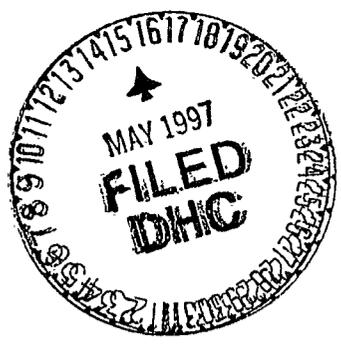


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NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
97 DHC 4

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
v.)
BEN K. WILSON, JR., Attorney)
Defendant)

FINDINGS OF FACT
AND CONCLUSIONS OF LAW
AND ORDER OF DISCIPLINE

This matter was heard on the 9th day of May, 1997, before a hearing committee of the Disciplinary Hearing Commission composed of Robert B. Smith, Jr., Chair; Michael L. Bonfoey and A. James Early. The plaintiff was represented by A. Root Edmonson. The defendant did not appear and was not represented by counsel. Based upon the pleadings and the evidence introduced at the hearing, the hearing committee hereby enters the following:

FINDINGS OF FACT

1. 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 North Carolina General Statutes and the Rules and Regulations of the North Carolina State Bar.
2. The defendant, Ben K. Wilson, Jr. (hereinafter Wilson) was admitted to the North Carolina State Bar on April 27, 1987 and was at all times relevant hereto licensed to practice law in North Carolina, subject to the rules, regulations and Rules of Professional Conduct of the North Carolina State Bar.
3. During all times relevant hereto, Wilson was actively engaged in the practice of law in North Carolina, and maintained a law office in Angier, Harnett County, North Carolina.
4. Wilson was properly served with process and the hearing was held with due notice to all parties.
5. Wilson maintained an attorney trust account at BB&T in Angier, N.C., account number 5110053063 (hereinafter trust account).

6. Knowledge Products Company (hereinafter KPC), a business management consulting firm, filed a lawsuit against Fast Food Merchandisers, Inc. (hereinafter FFM), a division of Hardees, for breach of contract.

7. After the law firm that filed KPC's lawsuit against FFM failed to resolve the matter, KPC's president, Bruce Speicher (hereinafter Speicher), turned the matter over to Wilson. Wilson was KPC's corporate attorney. The agreement between Speicher and Wilson was for Wilson to receive a 20% contingency fee for the FFM matter.

8. Speicher authorized Wilson to settle the FFM matter for \$30,000.

9. In October, 1995, shortly after the taking of Speicher's deposition, FFM's attorney, Bettie K. Sousa (hereinafter Sousa), and Wilson agreed to settle the case for \$20,000. Wilson did not seek Speicher's consent to the settlement. Sousa prepared a Settlement Agreement reflecting a \$20,000 confidential settlement and sent two originals of the document to Wilson for his and his client's signatures.

10. Wilson subsequently suggested a minor change in the Settlement Agreement document. Sousa agreed to make the change that Wilson suggested and send two originals of the amended document to him.

11. Wilson told Sousa that he would scan the Settlement Agreement into his computer and make the change himself.

12. On November 8, 1995, Wilson went to Speicher's office with two originals of a purported Settlement Agreement that falsely indicated that the FFM case was being settled for \$30,000. Speicher signed on page four of both copies of that Settlement Agreement. Page four of the Settlement Agreement contained only the date and signature information. Wilson did not tell Speicher that in fact he had agreed to settle the case for \$20,000.

13. Wilson left trust account check number 6151 in the sum of \$24,000 made payable to KPC with Speicher on November 8, 1995. Wilson led Speicher to believe that the amount of this check represented the \$30,000 gross settlement less Wilson's 20% fee of \$6,000.

14. At the time Wilson wrote trust account check number 6151 and left it with Speicher, no deposit had been made into Wilson's trust account on behalf of KPC. Trust account check number 6151 was covered by funds of other clients of Wilson which Wilson should have maintained in a fiduciary capacity in his trust account. Wilson did not have the consent of his other clients to use their funds for that purpose.

15. Also on November 8, 1995, Wilson left two originals of the actual Settlement Agreement reflecting the \$20,000 settlement, which he and Speicher had signed, at Sousa's office for her to send to FFM to be signed. The first three pages of the false Settlement Agreement that Wilson had shown to Speicher had been replaced by Wilson's computer's version of the first three pages of the Settlement Agreement that Sousa had originally drafted.

16. Sousa subsequently sent FFM's \$20,000 settlement check to Wilson which he deposited into his trust account on November 14, 1995.

17. Wilson never deposited other funds into his trust account on behalf of KPC to cover the balance of check number 6151.

18. Wilson maintained an office account at BB&T in Angier, N.C., account number 053101121 (hereinafter office account).

19. On December 5, 1995, Wilson wrote trust account check number 6166 to himself in the sum of \$2,000 as attorney fees. The check did not indicate the name of any client whose purported fee was being paid.

20. At the time Wilson wrote trust account check number 6166, Wilson did not have \$2,000 of earned fees accumulated in his trust account from which trust account check 6166 could be paid. Trust account check number 6166 was covered by funds of other clients of Wilson which Wilson should have maintained in a fiduciary capacity in his trust account. Wilson did not have the consent of his other clients to use their funds for that purpose.

21. On December 5, 1996, Wilson deposited trust account check number 6166 into his office account. Wilson used the proceeds of trust account check number 6166 for his own benefit.

22. On November 27, 1995, Wilson deposited \$11,043.03 into his attorney trust account on behalf of a client named Fitzgerald.

23. As of December 12, 1995, Wilson had disbursed \$5,043.03 on behalf of Fitzgerald. A balance of \$6,000.00 was retained by Wilson to pay liens on behalf of Fitzgerald.

24. No other disbursements were made from Wilson's attorney trust account on behalf of Fitzgerald.

25. As of January 31, 1996, because of the improper withdrawals made by Wilson as referenced above, the balance in Wilson's attorney trust account was only \$4,188.30.

BASED UPON the foregoing Findings of Fact, the hearing committee enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee and the committee has jurisdiction over Ben K. Wilson, Jr. and the subject matter.

2. Wilson's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Wilson violated the NC Rules of Professional Conduct as follows:

- (a) By failing to seek Speicher's consent to the \$20,000 settlement he agreed with Sousa to enter into on behalf of KPC, Wilson failed to abide by his client's decision respecting whether to accept an offer of settlement in a matter in violation of Rule 7.1(c)(1).
- (b) By falsely representing to Speicher that KPC's case against FFM had been settled for \$30,000 when he had agreed to settle the case for \$20,000, Wilson engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(c) and knowingly made a false statement of fact in violation of Rule 7.2(a)(4).
- (c) By presenting Speicher with a false Settlement Agreement indicating that KPC's case against FFM had been settled for \$30,000 when he had actually agreed with Sousa to settle the matter for \$20,000, Wilson participated in the creation or preservation of evidence when he knew that the evidence was false in violation of Rule 7.2(a)(6).
- (d) By appropriating funds of clients which he should have maintained in his trust account in a fiduciary capacity to his own use to pay trust account check number 6151 written to KPC on November 8, 1995 when no funds had been deposited into his trust account from which KPC's settlement could be paid, Wilson committed a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects in violation of Rule 1.2(b); engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(c); and failed to maintain funds received in a fiduciary capacity in his trust account in violation of Rules 10.1(a) and (c).
- (e) By appropriating funds of clients which he should have maintained in his trust account in a fiduciary capacity to his own use to pay trust account check number 6166 written to himself in the sum of \$2,000 on December 5, 1995 as fees when he did not have \$2,000 in earned fees accumulated in his trust account, Wilson committed a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects in violation of Rule 1.2(b); engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(c); and failed to maintain funds received in a fiduciary capacity in his trust account in violation of Rules 10.1(a) and (c).
- (f) By writing trust account check number 6166 to himself as fees without indicating the name of any client whose purported fee was being paid, Wilson wrote a check from his trust account for payment of fees to himself without indicating from which client balance the payment was drawn in violation of Rule 10.2(c)(2).

- (g) By failing to maintain at least a \$6,000 balance in his trust account on behalf of Fitzgerald, Wilson failed to maintain funds received in a fiduciary capacity in his trust account in violation of Rules 10.1(a) and (c).
- (h) By failing to promptly pay Fitzgerald's liens with the funds Fitzgerald had left with him for that purpose, Wilson failed to promptly pay to third persons as directed by the client the funds belonging to the client in Wilson's possession in violation of Rule 10.2(e).

BASED UPON the foregoing Findings of Fact and Conclusions of Law and upon the evidence and arguments concerning the appropriate discipline, the hearing committee hereby makes the additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. The defendant's misconduct is aggravated by the following factors:
 - a. dishonest motive; and
 - b. multiple offenses;
2. The defendant's misconduct is mitigated by the following factors:
 - a. absence of prior disciplinary record;
 - b. good faith effort to make restitution to Fitzgerald; and
 - c. physical or mental impairment.
3. The aggravating factors outweigh the mitigating factors.

Based upon the foregoing aggravating and mitigating factors and the arguments, the hearing committee hereby enters the following

ORDER OF DISCIPLINE

1. The defendant, Ben K. Wilson, Jr., is hereby disbarred from the practice of law.
2. As a condition of reinstatement, in addition to the requirements of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0125(a)(3), Wilson must demonstrate by clear, cogent and convincing evidence that:
 - (a) he does not suffer from a mental or physical condition which impairs his professional judgment, performance or competence; and

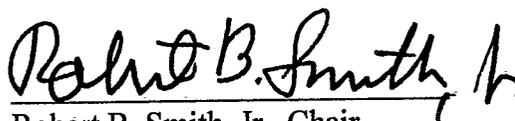
(b) any past impairment or condition has been under control for a sufficient period of time to demonstrate that such impairment or condition will not interfere with Wilson's ability to practice law in a professionally responsible, competent manner.

3. Wilson shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon him.

4. Wilson shall pay the costs of this proceeding as assessed by the Secretary within thirty (30) days of service of this order.

5. Wilson shall comply with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the N.C. State Bar Discipline & Disability Rules.

Signed by the chair with the consent of the other hearing committee members, this the 13 day of May, 1997.



Robert B. Smith, Jr., Chair
Hearing Committee