

WAKE COUNTY  
NORTH CAROLINA



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

THE NORTH CAROLINA STATE BAR

Plaintiff

v.

WAYNE FOUSHEE, ATTORNEY

Defendant

CONSENT ORDER  
OF DISCIPLINE

THIS MATTER came on to be heard and was heard by the undersigned Chair of the Disciplinary Hearing Commission pursuant to 27 NCAC 1B .0108(a)(6) and the consent of the parties hereto. Dudley Witt represented the defendant, Wayne Foushee, and Carolin Bakewell represented the State Bar. Based upon the pleadings herein and the consent of the parties, the Chair 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, Wayne Foushee, ("Foushee"), was admitted to the North Carolina State Bar in 1989, 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 of the periods relevant hereto, Foushee was engaged in the practice of law in Winston-Salem, North Carolina.

4. Anthony Joshua Wooten ("Wooten") sustained a severe brain injury at birth on June 27, 1984, leaving him mentally incompetent.

5. Following Wooten's birth, a personal injury action was filed on his behalf in Forsyth County Superior Court. That matter was ultimately settled with the entry of a substantial structured settlement.

6. On or about Oct. 10, 1990, Foushee was appointed as Wooten's guardian.

7. In his capacity as Wooten's guardian, Foushee received funds in trust for Wooten from which he was directed to make payments on Wooten's behalf.

8. Foushee was entitled to commissions for his work as Wooten's guardian only to the extent allowed by law and only after approval by the Forsyth County Clerk of Court.

9. Foushee was not otherwise authorized to use funds belonging to Wooten or disburse funds from the Wooten guardianship account for his own benefit or those of third parties other than Wooten.

10. Between June 28, 2002 and Oct. 10, 2003, Foushee knowingly withdrew a total of \$11,910 from Wooten's guardianship account without first having received approval of the Forsyth County Clerk of Court or any other official or individual.

11. Foushee expended the \$11,910 for his own use and benefit or that of third parties without the consent of his client or the clerk of court.

12. Foushee could not reasonably have believed that he was entitled to \$11,910 in commissions at the time he withdrew and expended the funds from the Wooten guardianship account for his own use and benefit.

13. On or about Nov. 17, 2003, Foushee filed an accounting with the Forsyth County Clerk of Superior Court regarding the Wooten guardianship.

14. On or about March 3, 2004, Brice Murphy ("Murphy") an Assistant Forsyth County Clerk of Court, entered an order awarding Foushee a total of \$9,644.08 in commissions for the period June 28, 2002 - Oct. 10, 2003. The sum Murphy awarded to Foushee was \$2,265.92 less than the amount Foushee had withdrawn from the Wooten guardianship account.

15. Murphy directed Foushee to refund the extra \$2,265.92 that he had withdrawn from the Wooten account without authorization. Murphy expressly warned Foushee not to take any commissions from the account without prior approval from the clerk.

16. Despite Murphy's instructions, Foushee knowingly removed a total of \$26,751.25 from the Wooten guardianship account between Oct. 10, 2003 and Oct. 10, 2004, without first having received approval of the Forsyth County Clerk of Court or any other official or individual.

17. Foushee expended the funds for his own use and benefit or that of third parties without the consent of his client or the clerk of court.

18. Foushee could not reasonably have believed that he was entitled to \$26,751.25 in commissions at the time he withdrew the funds from the Wooten guardianship account.

19. On Nov. 10, 2004, Murphy entered an order awarding Foushee \$5,616.03 in commissions for the period Oct. 10, 2003 – Oct. 10, 2004. This sum was \$21,135.22 less than the amount that Foushee had already removed from the Wooten account without authorization.

20. By letter dated Nov. 12, 2004, Murphy directed Foushee to refund \$21,135.22 to the Wooten account by Nov. 24, 2004.

21. Foushee repaid the \$21,135.22 to the Wooten guardianship account in three installments in late 2004.

22. Despite Murphy's instructions not to take commissions without prior authorization, Foushee knowingly withdrew a total of \$7,720 from the Wooten guardianship account between Oct. 10, 2004 and Aug. 26, 2005, without first having received approval of the Forsyth County Clerk of Court or any other official or individual.

23. Foushee could not reasonably have believed he was authorized to withdraw \$7,720 in commissions from the Wooten guardianship account for the period Oct. 10, 2004 – Aug. 26, 2005.

24. Upon learning that Foushee had taken commissions from the Wooten account without prior authorization for the third year in a row, Murphy refused to award any commissions to Foushee for the period Oct. 10, 2004 – Aug. 26, 2005.

25. Foushee refunded the \$7,720 on or about Aug. 31, 2005, after receiving a demand letter from the Forsyth County Clerk of Court.

Based upon the foregoing Findings of Fact, the Chair hereby enters the following:

#### CONCLUSIONS OF LAW

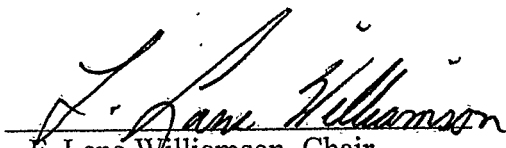
1. All parties are properly before the Disciplinary Hearing Commission and the Commission has jurisdiction over the subject of this proceeding and the person of the defendant.
2. Foushee has waived his right to a formal hearing in this matter and agrees that it may be resolved by the Chair of the Disciplinary Hearing Commission based upon his consent. Foushee further waives his right to appeal this Consent Order.
3. By withdrawing sums from the Wooten estate account to which he was not entitled Foushee engaged in criminal conduct that reflects adversely upon his honesty, trustworthiness or fitness as a lawyer in violation of Revised Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Revised Rule 8.4(c) of the Revised Rules of Professional Conduct.
4. Disbarment is the appropriate sanction for the misconduct in which Foushee engaged.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Chair hereby enters the following:

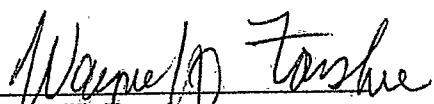
#### ORDER OF DISCIPLINE

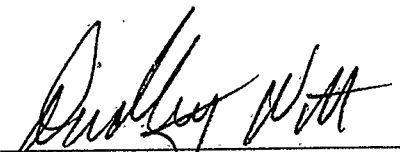
1. The Defendant, Wayne Foushee, is hereby disbarred from the practice of law in North Carolina, effective immediately upon entry of this order.
2. Foushee shall pay the costs of this proceeding within 30 days of service upon him of a statement of the costs by the Secretary of the N.C. State Bar.
3. Foushee shall comply with all provisions of 27 NCAC 1B. 0124 respecting the wind down of his law practice.

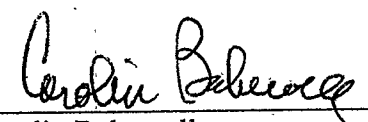
This the 8<sup>th</sup> day of March, 2006.

  
F. Lane Williamson, Chair  
Disciplinary Hearing Commission

Seen and consented to:

  
Wayne H. Foushee  
Defendant

  
Dudley Witt  
Defendant's Attorney

  
Carolin Bakewell  
Plaintiff's Attorney