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**V.**

## FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF DISCIPLINE

## FINDINGS OF FACT REGARDING VIOLATIONS

4. Prior to March 17, 1998, Winfrey undertook to represent Teresa Pierce ("Pierce") regarding a tax matter.

5. On or about March 17, 1998, Winfrey deposited \$35,445 belonging to Pierce into his attorney trust account at High Point Bank & Trust Co., assigned account number 40130983 ("attorney trust account"). The \$35,445 represented the settlement proceeds from a worker's compensation case which another attorney had previously recovered on Pierce's behalf.

6. Pierce directed Winfrey to hold the \$35,445 in trust, pending further instructions from her regarding disbursement of the funds.

7. On March 19, 1998, Winfrey withdrew \$675 from the \$35,445 he was holding for Pierce as an attorney's fee.

8. On March 26, 1998, Winfrey disbursed \$2,000 of Pierce's funds to Pierce.

9. As of March 26, 1998, a total of \$32,770 should have remained in Winfrey's trust account on Pierce's behalf.

10. The balance in Winfrey's attorney trust account dropped below \$32,770 on March 26, 1998 and remained below \$32,770 until April 24, 1998, when funds belonging to another client were deposited into Winfrey's attorney trust account.

11. Winfrey misappropriated a portion of funds belonging to Pierce without her knowledge and consent.

12. Between April 24, 1998 and October 20, 1998, Winfrey disbursed an additional \$2,219 of Pierce's funds to Pierce or third parties on her behalf.

13. As of October 20, 1998, a total of \$30,551 should have remained in Winfrey's attorney trust account on Pierce's behalf.

14. The balance in Winfrey's attorney trust account remained below \$30,551 from October 20, 1998 through January 29, 1999.

15. Winfrey misappropriated Pierce's funds without her knowledge and consent.

16. On various occasions between December 30, 1996 and January 1999, Winfrey deposited personal funds into the trust account. During the same period, Winfrey left earned fees in his attorney trust account. Client funds were present in Winfrey's trust account during the period in which he deposited personal funds into the account and left earned fees in the account.

17. Shortly before January 8, 1999, Pierce became dissatisfied with Winfrey's services and demanded the return of her money and her client file.

18. Winfrey did not have sufficient funds to repay Pierce as of January 8, 1999.

19. On January 8, 1999, Winfrey visited Pierce in her home and confessed that he had misappropriated her money. Winfrey offered to repay the funds by the end of January 1999.

20. Winfrey ultimately made restitution in the amount of \$30,489.50, by making a number of payments to Pierce between January 8, 1999 and June 19, 1999.

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 hearing committee has jurisdiction over the person of defendant Robert Winfrey, and the subject matter of this case.

2. Winfrey's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. Sec. 84-28(b)(1) as follows:

a. By misappropriating all or a portion of the client funds which he should have held in trust for Teresa Pierce, without the knowledge and consent of his client, Winfrey engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c); committed criminal acts which reflect adversely upon his honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b); and failed to hold client funds in trust in violation of Rule 1.15-1(a) of the Revised Rules of Professional Conduct.

b. By depositing personal funds into his attorney trust account at a time when client funds were also present in the account, Winfrey commingled personal and client funds in violation of Rule 1.15-1(e).

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the evidence and arguments of the parties concerning the appropriate discipline, the hearing committee hereby makes the following additional:

### FINDINGS OF FACT REGARDING DISCIPLINE

1. \$20,000 of the funds that defendant Winfrey used to make restitution to Pierce was derived from a mortgage placed on real property belonging to Frances Coan and Coan's daughter, Pamela Hanks. After Hanks obtained the mortgage proceeds in late 1998, she gave the funds to defendant Winfrey, who was then representing Hanks.

2. Winfrey placed the mortgage proceeds in a personal bank account at Central Carolina Bank, and he then transferred the funds to another personal account at Branch Banking & Trust Co..

3. On January 29, 1999, Coan filed a civil action against her daughter Hanks, claiming, among other things, that Hanks had fraudulently obtained the \$20,000 in mortgage proceeds. On the same date, Coan also obtained a temporary restraining order that forbade Hanks and her attorney from disbursing any portion of the mortgage proceeds.

4. Coan's attorney, David C. Smith, advised defendant Winfrey on the morning of January 29, 1999 that Smith planned to file suit against Hanks and intended to seek a temporary restraining order to prevent disbursement of the mortgage proceeds and other funds claimed by Coan. Smith invited defendant Winfrey to attend a hearing on the injunction issue. Winfrey indicated that he wished to be heard before an injunction was entered, but he claimed that he was having car trouble. Instead of appearing in court on January 29, 1999, Winfrey withdrew the \$20,000 in mortgage proceeds from his personal account and used these funds to purchase a cashier's check made payable to Pierce. He then gave this check to Pierce to repay her for the misappropriated funds.

5. Winfrey's misconduct is mitigated by the following factor:

- a. good character and reputation in his home community.

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

- a. Winfrey was motivated by selfishness and dishonesty;
- b. Winfrey engaged in a pattern of misconduct;
- c. Winfrey engaged in multiple acts of misconduct;
- d. Winfrey had substantial experience in the practice of law at the time of his misconduct;
- e. Winfrey refused to acknowledge the wrongful nature of his misconduct; and

f. Winfrey was censured by the Grievance Committee in 1989.

Based upon the foregoing aggravating and mitigating factors and the arguments of the parties, the hearing committee hereby enters the following

**ORDER OF DISCIPLINE**

1. Defendant Robert E. Winfrey is hereby disbarred from the practice of law in North Carolina, effective 30 days from the date of service of this order upon Winfrey.

2. Winfrey shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon Winfrey.

3. Winfrey shall pay the costs of this proceeding as assessed by the Secretary no later than 30 days following service of this order upon Winfrey.

4. Winfrey shall comply with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, Section .0124 of the N.C. State Bar Discipline & Disability Rules, and shall demonstrate that he has notified all current clients of his disbarment no later than 30 days following service of this order upon Winfrey.

Signed by the Chair with the consent of the other hearing committee members,  
this the 8 day of October, 1999.

  
Kenneth Smith, Chair  
Hearing Committee