

WAKE COUNTY

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
79 DHC 17

1979 DEC 13 AM 10:16

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-VS-

FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW

THIS CAUSE coming on to be heard and being heard before the undersigned Hearing Committee of the Disciplinary Hearing Commission of The North Carolina State Bar on November 16, 1979 in the Council Chambers of The North Carolina State Bar Building, 208 Fayetteville Street Mall, Raleigh, North Carolina. The North Carolina State Bar was represented by David R. Johnson, Staff Attorney, and the Defendant was present and represented by Clarence W. Griffin of Griffin and Martin, Williamston, North Carolina. The hearing began at 10:00 a.m. with all parties properly before the Hearing Committee and no objection was made by the Defendant or The North Carolina State Bar to the members constituting the Hearing Committee to hear the evidence in the cause. The Hearing Committee having heard the evidence and argument of counsel, as appears of record, makes the following Findings of Fact and Conclusions of Law:

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 in Chapter 84 of the General Statutes.

2. The Defendant, William L. Cooke, is a citizen and resident of Bertie County; and was admitted to The North Carolina State Bar in 1950; and is, and was at all times relevant to this proceeding, an attorney at law licensed to practice law in the State of North Carolina subject to the Rules, Regulations, Canons of Ethics and Code of Professional Responsibility of The North Carolina State Bar and of the laws of the State of North Carolina.

3. At and during all of the time relevant to this proceeding the Defendant was actively engaged in the practice of law in the State of North Carolina, and maintained a law office in the town of Windsor, Bertie County, North Carolina, and was a partner in the law firm of Prichett, Cooke & Burch.

4. A complaint setting forth the charges against the Defendant was filed in the office of the Secretary of The North Carolina State Bar on August 23, 1979. Notice thereof was given to the Defendant, together with notice that this matter will be heard by a Hearing Committee of the Disciplinary Hearing Commission of The North Carolina State Bar at a time and place to be determined by the Chairman of said Commission, by personal service upon the Defendant of a copy of the Complaint, Summons and Notice, by a deputy sheriff of Bertie County on August 24, 1979.

5. On August 31, 1979, the Chairman of the Disciplinary Hearing Commission notified Counsel for The North Carolina State Bar and the Defendant of the composition of the Hearing Committee and of the time and place for the hearing. On September 19, 1979, the Chairman of the Disciplinary Hearing Commission entered an Order substituting Mrs. Winifred T. Wells as a member of the Hearing Committee in place of Mr. Cyrus F. Lee.

6. An Answer to the Complaint was filed in the office of the Secretary of The North Carolina State Bar on September 4, 1979; and an Amendment to the Answer was filed on September 15, 1979.

7. The Defendant assisted in the incorporation of the business A. E. Bowen and Sons, Inc. and performed various legal services for the corporation from April 10, 1973 until May, 1977.

8. A Claim and Delivery action was filed on February 28, 1977, by A. E. Bowen and Sons, Inc. against Dan W. Bowen for return of a pickup truck, and the Defendant represented Dan W. Bowen in that action. The action was dismissed voluntarily on May 19, 1977.

9. Dan W. Bowen, Belle Bowen, A. E. Bowen, III, and Larry J. Bowen filed a Complaint seeking to dissolve the corporation A. E. Bowen and Sons, Inc. on March 2, 1977, file number 77-CvS-35 in the Bertie County Superior Court and that Joseph Flythe appeared as attorney of record for the plaintiffs.

10. On July 27, 1977, a hearing was held before the Honorable Perry Martin, Judge of the Superior Court on a motion by the plaintiffs in 77-CvS-35 for appointment of a temporary receiver, the Defendant entered an appearance as attorney of record for the plaintiffs, and Goodwin Byrd was appointed trustee to supervise and carry out the liquidation of A. E. Bowen and Sons, Inc. at that hearing.

11. On February 13, 1978, Goodwin Byrd was named as a party defendant to 77-CvS-35 by a Consent Order signed by the Honorable Robert D. Rouse, Jr., Judge of the Superior Court.

12. On February 27, 1978, a Memorandum of Agreement was prepared and consented to by the attorneys for the plaintiffs and defendants in 77-CvS-35 which Memorandum was the basis for the Consent Order issued by the Honorable Robert D. Rouse, Jr., Judge of the Superior Court on March 3, 1978. The Defendant signed the Memorandum of Agreement as one of the attorneys for the plaintiffs.

13. The Defendant accepted employment by the trustee, Goodwin Byrd and performed certain legal services for the trustee in his capacity as trustee in 77-CvS-35 from the date of the trustee's appointment until July 31, 1978, said legal services are more particularly described in Exhibit "K" of the stipulations entered on the record by counsel for the parties at trial before the Hearing Committee.

14. On June 13, 1978, the Defendant wrote plaintiff Dan W. Bowen and informed the plaintiff that he was "recommending to Goodwin that he go ahead and pay you [Bowen] and Belle the \$10,000.00 provided in the judgment." According to an accounting of the trustee, this \$10,000.00 was paid on June 14, 1978. This recommendation was contrary to the sequence of events provided for in the February 27, 1978 Memorandum of Agreement and the March 3, 1978 Consent Order referred to in paragraph 12 above.

15. The Defendant submitted charges to the trustee for the legal services provided to the trustee which charges the trustee filed against the corporation. The defendants had objections to the charges submitted by the Defendant and the Defendant prepared the Trustee's Answer to those objections, charging the trustee an additional sum. At a hearing on July 18, 1978, the defendants' objections to the charges were withdrawn by consent and the clerk approved the amount of the charges of the Defendant. The final distribution of the corporation's assets occurred on July 31, 1978.

16. None of the parties to 77-CvS-35 suffered any monetary loss resulting from the actions of the Defendant. However, the plaintiffs in 77-CvS-35 did receive a benefit by receiving the \$10,000.00 payment six weeks prior to the date of the final distribution of the corporation.

17. The Defendant now recognizes and admits that his acceptance of employment to perform legal services on behalf of the trustee in his capacity as trustee was improper and a violation of Disciplinary Rule 5-105 of the Code of Professional Responsibility.

BASED UPON THE FOREGOING FINDINGS OF FACT, THE HEARING COMMITTEE CONCLUDES that the conduct of the Defendant as set forth above constitutes a violation of Chapter 84, Section 28(b) (2) of the General Statutes of North Carolina in that the Defendant accepted and continued multiple employment on behalf of clients where the exercise of his independent professional judgment was or was likely to be adversely affected by his representation of another client when he entered appearance and acted on behalf of the plaintiffs and acted on behalf of the trustee in Bertie County file number 77-CvS-35, in violation of Disciplinary Rule 5-105 (A) and (B) of the Code of Professional Responsibility.

This the 16<sup>th</sup> day of November, 1979.

*Jerry L. Jarvis*

Jerry L. Jarvis, Chairman  
Disciplinary Hearing Committee

*Winifred T. Wells*

Winifred T. Wells

*Fred Moffit Byerly*

Fred Moffit Byerly

NORTH CAROLINA

WAKE COUNTY

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE

1979 DEC 17 NORTH CAROLINA STATE BAR  
79 DHC 17

B.E. JAMES, SEC.  
NORTH CAROLINA STATE BAR

THE NORTH CAROLINA STATE BAR, )  
Plaintiff, )  
-VS- )  
WILLIAM L. COOKE, Attorney, )  
Defendant. )

ORDER

THE HEARING COMMITTEE having found the facts and made conclusions of law in the above-entitled action,

IT IS NOW, THEREFORE, ORDERED:

1. That the Defendant, William L. Cooke, be disciplined under the provision of North Carolina General Statute 84-28(c) (4), private reprimand, and that the letter of reprimand be prepared by the Chairman of the Disciplinary Hearing Committee and delivered to the Defendant in the office of The North Carolina State Bar, 208 Fayetteville Street Mall, Raleigh, North Carolina, by the Secretary of The North Carolina State Bar, a copy of said reprimand to be filed with the Secretary of The North Carolina State Bar.

2. That the costs of this disciplinary action be paid by the Defendant, William L. Cooke.

This the 16th day of November, 1979.

Jerry L. Jarvis  
Jerry L. Jarvis, Chairman  
Disciplinary Hearing Committee

Winifred T. Wells  
Winifred T. Wells

Fred Moffit Byerly  
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