

WAKE COUNTY
NORTH CAROLINA



6507
BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
97 DHC 3

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

DAVID L. BEST, Attorney,
Defendant

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This matter was calendared for trial and heard on the 23rd day of May, 1997 before a duly appointed committee of the Disciplinary Hearing Commission consisting of Richard L. Doughton, Chair, Joseph G. Maddrey, and B. Stephen Huntley. The Plaintiff was represented by Clayton W. Davidson III, Deputy Counsel. The Defendant David L. Best appeared *pro se*.

BASED on the evidence presented at the trial of this matter, and the pleadings and pre-trial stipulations of record, the committee makes the following:

FINDINGS OF FACT

1. All parties are properly before the Hearing Committee and the Hearing Committee has jurisdiction over the defendant and the subject matter.
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, David L. Best, (the "Defendant") was admitted to the State Bar in 1975 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, Defendant was engaging in the practice of law in the State of North Carolina and maintained a law office in Sampson County, North Carolina.
5. On September 20, 1992, Ernest Ratliff (the "Decedent") died in an automobile accident.

6. Decedent was an attorney licensed to practice law in North Carolina.
7. Decedent's son, Mark R. Ratliff (the "Administrator") was appointed as Administrator of Decedent's estate on October 1, 1992 pursuant to letters issued by the Clerk of Superior Court of Sampson County, In the Matter of the Estate of Ernest Edward Ratliff, file No. 92-E-335 (the "Estate"). The Administrator retained the Defendant to represent the Estate.
8. The Defendant took the following actions on behalf of the Administrator and the Estate:
 - a) The Defendant prepared Application for Letters of Administration which name David L. Best as attorney, which names as heirs Mark R. Ratliff, son, Yasmin E. Ratliff, daughter, and Maria Ratliff, daughter (the "Heirs"), and which the Defendant filed with the Clerk of Superior Court in Sampson County after they were signed by Mark Ratliff.
 - b) On or about October 8, 1992 the Defendant wrote a letter to Carolina Power & Light advising it that he represented the Estate of Ernest Ratliff and inquiring about stock ownership in that organization.
 - c) On or about October 15, 1992 the Defendant signed a statement requesting that shares of Carolina Power & Light be re-registered in the name of the Estate of Ernest Edward Ratliff.
 - d) On or about October 16, 1992, the Defendant wrote a letter to the U.S. Postmaster in Holly Springs, North Carolina, indicating that he represented the Estate of Ernest Ratliff, and requesting that Decedent's mail be forwarded to Defendant's office.
 - e) On or about October 20, 1992, the Defendant wrote a letter to the Administrator purporting to advise the Administrator as to the extent of the Administrator's authority concerning the Estate.
 - f) The Defendant prepared the 90 day inventory (the "90 Day Inventory") which the Defendant filed on December 31, 1992.
 - g) The Administrator opened an account in the name of the Estate of Ernest E. Ratliff, First American Savings Bank Account 847185 (the "Administrator's Estate Account"), and deposited funds of the Estate into that account. In August, 1993, Defendant discovered that the Administrator had embezzled funds from the Estate, and therefore closed the Administrator's Estate Account. The Defendant opened a new account in the name of David L. Best at First American Savings Bank, Account number 904101 (the "Defendant's Estate Account") into which the Decedent deposited all remaining funds from the Administrator's Estate

Account. Defendant was the only person with signatory authority on the Defendant's Estate Account.

- h) The initial deposit into the Defendant's Estate Account consisted of all remaining funds from the Administrator's Estate Account. On or about August 18, 1993, the Defendant deposited into the Defendant's First American Estate Account checks drawn on the Trust Account of Shyllon & Shyllon in an amount totaling \$9,774.50, which was a portion of the Administrator's share of proceeds from a wrongful death action, and which was to refund money taken by the Administrator from the Administrator's Estate Account.
 - i) First Citizens Bank acquired First American Savings Bank and at that time the Defendant's Estate Account changed from First American Savings Bank Account number 904101 to First Citizens Bank Account Number 2419540441. The Defendant was the only person with signatory authority over First Citizens Account Number 2419540441.
 - j) On or about February 27 1995, Defendant purchased from First Citizens Bank, a Certificate of Deposit, Account number 241-0225893 (the "Certificate of Deposit") in the amount of \$13,800.00. The funds used to purchase the Certificate of Deposit were withdrawn from the Defendant's Estate Account. The Defendant was the only person with the authority to cash in or otherwise make withdrawals from the Certificate of Deposit.
 - k) On or about April 17, 1996, the Defendant received from First Citizen's Bank a Cashier's check in the amount of \$15,346.66 which was drawn on the Certificate of Deposit, and which represented the entire amount of the funds of the Estate which were being held as the Certificate of Deposit.
 - l) The Defendant used the Defendant's Cashier's Check to purchase a Cashier's Check payable to the Administrator.
9. Prior to the death of the Decedent, the Defendant was deeded a house and lot in Turkey, North Carolina by a deed recorded in deed Book 1017 Page 396 in the office of the register of Deeds of Sampson County, North Carolina (the "Turkey House").
10. The Defendant acquired a loan from Home Federal Savings and Loan, Account Number 50-0008246869 (the "Home Federal Loan") to finance the purchase of the Turkey House, which loan was secured by a deed of trust on the Turkey House.
11. No instrument was recorded in the office of the Register of Deeds of Sampson County, North Carolina transferring any interest in the Turkey House to the Decedent, or the Estate of the Decedent, and no written contract or agreement was ever executed

conveying or purporting to convey any interest in the Turkey House to Decedent, or to the Estate of the Decedent.

12. The 90 Day Inventory prepared by the Defendant listed the Turkey House as property of the Estate.
13. The Defendant used Estate funds for payments and expenses relating to the Turkey House in that, among other things, Defendant accepted or authorized the following checks to be drawn on the Administrator's Estate Account:
 - a) Check dated January 4, 1993 to Defendant individually to reimburse Defendant for four mortgage payments paid to Home Federal Savings and Loan for the Home Federal Loan.
 - b) Check dated May 28, 1993 to Defendant individually to reimburse Defendant for four mortgage payments for the Home Federal Loan on the Turkey House.
14. The Defendant used Estate funds for payments and expenses relating to the Turkey House in that, among other things, Defendant wrote the following checks on the Defendant's Estate Account:
 - a) Check dated September 1, 1993, to the Defendant individually to reimburse Defendant for three months mortgage payments for the Home Federal Loan on the Turkey House.
 - b) Check dated September 1, 1993, to Metropolitan Insurance to pay for homeowner's insurance on the Turkey House.
 - c) Check dated October 8, 1993, to the Sampson County Tax Collector for payment of property taxes due and owing on the Turkey House.
 - d) Check dated October 11, 1993, to Home Federal Savings and Loan for a mortgage payment on Home Federal Loan on the Turkey House.
15. Prior to November 1, 1993, Defendant attempted to file a final accounting with the Clerk of Superior Court of Sampson County in which he attempted to claim expenses associated with the Turkey House totaling \$7,959.55.
16. After the Clerk of Superior Court of Sampson County refused to allow Defendant to treat expenses relating to the Turkey House as expenses of the Estate, Defendant on or about November 9, 1993 deposited into the Defendant's Estate Account the sum of \$4,451.21, which was personal funds of the Defendant, and which was intended by the Defendant to be a repayment of the funds taken from the Estate by the Defendant.

17. In a letter dated June 2, 1993, Defendant provided to Administrator a report relating to rental efforts and expenses on the Turkey House, and requested that the Administrator consider "taking the property off Defendant's hands" The Defendant requested that the administrator consider taking title to the property and arranging alternate financing.
18. Prior to the time of the Decedent's death, Defendant and Decedent were partners in a law practice together and maintained an office at 402 College Street, Clinton, North Carolina.
19. Defendant and Decedent were deeded property located at 402 College Street, Clinton, North Carolina by a deed recorded on Deed Book 1044 Page 988 in the office of the Register of Deeds of Sampson County, North Carolina (the "Office Building").
20. Defendant and Decedent held the Office Building as tenants in common, with each having a $\frac{1}{2}$ undivided interest in the property. Decedent's undivided $\frac{1}{2}$ interest vested in the Estate and/or in the Heirs at the time of Decedent's death.
21. The Office Building was subject to a deed of trust executed to secure a loan from First Union National Bank of North Carolina Obligation Number 002-41-2543-7 (the "First Union Loan"). Both Defendant and Decedent executed the Promissory Note to repay the Loan.
22. Defendant continued to occupy the office building, and continued to use the Office Building for his law practice which generates income for the Defendant. Defendant has not, at any time paid to the Estate or the Heirs rental payments or any other payments for the use of the Office Building or the income generated thereby. The Defendant paid in full the First Union Loan without receiving any contributions from the Estate or the Heirs.
23. On or about June 7, 1993, at the time he was representing the estate, Defendant offered to acquire the Estate's interest in the office building for the sum of \$10,500.00.
24. Defendant computed the amount of the offer by taking the appraised value of the property, deducting the amount owed on the First Union Loan, and dividing the remainder by $\frac{1}{2}$.
25. The Administrator was aware of the interests of the Defendant in the Turkey House and the Office Building at the time the Defendant undertook representation of the Estate. The Defendant did not disclose to the Administrator the implications of the representation and the advantages and risks involved.
26. On or about December 6, 1994, a notice to file an annual or final account was issued in the Estate file. The Defendant received a copy of that order.
27. On or about December 19, 1994, another attorney, Prince Shyllon, entered an appearance as counsel of record for the Estate.

28. On or about August 28, 1995 an order to file Inventory or Account was issued in the Estate file. The Defendant received a copy of that order.
29. As of the date of the trial of this matter no final or annual account had been filed in the Estate, and there is no indication in the Estate file that creditors had been paid or that any heirs had received any distribution.
30. As of the date of the trial of this matter, the Estate remains open.
31. A disinterested lawyer with full knowledge the facts contained herein would conclude that the Administrator should not have agreed to the representation by the Defendant.

Based on the foregoing findings of fact, the Committee makes the following:

CONCLUSIONS OF LAW

1. An attorney client relationship existed between the Defendant and the Estate, and between the Defendant and the Administrator in his official capacity.
2. Defendant's conduct as set out above, constitutes grounds for discipline pursuant to NC GEN STAT § 84-28(b)(2) in that the Defendant violated Rule 5.1(b) of the Rules of Professional Conduct by undertaking to represent the Estate and the Administrator in his official capacity when the representation was materially limited by the Defendant's own interests.
3. The Defendant did not violate Rule 6 of the Rules of Professional Conduct.

Signed by the Chair with the consent of the other hearing committee members this 12
day of June, 1997.


Richard L. Doughton
Hearing Committee Chair

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ORDER OF DISCIPLINE

Based on the findings of fact and conclusions of law entered in this matter, and further based on the arguments of counsel and the Defendant David L. Best, the hearing committee of the Disciplinary Hearing Commission consisting of Richard L. Doughton, Chair, Joseph G. Maddrey, and B. Stephen Huntley makes the following additional findings regarding aggravating and mitigating circumstances in this case.

AGGRAVATING FACTORS

1. Vulnerability of victim.
2. Substantial experience in the practice of law.

MITIGATING FACTORS

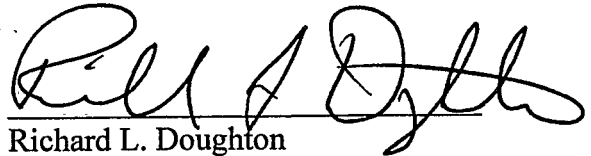
1. Absence of prior discipline.
2. Absence of a dishonest motive.
3. Displayed a cooperative attitude during the State Bar's investigation, and during these proceedings.
4. Remorse.

Based on the findings of fact and conclusions of law in this matter including the additional findings stated herein, the hearing committee enters the following:

ORDER OF DISCIPLINE

1. For the conduct described in this order, the Defendant is hereby admonished by the North Carolina State Bar.
2. The Defendant is taxed with the costs as assessed by the Secretary.

Signed by the Chair with the consent of the other hearing committee members this 12
day of June, 1997.



Richard L. Doughton
Hearing Committee Chair