

BEFORE THE DISCIPLINARY HEARING COMMISSION
OF THE NORTH CAROLINA STATE BAR

THE NORTH CAROLINA STATE BAR,)
)
 Plaintiff,)
)
 vs.)
)
 JERRY CHARLES WILSON)
)
 Defendant.)

FINDINGS OF FACT
AND CONCLUSIONS OF LAW
82 DHC 1

The hearing in this matter was conducted in the offices of The North Carolina State Bar in Raleigh, North Carolina on Wednesday, July 7, 1982. A. Root Edmonson appeared as counsel for the plaintiff and Joseph B. Cheshire, V. appeared as counsel for the defendant. At the beginning of the hearing the Stipulation on Pre-Hearing Conference was approved and ordered filed. At the conclusion of the evidence, the Committee made the following:

FINDINGS OF FACT

1. All parties are properly before the Hearing Committee and the Hearing Committee has jurisdiction over the defendant and the subject matter.
2. The plaintiff failed to establish by clear, cogent and convincing evidence that the relationship of attorney and client existed between the defendant and Robert Reid Mendenhall at the time the defendant and Robert Reid Mendenhall engaged in a business enterprise known as Venture Capital, Inc.

3. It was stipulated by the parties, and the Hearing Committee finds, that the defendant signed Robert Reid Mendenhall's name to the Guaranty Agreement dated May 28, 1974 and delivered the same to the Central Bank of Montgomery, Alabama. It is further found that the defendant falsely represented to Central Bank of Montgomery, Alabama that Robert Reid Mendenhall personally signed the Guaranty Agreement of May 28, 1974 with the intent to induce the bank to advance funds to B. R. Stanley so that B. R. Stanley could deliver some of those funds to defendant. In this regard we note specially and find the following additional facts that if the defendant did not have the authority to sign Robert Reid Mendenhall's name to the guaranty, Robert Reid Mendenhall subsequently ratified the defendant's act, and Robert Reid Mendenhall has suffered no loss as a result of defendant signing Robert Reid Mendenhall's name to the guaranty.

4. Defendant admitted and the Hearing Committee finds that defendant knew that had he signed Robert Reid Mendenhall's name in a manner indicating that it had been signed by defendant and consistent with the oral authority claimed by defendant, the Central Bank of Montgomery, Alabama would not have loaned the money to B. R. Stanley.

5. Defendant instructed his wife, whose notary certificate had been revoked, to falsely witness and represent the signature of Robert Reid Mendenhall on the Guaranty Agreement of May 28, 1974 which was in fact made by defendant as having been personally made by Mendenhall with the intent to use the product obtained thereby to induce the Central Bank of Montgomery, Alabama to rely upon the credit of Mendenhall in making a loan for the benefit of defendant.

6. The plaintiff announced that it would not proceed with respect to Count 4 of the Complaint and introduced no evidence with respect thereto.

Upon the foregoing Findings of Fact the Hearing Committee makes the following:

CONCLUSIONS OF LAW

1. The plaintiff failed to prove by clear, cogent and convincing evidence the facts necessary to support the allegations contained in Count 2 with respect to the \$15,000 investment, and Count 3 with respect to the \$50,000 investment made by Mendenhall in Venture Capital, Inc.

2. By falsely representing that the signature of Robert Reid Mendenhall on the Guaranty Agreement of May 28, 1974 was actually that of Robert Reid Mendenhall which was in fact a false representation used to obtain funds for the personal benefit of the defendant, the defendant engaged in illegal conduct involving immoral turpitude, fraud and misrepresentation which adversely reflects upon his fitness to practice law in violation of Disciplinary Rule 1-102(A)(3)(4) and (6) of the Code of Professional Responsibility of The North Carolina State Bar. The Committee specially finds that if defendant did not have actual oral authority to sign Mendenhall's name to the Guaranty, that Mendenhall later ratified the defendant's conduct by inaction or acquiescence, and at any event Mendenhall suffered no loss as a result thereof.

3. The conduct of the defendant with respect to the use of his wife's "jurat" to represent the signature of Robert Reid

Mendenhall as being personally made by Robert Reid Mendenhall and therefore genuine with the intent to induce the Central Bank of Montgomery, Alabama to rely upon the credit of Mendenhall in making funds available for defendant adversely reflects upon the defendant's fitness to practice law in violation of Disciplinary Rule 1-102(A) (2) (3) (4) and (5) of the Code of Professional Responsibility of The North Carolina State Bar.

Dudley Humphrey

Dudley Humphrey, Chairman

Garrett D. Bailey

Garrett D. Bailey

Mary Cecile Bridges

Mary Cecile Bridges

ORDER OF DISCIPLINE

Upon the foregoing Findings of Fact and Conclusions of Law and upon consideration of argument of counsel with respect to discipline, the majority of the Committee orders that the defendant be suspended from the practice of law for a period of one year. The Chairman of the Committee dissents from the imposition of such discipline and files a separate statement with respect thereto.

Garrett D. Bailey

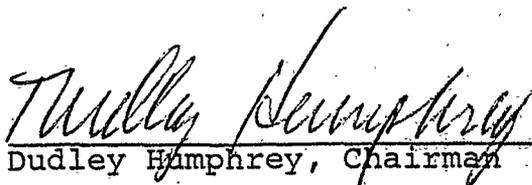
Garrett D. Bailey

Mary Cecile Bridges

Mary Cecile Bridges

STATEMENT OF CHAIRMAN

Although I concur fully in the Findings of Fact and Conclusions of Law as set forth herein, I am unable to reach any conclusion other than that the defendant should be disbarred as a result of his conduct with respect to delivering the guaranty to the Central Bank of Montgomery, Alabama. I was favorably impressed by the candor of the defendant with respect to his actions and do not believe that there is a strong likelihood that the defendant would ever repeat this conduct in the future. I am aware that no one suffered any financial loss as a result of the conduct of the defendant and believe that there is a strong likelihood that the defendant reasonably believed he had the authority to sign Robert Reid Mendenhall's name to the guaranty at the time the act was committed and believe that the subsequent conduct of Mendenhall ratified the defendant's act. However, the defendant freely testified that he knew at the time he delivered the guaranty to Central Bank of Montgomery, Alabama that had he represented his actual oral authority and signed Mendenhall's name indicating the same was done as attorney-in-fact, or agent, the bank would not have made the funds available to defendant. I believe the defendant consciously chose between expediency and truth and although no one has been hurt, I must find the conduct to be fraudulent and requiring disbarment. Such finding should in no way be considered an adverse reflection upon the contrary findings of the other members of the Committee.


Dudley Humphrey, Chairman