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WAKE COUNTY
NORTH CAROLINA



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
99 DHC 20

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
v.)
ROBERT D. JENKINS, ATTORNEY)
Defendant)

FINDINGS OF FACT
AND CONCLUSIONS OF LAW
AND ORDER OF DISCIPLINE

This matter was heard on the 8th day of October, 1999, before a hearing committee of the Disciplinary Hearing Commission composed of Richard T. Gammon, Chair; Fred H. Moody, Jr., and Robert B. Frantz. Douglas J. Brocker represented plaintiff. Defendant, Robert D. Jenkins, did not appear at the hearing. Based upon the pleadings, the entry of default, and the evidence introduced at the hearing on plaintiff's motion for an order of discipline, the hearing committee hereby enters the following:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar (hereafter "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. Defendant, Robert D. Jenkins, (hereafter "Jenkins"), was admitted to the North Carolina State Bar on August 23, 1991 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 Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During the times relevant to this complaint, Jenkins actively engaged in the practice of law in the State of North Carolina and maintained a law office in the city of Gastonia, Gaston County, North Carolina.

4. Defendant was properly served with process and the hearing was held with due notice to all parties. Defendant requested that his counsel, Johnny S. Gaskins, accept service of the State Bar's complaint in this matter. Pursuant to this request, Gaskins, on behalf of Jenkins, accepted service of the summons, complaint, requests for admission, and other discovery requests on July 26, 1999. On that same day, Gaskins forwarded a copy of the complaint and discovery requests to Jenkins. Gaskins subsequently made repeated efforts to get Jenkins to provide information necessary to answer the complaint before withdrawing from his representation.

5. Jenkins maintained a trust account at NationsBank, account number 112304, at all times relevant to this complaint. The NationsBank account was a trust or fiduciary account as defined in Rule 1.15-1(b)(2) & (3) of the Revised Rules of Professional Conduct (hereafter "NationsBank trust account").

6. Jenkins also maintained an account with Centura Bank, account number 673021607. The Centura Bank account is not a trust or fiduciary account as defined in Rule 1.15-1(b)(2) & (3) of the Revised Rules of Professional Conduct (hereafter "Centura Bank operating account").

7. Jenkins was the attorney for the Estate of Louise Ledbetter.

8. On or about March 7, 1996, Jenkins wrote and issued check number 992 to himself in the amount of \$2,500 out of his NationsBank trust account.

9. Jenkins wrote a notation on check 992 indicating that it was for attorney's fees in the "Ledbetter/Harris Estate and Property."

10. Jenkins endorsed check number 992 and negotiated it on or about July 19, 1996.

11. On or about August 2, 1996, Jenkins issued check number 1003 to himself in the amount of \$2,000 out of his NationsBank trust account.

12. There was a typewritten notation on check 1003 indicating that it was for the "Ledbetter/Harris Estate and Property."

13. Jenkins endorsed check number 1003 and negotiated it on or about August 5, 1996.

14. At the time Jenkins issued and negotiated check numbers 992 and 1003, the NationsBank trust account did not contain sufficient earned fees or personal funds of Jenkins to cover those checks.

15. Check numbers 992 and 1003 were drawn on and paid with funds that Jenkins should have been holding in trust for his clients or other persons.

16. Jenkins misappropriated the proceeds of check numbers 992 and 1003 for his own benefit or the benefit of third parties without the knowledge or consent of the clients or persons for whom he was holding those funds in trust.

17. On August 20, 1996, Jenkins, or someone under his direction or control, deposited \$3,500 in currency into his NationsBank trust account.

18. Jenkins made the \$3,500 deposit of currency into his NationsBank trust account to replace a portion of the \$4,500 in client funds Jenkins knew he had previously misappropriated in issuing check numbers 992 and 1003.

19. On or about September 11, 1996, Jenkins issued check number 1009 to himself in the amount of \$1,000 out of his NationsBank trust account.

20. On or about October 17, 1996, Jenkins wrote and issued check number 1020 to himself in the amount of \$1,000 out of his NationsBank trust account.

21. On or about November 15, 1996, Jenkins wrote and issued check number 1026 to himself in the amount of \$1,000 out of his NationsBank trust account.

22. On or about November 27, 1996, Jenkins issued check number 1035 to himself in the amount of \$1,000 out of his NationsBank trust account.

23. On or about December 11, 1996, Jenkins issued check number 1036 to himself in the amount of \$3,000 out of his NationsBank trust account.

24. On or about December 19, 1996, Jenkins wrote and issued check number 1039 to himself in the amount of \$2,000 out of his NationsBank trust account.

25. On or about December 22, 1996, Jenkins wrote and issued check number 1040 to himself in the amount of \$1,400 out of his NationsBank trust account.

26. On or about March 6, 1997, Jenkins issued check number 1077 to himself in the amount of \$1,000 out of his NationsBank trust account.

27. Jenkins, or someone at his direction or under his control, endorsed and negotiated check numbers 1009, 1020, 1026, 1035, 1036, 1039, 1040 and 1077.

28. At the time Jenkins issued and negotiated check numbers 1009, 1020, 1026, 1035, 1036, 1039, 1040, and 1077, the NationsBank trust account did not contain sufficient earned fees or personal funds of Jenkins to cover those checks.

29. Check numbers 1009, 1020, 1026, 1035, 1036, 1039, 1040, and 1077 were drawn on and paid with funds that Jenkins should have been holding in trust for his clients or other persons.

30. Jenkins misappropriated the proceeds of check numbers 1009, 1020, 1026, 1035, 1036, 1039, 1040 and 1077 for his own benefit or the benefit of third parties without the knowledge or consent of the clients or persons for whom he was holding those funds in trust.

31. On or about April 3, 1997, Jenkins, or someone at his direction or under his control, deposited check number 255097 made payable to Elizabeth Jenkins in the amount of \$5,142.85 into Jenkins' NationsBank trust account.

32. Jenkins, or someone at his direction or under his control, deposited check number 255097 into Jenkins' NationsBank trust account to replace a portion of the \$11,400 in client funds that Jenkins knew he had previously misappropriated by issuing and negotiating check numbers 1009, 1020, 1026, 1035, 1036, 1039, 1040 and 1077.

33. Even after check number 255097 was deposited, there was a defalcation in Jenkins' NationsBank trust account exceeding \$6,000.

34. On or about September 3, 1997, Jenkins issued check number 1132 to himself in the amount of \$1,500 out of his NationsBank trust account.

35. Jenkins endorsed check number 1132 and negotiated it on or about September 4, 1997.

36. At the time Jenkins issued and negotiated check number 1132, the NationsBank trust account did not contain sufficient earned fees or personal funds of Jenkins to cover that check.

37. Check number 1132 was drawn on and paid with funds that Jenkins should have been holding in trust for his clients or other persons.

38. Jenkins misappropriated the proceeds of check number 1132 for his own benefit or the benefit of third parties without the knowledge or consent of the clients or persons for whom he was holding those funds in trust.

39. On or about September 19, 1997, Jenkins, or someone at his direction or under his control, deposited check number 1051 in the amount of \$1,700 into his

NationsBank trust account. Jenkins wrote and issued check number 1051 out of his Centura Bank operating account.

40. Jenkins issued check number 1051 out of his operating account and deposited it into his NationsBank trust account to replace a portion of the client funds Jenkins knew he had previously misappropriated.

41. Even after check number 1051 was deposited, there was a defalcation in Jenkins' NationsBank trust account exceeding \$4,900.

42. On or about November 14, 1997, Jenkins wrote and issued check number 1168 to himself in the amount of \$900 out of his NationsBank trust account.

43. On or about December 8, 1997, Jenkins issued check number 1180 to himself in the amount of \$875 out of his NationsBank trust account.

44. Jenkins, or someone at his direction or under his control, endorsed and negotiated check numbers 1168 and 1180.

45. At the time Jenkins issued and negotiated check numbers 1168 and 1180, the NationsBank trust account did not contain sufficient earned fees or personal funds of Jenkins to cover those checks.

46. Check numbers 1168 and 1180 were drawn on and paid with funds that Jenkins should have been holding in trust for his clients or other persons.

47. Jenkins misappropriated the proceeds of check numbers 1168 and 1180 for his own benefit or the benefit of third parties without the knowledge or consent of the clients or persons for whom he was holding those funds in trust.

48. After check numbers 1168 and 1180 were negotiated, there was a defalcation in Jenkins' NationsBank trust account exceeding \$3,800.

49. Jenkins represented Richard Bradley in a civil dispute with John Dockery ("Bradley dispute").

50. On or about December 5, 1997, Jenkins received check number 2431 in the amount of \$8,500 issued payable to himself and Mr. Bradley. This check represented the settlement proceeds for the Bradley dispute.

51. On December 9, 1997, Jenkins, or someone at his direction or under his control, deposited check number 2431 into his operating account at Centura Bank.

52. The Centura Bank operating account contained Jenkins' personal funds at the time he deposited check number 2431 into that account.

53. Jenkins subsequently used most of the funds deposited in his Centura Bank operating account for his own personal benefit by the end of December 1997.

54. Jenkins did not thereafter transfer the proceeds of the Bradley settlement check into his NationsBank trust account.

55. Jenkins subsequently issued check number 1188 to Richard Bradley in the amount of \$8,100 out of his NationsBank trust account.

56. At the time he issued check number 1188, Jenkins was not holding any funds in the NationsBank trust account for Bradley.

57. Check number 1188 was drawn on and paid with funds that Jenkins should have been holding in trust for other clients or persons.

58. Jenkins misappropriated the proceeds of check number 1188 for his own benefit or the benefit of Bradley without the knowledge or consent of the clients or persons for whom he was holding those funds in trust.

59. On February 9, 1998, Jenkins issued check number 1213 to himself in the amount of \$500 out of his NationsBank trust account.

60. There was a typewritten notation on check 1213 indicating that it was for Bradley.

61. At the time Jenkins issued and negotiated check number 1213, Jenkins had no funds in the trust account representing fees for Bradley. Jenkins also did not have sufficient other earned fees or personal funds in the NationsBank trust account to cover check number 1213.

62. Check number 1213 was drawn on and paid with funds that Jenkins should have been holding in trust for his clients or other persons.

63. Jenkins misappropriated the proceeds of check number 1213 for his own benefit or the benefit of third parties without the knowledge or consent of the clients or persons for whom he was holding those funds in trust.

64. After check numbers 1188 and 1213 were negotiated, there was a defalcation in Jenkins' NationsBank trust account exceeding \$13,000.

65. In December 1996, Jenkins represented Willie Mae McCleary in a civil lawsuit pending in Gaston County Superior Court, file number 96 CVS 4495 (hereafter "McCleary civil suit").

66. On December 16, 1997, an Order of Judgment was entered in the McCleary civil suit. The order required the defendants in the McCleary civil suit to pay to Jenkins the sum of \$70,100.78 by December 19, 1997.

67. On approximately December 19, 1997, Jenkins received a check for approximately \$70,101 from the defendants in the McCleary civil suit in trust for his client, Willie Mae McCleary (hereafter "McCleary settlement check").

68. On December 22, 1997, Jenkins, or someone at his direction or under his control, deposited the McCleary settlement check into his NationsBank trust account.

69. Before Jenkins deposited the McCleary settlement check, the balance in the NationsBank trust account was less than \$8,100.

70. Check number 1188 issued by Jenkins from the NationsBank trust account to Richard Bradley in the amount of \$8,100 was negotiated on December 22, 1997.

71. Jenkins used the funds from the McCleary settlement check to repay Richard Bradley for the funds he previously deposited into his Centura Bank operating account and used for his own personal benefit.

72. On January 15, 1998, Jenkins met with his client, Willie Mae McCleary. At that time, Jenkins disbursed a portion of the McCleary settlement proceeds from his NationsBank trust account to Willie Mae McCleary or her son, Roosevelt.

73. After the disbursement on approximately January 15, 1998, Jenkins was still supposed to be holding at least \$10,000 in trust for Willie Mae McCleary from the proceeds of the McCleary settlement check.

74. On the following dates, the balance in Jenkins' NationsBank trust account dropped below \$10,000:

- (a) February 3-5, 1998, and
- (b) February 18 through April 1, 1998.

75. Between January and March 1998, Jenkins issued 7 checks to himself out of the NationsBank trust account designated as fees in the McCleary matter. The aggregate of these seven fee checks to Jenkins for McCleary was \$6,500.

76. Jenkins used funds he was supposed to be holding in trust for Willie Mae McCleary for his own benefit or the benefit of third parties.

77. Neither Willie Mae McCleary, nor anyone on her behalf, consented to Jenkins using or disbursing the funds he was supposed to be holding in trust for her for his own benefit or the benefit of third parties.

78. The hearing committee makes no findings regarding the allegations set forth in paragraphs 5 & 84-86 of the State Bar's complaint concerning Jenkins' trust account at First Gaston bank or his receipt and use of a \$137,000 retainer received from his client GCI. Those allegations are not necessary to the Committee's findings and conclusions in this matter, and the State Bar has informed the Committee that those matters may be the subject of another grievance or other legal dispute.

79. From at least July 1996 until April 1998, Jenkins failed to reconcile the NationsBank trust account balance with his client ledgers on a quarterly basis.

80. From at least July 1996 until April 1998, Jenkins failed to maintain a ledger for each person or entity from whom or for whom trust money was received, which accurately maintained the current balance of funds held in the NationsBank trust account for that person.

81. Jenkins did not include any notation of the client for whom he issued check numbers 1026, 1039, 1040, 1077, 1144, and 1168.

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 defendant, Robert D. Jenkins and the subject matter.

2. Jenkins'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) as follows:

- a. By repeatedly appropriating for his own use, funds he received in a fiduciary capacity on his clients' behalf as set out in paragraphs 1-33 above, Jenkins committed criminal acts that reflect adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects in violation of Rule 1.2(b), and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 1.2(c); and
- b. By repeatedly withdrawing from his NationsBank trust account funds that he was supposed to be holding in trust for his clients, as set out in paragraphs 1-33 above, Jenkins failed to preserve funds received in a fiduciary capacity in a trust account separate and apart from his funds in violation of Rule 10.1(a) and (c).

- c. By appropriating for his own use, funds he received in a fiduciary capacity on his clients' behalf, as set out in paragraphs 34- 77 above, Jenkins committed criminal acts that reflect adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects in violation of Revised Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Revised Rule 8.4(c);
- d. By withdrawing funds from his NationsBank trust account that he was supposed to be holding in trust for his clients, as set out in paragraphs 34-77 above, Jenkins failed to preserve funds received in a fiduciary capacity in a trust account separate and apart from his funds in violation of Revised Rules 1.15-1(a) and (d);
- e. By depositing the settlement proceeds check for the Bradley dispute into his operating account at Centura bank, as set out in paragraphs 50-71 above Jenkins commingled funds received in a fiduciary capacity in a trust account with his own personal funds in violation of Revised Rules 1.15-1(a) and (d);
- f. By failing to reconcile the NationsBank trust account balance with his client ledgers on a quarterly basis, as set out in paragraph 79 above, Jenkins violated Rule 10.2(c)(3) and Revised Rule 1.15-2(d)(2);
- g. By failing to maintain a current accurate ledger for each person or entity from whom or for whom trust money was received, as set out in paragraph 80 above, Jenkins violated Rule 10.2(d) and Revised Rule 1.15-2(g); and
- h. By issuing checks from his NationsBank trust account without designating the client from whom those funds were drawn, as set out in paragraph 81 above, Jenkins violated Rule 10.2(c)(2) and Revised Rule 1.15-2(f).

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the evidence and arguments of the parties concerning the appropriate discipline, the hearing committee hereby makes these additional:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Defendant's misconduct is aggravated by the following factors:

- (A) prior disciplinary offense;
- (B) dishonest or selfish motive;
- (C) a pattern of misconduct;
- (D) multiple offenses;
- (E) bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency;
- (F) deceptive practices during the disciplinary process;
- (G) refusal to acknowledge wrongful nature of conduct; and
- (K) issuance of a letter of warning to defendant in the same year as the filing of the complaint.

2. Defendant's misconduct is not mitigated by any factors.

3. The aggravating factors outweigh the mitigating factors.

4. The hearing committee finds that defendant pled guilty to four separate counts of criminal contempt of court relating to the investigation of this disciplinary matter. The hearing committee finds that defendant willfully disobeyed numerous orders of the Wake County Superior Court, which orders directed him to produce his trust account records to the State Bar. The hearing committee also finds that defendant intentionally obstructed and significantly delayed the State Bar's investigation in an attempt to avoid or delay the discovery of his criminal and unethical misappropriation of client funds. Defendant was fined and censured for his willful disobedience of these Court orders. The Superior Court's fine and the censure were imposed for his disobedience of that court's orders only and did not address the allegations of misappropriation and other trust account violations at issue in this matter

5. The hearing committee further finds that defendant used funds misappropriated from his clients for his own personal benefit. For example the hearing committee specifically finds that Jenkins used client funds to pay his personal tax obligations to the IRS for 1996 after a lien was filed against him.

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

ORDER OF DISCIPLINE

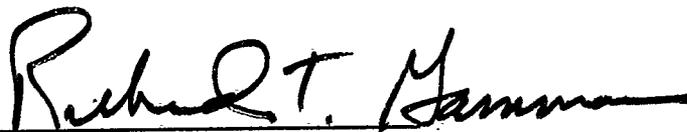
1. Defendant, Robert D. Jenkins, is hereby disbarred from the practice of law beginning 30 days from service of this order upon him.

2. Defendant 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.

3. Defendant shall pay the costs of this proceeding as assessed by the Secretary no later than 30 days after service of the order upon him.

4. Defendant 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 8th day of October 1999.



Richard T. Gammon
Hearing Committee Chair