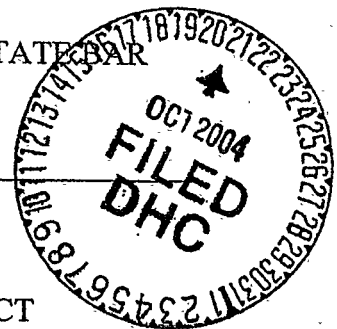


WAKE COUNTY
NORTH CAROLINA

17211

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
04 DHC 34



THE NORTH CAROLINA STATE BAR
Plaintiff

v.

N. JEROME WILLINGHAM, ATTORNEY
Defendant

)
)
) FINDINGS OF FACT
) CONCLUSIONS OF LAW
) AND
) ORDER OF DISCIPLINE
)
)

THIS MATTER came on to be heard and was heard on Sept. 30 – Oct. 1, 2004 before a duly appointed hearing committee of the Disciplinary Hearing Commission composed of Stephen E. Culbreth, Chair; Karen Eady-Williams and H. Dale Almond. Carolin Bakewell represented the State Bar. The Defendant, N. Jerome Willingham, appeared on his own behalf. Based upon the pleadings, evidence presented and trial and the arguments of counsel, the hearing committee 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, N. Jerome Willingham (Willingham) was admitted to the North Carolina State Bar in March 1990, 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, Willingham was engaged in the practice of law in Jacksonville, North Carolina.

4. Prior to July 16, 2003, Willingham undertook to handle a residential real estate closing for George Wigfall ("Wigfall").

5. Between July 16 and July 29, 2003, a total of \$52,509.03 was deposited into Willingham's attorney trust account number 650405453 at Bank of America ("BOA trust account") for Wigfall ("Wigfall closing funds").

6. Willingham was directed to disburse the Wigfall closing funds to American General Financial Services ("American General"), and other creditors for Wigfall's benefit, as set out on the HUD-1 closing statement prepared by Willingham.

7. Between July 22 and July 29, 2003 Willingham disbursed a total of \$914.24 of the Wigfall closing funds to himself and others for attorney fees, title insurance and recording fees.

8. As of July 29, 2003, Willingham should have had \$51,594.79 in his BOA trust account for Wigfall.

9. Although Willingham should have promptly disbursed \$51,594.79 to American General for Wigfall, he failed to do so.

10. As of July 30, 2003, the balance in Willingham's BOA trust account was \$38,189.17 and the balance in the account remained below that level at all times thereafter.

11. On or about Aug. 13, 2003, Willingham disbursed \$600 to American General in satisfaction of Wigfall's August 2003 mortgage payment.

12. After making the August 2003 mortgage payment for Wigfall, Willingham should have had \$50,994.79 in his BOA trust account for Wigfall.

13. The actual balance in Willingham's BOA trust account on Aug. 13, 2003 was \$34,089.17. The account balance remained below \$34,089.17 at all times after Aug. 13, 2003.

14. On or about Sept. 15, 2003, Willingham disbursed \$600 to American General in satisfaction of Wigfall's September 2003 mortgage payment.

15. After making the September 2003 mortgage payment for Wigfall, Willingham should have had \$50,394.79 in his BOA trust account on Wigfall's behalf.

16. The actual balance in Willingham's BOA trust account on Sept. 15, 2003 was \$26,164.17. The account balance remained below \$26,164.17 at all times after Sept. 15, 2003.

17. Willingham misappropriated all or a portion of the Wigfall closing funds for his own use and benefit or the use and benefit of third parties other than Wigfall, without Wigfall's knowledge and consent.

18. On or about Dec. 8, 2003, Willingham disbursed \$51,811.42 to American General on Wigfall's behalf. The check to American General was drawn on trust account number 0761338337 at First Citizens Bank ("FCB trust account"), which Willingham had opened on Dec. 8, 2003.

19. The bulk of the funds that Willingham sent to American General on Wigfall's behalf came from Willingham's brother, who is not a lawyer. Prior to receiving \$46,500 from his brother in early December 2003, Willingham did not have enough money in the BOA or FCB trust account to pay off the American General note and deed of trust.

20. On Dec. 5, 2003, Willingham issued three checks drawn on the BOA trust account totaling \$400 to Wigfall and two of his children. Willingham represented that he was issuing the checks to them to reimburse them for the "inconvenience" they had incurred because of Willingham's delay in paying off the American General note and deed of trust.

21. Willingham did not tell Wigfall that he delayed paying off the American General note and deed of trust because he had temporarily misappropriated part or all of the Wigfall closing funds nor did he reveal that the "reimbursement" checks to Wigfall and his children were in fact paid with client funds, rather than Willingham's personal funds.

22. In 2001, Willingham undertook to represent Marva V. Lane ("Ms. Lane") regarding a civil dispute in which she was engaged with St. Mark United Holy Church ("St. Mark's").

23. In October 2003, representatives of St. Mark's agreed to pay \$16,112.62 to Ms. Lane in settlement of the dispute ("Lane settlement funds"). The funds were paid via a \$15,000 check and a \$1,112.62 check issued in late 2003 to Ms. Lane in her individual capacity and to Willingham.

24. Ms. Lane agreed to pay \$1,500 of the Lane settlement funds to Willingham as a fee. The remaining \$14,612.62 of the Lane settlement funds belonged to Ms. Lane in her individual capacity.

25. On or about Dec. 31, 2003, Willingham deposited the \$16,112.62 in Lane settlement funds into his FCB trust account.

26. By late December 2003, Ms. Lane had been diagnosed with terminal colon cancer and was very ill.

27. After Ms. Lane became ill, her son, Perry Webster ("Webster") contacted Willingham to inquire about the whereabouts of the Lane settlement funds.

28. Willingham did not respond to Webster's inquiries, nor did he disburse the Lane settlement funds to Ms. Lane or to Webster.

29. On Jan. 27, 2004, Willingham wrote to Ms. Lane and Webster and acknowledged that he had not yet paid over the settlement funds to Ms. Lane.

30. In the Jan. 27, 2004 letter, Willingham promised "come hell or high water" to pay the Lane settlement funds to Ms. Lane by the following Monday, Feb. 2, 2004. Despite this promise, Willingham failed to disburse the settlement funds to Ms. Lane or Webster.

31. On Jan. 28, 2004, Webster wrote to Willingham and demanded payment of the settlement funds by Jan. 30, 2004.

32. Ms. Lane died on Jan. 30, 2004.

33. Willingham has not remitted any portion of the Lane settlement funds to Ms. Lane, her estate, or any of her heirs, including Webster.

34. As of Jan. 27, 2004, the balance in Willingham's FCB trust account was \$11,094.20. By Feb. 25, 2004, the balance in the FCB trust account had fallen to \$9,594.20.

35. Willingham used all or a portion of the Lane settlement funds for his own use or benefit or the use and benefit of third parties other than Ms. Lane without the knowledge or consent of his client.

36. On or about March 3, 2004, the Chairman of the Grievance Committee issued a letter of notice, substance of grievance and subpoena for cause audit to Willingham, commanding him to produce to the State Bar the client file regarding Marva Lane and all financial records required to be kept pursuant to Rule 1.15-3 of the Revised Rules of Professional Conduct.

37. The subpoena was served upon Willingham on March 8, 2004 and his response was due on March 15, 2004.

38. Willingham filed a motion to quash the subpoena, which was denied following a hearing in Wake County Superior Court before Hon. W. Donald Stephens on March 8, 2004.

39. On March 15, 2004, Willingham signed a release authorizing the State Bar to obtain bank records relating to his FCB and BOA trust accounts.

Willingham signed the authorization pursuant to the order of the Wake County Superior Court entered on March 11, 2004. Willingham failed to comply with the terms of the State Bar's lawful March 3, 2004 subpoena and never produced Ms. Lane's client file or any client ledgers that he is required to keep pursuant to Rule 1.15-3 of the Revised Rules of Professional Conduct.

40. Prior to March 25, 2002, Lawrence Marshburn ("Marshburn"), and his sister, Shirley Marshburn, inherited land in North Carolina.

41. Prior to March 25, 2002, one or both of the Marshburns contracted to sell some or all of the timber on the land.

42. After cutting of the timber began, some of the Marshburns' relatives objected and filed suit. Willingham ultimately undertook to represent both Marshburns regarding that lawsuit.

43. Marshburn agreed to pay Willingham a \$2,000 flat fee for his services.

44. Between March 26, 2002 and Feb. 10, 2003, Willingham received a total of \$16,901.49 in proceeds from the timber sales on Lawrence Marshburn's behalf ("timber sale proceeds"). These funds were deposited into Willingham's BOA trust account.

45. Willingham withdrew a total of \$2,000 from the timber sales proceeds in his BOA trust account between March 26, 2002 and April 1, 2002. These withdrawals represented the total fee to which he was entitled from Lawrence and Shirley Marshburn. The remaining \$14,901.49 in timber sale proceeds belonged to Lawrence Marshburn.

46. Between April 2, 2002 and Feb. 10, 2003, Willingham disbursed an additional \$4,500 from the timber sale proceeds to Marshburn or third parties on Marshburn's behalf. After making these disbursements, at least \$10,401.49 should have remained in Willingham's BOA trust account for Marshburn's benefit at all times between Feb. 10, 2003 and March 24, 2003.

47. The balance in Willingham's BOA trust account fell below \$10,401.49 on a number of occasions between Feb. 10, 2003 and Nov. 17, 2003, including, Feb. 10 - April 10, 2003 and April 18 - June 3, 2003 and June 9 - June 26, 2003.

48. Willingham used all or a portion of the \$10,401.49 that he should have held in trust for Marshburn for his personal benefit or the benefit of third parties without Marshburn's consent. For instance, on Nov. 5, 2002, Willingham issued check numbers 1206, 1207 and 1213 drawn on his BOA trust account in the total amount of \$3,675 for personal expenses. Check numbers

1206, 1207 and 1213 were paid with client funds and Willingham did not have sufficient personal funds in the BOA trust account at the time to cover any of these checks. He did not make any later deposit into the BOA trust account to replace these funds.

49. Willingham disbursed an additional \$2,500 to Marshburn or third parties for Marshburn's benefit between March 24, 2003 and Nov. 17, 2003. As of Nov. 17, 2003, at least \$7,901.49 should have remained in Willingham's BOA trust account for Marshburn's benefit.

50. The balance in Willingham's BOA trust account dropped below \$7,901.49 on Dec. 8, 2003 and remained below that level until Dec. 26, 2003, the date on which Willingham closed the account with a zero balance.

51. Willingham used all or a portion of the \$7,901.49 that he should have held in trust for Marshburn for the benefit of himself or third parties without Marshburn's consent.

52. After the State Bar filed its formal complaint in this matter, Willingham sent another \$1,800 to Lawrence Marshburn. At the time of the trial of this matter, Willingham should have held at least \$6,101.49 on Marshburn's behalf.

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

CONCLUSIONS OF LAW

1. The Disciplinary Hearing Commission has jurisdiction over the subject of this proceeding and over the person of the Defendant, N. Jerome Willingham.

2. By temporarily misappropriating funds belonging to George Wigfall for the use of himself and third parties without Wigfall's consent, Willingham engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), engaged in criminal conduct in violation of Rule 8.4(b) and engaged in a conflict of interest in violation of Rule 1.7(a).

3. By misappropriating funds belonging to Ms. Lane and Lawrence Marshburn for the benefit of himself and/or third parties without his clients' consent, Willingham engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and engaged in criminal conduct in violation of Rule 8.4(b).

3. By failing to disburse funds as directed by Wigfall, Ms. Lane and Lawrence Marshburn, Willingham failed to pay or deliver client funds as directed by his clients in violation of Rule 1.15-2(m).

4. By failing to maintain a sufficient balance on hand to pay sums owed to Wigfall, Ms. Lane and Marshburn, Willingham failed to hold client funds intact in violation of Rule 1.15-2(a).

5. By willfully and intentionally failing to comply with the terms of a lawful order from the Chairman of the Grievance Committee, Willingham failed to respond to a demand for information of a disciplinary authority in violation of Revised Rule 8.1(b) and engaged in conduct amounting to contempt of the Grievance Committee of the North Carolina State Bar in violation of N.C. Gen. Stat. Section 84-28(b)(3).

Based upon the foregoing Findings of Fact and Conclusions of Law, the hearing committee enters the following

FINDINGS OF FACT REGARDING DISCIPLINE

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

- a) Selfish and dishonest motive
- b) Indifference to restitution
- c) Prior discipline
- d) Pattern of misconduct
- e) Multiple rule violations
- f) Substantial experience in the practice of law
- g) Lack of cooperation with the State Bar's investigation.

h) Several of Willingham's victims were particularly vulnerable. Marva Lane was dying from cancer when Willingham received her funds, and Lawrence and Shirley Marshburn are both ill. George Wigfall is a retired pipefitter with a 6th grade education and was in his 80s as of the July 2003 loan closing conducted by Willingham.

3. There are no mitigating factors present.

4. The aggravating factors substantially outweigh the mitigating factors.

5. Willingham's misconduct has caused substantial actual harm to his clients, Marva Lane, Lawrence Marshburn and George Wigfall, Sr., and has also

harmd the standing of the legal profession in the eyes of some members of the public. Willingham's delay in paying off the American General loan caused American General to discuss foreclosing on Wigfall's house. Wigfall was so distressed by the situation that he could not sleep at night.

6. Although the hearing committee declined to grant the State Bar's motion to sanction Willingham for his failure to produce various records in compliance with an order entered by the Chair of the hearing committee prior to the trial of this matter, the committee finds that Willingham's failure to comply with the order was without justification and was done to obstruct the State Bar's investigation and prosecution of this matter.

7. An order of discipline short of disbarment would not sufficiently protect the public for the following reasons:

a) Willingham engaged in multiple violations of the Revised Rules of Professional Conduct over a substantial period of time. His conduct therefore was not the result of an aberration or mistake, but is the product of a serious personality flaw that is not readily changeable.

b) Willingham has offered no evidence that he has addressed the problem or flaw that motivated his criminal conduct and other violations of the Revised Rules of Professional Conduct. Indeed, he has ignored and obstructed the State Bar's attempts to investigate this matter. Consequently, the Committee finds that there is a substantial risk that Willingham would continue to engage in misconduct if he were permitted to retain his law license.

c) Willingham has previously been disciplined by the State Bar. The prior order of discipline, which suspended Willingham's law license for unrelated trust account violations, apparently failed to prevent Willingham from engaging in additional, more serious violations of the Revised Rules of Professional Conduct.

d) If Willingham's law license was merely suspended for a term certain, he would be permitted to resume the practice of law without first having to demonstrate that he has reformed and is no longer a threat to the public. Only an order of disbarment shifts the burden of proof to the attorney to demonstrate rehabilitation and good character before reinstatement occurs.

e) Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses which Willingham committed, would be inconsistent with orders of discipline entered by the Commission in similar cases and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar of this State.

f) Willingham's misconduct has jeopardized the profession's ability to remain self regulating. Lawyers cannot continue to enjoy this privilege if members of the Bar do not respond to lawful orders and inquiries of the regulatory authority.

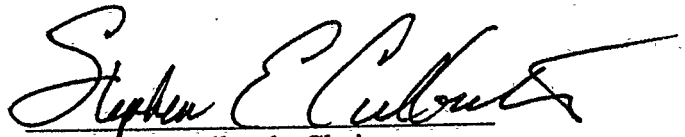
BASED UPON the foregoing Findings of Fact, Conclusions of Law and Findings of Fact Regarding Discipline, the hearing committee hereby enters the following:

ORDER OF DISCIPLINE

1. The Defendant, N. Jerome Willingham, is hereby DISBARRED from the practice of law in North Carolina.
2. Willingham must pay the costs of this action, including the costs incurred by the State Bar in taking the depositions of Lawrence Marshburn and George Wigfall, which the hearing committee found were necessary for the State Bar to prosecute this case, within 30 days of service of the statement of costs by the Secretary.
3. Willingham may not seek reinstatement of his license to practice law until he submits written proof that he has made full restitution to the estate of Marva Lane and Lawrence Marshburn.
4. Willingham shall comply with all provisions of 27 NCAC 1B Section .0124 of the State Bar Discipline & Disability Rules and shall surrender his license and membership card to the Secretary of the N.C. State Bar along with the affidavit required by Section .0124.

This the 21st day of October, 2004.

Signed by the Chair of the Hearing Committee with the knowledge and consent of all Committee members.



Stephen E. Culbreth, Chair
Discipline Hearing Committee