

NORTH CAROLINA
WAKE COUNTY

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

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

Bobby F. Jones, ATTORNEY-
Defendant

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This cause was heard by a hearing committee of the Disciplinary Hearing Commission consisting of Maureen Demarest Murray, Chair; Karen P. Boyle; and Frank L. Boushee on Friday, September 6, 1991. R. David Henderson represented the North Carolina State Bar and Joseph B. Chesire, IV and Alan M. Schneider represented the Defendant, Bobby F. Jones. Based upon the pleadings and pre-hearing stipulations, the Committee makes the following:

FINDINGS OF FACT

1. Plaintiff 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. Defendant was admitted to the North Carolina State Bar on September 29, 1960 and is, and was at all times relevant 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 times relevant herein, Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Wilson, Wilson County, North Carolina.
4. On or about May 20, 1985, Defendant was issued letters as administrator of the estate of William Gray Edwards, Jr. (hereinafter "the Estate"). At the time he was appointed administrator, an estate account had already been established at Branch Banking and Trust Co. and assigned account number 101-1127572 (hereinafter "the Estate Account"). The Estate Account had a balance of \$11,008.68 as of May 31, 1985.

5. On or about October 24, 1988, Defendant removed \$1,000 from the Estate Account by writing a check to himself. Defendant did not seek or obtain the permission of the Estate heirs or the Clerk of Court prior to disbursing these funds to himself. Defendant used the \$1,000 for his own benefit or the benefit of individuals other than the Estate heirs.
6. On or about October 25, 1988, Defendant removed \$1,000 from the Estate Account by writing a check to himself. Defendant did not seek or obtain the permission of the Estate heirs or the Clerk of Court prior to disbursing these funds to himself. Defendant used the \$1,000 for his own benefit or the benefit of individuals other than the Estate heirs.
7. On or about November 11, 1988, Defendant removed \$3,000 from the Estate Account by writing a check dated October 10, 1988 to himself. Defendant did not seek or obtain the permission of the Estate heirs or the Clerk of Court prior to disbursing these funds to himself. Defendant used the \$3,000 for his own benefit or the benefit of individuals other than the Estate heirs.
8. On or about December 16, 1988, Defendant removed \$1,000 from the Estate Account by writing a check to himself. Defendant did not seek or obtain the permission of the Estate heirs or the Clerk of Court prior to disbursing these funds to himself. Defendant used the \$1,000 for his own benefit or the benefit of individuals other than the Estate heirs.
9. On or about January 25, 1989, Defendant removed \$2,000 from the Estate Account by writing a check to himself. Defendant did not seek or obtain the permission of the Estate heirs or the Clerk of Court prior to disbursing these funds to himself. Defendant used the \$2,000 for his own benefit or the benefit of individuals other than the Estate heirs.
10. The total amount removed from the Estate Account by Defendant was \$8,000. The balance in the Estate Account as of September 30, 1988 was \$8,104.63. The balance in the Estate Account as of January 31, 1989 was \$174.67.
11. Before Defendant removed the \$8,000 from the Estate Account, the Estate was earning an average of \$32 per month in interest. After the money was removed, the Estate incurred service charges of \$10 per month for the next nineteen months, until the \$174.67 balance, plus the minimal amount of accrued interest thereon, was expended.
12. On or about January 23, 1991, after learning that Plaintiff was investigating his handling of the Estate, Defendant wrote a check in the amount of \$10,208.41 from his personal checking account at The Heritage Bank payable to the Estate.

13. On or about March 18, 1991, Defendant wrote a check in the amount of \$1,634.00 from his personal checking account at The Heritage Bank payable to the Estate.
14. Shortly thereafter, Defendant disbursed all funds in the Estate Account to the Estate heirs, except for a \$34.00 fee to the Clerk, and also filed the final account.
15. On or about March 15, 1991, Defendant filed an final account with the Wilson County Clerk of Court for the Estate. As of said date, Defendant had removed \$8,000 from the Estate Account. On page two of the final account under "disbursements", Defendant falsely indicated that only \$15,412.38 had been disbursed from the Estate Account. The final account failed to reveal that Defendant had misappropriated \$8,000 belonging to the Estate between November of 1988 and January of 1989.
16. While serving as administrator of the Estate, Defendant failed to file appropriate accountings for the Estate in a timely fashion. Although letters of administration were issued to Defendant on or about May 17, 1985, Defendant did not file the 90 day inventory and annual account until April 7, 1987. The filings were made only after a notice to file inventory and annual account dated July 10, 1986 and a second notice to file inventory and annual account dated January 22, 1987 were sent to Defendant. Thereafter, the final account was not filed until March 15, 1991 only after the following notices were sent to Defendant: a notice to file annual account and final account dated August 7, 1989; an order to file inventory or account dated March 22, 1990; a notice to file final account dated January 3, 1991; and an order to show cause dated February 18, 1991.
17. During the month of December, 1985, the Estate was paid \$12,212.24 for the sale of certain real and personal property. \$1,750.00 of this was in cash. However, Defendant did not deposit this money into the Estate Account until June 17, 1986.
18. On or about July 14, 1987, Defendant, on behalf of the Estate, was paid \$400 for the sale of a boat. However, Defendant did not deposit this money in the Estate Account until February 4, 1988.
19. On or about December 28, 1989, the Plaintiff received a grievance against Defendant which, among other things, complained that Defendant failed to handle the Estate in a diligent fashion. By letter dated March 8, 1990, Defendant was informed of this grievance and directed to respond. By letter dated March 27, 1990, Defendant stated that he intended "... to close the [Estate] within the next three days and dispose of the matter.... I regret that this has taken so long; however, I will immediately proceed to close the [Estate]."

20. By letter dated August 17, 1990, Plaintiff requested an update prior to September 1, 1990 on the status of the Estate.
21. On September 13, 1990, having received no response from Defendant, Plaintiff contacted Defendant concerning the Estate and Defendant promised to have a response to Plaintiff prior to September 17, 1990.
22. No response was received by September 17, 1990. Therefore, Plaintiff's investigator made an appointment with Defendant to meet with him on December 11, 1990. Defendant stated that he would be prepared to discuss the status of the Estate at that time.
23. On December 11, 1990, the investigator met with Defendant. Defendant stated that he needed additional time to assemble his files and records related to the Estate. Defendant and the investigator agreed to meet on December 20, 1990.
24. On December 14, 1990, Defendant contacted the investigator and once again stated that he needed more time. The investigator promised to contact him in approximately one week.
25. On December 19, 1990 the investigator contacted Defendant who stated that he still was not prepared to review his files concerning the Estate and asked that the review be postponed until after the Christmas holidays.
26. Defendant was finally reached on January 10, 1991 after repeated attempts to contact him on January 7, 1991; January 8, 1991 and January 9, 1991. Defendant agreed to meet with the investigator at 1:00 p.m. on January 22, 1991 to review his records and files concerning the estate. At 12:45 p.m. on January 22, 1991 Defendant contacted the investigator and stated that he would not be able to attend the scheduled meeting.
27. On January 29, 1991, the Secretary of the North Carolina State Bar, at the direction of the Chairman of the Grievance Committee, issued a Subpoena to Appear and Produce Documents to Defendant. (hereinafter "the Subpoena"). The Subpoena was sent by certified mail, return receipt requested. Defendant received the Subpoena on January 31, 1991.
28. The Subpoena commanded Defendant to appear at the Plaintiff's offices on February 13, 1991 at 1:00 p.m. to produce certain documents concerning, among other things, his administration of the Estate. Defendant failed to appear and produce the documents as ordered in violation of the Subpoena. On March 1, 1991, Plaintiff filed a Motion for Order to Show Cause with the Wake County Clerk of Superior Court styled The North Carolina State Bar v. Bobby F. Jones, Attorney, 91 CVS 2342.

29. The Honorable N. L. Cashwell found that there was probable cause to believe that Defendant was in civil contempt and ordered Defendant to appear in Wake County Superior Court at 10:00 a.m. on April 1, 1991 to show cause, if any, why he should not be held in civil contempt pursuant to North Carolina General Statute Section 5A-21.
30. Defendant was served with the Motion for Order to Show Cause and the Order to Show Cause on March 5, 1991.
31. On or about March 15, 1991, in an effort to appease the Plaintiff and avoid producing the Estate Account records, Defendant filed a final account with the Wilson County Clerk of Court, a copy of which is attached hereto as Plaintiff's Exhibit #15. He also sent a letter to the heirs of the Estate disbursing the balance of the Estate assets to them.
32. On or about March 25, 1991, Defendant was notified that he would still be required to produce the Estate Account records as ordered by the Subpoena despite the fact that he had finally closed out the Estate. Otherwise, Defendant was informed that Plaintiff would secure an Order of Contempt at the April 1, 1991 hearing.
33. Only after he was faced with imprisonment for contempt did Defendant finally appear at the Plaintiff's office at a scheduled meeting on March 29, 1991. Only when the misappropriation was discovered by Plaintiff did Defendant admit to taking \$8,000 from the Estate.
34. Some Estate Account records were missing from the documents produced by Defendant at the March 29, 1991 meeting. Defendant promised to produce these remaining documents by Friday, April 5, 1991. Defendant failed to produce these documents by April 5, 1991. However, in his Answer dated May 29, 1991, Defendant agreed to produce any documents requested.

BASED UPON THE FOREGOING Findings of Fact, the Committee makes the following:

CONCLUSIONS OF LAW

1. By misappropriating Estate funds, Defendant engaged in criminal acts that reflect adversely on Defendant's honesty, trustworthiness or fitness as a lawyer in violation of Rule 1.2(B).
2. By misappropriating Estate Funds, Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C).
3. By failing to disclose on the final account that he had disbursed \$8,000 to himself, Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C).

4. By failing to file Estate accounts with the Clerk in a timely fashion, the Defendant failed to act with reasonable diligence and promptness in representing the Estate in violation of Rule 6(B)(3).
5. By failing to deposit funds received by him on behalf of the Estate into the Estate account in a timely fashion, Defendant violated Rule 10.1(C).
6. By failing to appear as commanded by the subpoena of the North Carolina State Bar, Defendant failed to comply with a lawful request for information from a disciplinary authority in violation of Rule 1.1 and North Carolina General Statute Section 84-28(b)(3).

Signed by the undersigned with the full knowledge and consent of the other hearing committee members, this the 6th day of September, 1991.

Maureen Demarest Murray
Maureen Demarest Murray, Chair
Disciplinary Hearing Committee

NORTH CAROLINA

WAKE COUNTY

19 SEP 9: 9. 42

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THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

BOBBY F. JONES, ATTORNEY
Defendant

ORDER OF DISCIPLINE

This cause was heard by a duly appointed Hearing Committee ("the Committee") the Disciplinary Hearing Commission consisting of Maureen Demarest Murray, Chair; Karen P. Boyle; and Frank L. Boushee on Friday, September 6, 1991. After entering the Findings and Fact and Conclusions of Law in this matter, the Committee heard evidence concerning the appropriate measure of discipline to be imposed. Based upon the evidence presented, the Committee finds the following aggravating factors:

1. Defendant's multiple misappropriations of client funds.
2. Defendant's substantial experience in the practice of law.
3. The serious nature of Defendant's misconduct.

Based upon the evidence presented, the Committee finds the following mitigating factors:

1. Defendant's absence of prior discipline.
2. Defendant's excellent character and reputation.
3. Defendant's personal and emotional problems.
4. Defendant's timely restitution.

The Committee finds that the aggravating factors outweigh the mitigating factors and hereby enters this ORDER OF DISCIPLINE:

1. Defendant is hereby disbarred.
2. Defendant is taxed with the costs of this action.

Signed by the Chair of the Hearing Committee of the Disciplinary
Hearing Commission with the full knowledge and consent of all
parties and the other members of the Hearing Committee, this the
18th day of September, 1991.

Maureen Demarest Murray
Maureen Demarest Murray, Chair
Disciplinary Hearing Committee

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