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FILE NO. 90 DHC 18

FILM NO. _____

NORTH CAROLINA
WAKE COUNTY

BEFORE THE DISCIPLINARY HEARING
COMMISSION OF THE NORTH CAROLINA
STATE BAR

THE NORTH CAROLINA STATE BAR,)
)
Plaintiff)
)
vs.)
)
DALLAS MCPHERSON,)
)
Defendant)

CONSENT ORDER OF DISCIPLINE

THIS CAUSE came on before a hearing committee of the Disciplinary Hearing Commission of the North Carolina State Bar, said committee being composed of Maureen D. Murray as Chairman, Frank E. Emory, Jr., and Frank Boushee. Pursuant to Section 14(8) of Article IX of the Rules and Regulations of the North Carolina State Bar, it appears that the parties have agreed to waive a formal hearing in this matter and that the parties stipulate and agree to the following Findings of Fact and Conclusions of Law recited in this Consent Order of Discipline and to the discipline imposed. Based upon the stipulations and agreements of the parties, which the hearing committee accepts and adopts, the committee makes the following entries:

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 pursuant to Chapter 84 of the North Carolina General Statutes, and pursuant to the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. The Defendant, Dallas W. McPherson, was admitted to and licensed by the North Carolina State Bar on 3 September 1969. At all times concerned in this matter, and to the present date, Mr. McPherson has been an Attorney at Law licensed to practice law in North Carolina, and he is 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 and relevant to this Order, the defendant was actively engaged in the practice of law in the State of North Carolina and he maintained a law office in Greenville, Pitt County, North Carolina.

4. On 7 August 1989, defendant wrote a check drawn against his attorney trust account in the amount of \$1,567.69 payable to Bob's T.V.

5. At the time defendant drew and delivered the trust account check, Mr. Venter did not have funds in defendant's trust account.

6. The defendant deposited \$1,570 of his personal funds into his attorney trust account on 19 September 1989 to cover the disbursement made on Mr. Venter's behalf from the trust account.

7. Defendant admits and stipulates that the foregoing acts on his part, as alleged in the plaintiff's SECOND CLAIM FOR RELIEF in its COMPLAINT filed herein, constitute sufficient grounds for discipline pursuant to NCGS 84-28(b)(2).

8. Defendant makes no admissions as to the allegations contained in plaintiff's FIRST CLAIM FOR RELIEF in its Complaint, said allegations are deemed denied for purposes of this Consent Order, and the hearing committee makes no findings, conclusions, or orders of discipline with regard to same. Plaintiff and defendant stipulate to a dismissal with prejudice of the FIRST CLAIM FOR RELIEF. However, the North Carolina State Bar shall be entitled to consider the allegations raised in the FIRST CLAIM FOR RELIEF in Plaintiff's complaint in any proceedings for reinstatement under Article IX, Section 25 of the Rules of the North Carolina State Bar.

9. Defendant contends that, at the time the trust account check was drawn, O.J. Venter promised to deliver immediately to defendant the funds necessary to cover the defendant's trust account check. Defendant further contends that Mr. Venter failed to promptly deliver the funds to defendant for deposit in defendant's trust account to cover the trust check written and delivered to Bob's T.V., although defendant made inquiries and demands seeking the funds from Mr. Venter. Defendant contends he drew and delivered the trust check to Bob's T.V. in reliance upon the assurances of O.J. Venter that the check would be covered immediately by funds to be transmitted to defendant by wire transfer.

10. The hearing committee makes no findings of fact as to the defendant's contentions and explanations set forth in Paragraph 9 above with regard to the circumstances of Mr. Venter's promises and assurances to defendant.

BASED UPON the foregoing Findings of Fact, the hearing committee makes the following:

CONCLUSIONS OF LAW

1. The hearing committee of the Disciplinary Hearing Commission of the North Carolina State Bar has jurisdiction in this matter for the purpose of entering this Consent Order.

2. The defendant's conduct as set forth above constitutes grounds for discipline pursuant to NCGS 84-28(b)(2) in that defendant violated the Rules of Professional Conduct as follows:

a. By paying Mr. Venter's debt with funds in defendant's attorney trust account which were being held for the benefit of others and without having funds in the trust account held on behalf of Mr. Venter, thereby causing the temporary misappropriation and misapplication of trust funds belonging to others, in violation of Rule 10.1(A) and (C).

b. By depositing his personal funds into his trust account and not keeping his personal funds separate and apart from his clients' funds held in his trust account, in violation of Rule 10.1(A) and (C).

3. Pursuant to stipulation of the parties, the plaintiff's FIRST CLAIM FOR RELIEF is dismissed with prejudice.

BASED UPON the foregoing Findings of Fact, the stipulations and consent of the parties, and the Conclusions of Law, the hearing committee enters the following:

ORDER OF DISCIPLINE

1. The appropriate discipline to be imposed for the defendant's conduct as recited in this Consent Order of Discipline is DISBARMENT.

2. The defendant is hereby ordered DISBARRED, and he is

ordered to surrender his law license and membership card to the Secretary of the North Carolina State Bar.

3. The defendant is taxed with the costs of this action as assessed by the Secretary of the North Carolina State Bar.

4. The defendant shall conclude and wind up his practice of law in accordance with Article IX, Section 24 of the Rules of the North Carolina State Bar.

5. The defendant shall not violate any laws of North Carolina or the United States, or any rules of ethics promulgated by the North Carolina State Bar during the period of his disbarment.

6. The FIRST CLAIM FOR RELIEF contained in plaintiff's complaint is dismissed with prejudice, except and provided that the North Carolina State Bar shall be entitled to consider same in any proceedings for reinstatement under Article IX, Section 25 of the Rules of the North Carolina State Bar.

Consented and stipulated to by the parties, and signed by the Chairman of the Hearing Committee on behalf of the committee with the knowledge and consent of all members, this the 8th day of January, 1991.

February 1991

Maureen D. Murray
Maureen D. Murray, Chairman
Hearing Committee

Fern E. Gunn
Fern E. Gunn, Attorney for
North Carolina State Bar

Jeffrey L. Miller
Jeffrey L. Miller, Attorney for
defendant

Dallas McPherson
Dallas McPherson, defendant