

NORTH CAROLINA  
WAKE COUNTY

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
85 DHC 10

THE NORTH CAROLINA STATE BAR,  
Plaintiff,  
  
v.  
  
MAXINE TYSOR BEST, Attorney,  
Defendant.

STIPULATED FINDINGS  
OF FACT AND  
CONCLUSIONS OF LAW

DR. JAMES, SEC.  
TENN. C. STATE BAR

1985 MAY 21 AM 9 50

FILED

Pursuant to Section 14(8) of the Rules of Discipline and Disbarment, the parties to the above-captioned action through their respective attorneys have agreed to a settlement upon the following stipulated Findings of Fact and Conclusions of Law. In consequence of this settlement and these stipulations, the Hearing Committee has entered an order of discipline of even date herewith to which the parties have consented and which provides that the Defendant be suspended from the practice of law for a period of two years with reinstatement being conditioned upon compliance with certain conditions enumerated therein. Incident to the settlement, the Defendant was represented by Donald D. Pollock of the Lenoir County Bar. The Plaintiff was represented by L. Thomas Lunsford, II. Based upon the representations of counsel, the Hearing Committee hereby accepts and adopts these stipulations and based upon the stipulations, the Hearing Committee makes the following Findings of Fact:

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, Maxine Tysor Best, was admitted to the North Carolina State Bar on October 6, 1975, and was at all times referred to herein, an Attorney at Law, licensed to practice law in the State of North Carolina subject to the Rules, Regulations, and Code of Professional Responsibility of the North Carolina State Bar, and the laws of the State of North Carolina.

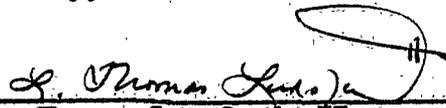
3. At and during all of the times hereinafter referred to, the Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Fayetteville, Cumberland County, North Carolina.
4. In May, 1982, the Defendant was employed by Josiah Mercer, executor of the estate of Oscar Mercer, to represent him concerning the administration of said estate in Cumberland County. No fee or means for determining a fee for legal services was agreed upon at the time of employment.
5. An estate checking account was established shortly thereafter at United Carolina Bank (account no. 50-521-330-3) in Fayetteville on which both Josiah Mercer and the Defendant had signatory authority. The Defendant retained custody of the estate checkbook with the permission of the personal representative and wrote all estate checks. The total value of the estate was less than \$20,000.
6. During the course of the administration the Defendant handled all routine estate affairs and represented the estate in a contested caveat proceeding. The Defendant performed substantial legal services for the estate. Between May 25, 1983, and September 23, 1983, the Defendant wrote six (6) estate checks payable to herself and to cash totalling \$5,500.00. Three of these checks totalling \$3,750.00 were designated as legal fees and all were intended as legal fees. The Defendant negotiated the checks and used the funds obtained for personal purposes. The Defendant claims she did not realize at the time she wrote estate checks for cash that such was inappropriate.
7. Prior to writing the checks referred to in paragraph 6 above, the Defendant did not consult with the personal representative or the Clerk of Superior Court as to the timing or amount of the payments described above. They were made without regard to time spent or work accomplished in the total discretion of the Defendant. No legal fees paid by the Defendant to herself have ever been approved by the Clerk of Superior Court.
8. The Defendant kept no records of her handling of the estate funds other than check stubs, several of which contained no description of how estate funds were used. The Defendant had bank statements and cancelled checks mailed directly to the personal representative.
9. On or about September 4, 1984, the Defendant prepared and filed a final account in the estate of Oscar Mercer in the office of the Clerk of Superior Court. This final account, which was signed and approved by the personal representative, showed that the Defendant had received only \$4,100.00 from the estate in legal fees, approximately \$1,400.00 less than she had actually received. The Defendant knew at the time she presented the final account that it did not accurately state the total amount of fees she had paid herself. The final account was not approved by the Clerk.

10. On or about May 10, 1983, Eva Walker, administratrix of the estate of Ishmael Walker, retained the Defendant to assist her concerning the administration of said estate in Cumberland County. A fee for this service of \$700.00 was agreed upon and the Defendant was paid \$160.00 by Eva Walker at the time of employment.
11. An estate checking account was established shortly thereafter at First Citizens Bank and Trust Company (account no. 034-73-44-404) in Fayetteville on which both the administratrix and the Defendant had signatory authority. The Defendant retained custody of the estate checkbook with the permission of the administratrix and wrote all estate checks.
12. During the course of the administration the Defendant handled all routine estate affairs. Between June 22, 1983, and August 10, 1983, the Defendant wrote seven (7) estate checks payable to herself and to cash totalling \$1,820.00. Five of these checks totalling \$1,700.00 were designated as legal fees and all were intended as legal fees. The Defendant negotiated the checks and used the funds obtained for personal purposes. The Defendant claims that checks representing the difference between the amount she actually paid herself and the contract fee were inadvertently written on the Walker account instead of the Mercer account. According to the Defendant, the checkbooks for the two estates were very similar in appearance and kept in the same drawer in her office. The Defendant has fully refunded to the Walker estate all funds paid to her as legal fees in excess of the \$700 contract fee. The Defendant claims that at the time she wrote estate checks for cash she did not realize that such was inappropriate.
13. Prior to writing the checks referred to in paragraph 12 above, the Defendant did not consult with the administratrix or the Clerk of Superior Court as to the timing or amount of the payments described above. They were made without regard to time spent or work accomplished in the total discretion of the Defendant. Neither the administratrix nor the Clerk of Superior Court ever authorized a fee in excess of \$700.00.
14. The Defendant kept no records of her handling of the estate funds other than check stubs. The Defendant had bank statements and cancelled checks mailed directly to the administratrix. After disbursement of all funds in the estate account, the Defendant destroyed the checkbook, including all checkstubs, for the professed purpose of insuring that unused checks would not be misused.
15. The Defendant received a private reprimand from the Grievance Committee in 1984 for failing to deposit client funds in a trust account and for failing to pay client funds promptly as directed in 1981.

Based upon the foregoing FINDINGS OF FACT the parties stipulate the following CONCLUSIONS OF LAW:

1. The Disciplinary Hearing Commission has subject matter jurisdiction and has obtained personal jurisdiction over the Defendant.
2. The Defendant has engaged in conduct constituting grounds for discipline under N. C. Gen. Stat. §84-28(A) and (B) by violating the Disciplinary Rules of the Code of Professional Responsibility of the North Carolina State Bar in the following respects:
  - a. By intentionally misrepresenting the amount of money she received from the Mercer estate, the Defendant engaged in conduct involving dishonesty, fraud, deceit and misrepresentation and in professional conduct which adversely reflects upon her fitness to practice in violation of Disciplinary Rules 1-102(A)(4) and (6), respectively, of the Code of Professional Responsibility.
  - b. By paying herself fees from the Mercer estate for legal services which had not been specifically approved in advance by her client or the Clerk of Superior Court and which were unrelated to time spent and work accomplished, the Defendant engaged in professional conduct which adversely reflects on her fitness to practice and failed to maintain client funds in a trust account in violation of Disciplinary Rules 1-102(A)(6) and 9-102(A), respectively, of the Code of Professional Responsibility.
  - c. By not keeping adequate records of her handling of estate funds in the Walker and Mercer estates, the Defendant failed to maintain complete records of all clients funds in her possession in violation of Disciplinary Rules 9-102(B)(3) of the Code of Professional Responsibility.
  - d. By paying herself legal fees in the Walker estate which had not been specifically approved in advance by her client or the Clerk of Superior Court, which exceeded the contract amount, and which were unrelated to time spent or work accomplished, the Defendant engaged in professional conduct that adversely reflects on her fitness to practice law and failed to maintain client funds in a trust account in violation of Disciplinary Rules 1-102(A)(6) and 9-102(A) of the Code of Professional Responsibility.
  - e. By undertaking to represent estates without understanding that it is inappropriate to write estate checks to cash, to pay arbitrarily determined amounts of legal fees at arbitrary times without the specific authority of the personal representative, and to destroy financial records after settlement, the Defendant handled legal matters which she should have known she was not competent to handle in violation of Disciplinary Rule 6-101(A)(1) of the Code of Professional Responsibility.

Stipulated to, this the 22<sup>nd</sup> day of May, 1985.

  
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L. Thomas Lunsford, II  
Attorney for Plaintiff

Donald D. Pollock  
Donald D. Pollock  
Attorney for Defendant

Maxine Tysor Best  
Maxine Tysor Best  
Defendant

The foregoing stipulated FINDINGS OF FACT and CONCLUSIONS OF LAW are adopted and the Hearing Committee finds the facts and conclusions of law as stated. Further, the Committee finds misconduct.

Pursuant to Discipline and Disbarment Rule §14(20), the Committee has authorized the Chairman to sign on behalf of all members.

This the 23<sup>rd</sup> day of May, 1985.

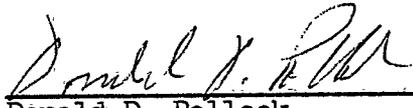
Frank B. Wyatt  
Frank B. Wyatt, Chairman  
Hearing Committee



3. This order shall be effective 30 days after service on the Defendant or 30 days after affirmation of this order if it is appealed.
4. The Defendant shall surrender her license and membership card to the Secretary of the North Carolina State Bar who will maintain them during the period of suspension.
5. The Defendant shall comply with all provisions of Rule 24 of the Discipline and Disbarment Rules of the North Carolina State Bar governing the winding down of her practice and shall not engage in any conduct which would constitute the practice of law or a holding out as capable of practicing law during the period of suspension.
6. The Defendant is taxed with the costs of this proceeding.

Consented and agreed to, this the 22<sup>nd</sup> day of May, 1985.

  
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L. Thomas Lunsford, II  
Attorney for Plaintiff

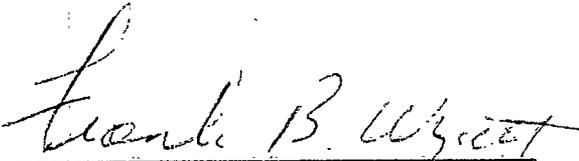
  
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Donald D. Pollock  
Attorney for Defendant

  
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Maxine Tysor Best  
Defendant

The foregoing Consent Order of Discipline is adopted by the Hearing Committee and entered as the Order of Discipline of the Committee.

Pursuant to Discipline and Disbarment Rule §14(20), the Committee has authorized the Chairman to sign on behalf of all members.

This the 23<sup>rd</sup> day of May, 1985.

  
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Frank B. Wyatt, Chairman  
Hearing Committee