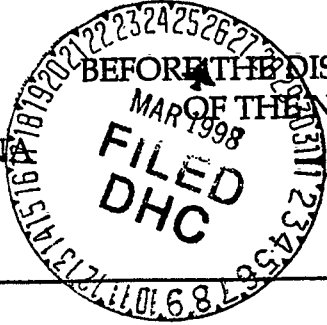


11047

WAKE COUNTY

NORTH CAROLINA



BEFORE THE DISCIPLINARY HEARING COMMISSION

OF THE NORTH CAROLINA STATE BAR

97 DHC 31

THE NORTH CAROLINA STATE BAR,)
Plaintiff)

v.)

ALEXIS C. PEARCE, JR.)
ATTORNEY)
Defendant)

FINDINGS OF FACT
AND CONCLUSIONS OF LAW
AND ORDER OF DISCIPLINE

This matter was heard on the 6th day of March, 1998, before a hearing committee of the Disciplinary Hearing Commission composed of James R. Fox, Chair; Fred H. Moody, Jr. and Anthony E. Foriest. The defendant, Alexis C. Pearce, Jr. failed to appear. The Plaintiff was represented by Clayton W. Davidson, III. Prior to the hearing in this matter, Plaintiff filed a Motion for Entry of Order of Discipline Following Default. The Hearing Committee elected to reserve ruling on this motion and to hear evidence presented by the Plaintiff in support of the allegations in the Complaint without regard to Defendant's default. Based solely upon the pleadings and the evidence introduced at the hearing, without regard to the default, the hearing committee hereby enters the following:

FINDINGS OF FACT

1. All parties have been duly served, noticed for this hearing, and all parties are properly before this court.
2. The Plaintiff, the North Carolina State Bar (the "State Bar") is a body duly organized under the laws of the State of North Carolina and is the proper body to bring this proceeding under the authority granted to it in Chapter 84 of the General Statutes of North Carolina and the rules and regulations of the State Bar promulgated pursuant thereto (the "State Bar Rules and Regulations").
3. The Defendant, Alexis C. Pearce Jr., (the "Defendant") was admitted to the State Bar in or about 1985 and is, and was at all times referred to herein, an attorney at

law licensed to practice in North Carolina subject to the State Bar Rules and Regulations and the Rules of Professional Conduct of North Carolina.

4. During all or a part of the relevant periods referred to herein, the Defendant was engaging in the practice of law in the State of North Carolina and maintained a law office in Raleigh, North Carolina.

5. On or about November 29, 1994, Emma L. Robinson ("Robinson") was injured in an automobile accident. Robinson retained the Defendant to handle the matter.

6. Subsequently, in mid-1995, the Defendant began failing to return telephone calls and failing to keep Robinson apprised of the status of her matter.

7. On or about January 1996, Defendant received on behalf of Robinson a check in the amount of \$2,500.00 (the "PIP Check") which was a "PIP" payment and was intended to cover the medical payments portion of Robinson's policy.

8. The PIP Check was made payable to Emma Robinson.

9. At the time that he received the PIP Check, the Defendant instructed his then secretary, Emma Brown ("Brown") to place the PIP Check in the file. He did not instruct his secretary or anyone else to deposit the check in his trust account, to notify Robinson of the receipt of the check, or to forward the check to Robinson, and the Defendant did not personally take any of these actions.

10. In November 1996, the Defendant was informed of the grievance brought against him by Robinson. At that time, the Defendant believed that the PIP Check was still in his file and had not been deposited into the trust account.

11. There is no evidence indicating that from January 1996 when the Defendant received the \$2,500 check until the present, the Defendant has taken any further action to negotiate or settle Robinson's claim.

12. Defendant maintained a trust account at First Union Bank, account number 28886 (the "Trust Account"). Defendant was the only person with signatory authority over the Trust Account.

13. On or about February 26, 1996, Brown who was then a nonlawyer employed, retained by, or associated with Defendant deposited the PIP Check into the trust account.

14. Beginning in September 1995 through August 1996, Brown wrote approximately 45 checks (the "Brown Checks") totaling approximately \$4,530 from the Trust Account either to herself or to Defendant.

15. Neither Defendant nor Brown had sufficient funds to which they were entitled in the Trust Account to cover the Brown Checks.

16. Funds of other clients, including but not limited to the funds of Robinson were contained in the Trust Account, and were used to cover the Brown Checks.

17. Defendant did not authorize Brown to write the Brown Checks, and Defendant did not benefit from the Brown Checks.

18. Defendant failed to exercise sufficient supervision of Brown's handling of the Trust Account to ensure compliance with the Rules of Professional Conduct.

19. Defendant failed to reconcile or review the reconciliation of the Trust Account at least quarterly, which would have revealed the defalcations by Brown.

20. Defendant did not maintain sufficient records to meet the requirements of Rule 10.2 of the Rules of Professional Conduct, including but not limited to a journal of receipts, a journal of disbursements, and a file or ledger card on each client who had funds in the trust account.

21. Defendant has not made restitution for the amounts wrongfully taken by Brown.

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) in that the Defendant violated the North Carolina Rules of Professional Conduct as follows:

(a) In violation of Rules 10.1(c), 10.2(a), and 10.2(e), the Defendant failed to deposit the client funds in his trust account, failed to notify Robinson of the receipt of the check, and failed to deliver the funds to Robinson or other persons on Robinson's behalf.

(b) In violation of Rule 6(b)(1), the Defendant failed to return telephone calls or keep Robinson apprised of the status of the matter.

(c) In violation of Rule 6(b)(3), the Defendant failed to act reasonably diligently and promptly in handling the matter.

(d) In violation of Rules 3.3(a) and 3.3(b), the Defendant failed to undertake reasonable efforts to ensure that Brown's conduct was compatible with Defendant's professional obligations.

(e) In violation of Rule 10.2(d), the Defendant failed to reconcile the trust account balances of all clients at least quarterly.

(f) In violation of Rule 10.2(c), the Defendant failed to maintain the minimum records of funds received and disbursed from the Trust Account.

3. The Plaintiff failed to prove by clear cogent and convincing evidence that the Defendant had violated Rules 6(b)(2), 7.1(a)(1), and 7.2(a)(2) of the North Carolina Rules of Professional Conduct.

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the evidence and arguments at trial 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. The Defendant engaged in multiple violations of the Rules of Professional Conduct.
 - b. The Defendant had substantial experience in the practice of law.
2. The Defendant's misconduct is mitigated by the following factors:
 - a. The Defendant has no prior disciplinary record.
3. The aggravating factors outweigh the mitigating factors.

In addition to the foregoing Findings of Fact, Conclusions of Law, and Findings of Fact Regarding Discipline, all of which were based solely on the pleadings and evidence presented at trial without regard to the Entry of Default, the Hearing Committee rules as follows:

PLAINTIFF'S MOTION FOR ENTRY OF ORDER OF DISCIPLINE FOLLOWING
DEFAULT

In considering Plaintiff's Motion for Entry of Order of Discipline Following Default, the Committee considered the pleadings, arguments and the affidavits filed by the Plaintiff and makes the following additional findings:

1. Default was entered by the Secretary of the North Carolina State Bar following service by publication on January 22, 1998.
2. The Defendant was notified in a telephone conversation on January 30, 1998 by Clayton W. Davidson III, that a complaint had been filed against him, that he had been served by publication, no answer had been received, that a default had been entered, and that a motion for the entry of an order following the default had been filed.
3. The Defendant was served by certified mail for which Defendant personally signed on February 2, 1998 with copies of a Summons, Complaint, Motion for Entry of Default, Entry of Default, Motion for Entry of Order of Discipline Following Default, and Affidavit Supporting Service of Process by Publication.
4. The Defendant failed to file answer or other responsive pleading and failed to file any motion to set aside the entry of default after receiving actual notice that default had been entered.
5. Default was entered a second time following service of process by certified mail on March 2, 1998.
6. By virtue of the Entry of Default, all allegations of the complaint are deemed admitted.
7. Defendant was provided notice of the hearing on March 6, 1998, by U.S. Mail by the Clerk of the Disciplinary Hearing Commission, and failed to appear at the hearing.

Based on the foregoing Findings of Fact Regarding Plaintiff's Motion for Entry of Order of Discipline Following Default, the Plaintiff's Motion for Entry of Order of Discipline Following Default is hereby GRANTED.

The following Order of Discipline is entered based the Findings of Fact, Conclusions of Law and Findings of Fact Regarding Discipline which were based on the pleadings, evidence, and arguments presented at the hearing on this matter without regard to the Entry of Default. As an alternative basis, the committee finds that the following Order of Discipline is appropriate based on the Plaintiff's Motion for Entry of

Order of Discipline Following Default. Each of the foregoing bases for the entry of the Order of Discipline standing alone would support the Order of Discipline without regard to the other. On these two independent bases the committee makes the following:

ORDER OF DISCIPLINE

1. The Defendant, Alexis C. Pearce, Jr., is hereby suspended from the practice of law for a period of three years. The suspension shall become effective thirty (30) days after the date of the service of this order upon the Defendant.

2. After six (6) months following the date the suspension takes effect, the Defendant may make application to a duly appointed committee of the Disciplinary Hearing Commission to stay the remainder of the suspension. The application shall include a written explanation as to the reasons that the Defendant failed to appear and defend this action. The Disciplinary Hearing Commission, in its discretion, may stay the suspension for the balance of the term of the suspension if the following conditions and any other conditions deemed appropriate by such duly appointed committee of the Disciplinary Hearing Commission have been met:

a. The Defendant has made restitution for all amounts wrongfully taken from his trust account, and has presented evidence to the Office of Counsel of the North Carolina State Bar that all clients have received all funds or had funds paid on their behalf that were retained or required to be retained by Defendant in a fiduciary capacity as of the date of this order.

b. The Defendant has satisfied all Continuing Legal Education requirements contained in the Rules and Regulations of the North Carolina State Bar, and has paid all amounts due and owing to the Board of Continuing Legal Education.

c. The Defendant has paid any and all costs assessed against the Defendant in this matter.

d. The Defendant has paid any membership dues and Client Security Fund assessments due and owing to the North Carolina State Bar.

e. The Defendant has demonstrated by clear, cogent and convincing evidence that he is competent and capable of practicing law and that there is not a substantial risk that he will neglect client matters in the future in the manner that he has neglected this disciplinary proceeding.

3. The Disciplinary Hearing Commission shall retain jurisdiction to impose additional conditions during the period of the stay. The Disciplinary Hearing

Commission shall retain jurisdiction to require the Defendant to submit to any psychiatric or other evaluations as may be reasonably necessary to insure that there is no risk to the public in granting the stay.

4. During the period of any stay of the suspension, as continuing conditions of the stay of the suspension, the Defendant shall comply with the following conditions in addition to any other conditions imposed pursuant to paragraph 3 above:

a. The Defendant, at the expense of the Defendant, shall have any trust account maintained by Defendant audited by a Certified Public Accountant approved by the Office of Counsel of the North Carolina State Bar at least quarterly during the first year of suspension, and once a year after that. A report of the audit shall be received by the Secretary of the North Carolina State Bar on or before the last day of March, June, September, and December of the first year that the stay remains in effect, and by the first day of October of each additional year that the stay remains in effect. In addition to the foregoing, the Defendant shall submit to random audits of his trust account by the North Carolina State Bar as may be deemed necessary by the Office of Counsel of the North Carolina State Bar.

b. The Defendant shall comply with the Revised Rules of Professional Conduct, and all provisions of the Rules and Regulations of The North Carolina State Bar, including but not limited to the provisions of 27 Admin. Code Chapter 1 Subchapter B § .0124. Any violation of the Rules following the date of this order shall be grounds for denial of or lifting of the stay.

c. The Defendant shall not violate the laws of the United States, or the any State of the United States.

5. If the Defendant fails to petition for or meet the requirements for any stay of the suspension, or in the event that any stay of the suspension is lifted, and the suspension is re-activated, as a condition of reinstatement, the Defendant must meet the requirements of subparagraphs a, b, c, d and e of paragraph 2 above, and any other conditions deemed appropriate by a duly appointed committee of the Disciplinary Hearing Commission before seeking reinstatement. This requirement is in addition to, and shall not be deemed to limit the provisions of 27 N.C. Admin. Code Chapter 1 Subchapter B § .0125.

6. The Defendant shall pay the costs of this proceeding within thirty days of service of notice of the amount of costs as assessed by the Secretary.

Signed by the chair with the consent of the other hearing committee members,
this the 23rd day of March 1998.

James R. Fox
James R. Fox
Hearing Committee Chair.