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WAKE COUNTY

NORTH CAROLINA



BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR 02 DHC 4

THE NORTH CAROLINA STATE BAR
Plaintiff

v.

DAVID B. CROSLAND, ATTORNEY
Defendant

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER OF DISCIPLINE

THIS MATTER came on to be heard and was heard on April 26, 2002 before a duly assigned Committee of the Disciplinary Hearing Commission composed of Joseph G. Maddrey, Chair; F. Lane Williamson and Lorraine Stephens. The case was continued until May 1, 2002 for the presentation of closing arguments with consent of all parties. Terry Sherrill represented the defendant, David B. Crosland and Carolin Bakewell appeared for the N.C. State Bar. Based upon the pleadings and the evidence introduced at trial, the Hearing Committee hereby 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 B. Crosland (Crosland), was admitted to the North Carolina State Bar in 1985, 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 or part of the periods relevant hereto, Crosland was engaged in the practice of law in the State of North Carolina.

4. On or about Aug. 12, 1996, Crosland established a solo law practice and opened trust account number 2000000851370 at First Union National Bank (First Union trust account). The account remained open until Sept. 11, 1998.

5. Crosland's practice was devoted almost exclusively to handling personal injury claims for plaintiffs

6. Crosland's standard contract entitled him to deduct a fee of 33 1/3% of each client's bodily injury recovery. Although Crosland's standard contract entitled him to take a higher percentage fee if the case went to trial or was appealed, Crosland settled nearly all of his cases short of trial and seldom, if ever, appeared in court.

7. Crosland's standard contract with his clients entitled him to deduct a flat fee of \$100 - \$250 from his clients' medical pay recovery, depending upon the amount of the recovery.

8. Beginning on Aug. 23, 1997 and continuing through Sept. 11, 1998, when the First Union trust account was closed, the balance in the account was insufficient to reimburse all clients whose funds should have been in the account.

9. As of Aug. 31, 1998, the balance in the First Union trust account was \$3,824.24. Crosland should have maintained a trust account balance of \$8,105.21 for his clients as of Aug. 31, 1998, and the account was thus \$4,280.97 short.

10. In May 1997, before the trust account shortages occurred, Crosland was convicted of four felony counts of obtaining prescription drugs by fraud.

11. On April 30, 1998, after a hearing at which Crosland appeared and was represented by counsel, the Disciplinary Hearing Commission suspended Crosland's law license for three years, based upon his felony convictions.

12. By January or February 1998, before the disciplinary hearing, Crosland had stopped coming to work on a regular basis.

13. Crosland's non-attorney staff, including his bookkeeper Whitney Hawkins, and office manager, Annette Cash, resigned prior to April 30, 1998. Tim Stanley, who was an associate and was the only other attorney with the firm, ceased his employment with Crosland in June 1998.

14. Some of the trust account shortages which occurred prior to Sept. 11, 1998 resulted when Crosland paid himself fees in excess of 33 1/3% of the clients' settlement.

15. The shortages which occurred in the trust account before Sept. 11, 1998 were the result of Crosland's negligent failure to keep and refer to

appropriate trust account records, his failure to supervise staff and his failure to ensure that the trust account was regularly reconciled.

16. The State Bar failed to show by clear, cogent and convincing evidence that the trust account shortages that occurred before Sept. 11, 1998 were the result of intentional dishonesty by Crosland, although he benefited from some of the transactions which caused the shortages.

17. On Sept. 11, 1998, Crosland withdrew the entire remaining balance of \$3,824.24 from the trust account, all of which belonged to his clients, and knowingly used those sums for his own benefit without his clients' consent.

18. As of Sept. 11, 1998 Crosland knew that he should have been holding \$2,162.80 in his trust account on behalf of a client named Brenda Little.

19. Crosland had deposited Ms. Little's \$2,162.80 into his trust account on March 3, 1997 to be held pending resolution of a disputed medical lien.

20. Crosland never settled the lien dispute on Ms. Little's behalf. On various occasions before Sept. 11, 1998, Ms. Cash reminded Crosland that Ms. Little's funds remained in his trust account and that he needed to settle the lien dispute or return the funds to Ms. Little.

21. Crosland did not consult any trust account records or documents, nor did he speak with any of his former employees to discuss the ownership of the funds in the account before withdrawing the \$3,824.24 from the trust account. He had no reasonable basis for believing that the balance in the trust account represented earned fees or money otherwise belonging to him.

22. Pursuant to the 1998 disciplinary order, Crosland was required to refund all sums held in his trust account on behalf of clients and others as part of the wind down of his law practice.

23. Crosland was aware of the terms of the 1998 disciplinary order.

24. Crosland violated the 1998 disciplinary order by failing to deliver to his clients all funds in his trust account to which his clients were entitled.

25. On May 6, 1999, Ms. Little filed a grievance against Crosland with the N.C. State Bar.

26. Crosland's response to Ms. Little's grievance was due in late August 1999.

27. Crosland did not obtain any extensions of time in which to respond to Ms. Little. Nevertheless, Crosland did not respond to Little's complaint until December 2001.

28. Crosland became addicted to prescription drugs in approximately 1992 and continued to abuse prescription drugs at least through 1999. As of the time of the April 1998 disciplinary hearing, he was also using cocaine and thereafter was treated for cocaine addiction.

29. Crosland did not present convincing evidence that his drug use and addictions caused or contributed to his violations of the Revised Rules of Professional Conduct.

Based upon the foregoing Findings of Fact, the Hearing Committee hereby makes the following:

CONCLUSIONS OF LAW

1. By withdrawing \$3,824.24 in client funds from his trust account on Sept. 11, 1998 and using those funds for his own benefit without his clients' consent, Crosland committed a criminal act that reflect adversely on his honesty, trustworthiness or fitness as a lawyer, in violation of Rule 8.4(b) of the Revised Rules of Professional Conduct, engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c) of the Revised Rules of Professional Conduct and failed to hold client and/or fiduciary funds in trust in violation of Rule 1.15-2 of the Revised Rules of Professional Conduct.

2. By failing to promptly deliver to his clients all property to which the clients were entitled, Crosland knowingly disobeyed the 1998 order of the Disciplinary Hearing Commission, in violation of Rule 3.4 of the Revised Rules of Professional Conduct. This conduct also violated of the Disciplinary Hearing Commission's 1998 order and therefore constituted contempt of the Commission.

3. By failing to maintain a balance in the trust account at all times between Aug. 23, 1997 and Sept. 11, 1998 which was sufficient to cover all sums owed to his clients, Crosland failed to hold client funds in trust in violation of Revised Rule 1.15-2.

In addition to the foregoing Findings of Fact and Conclusions of Law, the Hearing Committee hereby makes the following:

ADDITIONAL FINDINGS OF FACT RELEVANT TO DISCIPLINE

1. During the April 30, 1998 disciplinary hearing, Crosland falsely testified that he had never used illegal drugs, such as cocaine and marijuana.

2. In June 1999, while employed as a paralegal by John Hanzel, an attorney in Cornelius, Crosland created letterhead and business cards which referred to himself as "David B. Crosland, Esq." without Hanzel's knowledge. Crosland distributed the business cards and letterhead to members of the public. Crosland also referred to various individuals whom Hanzel was representing as "my client" in letters which he wrote to Allstate Insurance Company in June 1999.

3. Crosland willfully failed to comply with the Chair's order of discovery entered herein by failing to produce the following items to Counsel for the Plaintiff: 1) income tax records for the years 1996 - 2001; 2) copies of all documents relating to his personal and operating bank accounts for the years 1996 - 1998; 3) copies of documents relating to medical and psychiatric treatment for the period 1993 - 2001.

4. Although Crosland represented in his December 2001 response to the Grievance Committee that he was prepared to make restitution to Brenda Little, he failed to do so and Ms. Little is now deceased.

5. Crosland's misconduct is mitigated by the following factors:

- a. personal or emotional problems.
- b. remorse.

6. Crosland's misconduct is aggravated by the following factors:

- a. prior disciplinary offenses.
- b. dishonest or selfish motive.
- c. a pattern of misconduct.
- d. multiple offenses.
- e. bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency.
- f. substantial experience in the practice of law.
- g. indifference to making restitution.

7. Crosland's use of cocaine is an aggravating factor, as it involves illegal conduct.

Based upon the foregoing Findings of Fact, Conclusions of Law, the mitigating and aggravating factors and the arguments of counsel, the Hearing Committee hereby enters the following:

ORDER OF DISCIPLINE

1. The Defendant, David B. Crosland III, is hereby disbarred from the practice of law beginning 30 days from service of this order upon him.

2. Prior to filing a petition for reinstatement, Crosland shall serve upon the counsel the following items

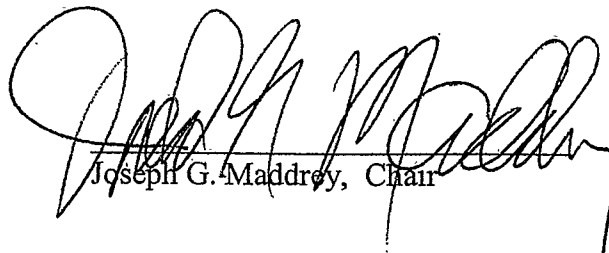
- a) his personal and operating bank account records for the period 1997 - 98.
- b) his state and federal income tax returns, including all schedules, W-2s and attachments, for the period 1996 - 2001.
- c) Copies of all medical records relating to any treatment or consultation which Defendant received for substance abuse and/or any psychiatric condition, for the period 1996 - 2001.

3. Crosland shall pay the costs of this proceeding within 60 days of service of the order upon him.

4. Prior to filing a petition for reinstatement of his law license, Crosland shall make restitution in the following amounts to the following clients or their estates:

Wayne Allison	\$100
Cecil Campbell	\$800
Latiecha Davis	\$390
Lewis Funderburk	\$125
Alice Henderson	\$999.75
Chrystal Hood	\$500
Brenda Little	\$2,162.80
William Little	\$542.48
Nicholas Mambrino	\$310
Anthony McCormick	\$149.20
Erica Newsome	\$312.29
Sunny Oziogu	\$90
Walter Rose	\$1,000
Shakiga Spears	\$235
Jesse West	\$64

Signed by the Chair with the consent of the other Hearing Committee members,
this the 7 day of July 2002.


Joseph G. Maddrey, Chair