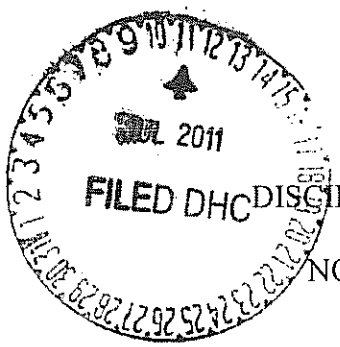
NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
11 DHC 20

THE NORTH CAROLINA STATE BAR, Plaintiff	)	
v.	)	COMPLAINT
BILLY D. FRIENDE, JR., Attorney, Defendant	)	

The plaintiff, complaining of the defendant, alleges and says:

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, Billy D. Friende, Jr. (hereinafter "Friende"), was admitted to the North Carolina State Bar on August 22, 1976 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 the time relevant to this complaint, Friende actively engaged in the private practice of law in the State of North Carolina and maintained a law office in the city of Winston-Salem, Forsyth County, North Carolina.

4. On November 12, 2003, Alice A. Jackson (hereinafter, "Ms. Jackson") moved from Alexandria, VA to Brighton Gardens, a retirement community in Forsyth County, NC.

5. While she lived in North Carolina, Ms. Jackson was cared for by her two attorneys-in-fact, Brenda D. Sloan (hereinafter, "Sloan") of Winston-Salem and Thomas E. Carter (hereinafter, "Carter") of Charles City, Va.

6. Ms. Jackson maintained an investment account at Wachovia Bank, N.A., account number ending in 0946 (hereinafter, "Wachovia 0946 account"). Account statements for the Wachovia 0946 account were sent to Carter.

7. Ms. Jackson died domiciled in Forsyth County on July 28, 2005.

8. Ms. Jackson left a will naming Sloan and Carter as co-executors. The will left all of Ms. Jackson's residual estate, including the proceeds of the Wachovia 0946 account, to five charitable institutions.

9. Sometime between Ms. Jackson's death and November 2005, Sloan retained Friende to assist her in opening and administering Ms. Jackson's estate.

10. On November 2, 2005, Carter renounced his right to qualify as co-executor in favor of Sloan.

11. On November 10, 2005, with Friende's assistance, Sloan was issued letters by the Forsyth County Clerk of Superior Court (hereinafter, "Forsyth Clerk") appointing her as the fiduciary in the Alice A. Jackson Estate (hereinafter, "Jackson Estate").

12. On November 30, 2005, Wachovia wired Ms. Jackson's principal balance of $253,159.19 from the Wachovia 0946 account to Friende's trust account for the benefit of the Jackson Estate.

13. Also on November 30, 2005, Wachovia wired Ms. Jackson's income balance of $3,602.24 from the Wachovia 0946 account to Friende's trust account for the benefit of the Jackson Estate.

14. On December 27, 2005, Wachovia wired Ms. Jackson's final share balance of $738.64 from the Wachovia 0946 account to Friende's trust account for the benefit of the Jackson Estate.

15. In total, $257,500.07 from Ms. Jackson's Wachovia 0946 account was deposited into Friende's trust account for the benefit of the Jackson Estate.

16. On January 2, 2006, without the knowledge or consent of Sloan or authorization of the Forsyth Clerk, Friende wrote a $5,000.00 trust account check, number 7927, payable to himself with a notation indicating the $5,000 was drawn on the balance he held for the Jackson Estate. Check number 7927 cleared on January 4, 2006.

17. By disbursing funds to himself by check number 7927 without authorization, Friende appropriated $5,000.00 of the Jackson Estate's funds to his own use.

18. On January 5, 2006, without the knowledge or consent of Sloan or authorization of the Forsyth Clerk, Friende wrote trust account check number 7938 to himself for the $738.64 that he had received in the last wire from the Wachovia 0946 account, but he falsely included a notation on that check indicating it was drawn from the balance of a client named Brown. Check number 7938 cleared on January 5, 2006.

19. By disbursing to himself the funds that had recently been wired to him for the Jackson Estate by Wachovia, Friende appropriated $738.64 of the Jackson Estate's funds to his own use.

20. On January 5, 2006, without the knowledge or consent of Sloan or authorization of the Forsyth Clerk, Friende wrote a $5,000.00 trust account check, number 7939, to himself with a notation indicating the $5,000.00 was drawn on the balance he held for the Jackson Estate's balance. Check number 7939 cleared on January 5, 2006.

21. By disbursing funds to himself by check number 7939 without authorization, Friende appropriated $5,000.00 of the Jackson Estate's funds to his own use.

22. On January 6, 2006, Friende filed with the Forsyth Clerk an Inventory for Decedent's Estate for the Jackson Estate (hereinafter, "Inventory") that he had prepared for Sloan. Friende falsely listed the value of Ms. Jackson's Wachovia 0946 account as $177,159.19 on the Inventory rather than the $257,500.07 that Friende had received from Wachovia.

23. Friende concealed from Sloan the amount he had actually received from Wachovia on behalf of the Jackson Estate.

24. On February 5, 2006, without the knowledge or consent of Sloan or authorization of the Forsyth Clerk, Friende wrote a $5,000.00 trust account check, number 8027, payable to himself with a notation indicating the $5,000 was drawn on the balance he held for the Jackson Estate. Check number 8027 cleared on February 6, 2006.

25. By disbursing funds to himself by check number 8027 without authorization, Friende appropriated $5,000.00 of the Jackson Estate's funds to his own use

26. On February 7, 2006, without the knowledge or consent of Sloan or authorization of the Forsyth Clerk, Friende wrote a $714.70 trust account check, number 8030, payable to himself with a notation indicating the $714.70 was drawn on the balance he held for the Jackson Estate. Check number 8030 cleared on February 9, 2006.

27. By disbursing funds to himself by check number 8030 without authorization, Friende appropriated $714.70 of the Jackson Estate's funds to his own use

28. On March 27, 2006, without the knowledge or consent of Sloan or authorization of the Forsyth Clerk, Friende wrote a $5,000.00 trust account check, number 8141, payable to himself with a notation indicating the $5,000 was drawn on the balance he held for the Jackson Estate. Check number 8141 cleared on March 28, 2006.

29. By disbursing funds to himself by check number 8141 without authorization, Friende appropriated $5,000.00 of the Jackson Estate's funds to his own use

30. On or before April 17, 2006, Friende prepared a Final Account (hereinafter, "Final Account") for the Jackson Estate that he presented to Sloan. Like the January 2006 Inventory, the Final Account falsely indicated that the proceeds of the Wachovia 0946 account were $80,340.88 less than the amount Friende had actually received from Wachovia for the benefit of the Jackson Estate.

31. The Final Account that Friende prepared also falsely reported an attorney fee paid to Friende on April 17, 2006 in the amount of $8,800.00. By April 17, 2006, Friende had already taken $21,453.34 from the Jackson Estate. Friende did not receive any Jackson Estate funds on April 17, 2006 as stated on the Final Account.

32. On April 18, 2006, after he had prepared the Final Account and without the knowledge or consent of Sloan or authorization of the Forsyth Clerk, Friende wrote a $7,000.00 trust account check, number 8227, payable to himself with a notation indicating the $7,000 was drawn on the balance he held for the Jackson Estate. Check number 8227 cleared on April 19, 2006.

33. By disbursing funds to himself by check number 8227 without authorization, Friende appropriated $7,000.00 of the Jackson Estate's funds to his own use.

34. On May 10, 2006, Friende filed the Final Account containing false information for the Jackson Estate with the Forsyth Clerk.

35. On or before July 12, 2006, after inquiries initiated by Carter, Friende prepared a supplemental final accounting for the Jackson Estate (hereinafter, "Supplemental Account") that accounted for $76,000.00 of the $80,340.88 that the Inventory and the Final Account had failed to account for.

36. The Supplemental Account showed a disbursement to Friende on June 21, 2006 of $29,143.87 as an attorney fee. No disbursement was made to Friende on that date.

37. Friende had not performed legal services for the estate that would have qualified him to take a fee in excess of the $8,800.00 fee approved by the Forsyth Clerk when the Final Account was approved.

38. Friende misrepresented to Sloan his entitlement to the $29,143.87 as an additional attorney fee for representing the Jackson Estate.

39. On February 8, 2007, Friende presented the Supplemental Account to the Forsyth Clerk for filing. The Supplemental Account contained false information because it failed to report $4,340.88 of the funds that Friende had received from the Wachovia 0946 account and misrepresented Friende's entitlement to a fee of $29,143.87 from the Jackson Estate.

40. Because of the excessive attorney fee set forth in the Supplemental Account, the Forsyth Clerk did not approve the Supplemental Account, but only "recorded" it.

THEREFORE, the plaintiff alleges that Friende's foregoing actions constitute grounds for discipline pursuant to NCGS 84-28(b)(2) in that Friende violated the Rules of Professional Conduct as follows:

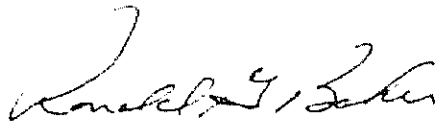
(a) by each act of appropriating funds of the Jackson Estate that he held in a fiduciary capacity to his own use, Friende committed criminal acts that reflect adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);

(b) by filing with the Forsyth Clerk the Inventory, the Final Account, and the Supplemental Account that contained false information, Friende knowingly made false statements of material facts to the Forsyth Clerk in violation of Rule 3.3(a)(1); engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c); and engaged in conduct that was prejudicial to the administration of justice in violation of Rule 8.4(d); and

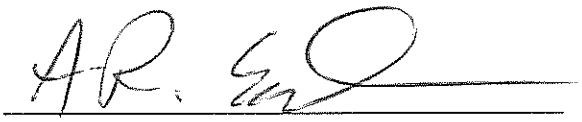
(c) by concealing from Sloan the amount he had actually received from Wachovia on behalf of the Jackson Estate and misrepresenting his entitlement to the $29,143.87 identified as an attorney fee for representing the Jackson Estate, Friende engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

WHEREFORE, the plaintiff prays that disciplinary action be taken against the defendant in accordance with NCGS Sec. 84-28(a) and 27 N.C. Admin. Code, Chapter 1, Subchapter B, § .0114, the Rules and Regulations of the North Carolina State Bar, as the evidence on hearing may warrant, that the defendant be taxed with all costs and administrative fees permitted by law in connection with this proceeding, and for such other and further relief as is appropriate.

This the 11th day of July 2011.



Ronald G. Baker, Sr., Chair
Grievance Committee



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