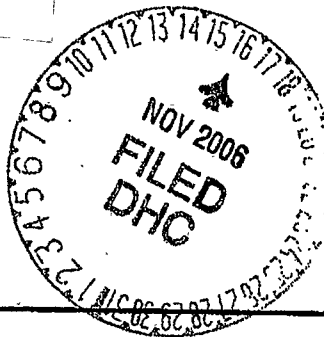


NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
06 DHC 22

v.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF DISCIPLINE

On October 5 & 6, 2006, this matter came on to be heard before a hearing committee of the Disciplinary Hearing Commission composed of F. Lane Williamson, Chair; T. Richard Kane, and H. Dale Almond. A. Root Edmonson and William N. Farrell, Jr. represented the North Carolina State Bar and Alan M. Schneider, Dudley A. Witt, and David B. Freedman represented James B. Ethridge. Based upon the admissions in the Answer, the stipulations of fact in the Pre-Hearing Order, and the evidence presented at the hearing, the hearing committee finds that the following has been established by clear, cogent and convincing evidence:

FINDINGS OF FACT

1. 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. Defendant, James B. Ethridge, (hereinafter "Ethridge"), was admitted to the North Carolina State Bar on August 19, 1973, 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 Revised Rules of Professional Conduct of the State of North Carolina State Bar and the laws of the State of North Carolina.
3. During the times relevant herein, Ethridge actively engaged in the practice of law in the State of North Carolina and maintained a law office in Smithfield, Johnston County, North Carolina until he became a District Court Judge in 2004.
4. On August 16, 2001, Ms. Rosalind W. Sweet (hereinafter "Ms. Sweet") met with Ethridge in his law office to obtain his assistance in safeguarding her property from her own relatives and others. Although Ethridge had met Ms. Sweet in his partner's office in 1974, Ethridge had not had any contact with Ms. Sweet between 1974 and August 16, 2001.

5. At the time of this meeting, Ms. Sweet was 69 years old and was being encouraged by Wendy Whitfield ("Whitfield") in Adult Protective Services at Johnston County Social Services to agree to placement in an assisted living facility due to her inability to care for herself caused by dementia.

6. On August 16, 2001, Ethridge prepared a deed conveying Ms. Sweet's residence, described as lot number 11 Old Mill property, to himself.

7. On August 17, 2001, Ethridge took the deed he had prepared to Ms. Sweet's residence where Ms. Sweet signed it in her bedroom and it was then notarized by Lyndon D. McKennie, a friend of Ethridge.

8. Ethridge then drove Ms. Sweet to the State Employees' Credit Union, where they both entered and Ms. Sweet withdrew \$14,249.11 from her account to purchase a money order made payable to her.

9. Ethridge and Ms. Sweet then went to the Four Oaks Bank across from Ethridge's office where Ms. Sweet endorsed the money order for \$14,249.11 from the State Employees' Credit Union. The proceeds from the money order were then used to set up a personal checking account in Ethridge's name with him as the sole signatory, account number ending 706 ("account No. 706"). Ethridge was instructed by the representative of Four Oaks Bank to endorse the money order. Account No. 706 was not set up as a trust or fiduciary account and did not indicate that Ms. Sweet had any interest in the account.

10. Thereafter on August 17, 2001, Ethridge recorded the deed transferring Ms. Sweet's real property to himself in the Register of Deed's Office of Johnston County.

11. Ethridge attached \$24 in revenue stamps to the deed that falsely represented on the public record that he had given \$12,000 to Ms. Sweet in consideration for the property. Ethridge mistakenly believed that the amount of revenue stamps reflected \$48,000 in consideration for the property.

12. On August 28, 2001, Ms. Sweet was placed in a family care home.

13. On September 10, 2001, Whitfield left a message with Ethridge to return her call.

14. On September 12, 2001, Ethridge visited Ms. Sweet at the family care facility.

15. On September 12, 2001, Ethridge returned Whitfield's call and Whitfield told Ethridge that Ms. Sweet was transferred to the family care facility because she was not able to take care of herself. Whitfield asked Ethridge why Ms. Sweet's real property was deeded to him and he advised her that Ms. Sweet decided to do this because she owed him for past legal services.

16. On September 20, 2001, Ethridge withdrew \$750.00 from account No. 706 by check number 526 payable to cash.

17. Ethridge testified that he gave Ms. Sweet \$350 of the cash from check number 526 when he visited her at the family care home, that he used \$75 of the money to get the grass cut at Ms. Sweet's home, and that he intended to use the remainder of the cash for her benefit such as to buy homeowner's insurance covering her house. However, the other evidence presented at the hearing showed that Ethridge only visited Ms. Sweet at the family care home on one occasion - September 12, 2001. Ethridge could not have given Ms. Sweet \$350 of the cash from check number 526 eight days prior to writing the check.

18. On September 24, 2001, Ethridge wrote a check payable to the Four Oaks Bank in the amount of \$13,499.11 from account No. 706 to place Ms. Sweet's funds in a trust account. However, Ethridge reconsidered this and instead opened a separate personal checking account at the Four Oaks Bank in his name with him as the sole signatory, account number ending 606 (hereinafter "account No. 606"), with the deposit of the check for \$13,499.11 drawn on account No. 706. Account No. 606 was not a trust or fiduciary account and did not indicate that Ms. Sweet had any interest in the account.

19. On or about September 24, 2001, Ethridge gave \$1,500 of his personal funds in cash to Broderick Parrott ("Parrott"), a contractor, as a partial deposit for Parrott to put siding, windows and doors on the house Ms. Sweet had deeded to Ethridge.

20. On September 28, 2001, Ethridge gave Parrott another \$1,500 of his personal funds in cash as additional deposit for the siding, windows and doors and Parrot gave Ethridge a receipt for the \$3,000 deposit.

21. Between September 24, 2001 and October 18, 2001, Ethridge wrote the following checks from his personal checking account, account No. 606, using Ms. Sweet's funds other than for her benefit as follows:

<u>Check number</u>	<u>Date</u>	<u>Payee</u>	<u>Amount</u>
1001	October 4, 2001	James B. Ethridge	\$150.00
1002	October 10, 2001	Alexus Wright	\$400.00
1003	October 18, 2001	Denise Ethridge	\$300.00

22. On October 2, 2001, a petition was filed by Thomas S. Berkau (Berkau) on behalf of Ms. Sweet's nephew, Roosevelt Williams, Jr. ("Williams"), to have Ms. Sweet adjudicated as incompetent because she suffered from dementia and Alzheimer's and didn't have sufficient capacity to manage her own affairs.

23. Christi C. Stem was appointed as attorney-guardian ad litem for Ms. Sweet.

24. On October 18, 2001, Ms. Sweet was adjudicated as incompetent and it was ordered that a guardian be appointed for Ms. Sweet.

25. On October 18, 2001, Williams was appointed as general guardian for Ms. Sweet by the Johnston County Clerk of Superior Court, Will R. Crocker.

26. On or before October 30, 2001, after undertaking an investigation of Ms. Sweet's assets, Berkau left a message for Ethridge indicating he wanted to talk with Ethridge about Ms. Sweet.

27. On October 30, 2001 Ethridge went to Berkau's office. Berkau told Ethridge that he was the attorney for the general guardian that had been appointed for Ms. Sweet. Ethridge acknowledged to Berkau that Ms. Sweet had conveyed her real property to him and that she had withdrawn money from the credit union. Ethridge told Berkau that he had given Ms. Sweet \$7,000 of the money withdrawn from the credit union account and that he held the remainder of Ms. Sweet's money. Ethridge agreed to return Ms. Sweet's property. Berkau told Ethridge that he would send Williams to get the money from Ethridge.

28. Ethridge reconveyed the real property to Ms. Sweet on October 31, 2001.

29. Also on October 31, 2001, Ethridge wrote a check made payable to cash in the amount of \$8,000.00 from account No. 606 that he deposited into his trust account, account number ending 230.

30. On November 16, 2001, Williams went to Ethridge's office to get Ms. Sweet's money from Ethridge. Ethridge wrote a check in the amount of \$8,000.00 from his trust account number 230 and gave it to Williams who delivered it to Berkau.

31. On December 21, 2001, Ethridge wrote a check in the amount of \$500.00 payable to cash from account No. 606.

32. Because Williams had not found any cash at Ms. Sweet's house, Williams advised Ethridge, on one or more occasions, that Ethridge had not returned all of Ms. Sweet's money.

33. Prior to January 2, 2002, Parrott returned the \$3,000 he had received from Ethridge by paying \$3,000 to Ethridge in \$100 bills.

34. On January 2, 2002, Williams went to Ethridge's office demanding that Ethridge return the remainder of Ms. Sweet's money. Ethridge wrote a check, from a personal account ending in number 364, in the amount of \$4,000.00 to Williams as guardian-ad-litem [sic] for Ms. Sweet. Ethridge hand wrote a release that he had Williams sign that "releases and discharges James B. Ethridge from all claims, damages or money that maybe [sic] owed to Rosalind Williams Sweet arising out of a disputed amount of money that was given to James B. Ethridge to hold for her." Williams signed the release and received the check.

35. By requiring Williams to sign the release, after having told Williams' lawyer, Berkau, that he had given Ms. Sweet \$7,000 in cash when the \$14,249.11 was removed from her credit union account, Ethridge held out that the amount that he should have to return was in dispute. By requiring Williams to sign a release releasing him from any other claim of money he

may owe to Ms. Sweet, Ethridge held out that he did not owe Ms. Sweet any further funds. Thus, Ethridge failed to account for the \$2,249.11 of Ms. Sweet's funds that he had not returned.

36. On January 17, 2001, Ethridge wrote a check in the amount of \$85.00 payable to cash from account No. 606.

37. After writing a check for the \$4,000 payment to Williams from his personal account, on February 4, 2002, Ethridge wrote a check to himself in the amount of \$3,700.00 from account No. 606 and on the same day deposited this check into his personal bank account, account number ending 364.

38. Between February 2002 and August 2003, monthly service charges were removed from account No. 606 by Four Oaks Bank.

39. On August 11, 2003, Ethridge closed his personal bank account No. 606 which he had opened with a deposit of Ms. Sweet's funds by withdrawing the balance in the amount of \$243.01.

40. Although Ethridge testified that he held \$2,250 for Ms. Sweet in cash in an envelope from January 2, 2002 until he delivered it to Berkau on September 21, 2006 because Ms. Sweet had not wanted Williams to have it, Ethridge did not have the option to choose to retain any of Ms. Sweet's money after he knew that the Clerk of Superior Court had appointed a guardian for her that was responsible for her property.

41. When he was served with notice of the grievance that led to this matter on August 4, 2005, Ethridge told State Bar Investigator Steven M. Annis: "I paid back all of the money I received from her" and "I don't have the money to pay, but I can borrow the money if I have to pay any back." Those statements are inconsistent with Ethridge's testimony that he had \$2,250 in cash in an envelope for Ms. Sweet.

42. Ethridge failed to account for or return to Ms. Sweet or her guardian \$2,249.11 of Ms. Sweet's funds until after service of the Letter of Notice in this matter in August 2005.

43. The deposit of Ms. Sweet's funds into a personal account in Ethridge's name as sole signatory, and the preparation and recording of a deed to Ms. Sweet's real property to himself with revenue stamps thereto falsely reflecting that Ethridge had paid consideration for the property tend to show that Ethridge had an intent at the time of the initial transfers on August 17, 2001 to misappropriate Ms. Sweet's funds and real property that had been entrusted to Ethridge in a fiduciary capacity as an attorney to his own use and ownership. The prompt reconveyance of the real property by Ethridge when notified of the appointment of a general guardian for Ms. Sweet nevertheless tends to negate the existence of such intent as of the time of the initial transfers under the clear, cogent and convincing evidentiary standard applicable to this proceeding. The hearing committee therefore finds that the allegations in the complaint that Ethridge intended to misappropriate Ms. Sweet's real property and funds at the time of the initial transfers have not been proven to the applicable standard.

44. Ethridge's handling of Ms. Sweet's funds subsequent to the initial transfer of August 17, 2001, and his own conflicting explanations relating to the handling of the funds, however, compel the hearing committee to find that he had an intent to misappropriate and did in fact misappropriate funds of Ms. Sweet by the time he wrote checks from entrusted funds to himself and others and took cash from the account containing Ms. Sweet's entrusted funds.

BASED UPON the foregoing Findings of Fact, the hearing committee makes the following:

CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee of the Disciplinary Hearing Commission and the hearing committee has jurisdiction over Ethridge and the subject matter.

2. Ethridge's conduct, as set out above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(a) & (b)(2) in that Ethridge violated the Revised Rules of Professional Conduct as follows:

- a) by writing checks from entrusted funds to himself and others, by taking cash from the account containing Ms. Sweet's entrusted funds, and by failing to return portions of Ms. Sweet's funds to the rightful owner, Ethridge misappropriated Ms. Sweet's funds that had been entrusted to him in a fiduciary capacity to his own use, and thus engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and prejudiced or damaged his client during the course of the professional relationship in violation of Rule 8.4(g);
- b) by depositing the \$14,249.11 of Ms. Sweet's funds into his own personal bank account, Ethridge failed to maintain entrusted funds separate from his property in violation of Rule 1.15-2(a) and failed to deposit funds belonging to another received by him as a lawyer in a trust account in violation of Rule 1.15-2(c);
- c) by disbursing funds belonging to Ms. Sweet for the benefit of himself and third parties, Ethridge used entrusted property for his own personal benefit and the benefit of other persons other than the legal or beneficial owner of the property in violation of Rule 1.15-2(j);
- d) by preparing and recording a deed conveying Ms. Sweet's 11 Old Mill property to himself, Ethridge failed to maintain fiduciary property identified separately from the property of the lawyer in violation of Rule 1.15-2(a); and
- e) by falsely representing on the public record that he had given Ms. Sweet \$12,000 in consideration for the property she deeded to him on August 17, 2001, Ethridge engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

BASED UPON the foregoing Findings of Fact and Conclusions of Law, the evidence presented at the hearing and the arguments of counsel, the hearing committee hereby makes the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Ethridge's misconduct is aggravated by the following factors:

- (a) A dishonest or selfish motive; and
- (b) Substantial experience in the practice of law.

2. Ethridge's misconduct is mitigated by the following factors:

- (a) Absence of a prior disciplinary record;
- (b) Good character and reputation; and
- (c) Delay in the disciplinary proceedings not attributable to him.

3. The hearing committee has a great appreciation of the facts showing that Ethridge has come from a poor background, has led an exemplary life, and has been a pillar in his community, but because of Ethridge's dishonesty, the aggravating factors outweigh the mitigating factors.

CONCLUSIONS OF LAW REGARDING DISCIPLINE

1. Disbarment is the only sanction that can adequately protect the public for the following reasons:

- (a) An attorney's duty to preserve a client's entrusted funds is one of the most fundamental duties that an attorney undertakes. An attorney should never violate that duty or the trust the client has in the attorney to honor that duty.
- (b) By misappropriating Ms. Sweet's entrusted funds, Ethridge violated that duty and his clients' trust. In doing so, Ethridge caused significant harm to his client.
- (c) Ethridge's violation of his duty to preserve his clients' entrusted funds caused significant harm to the legal profession.
- (d) Entry of an order imposing lesser discipline would fail to acknowledge the seriousness of the offenses that Ethridge committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar in this State.
- (e) The protection of the public requires that Ethridge not be permitted to resume the practice of law until he demonstrates that he has reformed, that he understands his


obligations to his clients and that reinstatement would not injure the standing of the legal profession. Disbarred attorneys must show reformation, among other things, before they resume the practice of law, whereas no such showing of reformation is required of an attorney whose license is merely suspended for a term certain.

BASED UPON the foregoing Findings of Fact Regarding Discipline and the arguments of counsel, the hearing committee hereby enters the following:

ORDER OF DISCIPLINE

1. The Defendant, James B. Ethridge, is hereby disbarred.
2. Ethridge shall surrender his license and membership card to the Secretary within 30 days of the effective date of this order.
3. The costs of this proceeding are taxed to Ethridge and shall be paid as assessed by the Secretary with 90 days of the entry date of this order.

Signed by the Chair with the consent of the other members of the hearing committee this
the 16th day of November, 2006.



F. Lane Williamson, Chair
Disciplinary Hearing Committee