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Filed 1986, June 23

NORTH CAROLINA  
WAKE COUNTY

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
86 DHC 2

THE NORTH CAROLINA STATE BAR, )  
Plaintiff )  
vs. )  
BRUCE E. KINNAMAN, Attorney )  
Defendant )

ORDER OF DISCIPLINE

This cause was heard by a duly appointed Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar consisting of George Ward Hendon, Chairman, James E. Ferguson, and John Beach on Friday, May 23, 1986. Based upon the FINDINGS OF FACT and CONCLUSIONS OF LAW entered in this cause and the evidence presented relative to the appropriate disciplinary sanction, including all aggravating and mitigating evidence, the Hearing Committee enters this ORDER OF DISCIPLINE.

1. The Defendant is suspended from the practice of law for a period of six (6) months, effective thirty (30) days after service of this ORDER or, if an appeal is prosecuted, thirty (30) after affirmation of the ORDER on appeal.

2. The Defendant shall surrender his license and membership card to the Secretary of the North Carolina State Bar by the effective date of this Order.

3. The Defendant shall comply with the pertinent provisions of Section 24 of the Rules of Discipline and Disbarment of the North Carolina State Bar.

4. The Defendant shall pay the costs of this proceeding.

Pursuant to Section 14(20) of the Rules of Discipline and Disbarment, the Hearing Committee has authorized the Chairman to sign this ORDER on behalf of all members.

This the 19 day of June, 1986.

  
George Ward Hendon, Chairman  
(for the Committee)

Dissent:

In my judgment, the Defendant should receive a suspension for three years for his misconduct. <sup>at least</sup>

  
George Ward Hendon (Individually)

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Plaintiff )

vs. )

BRUCE E. KINNAMAN, Attorney )  
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FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

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This cause was heard by a duly appointed Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar consisting of George Ward Hendon, Chairman, James E. Ferguson, and John Beach on Friday, May 23, 1986. The North Carolina State Bar was represented by L. Thomas Lunsford, II, and the Defendant was represented by Joseph B. Cheshire, V. Based upon the evidence at hearing, the pleadings and the stipulations in the pretrial order, the Committee finds the following FACTS by clear, cogent and convincing evidence.

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, Bruce E. Kinnaman, was admitted to the North Carolina State Bar in 1980 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 Code of Professional Responsibility of the North Carolina State Bar and the laws of the State of North Carolina.

3. During all of the period referred to herein, 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 Sanford, Lee County, North Carolina.

4. In November, 1983, the Defendant was employed by Roderick Barker and Danita Barker to represent them relative to their claim against Central Carolina Hospital for the death of their infant son due to alleged medical malpractice. In accepting employment, the Defendant agreed in a

written contract to handle the case for a contingency fee of 30% of the gross recovery, if any. (The evidence presented at trial was in conflict as to whether the Defendant and the Barkers subsequently amended their contract orally to provide for greater compensation. The Committee makes no finding on that question).

5. During the winter and spring of 1984, the Defendant investigated and researched the case and also negotiated with hospital officials.

6. In mid-July, 1984, the Defendant concluded negotiations and arranged for a structured settlement of the case on terms which were satisfactory to his clients. The total amount of the settlement was \$225,000.00. The settlement provided for the purchase of an annuity contract for the benefit of the Barkers for the sum of \$100,000.00. The balance of the settlement proceeds, \$125,000.00, was deposited into a new checking account at the Mid-South Bank and Trust Company in Broadway, North Carolina, account number 033009465, with respect to which each of the Barkers and the Defendant had independent signatory authority. The joint checking account was established to enable the Defendant to assist his clients, who were relatively unsophisticated and had never successfully maintained a checking account, in the handling of their money.

7. In August, 1984, the Defendant paid himself and his firm legal fees totalling \$80,256.50 by checks drawn on the subject account.

8. Included in the payments alleged in the preceding paragraph were two checks, identified by the handprinted letters "R" and "S", which were drawn by the Defendant on or about August 9, 1984 and made payable to Robert Johnston and William Peterson in the amounts of \$8,000.00 and \$4,000.00, respectively. The persons named as payees were actually nonexistent. These checks, which were negotiated by the Defendant for his personal benefit, were issued to fictitious persons with the intent to deceive the Internal Revenue Service.

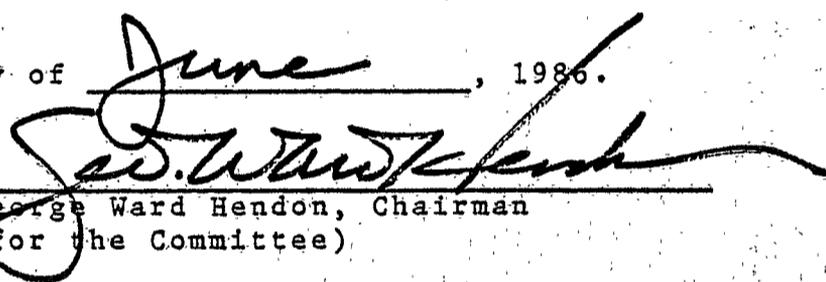
9. Another check, identified by the handprinted letter "Q", was drawn by the Defendant on or about August 9, 1984 and made payable to Roderick Barker in the amount of \$8,000.00. This check was never delivered to Roderick Barker but, rather, was negotiated by the Defendant for his personal use and benefit upon the false indorsement of Roderick Barker, which indorsement the Defendant either signed or directed someone else to sign.

BASED upon the foregoing Findings of Fact, the Hearing Committee makes the following Conclusions of Law.

- (a) The Defendant, by issuing and negotiating checks in the name of fictitious individuals, engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Disciplinary Rule 1-102(A)(4) of the North Carolina Code of Professional Responsibility;

- (b) The Defendant, by issuing checks to fictitious persons and to a person other than himself to conceal payment of legal fees for the purpose of deceiving the Internal Revenue Service, engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation and engaged in professional conduct that adversely reflects on his fitness to practice law in violation of Disciplinary Rules 1-102(A)(4) and (6), respectively, of the North Carolina Code of Professional Responsibility;
- (c) The Defendant, by signing or by directing someone else to sign the name of Roderick Barker and by negotiating a check with an indorsement known to be false, engaged in illegal conduct involving moral turpitude, engaged in conduct involving fraud, deceit, dishonesty, or misrepresentation and engaged in other conduct that adversely reflects on his fitness to practice law in violation of Disciplinary Rules 1-102(A)(3), (4) and (6), respectively, of the North Carolina Code of Professional Responsibility.

This the 19 day of June, 1986.

  
George Ward Hendon, Chairman  
(for the Committee)