

NORTH CAROLINA
WAKE COUNTY

FILED
1985 JUN 10 PM 1:58
B.E. JAMES, SEC.
THE N. C. STATE BAR

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
85 DHC 8

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
vs.)
EARL WHITTED, JR.,)
Defendant)

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This matter coming on to be heard and being heard on May 29, 1985 before a Hearing Committee composed of Robert W. Wolf, Chairman, George Ward Hendon, and Alice Penny; with A. Root Edmonson representing the North Carolina State Bar and Herbert Hulse representing the Defendant; and based upon the stipulations filed and the evidence presented at the hearing, the Hearing Committee finds the following by clear, cogent, and convincing evidence:

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, Earl Whitted, Jr., was admitted to the North Carolina State Bar on September 26, 1955 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 of the laws of the State of North Carolina.

3. During all of the periods 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 Goldsboro, Wayne County, North Carolina.

4. On March 23, 1984, Tyrone McCalop was killed in an automobile accident while a passenger in an automobile driven by Matt Arthur Moore. The Moore vehicle collided with an automobile driven by Cornelious E. Page.

5. On April 9, 1984, Mrs. Evelyn McCalop Goodman retained Defendant to litigate or settle all claims against any persons responsible for the death of her son, Tyrone McCalop.

6. In May, 1984, Defendant received a med-pay draft from Allstate Insurance Company in the amount of \$2,000.00 payable to Evelyn M. Goodman, Administratrix of the estate of Tyrone McCalop and attorney Earl Whitted, Jr which had been sent to Defendant by Allstate on May 14, 1984.

7. Defendant did not notify Mrs. Goodman of the receipt of this draft. Defendant placed the necessary endorsements on the draft and cashed it. Mrs. Goodman did not endorse the draft nor did she authorize Defendant to endorse her signature.

8. Defendant failed to deposit the \$2,000.00 med-pay draft into a trust account. Defendant appropriated the proceeds of this draft to his own use.

9. On July 19, 1984, a settlement draft in the amount of \$7,000.00 was forwarded to Defendant in full settlement of all claims against Allstate Insurance Company.

10. On Saturday, July 21, 1984, Mrs. Goodman and Joseph McCalop, Tyrone McCalop's father, executed a release of Allstate's Insureds as consideration for the \$9,000.00 received from Allstate. Mrs. Goodman endorsed the \$7,000.00 draft and left it with the Defendant. Defendant deposited the \$7,000.00 settlement draft into his office account at Branch Bank and Trust Company (BB&T) in Goldsboro, North Carolina on July 24, 1984. Defendant did not maintain a trust account in any North Carolina bank.

11. Mrs. Goodman was informed by Defendant that she would get her funds at a subsequent date. She was also informed that the Wiseman Mortuary, Inc. bill would be taken care of.

12. On September 7, 1984, Ms. Goodman called Defendant and told him to have her money ready for her. Defendant agreed to do so.

13. On Saturday, September 8, 1984, Ms. Goodman went to Defendant's office to receive her share of the settlement proceeds. Defendant wrote Ms. Goodman a check, number 166, on Defendant's office account at BB&T, account number 112-1164287, in the amount of \$2,349.00.

14. On Monday, September 10, 1984, Ms. Goodman took check number 166 to a BB&T branch office in Fayetteville, North Carolina and was informed that there were insufficient funds on deposit in Defendant's account to cover the check. Ms. Goodman was given a letter to this effect by Ms. Vivian Settle.

15. Ms. Goodman called Defendant's office on September 10, 1984 and informed a secretary that the check was not good.

16. Defendant had made a deposit on Friday afternoon, September 7, 1984, that was not shown on BB&T's computers until after the end of the business day on September 10, 1985. Had the deposit been credited, the check would have been good. The balance in account number 112-1164287 would not have exceeded \$2,419.19 on September 10, 1984, if the deposit had been credited.

17. On September 12, 1984, Mrs. Goodman's new attorney, Thomas Henry Finch, Jr., mailed a letter to Defendant demanding an accounting of the settlement proceeds on Ms. Goodman's behalf. He also demanded a certified check for Ms. Goodman's share of the proceeds and demanded that Wiseman Mortuary, Inc. be paid.

18. On September 18, 1984, Thomas Henry Finch, Jr. again directed a demand for payment to Defendant on behalf of Ms. Goodman.

19. On September 21, 1984, Defendant paid Wiseman Mortuary, Inc. by check number 183 on his BB&T account, number 112-1164287.

20. On September 21, 1984, Defendant wrote to Thomas Henry Finch, Jr. and instructed him to tell his client to present check no. 166 for payment.

21. On September 26, 1984, Defendant purchased a cashier's check from BB&T made payable to Joseph McCalop in the amount of \$2,349.00 and forwarded same to the Clerk of Superior Court.

22. By order dated September 28, 1984, George T. Griffin, Clerk of Superior Court, Cumberland County, ordered Defendant to appear on October 19, 1984 and produce an inventory and accounting in the McCalop estate.

23. On October 18, 1984, Defendant filed an accounting with the Clerk of Superior Court in the McCalop estate.

24. By letter dated August 16, 1984, the attorney for American Mutual Fire Insurance Company, insurers responsible for payment of claims against Cornelius E. Page, offered to pay its policy limits, \$50,000, to the four occupants of Matt Arthur Moore's automobile if the four occupants could agree on a split of those funds.

25. Upon receipt of this letter, Defendant informed Ms. Goodman. Mrs. Goodman subsequently took Defendant to meet with Annie R. Moore, mother of Matt A. Moore. Defendant agreed to represent Annie R. Moore and explained to her that she would not get as large a share of the settlement proceeds as the

representatives of the other occupants of the car since her son had been driving.

26. Defendant subsequently got both of his clients, Ms. Goodman and Ms. Moore, to agree to a proposed division of the \$50,000. Ms. Goodman was to receive \$15,333.00 and Ms. Moore \$4,000.00.

27. Defendant did not fully disclose the possible effect of his multiple representation on his independent professional judgment on behalf of the McCalop and Moore estates.

BASED UPON the foregoing FINDINGS OF FACT, the Hearing Committee makes the following:

CONCLUSIONS OF LAW

The conduct of Defendant, as set forth above, constitutes grounds for discipline pursuant to N.C.G.S. §84-28(a) and (b)(2) in that Defendant violated the Disciplinary Rules of the Code of Professional Responsibility as follows:

- (a) Both by placing a false endorsement on the \$2,000 med-pay draft from Allstate Insurance Company and by cashing said draft and appropriating the proceeds to his own use, Defendant engaged in illegal conduct involving moral turpitude in violation of Disciplinary Rule 1-102(A)(3); engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Disciplinary Rule 1-102(A)(4); and engaged in other professional conduct adversely reflecting on his fitness to practice law in violation of Disciplinary Rule 1-102(A)(6).
- (b) By failing to notify his client of receipt of the \$2,000 med-pay draft from Allstate Insurance Company upon receipt of said draft, Defendant failed to notify his client of receipt of her funds in violation of Disciplinary Rule 9-102(B)(1)
- (c) By failing to account for the \$2,000.00 med-pay draft to his client, Defendant failed to maintain complete records of all funds of the client and render appropriate accounts to his client regarding them in violation of Disciplinary Rule 9-102(B)(3).
- (d) By failing to pay any portion of the \$2,000.00 med-pay draft to his client when it was received, Defendant failed to promptly pay or deliver to the client as

requested by the client the funds in possession of the lawyer which the client was entitled to receive in violation of Disciplinary Rule 9-102(B)(4).

- (e) By failing to maintain a trust account in a North Carolina bank in which to deposit funds of his clients', and by placing his client funds in his general office account, Defendant failed to preserve the identity of all funds of the client paid to the lawyer or law firm in one or more identifiable bank accounts maintained within the state with no funds of the lawyer or law firm deposited therein in violation of Disciplinary Rule 9-102(A) [for conduct occurring after August 29, 1984, the appropriate designation for the applicable former Rule is Disciplinary Rule 9-102(A)(3).]
- (f) By agreeing to represent Mrs. Annie R. Moore in settlement of her wrongful death claim on behalf of her son, Matt Arthur Moore, while representing Mrs. Evelyn Goodman on behalf of her son, Tyrone McCalop, knowing that the interests of both clients in the apportionment of the insurance proceeds conflicted, Defendant failed to decline the proffered employment by Mrs. Annie R. Moore knowing that his independent professional judgment on behalf of his other client, Mrs. Goodman, would be or was likely to be adversely affected by the acceptance of the proffered employment in violation of Disciplinary Rule 5-105(A).
- (g) The above referenced multiple representation was not a situation in which it was obvious that Defendant could represent the interests of both the McCalop and Moore estates as would be permitted by Disciplinary Rule 5-105(C).
- (h) Defendant did not give a full disclosure to Mrs. Goodman of the possible effect of the multiple representation on the exercise of his independent professional judgment as would be required for the multiple representation to be permitted by Disciplinary Rule 5-105(C).

Signed by the undersigned Chairman with the consent of the other members of the Hearing Committee.

This the 6th day of June, 1985.



Robert W. Wolf, Chairman
The Disciplinary Hearing Committee

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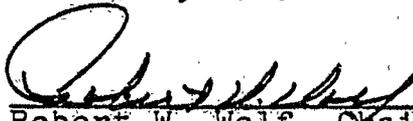
THE NORTH CAROLINA STATE BAR,)
Plaintiff)
vs.) ORDER OF DISCIPLINE
EARL WHITTED, JR.,)
Defendant)

BASED UPON the FINDINGS OF FACT and CONCLUSIONS OF LAW entered in this matter of even date herewith, the Hearing Committee enters the following ORDER OF DISCIPLINE:

- (1) The Defendant, Earl Whitted, Jr. is hereby ordered DISBARRED from the practice of law in North Carolina.
- (2) Defendant shall surrender his license and membership card to the Secretary of the North Carolina State Bar.
- (3) Defendant shall comply with the provisions of §24 of Article IX of the Rules and Regulations of the North Carolina State Bar contained in the Red Book.
- (4) Defendant is taxed with the costs of this action.

Signed by the undersigned Chairman with the consent of the other members of the Hearing Committee.

This the 6TH day of June, 1985.


Robert W. Wolf, Chairman
The Disciplinary Hearing Committee