issued by the Chairman for the production of records, the Defendant failed to respond to a formal inquiry of the North Carolina State Bar in violation of N. C. Gen. Stat. §84-28(b)(3) and engaged in professional conduct adversely reflecting on his fitness to practice law in violation of Disciplinary Rule 1-102(A)(6).

3. William M. Patton could not successfully defend any charges of misconduct predicated upon the matters under investigation.

THEREFORE, upon Motion duly made and seconded, the Council ORDERS that:

1. The tender of surrender of the license of William M. Patton is hereby accepted.
2. William M. Patton is hereby DISBARRED ON CONSENT.
3. William M. Patton shall surrender his license and membership card to the Secretary of the North Carolina State Bar.
4. The costs of this proceeding are taxed to William M. Patton.

This the 12th day of April, 1985.



Wright T. Dixon, Jr.
President
The North Carolina State Bar