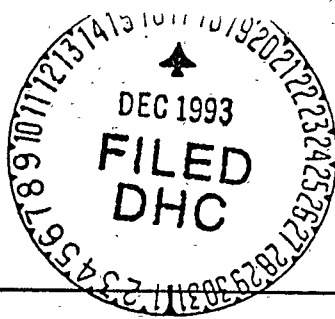


NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
93 DHC 9

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

MARVEL E. DANIELS,
Attorney

Defendant

16208
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This matter came on to be heard and was heard on December 2 and 3, 1993 before a hearing committee of the Disciplinary Hearing Commission composed of Paul L. Jones, chairman; Henry C. Babb, Jr., and William H. White. The North Carolina State Bar was represented by Fern E. Gunn. The Defendant, Marvel E. Daniels, was present and represented by Gerald E. Rush. Based upon the stipulations of the parties and the evidence admitted at the hearing, the committee finds the following facts by clear, cogent, and convincing evidence:

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, Marvel E. Daniels, was admitted to the North Carolina State Bar in 1988, 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 referred to herein, the Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in Rowan County, Salisbury, North Carolina.

4. Prior to April 26, 1991, Defendant agreed to represent Simi Saxena (hereinafter Saxena) in a personal injury action. The case settled for \$4,954.00.

5. On April 26, 1991, Defendant deposited \$4,754.00 into her trust account at Nationsbank, account number 411013006, for

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Saxena in her personal injury case.

6. According to Saxena, Defendant was supposed to disburse \$1,021.00 of the funds held in her trust account to Dr. W.O. Black on Saxena's behalf. In addition, Defendant agreed to receive \$936.00 as her attorney's fee in the case.

7. During the following periods, the balance in Defendant's trust account dropped below \$1,021.00: May 8, 1991 to May 14, 1991; May 23, 1991 to June 27, 1991; August 27, 1991 to September 6, 1991; September 11, 1991 to September 25, 1991; October 4, 1991 to November 18, 1991; December 4, 1991 to December 16, 1991; January 7, 1992 to February 11, 1992; April 1, 1992 to April 2, 1992; April 3, 1992 to May 1, 1992; May 12, 1992 to June 3, 1992; July 15, 1992 to July 22, 1992; October 5, 1992 to October 9, 1992; and October 19, 1992 to October 30, 1992.

8. At all periods when Defendant's trust account balance dropped below \$1,021.00, this amount should have been in Defendant's trust account on Saxena's behalf since Defendant did not pay Dr. Black until November 9, 1992.

9. Defendant appropriated to her own use or purpose \$1,021.00 held in her trust account on Saxena's behalf, without Saxena's knowledge or permission and without the knowledge or permission of Saxena's father, Subhash Saxena, who was also involved in handling his daughter's case.

10. Prior to June 27, 1991, Defendant agreed to represent her cousin, Walter Howell (hereinafter Howell), in a personal injury action. The case settled for \$8,000.00.

11. On June 27, 1991, Defendant deposited \$5,000.00 into her trust account at Nationsbank, account number 411013006, for Walter Howell in his personal injury case.

12. According to Howell, Defendant was supposed to disburse \$1,455.00 of the funds held in her trust account to Stewart's Physical Therapy on Walter Howell's behalf. In addition, Defendant agreed to receive \$2,000.00 as her attorney's fee in the case.

13. During the following periods, the balance in Defendant's trust account dropped below \$1,455.00: July 24, 1991 to August 6, 1991 and August 23, 1991 to August 27, 1991.

14. At all periods when Defendant's trust account balance dropped below \$1,455.00, this amount should have been in Defendant's trust account on Walter Howell's behalf since Defendant had not paid Stewart's Physical Therapy.

15. Howell testified that he gave Defendant permission to use his money for her personal purposes.

16. David Frederick (hereinafter Frederick), an investigator with the North Carolina State Bar, testified that on August 19, 1993, Howell stated that he had not given Defendant permission to use his money for her personal purposes.

17. Defendant appropriated to her own use or purpose \$1,455.00 held in her trust account on Walter Howell's behalf, without his knowledge or permission.

18. Prior to September 25, 1991, Defendant agreed to represent Douglas Howell in a personal injury action. His case settled for \$5,500.00.

19. On September 25, 1991, Defendant deposited \$5,500.00 into her trust account at Nationsbank, account number 411013006, for Douglas Howell in his personal injury case.

20. According to the payout sheet or settlement prepared by Defendant, Defendant agreed to receive \$1,375.00 as her attorney's fee.

21. Prior to December 16, 1991, Defendant agreed to represent Robin Ingram (hereinafter Ingram) and her son, Christopher Geter (hereinafter Geter), in a personal injury action arising out of the same car accident. Ingram dealt with Defendant regarding Geter's case. Ingram's case settled for \$3,750.00 and Geter's case settled for \$1,000.00.

22. On December 16, 1991, Defendant deposited a total of \$2,362.00 into her trust account at Nationsbank, account number 411013006, for Ingram and Geter in their personal injury cases.

23. According to Ingram, Defendant was supposed to disburse a total of \$1,515.00 of the funds held in Defendant's trust account to the emergency room doctor (\$85.00) and Dr. Hurst (\$1,005.00) on Ingram's behalf and to Medical Billing (\$85.00) and Dr. Hurst (\$340.00) on Geter's behalf. In addition, Defendant agreed to receive a total of \$1,187.50 as her attorney's fees in the two cases.

24. During the following period, the balance in Defendant's trust account dropped below \$1,515.00: January 2, 1992 to February 11, 1992.

25. At all periods when Defendant's trust account balance dropped below \$1,515.00, this amount should have been in Defendant's trust account on behalf of Ingram and Geter since Defendant had not paid their medical care providers.

26. Defendant appropriated to her own use or purpose \$1,515.00 held in her trust account on behalf of Ingram and Geter, without Ingram's knowledge or permission.

27. Prior to December 31, 1991, Defendant agreed to represent Norman Frontis (hereinafter Frontis) in a personal injury action. His case settled for \$3,100.00.

28. On December 31, 1991, Defendant deposited \$1,322.00 into her trust account at Nationsbank, account number 411013006, for Frontis in his personal injury case.

29. According to Frontis, Defendant was supposed to disburse \$1,002.00 of the funds held in Defendant's trust account to Binder Chiropractic Clinic on Frontis' behalf. In addition,

Defendant agreed to receive \$775.00 as her attorney's fee in the case.

30. After depositing Frontis' money (\$1,322.00) into her trust account, Defendant disbursed the following amounts totalling \$2,937.00 to herself from December 23, 1991 to January 23, 1992:

<u>Check #</u>	<u>Amount</u>	<u>Payee</u>	<u>Notation on "for" line</u>
cash w/held from dep.	\$455.00	MED*	None
1349	300.00	MED	None
1350	130.00	MED	None
1351	180.00	MED	None
1352	100.00	MED	None
1353	150.00	MED	None
1354	75.00	MED	None
1360	200.00	MED	None
1361	150.00	MED	None
1362	125.00	MED	None
1363	175.00	MED	None
1364	35.00	MED	None
1366	100.00	MED	None
1367	100.00	MED	Whiteside case
1368	350.00	MED	None
1370	100.00	MED	None
1373	85.00	MED	None
1374	45.00	MED	None
1377	12.00	MED	None
1379	70.00	MED	None

No deposit had been made into Defendant's trust account for "Whiteside" at the time Defendant wrote and cashed check number 1367 to herself.

*MED refers to the Defendant, Marvel E. Daniels

31. After depositing Frontis' money (\$1,322.00) into her trust account, Defendant disbursed the following amounts totalling \$476.00 to third parties who were not clients:

<u>Check #</u>	<u>Amount</u>	<u>Payee</u>	<u>Notation on "for" line</u>
1340	\$110.00	N.C. Bar Foundation	1991 Profes. Resp.CLE Req.
1348	75.00	Marshall Swaringen	None
1359	25.00	Marshall Swaringen	None
1371	60.00	Cash	Tara
1372	45.00	Marshall Swaringen	None
1375	40.00	Marshall Swaringen	None
1376	21.00	Subash Saxena	None

Defendant made no deposits into her trust account on behalf of the above payees she paid from her trust account. Furthermore, Defendant testified that check number 1340 to N.C. Bar Foundation was payment for a continuing legal education course she attended; check numbers 1348, 1359, 1372, 1375 to Marshall Swaringen were payments for her uncle's bond; check number 1371 to "Cash" was

payment to an employee; check number 1376 to Subash Saxena was a purchase by Defendant from Saxena's convenience store.

32. Defendant wrote a total of \$3,413.00 in checks to herself and to third parties who were not clients after she deposited Frontis' money. Defendant knew that she was entitled to \$775.00 as her attorney's fee in Frontis' case. She did not keep an account of the checks she was writing to herself for her fee from Frontis' money.

33. During the following period, the balance in Defendant's trust account dropped below \$1,002.00: January 7, 1992 to February 11, 1992.

34. At all periods when Defendant's trust account balance dropped below \$1,002.00, this amount should have been in Defendant's trust account on Frontis' behalf since Defendant had not paid Binder Chiropractic Clinic.

35. Defendant appropriated to her own use or purpose \$1,002.00 held in her trust account on Frontis' behalf, without Frontis' knowledge or permission.

36. Prior to February 11, 1992, Defendant agreed to represent Emmanuel Houston (hereinafter Houston) in a personal injury action. His case settled for \$6,500.00.

37. On February 11, 1992, Defendant deposited \$6,350.00 into her trust account at Nationsbank, account number 411013006, for Houston in his personal injury case.

38. According to the payout sheet or settlement statement prepared by Defendant, Defendant agreed to receive \$1,625.00 as her attorney's fee.

39. Prior to July 27, 1992, Defendant agreed to represent Willie Harrell (hereinafter Harrell) in a personal injury action. His case settled for \$13,500.00.

40. On July 27, 1992, Defendant deposited \$13,500.00 into her trust account at Nationsbank, account number 411013006, for Harrell in his personal injury case.

41. Harrell owed \$3,116.64 to Subro Audit Inc. Defendant held these funds in her trust account on Harrell's behalf.

42. Harrell told Defendant to pay the \$3,116.64 to him. Defendant did not pay \$3,116.64 in one lump sum to Harrell.

43. Out of the \$3,116.64 due to Harrell for Subro Audit, Inc., Harrell received the following amounts from checks written by Defendant on her trust account: check number 1594, dated September 11, 1992, in the amount of \$330.00; check number 1596, dated September 17, 1992, in the amount of \$300.00; check number 1605, dated October 1, 1992, in the amount of \$150.00; check number 1629, dated October 16, 1992, in the amount of \$350.00; check number 1618, dated October 12, 1992, in the amount of \$75.00; check number 1612, dated October 12, 1992, in the amount of \$90.00; check number 1626, dated October 12, 1992, in the

amount of \$50.00. These checks total \$1,345.00.

44. Harrell stated that he received \$700.00 (possibly less) in cash at various times from the Defendant. The \$700.00 cash was part of the \$3,116.64 Defendant was to pay Harrell. Neither Harrell nor Defendant presented receipts or other written proof of the cash paid to Harrell.

45. Harrell has received from Defendant approximately \$2,045.00 (by checks and cash) of the money that was owed to Subro Audit Inc. Approximately \$1,071.64 is due to Harrell and there was no evidence presented that he had received that amount.

46. From August 19, 1992 to September 14, 1992, the balance in Defendant's trust account dropped below \$3,116.64.

47. Until Defendant paid \$3,116.64 to Harrell, this amount or the balance due Harrell (after she paid him by checks and cash) should have been in Defendant's trust account.

48. As of February 26, 1993, Defendant had a balance of negative \$44.09 in her trust account. She did not have enough money in her trust account to pay \$1,071.64 to Harrell.

49. According to Harrell, Defendant agreed to receive \$3,475.00 as her attorney's fee in his case.

50. After depositing Harrell's money (\$13,500.00) into her trust account, Defendant disbursed the following amounts totalling \$4,049.00 to herself from July 27, 1992 to September 11, 1992:

<u>Check #</u>	<u>Amount</u>	<u>Payee</u>	<u>Notation on "for" line</u>
1553	\$250.00	MED*	None
1554	150.00	MED	None
Countercheck	800.00	MED	None
1556	150.00	MED	None
1557	175.00	MED	None
1561	230.00	MED	None
1562	65.00	MED	None
1566	175.00	MED	None
1569	50.00	MED	None
1572	250.00	MED	None
1573	300.00	MED	None
Countercheck	125.00	Cash	None
1574	75.00	MED	None
1579	100.00	MED	None
1581	50.00	MED	None
1582	50.00	MED	None
1584	75.00	MED	None
1586	50.00	MED	None
1587	329.00	MED	None
1589	50.00	MED	None
1590	135.00	MED	None
1592	350.00	MED	None
1593	65.00	MED	None

----- * MED refers to the Defendant, Marvel E. Daniels

<u>Check #</u>	<u>Amount</u>	<u>Payee</u>	<u>Notation</u>
1555	\$244.00	Toronda Davis	None
1564	387.55	Bertha D. Gamble	None
1560	50.00	Vanetta R. Payne	None
1568	1,398.85	Rivis Motor Co.	Willie Harrell (auto)
1559	50.00	Rowan Co. Clk.	Tyson v. Tyson
1565	200.00	Myrtle Harrison	None
1571	110.00	Rowan Co. Clk.	Patricia Tuckers (speeding ticket)
1576	100.00	Jack Gill	Taxes
1577	150.00	Penny Hobson	None
1578	300.00	Alicia Barber	None
1580	260.00	Cabarrus Co. Clerk	Toronda
1588	150.00	Marshall Swaringen	None
1583	43.91	Primerica Life Ins. Co.	Life Insurance

Defendant made no deposits into her trust account on behalf of the above payees she paid from her trust account. Furthermore, Defendant testified that check number 1555 to Toronda Daniels was money given to her daughter; check number 1564 to Bertha D. Gamble was money given to her mother; check number 1560 to Vanetta Payne was a loan to an employee; check number 1568 to Rivis Motor Company was a down payment on the purchase of her car; check number 1565 to Myrtle Harrison was office rent; check number 1576 to Jack Gill was payment for preparation of her taxes; check number 1577 to Penny Hobson was money given to a relative; check number 1578 to Alicia Barber was wages for her employee; check number 1580 to Cabarrus County Clerk was payment of a traffic ticket for her daughter, Toronda Daniels; check number 1588 to Marshall Swaringen was cash received by Defendant; check number 1583 to Primerica Life Insurance Company was payment of her life insurance policy.

51. Defendant wrote a total of \$7,493.31 in checks to herself and to third parties who were not clients after she deposited Harrell's money. Defendant knew that she was entitled to \$3,475.00 as her attorney's fee in Harrell's case. She did not keep an account of the checks she was writing to herself for her fee from Harrell's money.

52. Defendant appropriated to her own use or purpose all or part of the \$3,116.64 held in her trust account on Harrell's behalf, without his knowledge or permission.

53. Prior to October 9, 1992, Defendant agreed to represent Latrina Brown (hereinafter Brown) in a personal injury action. Her case settled for \$6,000.00.

54. On October 9, 1992, Defendant deposited \$6,000.00 into her trust account at Nationsbank, account number 411013006, for Brown in her personal injury case.

55. According to Brown, Defendant was supposed to disburse a total of \$277.00 of the funds held in Defendant's trust account to Rowan County Ambulance (\$100.00) and Piedmont Radiology (\$177.00) on Brown's behalf. In addition, Defendant agreed to

receive \$1,500.00 as her attorney's fees in the case.

56. During the following period, the balance in Defendant's trust account dropped below \$277.00: January 11, 1993 to January 22, 1993; October 23, 1992 to October 30, 1992.

57. At all periods when Defendant's trust account balance dropped below \$277.00, this amount should have been in Defendant's trust account on Brown's behalf since Defendant had not paid the medical care providers.

58. Defendant appropriated to her own use or purpose \$277.00 held in her trust account on Brown's behalf, without Brown's knowledge or permission.

59. Prior to October 30, 1992, Defendant agreed to represent Ronald Sturdivant (hereinafter Sturdivant) in a personal injury action. The case was settled for \$5,000.00.

60. On July 27, 1992, Defendant deposited \$5,000.00 into her trust account at Nationsbank, account number 411013006, for Sturdivant in his personal injury case.

61. According to Sturdivant, Defendant was supposed to disburse \$160.00 of the funds held in Defendant's trust account to Professional Billing on Sturdivant's behalf. In addition, Defendant agreed to receive \$1,250.00 as her attorney's fee in the case.

62. According to Sturdivant, he received \$1,300.00 in one hundred dollar bills from Defendant and not \$1,529.50 as is indicated on the payout sheet.

63. During the following period, the balance in Defendant's trust account dropped below \$160.00: January 11, 1993 to January 22, 1993.

64. At all periods when Defendant's trust account balance dropped below \$160.00, this amount should have been in Defendant's trust account on Sturdivant's behalf since Defendant had not paid Professional Billing.

65. Defendant appropriated to her own use or purpose \$160.00 held in her trust account on Sturdivant's behalf, without Sturdivant's knowledge or permission.

66. Prior to November 6, 1992, Defendant agreed to represent Arthur Jackson in a personal injury action. The case was settled for \$8,000.00.

67. On November 6, 1992, Defendant deposited \$7,650.00 into her trust account at Nationsbank, account number 411013006, for Jackson in his personal injury case.

68. According to the payout sheet or settlement statement prepared by Defendant, Defendant agreed to receive \$2,000.00 as her attorney's fee in Jackson's case.

69. Jackson died in early 1993.

70. Prior to December 21, 1992, Defendant agreed to represent Carl Lee Burch (hereinafter Burch) in a personal injury action. The case was settled for \$4,800.00.

71. On December 21, 1992, Defendant deposited \$3,072.00 into her trust account at Nationsbank, account number 411013006, for Burch in his personal injury case.

72. According to the payout sheet or settlement statement prepared by Defendant, Defendant was supposed to disburse \$1,972.00 of the funds held in Defendant's trust account to Dr. Marvin Bonzo. In addition, Defendant agreed to receive \$1,200.00 as her attorney's fee.

73. During the following periods, the balance in Defendant's trust account dropped below \$1,972.00: January 5, 1993 to January 22, 1993 and January 26, 1993 to January 29, 1993.

74. At all periods when Defendant's trust account balance dropped below \$1,972.00, this amount should have been in Defendant's trust account on Burch's behalf since Defendant had not paid Dr. Bonzo.

75. Defendant testified that Burch gave her permission to use the \$1,972.00 owed to Dr. Bonzo as long as she eventually paid Dr. Bonzo's bill. Burch was present at the hearing on December 2 and 3, 1993 and he did not testify that he gave Defendant permission to use the money owed to Dr. Bonzo.

76. Defendant admitted that she did not have Burch's permission to use the \$1,972.00 owed to Dr. Bonzo for her own benefit or a third party when she signed a consent order of preliminary injunction on February 9, 1993. She also admitted taking Burch's money to Frederick of the State Bar. She did not tell Frederick that she had Burch's permission to use his money.

77. Defendant appropriated to her own use or purpose \$1,972.00 held in her trust account on Burch's behalf, without Burch's knowledge or permission.

78. Prior to December 22, 1992, Defendant agreed to represent Michele Sawyer (hereinafter Sawyer) in a personal injury action. The case was settled for \$6,004.40.

79. On December 22, 1992, Defendant deposited \$3,485.10 into her trust account at Nationsbank, account number 411013006, for Sawyer in her personal injury case.

80. According to the payout sheet or settlement statement prepared by Defendant, Defendant agreed to receive \$4,503.30 as her attorney's fee in Sawyer's case.

81. After Defendant deposited her clients' money into her trust account, she wrote numerous checks made payable to herself. Defendant did not withdraw from her trust account her attorney's fees in one lump sum when she had earned them in the following clients' cases: Saxena, Ingram, Geter, Frontis, Houston, Harrell, Brown, Sturdivant, Jackson, Burch, and Sawyer.

82. As of February 26, 1993, Defendant had a negative \$44.09 balance in her trust account. She did not have enough money in her trust account to pay the outstanding bills of Norman Frontis, Robin Ingram and Christopher Geter, Willie Harrell, Latrina Brown, Ronald Sturdivant, and Carl Burch.

83. On February 9, 1993, Defendant talked with David Frederick of the North Carolina State Bar. Defendant admitted that she had used client money from her trust account for personal reasons. Defendant stated that her law practice was not doing well and she had used client money to prevent repossession of her car, pay personal bills and business expenses. Defendant also admitted that on numerous occasions she deposited her personal money into her trust account to replace money she had taken from her clients.

84. The North Carolina State Bar audited Defendant's trust account for the period of January 1, 1991 to February 26, 1993. There was no further activity in Defendant's trust account after February 26, 1993.

85. During the above referenced period, Defendant did not maintain client ledgers to keep track of the current balance of funds held in the trust account for each client in question. Instead, she wrote numerous checks to herself and third parties (who were not clients) with no regard as to whether she was entitled to the money.

86. From January 1, 1991 to February 26, 1993, Defendant wrote the following checks from her trust account made payable to "cash": Check numbers 1248, 1247, 1250, 1253, 1255, 1258, 1328, 1371, and 1390.

87. Defendant testified that she did not have a personal checking account and for most of her years in private practice, she used her trust account as her personal checking account.

88. From January 1, 1991 to February 26, 1993, Defendant wrote numerous checks from her trust account to pay personal obligations or for other personal reasons. Listed below are some of the checks that according to Defendant were written from her trust account for personal reasons:

- a. check number 1245, paid to Delta Sigma Theta in the amount of \$25.00. Purpose: purchase advertisement for Defendant's law practice in souvenir book.
- b. check numbers 1252 and 1576, paid to Jack Gill in the amounts of \$150.00 and \$100.00, respectively. Purpose: payment for preparation of Defendant's tax returns.
- c. check numbers 1260, 1298, 1565, 1608, 1641, paid to Myrtle Harrison in the amounts of \$200.00. Purpose: payment of Defendant's office rent.
- d. check number 1262, paid to Diversified Graphics in the amount of \$156.00. Purpose: purchase of office stationery and business cards for Defendant.

- e. check number 1279, paid to Willie Ashford in the amount of \$40.00. Purpose: repair of Defendant's window.
- f. check number 1302, paid to Bertha Gamble in the amount of \$40.00. Purpose: money for Defendant's mother.
- g. check number 1340, paid to N.C. Bar Foundation in the amount of \$110.00. Purpose: fee for continuing legal education course attended by Defendant.
- h. check number 1369, paid to Salisbury Rowan NAACP in the amount of \$13.00. Purpose: Defendant's contribution to NAACP.
- i. check number 1413, paid to K-Mart Dept. Store in the amount of \$271.37. Purpose: Defendant's purchases from K-Mart.
- j. check number 1391, paid to Daniel Harrison in the amount of \$200.00. Purpose: payment of Defendant's office rent.
- k. check number 1495, paid to Winn-Dixie in the amount of \$70.43. Purpose: Defendant's purchases.
- l. check numbers 1578, 1613, 1664, and 1717, paid to Alicia Barber in the amounts of \$300.00, \$75.00, \$75.00, \$100.00, respectively. Purpose: payment of employee in Defendant's office.
- m. check number 1583, paid to Primerica Life Insurance Company in the amount of \$43.91. Purpose: payment on Defendant's life insurance policy.

Based upon the foregoing Findings of Fact, the hearing committee makes the following Conclusions of Law:

(a) By appropriating to her own use or purpose her clients' funds which she held in a fiduciary capacity, the Defendant has committed criminal acts which reflect adversely on her 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); failed to maintain client funds in her trust account in violation of Rule 10.1(A) and (C); and failed to pay over sums owed to a client or third party as directed by a client in violation of Rule 10.2(E).

(b) By not promptly withdrawing her attorney's fees when she was entitled to the fees, Defendant has commingled her personal funds with clients' funds and not kept her personal funds separate and apart from her clients' funds held in her trust account in violation of Rules 10.1(A) and (C).

(c) By disbursing checks from her trust account to pay personal obligations, Defendant has violated Rules 10.1(A) and

(C).

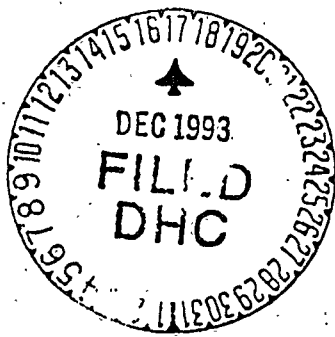
(d) By drawing checks on her trust account which were made payable to cash, Defendant has violated Rule 10.2(C)(2).

Signed by the undersigned chairman with the full knowledge and consent of the other members of the hearing committee, this the 15th day of December, 1993.


Paul L. Jones, Chairman
Hearing Committee

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NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
93 DHC 9

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

MARVEL E. DANIELS,
Attorney

Defendant

ORDER OF DISCIPLINE

This cause was heard on December 2 and 3, 1993 by a hearing committee of the Disciplinary Hearing Commission consisting of Paul L. Jones, chairman; Henry C. Babb, Jr., and William H. White. In addition to the Findings of Fact and Conclusions of Law made following the hearing, the committee makes additional Findings of Fact relative to aggravating and mitigating factors as follows:

ADDITIONAL FINDINGS OF FACT:

1. The following aggravating factors existed:

- (a) the Defendant had a dishonest or selfish motive in the misappropriation of her clients' funds;
- (b) the Defendant's conduct showed a pattern of misconduct;
- (c) the Defendant was charged with and found to have committed multiple offenses involving her violation of the trust account rules;
- (d) the Defendant exhibited bad faith obstruction of the disciplinary proceedings by refusing to admit allegations based on information obtained from her own trust account bank records which were obtained from her both in the answer filed to the State Bar's complaint and the responses filed to the State Bar's Requests for Admission. Furthermore, the Defendant's bad faith obstruction to these proceedings was shown by her refusal to stipulate to the genuineness of bank documents and records

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which the State Bar obtained from her.

- (e) the Defendant refused to acknowledge the wrongful nature of her conduct with respect to misappropriation of clients' funds;
- (f) the Defendant's clients were vulnerable victims to her dishonest conduct; and
- (g) the Defendant showed an indifference to make restitution to her clients for their losses.

2. The only mitigating factor was that Defendant had no prior disciplinary record.

Based upon the Findings of Fact and Conclusions of Law entered in this case and the further Findings of Fact set forth above, the hearing committee enters the following ORDER OF DISCIPLINE:

1. The Defendant, Marvel E. Daniels, is hereby DISBARRED from the practice of law in North Carolina.

2. The Defendant shall immediately surrender her license certificate and membership card to the Secretary of the North Carolina State Bar.

3. The Defendant shall comply with all of the requirements of Section 24 of Article IX of the Rules and Regulations of the North Carolina State Bar for winding down her practice.

4. The Defendant is taxed with the costs of this proceeding as assessed by the Secretary, including: 1. the cost (\$754.00) associated with her deposition taken by the North Carolina State Bar and 2. the costs (\$7.00) associated with J.C. Holder's testimony regarding the authentication of Defendant's trust account bank records.

Signed by the undersigned chairman with the full knowledge and consent of the other members of the hearing committee this the 15th day of December, 1993.


Paul L. Jones, Chairman
Hearing Committee