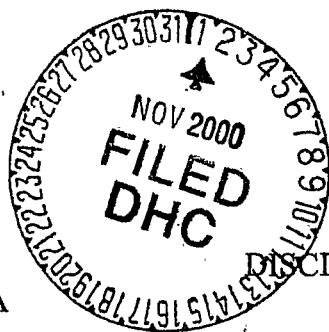


WAKE COUNTY  
NORTH CAROLINA



17406

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
00 DHC 3

THE NORTH CAROLINA STATE BAR  
Plaintiff

v.

WILLIE D. GILBERT, ATTORNEY  
Defendant

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER  
OF DISCIPLINE

This matter was heard on July 17, 18 and Sept. 18 and 19, 2000 before a hearing committee of the Disciplinary Hearing Commission composed of Richard T. Gammon, Chair; T. Paul Messick Jr. and Catharine Sefcik. The defendant, Willie D. Gilbert, was represented by Eric C. Michaux. The plaintiff was represented by Carolin Bakewell. Based upon the pleadings and the evidence introduced at the hearing, the hearing committee hereby enters the following:

FINDINGS OF FACT

1. 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 North Carolina General Statutes and the Rules and Regulations of the North Carolina State Bar.
2. The defendant, Willie D. Gilbert, (hereafter, Gilbert), was admitted to the North Carolina State Bar in 1990 and was at all times relevant hereto licensed to practice law in North Carolina, subject to the rules, regulations and Rules of Professional Conduct of the North Carolina State Bar.
3. During all times relevant hereto Gilbert was actively engaged in the practice of law in Durham, North Carolina, and maintained a law office in Durham, N.C.
4. Gilbert was properly served with process and the hearing was held with due notice to all parties.

5. The hearing committee assigned to hear this matter was duly commissioned and had proper authority to hear and determine all matters set out in the N.C. State Bar's amended complaint and the order herein.

6. On Oct. 23, 1996, Anthony Pologruto was killed in a job-related accident in Roxboro, N.C.

7. In January 1997, Gilbert undertook to represent Celeste Pologruto, Pologruto's widow, (hereafter, Ms. Pologruto) regarding her claims for workers' compensation benefits and damages arising out of the death of Anthony Pologruto.

8. Gilbert agreed to handle the workers' compensation and wrongful death claims on a contingent fee basis.

9. On Sept. 22, 1998, an Agreement for Final Settlement was entered in the workers' compensation case. The Settlement Agreement provided that Ms. Pologruto would receive a \$60,000 lump sum payment, plus periodic payments of \$1,455 per month for 60 months. Ms. Pologruto knew of and agreed to the terms of the Agreement for Final Settlement.

10. On Oct. 8, 1998, Gilbert caused to be filed with the N.C. Industrial Commission a proposed order which provided that he would receive \$45,000 of the \$60,000 lump sum as an attorney fee in the workers compensation case.

11. On Oct. 14, 1998, the N.C. Industrial Commission issued an order awarding Gilbert \$15,000 of the \$60,000 lump sum settlement as an attorney fee. The order also provided that Gilbert would receive, as an additional attorney fee, one out of four of the monthly annuity checks awarded to Ms. Pologruto.

12. Gilbert was aware that the Commission had denied his request for a \$45,000 fee. He was also aware of the terms of the Oct. 14, 1998 order on or shortly after Oct. 14, 1998.

13. The Industrial Commission did not set aside or modify the Oct. 14, 1998 order at any time prior to September 1999.

14. On or about Oct. 23, 1998, Gilbert received checks for \$15,000 and \$45,000, respectively, which represented the \$60,000 lump sum settlement in the Pologruto workers' compensation case.

15. Despite the fact that he knew that the N.C. Industrial Commission had authorized him only to retain \$15,000 of the lump sum settlement as a fee in the Pologruto case, Gilbert retained \$45,000 from the lump sum settlement.

16. On or about Feb. 2, 1999, Gilbert received a check in the amount of \$1,455. The check represented one of the monthly annuity checks awarded to Ms. Pologruto pursuant to the settlement of her workers' compensation claim (hereafter, February annuity check).

17. The proceeds of the \$1,455 February annuity check were the property of Ms. Pologruto.

18. On or about Feb. 2, 1999, Gilbert deposited the \$1,455 check into his attorney trust account at Central Carolina Bank.

19. Between Feb. 4 and Feb. 23, 1999, Gilbert drew down \$920.22 of the proceeds of the February annuity check by writing trust account checks to various third parties for his personal benefit. Gilbert did not advise Ms. Pologruto before issuing these checks nor did he have her consent to draw down \$920.22 of the February annuity check proceeds for his own use and benefit.

20. Prior to Feb. 23, 1999, Ms. Pologruto contacted Mr. Gilbert's wife, Sheri Hall, who was also his secretary, to inquire about the whereabouts of the February annuity check.

21. On Feb. 23, 1999, Gilbert deposited \$2,665 in personal funds into his attorney trust account. The deposit was credited to his account on Feb. 24, 1999.

22. On or about Feb. 23, 1999, Gilbert issued a trust account check to Ms. Pologruto in the amount of \$1,455. Between Feb. 4 and Feb. 23, 1999, Gilbert did not have \$1,455 in his trust account.

23. On Feb. 23, 1999, Gilbert wrote to Ms. Pologruto, enclosing the \$1,455 trust account check to Ms. Pologruto. Gilbert stated in the letter that he had "originally intended to deduct approximately \$524" from the check for expenses accrued in the wrongful death case. Gilbert did not reveal that in fact he had drawn down \$920.20 and that these funds had been used for Gilbert's own expenses.

24. As of February 4, 1999, Gilbert had incurred costs and expenses in the workers' compensation and wrongful death cases, but these costs and expenses did not equal \$920.22.

25. In January 1996, Gilbert undertook to handle a personal injury case for Michelle and Sanjay Munavallis (hereafter, the Munavallis).

26. During his representation of the Munavallis, Gilbert ordered three CD-ROMs which contained, among other things, a medical encyclopedia, various forms, briefs and statutes. The CD-ROMs cost a total of \$4,627.43.

27. Gilbert testified that he needed the CD-ROMs to prosecute the Munavallis case, as he had never handled a personal injury action prior to undertaking the Munavallis' matter.

28. Gilbert settled the Munavallis' personal injury case for \$65,000 in April 1998.

29. On April 28, 1998, Gilbert sent to the Munavallis an itemized fee and expense statement in their case. In the fee and expense statement, Gilbert billed the Munavallis the full price for all three of the CD-ROMs which he had purchased.

29. Gilbert did not consult with the Munavallis before incurring the \$4,627.43 expense for the CD-ROMs.

30. The fee contract which Gilbert entered into with the Munavallis did not state that the Munavallis would be responsible for the cost of purchasing CD-ROMs.

31. Although the Munavallis disputed the amount of the bill which Gilbert sent to them on April 20, 1998, they ultimately paid to him \$6,800 in costs, which included the full price of the CD-ROMs.

32. Between May 13, 1999 and May 25, 1999, Gilbert withdrew a total of \$250 from his attorney trust account by issuing check numbers 1194, 1195, 1165 and 1196 to his wife.

33. Hall cashed the four checks and gave the cash proceeds to Gilbert, who used the proceeds for his own benefit.

34. On May 26, 1999, Gilbert withdrew \$10 from his attorney trust account by issuing check number 1197 made out to E. P. Mart. The proceeds of check number 1197 were used for Gilbert's benefit.

35. Gilbert did not have sufficient personal funds in his trust account to cover the entire amount of check numbers 1194, 1195, 1196, 1197 and 1165. A portion of those checks were paid using funds of a client of Gilbert named Waller, without Waller's knowledge or consent.

Based on the foregoing Findings of Fact and Conclusions of Law, the hearing committee hereby makes the following:

#### CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee and the committee has jurisdiction over Willie D. Gilbert and the subject matter of this proceeding.

2. The Disciplinary Hearing Committee was properly assigned to this matter and has authority to consider and determine all matter associated with the State Bar's Amended Complaint herein.

3. Gilbert's conduct, as set out in the Findings of Fact herein, is grounds for discipline pursuant to N.C. Gen. Stat. Section 84-28(b)(1) as follows:

a. By retaining \$45,000 of the \$60,000 lump settlement in the Pologruto case for his own use and benefit in violation of the N.C. Industrial Commission's order, Gilbert engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), engaged in criminal conduct that reflects adversely on his honesty, trustworthiness or fitness as a lawyer, in violation of Rule 8.4(b), collected an illegal fee in violation of Rule 1.5 and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d) of the Revised Rules of Professional Conduct.

b. By temporarily misappropriating a portion of the \$1,455 February 1999 annuity payment without Ms. Pologruto's knowledge or consent, Gilbert engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), engaged in criminal conduct that reflects adversely on his honesty, trustworthiness or fitness as a lawyer, in violation of Rule 8.4(b) and engaged in a conflict of interest in violation of Rule 1.7 of the Revised Rules of Professional Conduct.

c. By charging the Munavallis for three CD-ROMs which he retained in his law office library, without first obtaining his clients' approval for the expense, Gilbert engaged in a conflict of interest in violation of Rule 1.7(b) and prejudiced his clients, in violation of Rule 8.4(g) of the Revised Rules of Professional Conduct.

d. By issuing trust account checks to EP Mart and to his wife, at a time when he did not have sufficient personal funds in the account to cover the checks, with the result that client funds were temporarily used to cover a portion of the checks, Gilbert failed to disburse funds as directed by the client in violation of Rule 1.15-2(h) of the Revised Rules of Professional Conduct.

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 additional

#### FINDINGS OF FACT REGARDING DISCIPLINE

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

- a. The defendant was motivated by a dishonest or selfish motive.
- b. The defendant engaged in a pattern of misconduct.
- c. The defendant engaged in multiple violations of the Revised Rules of Professional Conduct.

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

- a. The defendant has no prior disciplinary record.
- b. The defendant was inexperienced in the practice of law at the time of the offenses.
- c. The defendant previously had a good reputation and good character for truthfulness and honesty.
- d. The temporary misappropriation of the \$1,455 February annuity check occurred in part because there was no clear agreement between Gilbert and Ms. Pologruto regarding how the costs and expenses in her cases would be paid.

3. The mitigating factors outweigh the aggravating factors.

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. The license of the defendant, Willie D. Gilbert, is hereby suspended for five years. The last three years of the suspension of Gilbert's license is hereby stayed for three years upon the following terms and conditions:

(a) Gilbert shall not violate any local, state or federal laws.

(b) Gilbert shall not violate any provisions of the Revised Rules of Professional Conduct or the rules and regulations of the North Carolina State Bar.

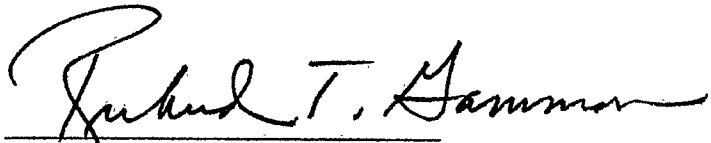
2. Prior to seeking reinstatement of his law license at the close of the two-year active suspension period, Gilbert shall

(a) comply with all provisions of Section .0125(b) of the N.C. State Bar Discipline & Disability Rules, including reimbursing the Client Security Fund for any amounts disbursed by the Client Security Fund as a result of Gilbert's misconduct.

(b) Successfully complete 20 hours of continuing legal education on the subjects of law office management and trust account requirements. Gilbert shall submit written proof of compliance to the Office of Counsel. The 20 hours of CLE shall be in addition to the mandatory CLE requirements imposed by the N.C. State Bar pursuant.

3. Gilbert shall pay the costs of this proceeding within 30 days after service of the statement of costs upon him by the Secretary of the N.C. State Bar.

Signed by the chair with the consent of the other hearing committee members, this  
the 31<sup>st</sup> day of October, 2000.



Hearing Committee Chair