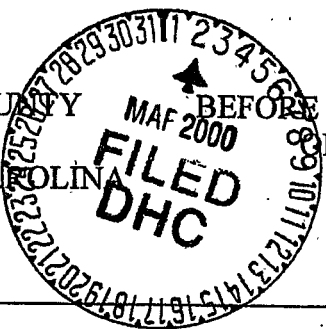


10435

WAKE COUNTY
NORTH CAROLINA

BEFORE THE DISCIPLINARY HEARING COMMISSION
OF THE NORTH CAROLINA STATE BAR
99 DHC 14



THE NORTH CAROLINA STATE BAR,
Plaintiff
v.
MICHAEL T. MILLS, ATTORNEY
Defendant

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER OF DISCIPLINE

This matter was heard on August 25-26, 1999, before a hearing committee of the Disciplinary Hearing Commission composed of Henry C. Babb, Chair; Fred H. Moody, Jr. and Robert B. Frantz. The defendant, Michael T. Mills, was represented by Joseph B. Cheshire, V, Wade M. Smith, and Alan M. Schneider. The plaintiff was represented by Douglas J. Brocker. Based upon the pleadings and the evidence introduced at the hearing, 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, Michael T. Mills, (hereafter "Mills"), was admitted to the North Carolina State Bar on July 15, 1982 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 Revised Rules of Professional Conduct of the North Carolina State Bar (hereafter "Revised Rules") and the laws of the State of North Carolina.
3. During the times relevant to this complaint, Mills actively engaged in the practice of law in the State of North Carolina and maintained a law office in the city of Wilmington, New Hanover County, North Carolina.

4. Mills was properly served with process and the hearing was held with due notice to all parties.
5. On February 5, 1998 at the Hudson Belk store in Crabtree Valley Mall in Raleigh, North Carolina (hereafter "Hudson Belk"), Mills was cited for misdemeanor larceny of "one camisole worth \$19.00" in violation of NCGS Sec. 14-72.
6. After a trial, on July 16, 1998, Wake County District Court Judge Paul G. Gessner found Mills guilty on the misdemeanor larceny charge.
7. Mills, by and through counsel, appealed his conviction of the misdemeanor larceny charge to Wake County Superior Court.
8. A Wake County Superior Court jury returned a verdict of guilty against Mills on the misdemeanor larceny charge on December 4, 1998.
9. Judge Ronald L. Stephens entered judgment against Mills on the misdemeanor larceny charge on that same day.
10. While at Hudson Belk on February 5, 1998, Mills purchased several items at Hudson Belk from a store clerk named Susan Price (hereafter "first purchase").
11. At his criminal trial, the State contended that after making his first purchase, Mills removed a white Calvin Klein camisole from a hanger, placed it in the shopping bag with the items he previously purchased, and removed it from the premises without paying for the item.
12. At his criminal trial, the State introduced, over Mills' objection, a Hudson Belk surveillance videotape.
13. The surveillance videotape shows, among other things, Mills taking an item of white clothing off a clothes hanger and placing it in his hand after making his first purchase.
14. A white Calvin Klein camisole was found in Mills's shopping bags when he was detained after leaving Hudson Belk.
15. Mills did not pay for the Calvin Klein camisole before leaving Hudson Belk.
16. Mills testified in his own defense during his criminal trial in Wake County Superior Court.
17. Mills testified during his direct examination that he did not intentionally remove the Calvin Klein camisole from Hudson Belk without paying for it. Mills further testified during direct examination that the item he took or removed from a clothes rack

or hanger after his first purchase was not the Calvin Klein camisole but a similar Ralph Lauren Polo item that he claimed he set down before leaving the premises.

18. Mills denied during cross-examination that, after making his first purchase,

(a) he had taken or removed from a clothes rack or hanger the white Calvin Klein camisole he was accused of stealing (hereafter "Calvin Klein camisole");

(b) he folded up or balled up the Calvin Klein camisole in one of his hands; and

(c) he had put the Calvin Klein camisole in his shopping bag.

19. The State Bar opened a grievance file against Mills (hereafter "grievance"), after learning that Mills had been arrested on the larceny charge.

20. Mills was not served with a Letter of Notice regarding the grievance, however, until after his conviction in Superior Court.

21. The Letter of Notice concerned Mills' conviction on the larceny charge and allegations that he knowingly gave materially false testimony at his criminal trial.

22. Mills, by and through counsel, responded on several occasions to allegations set forth in the Letter of Notice and related State Bar correspondence concerning allegations that he knowingly gave materially false testimony at his criminal trial.

23. In his responses to the Grievance Committee, Mills denied that he took the Calvin Klein camisole off a clothes hanger after making his first purchase.

24. In his responses to the Grievance Committee, Mills also represented that the item that he took off the clothes hanger after his first purchase was not the Calvin Klein camisole, but was a similar Ralph Lauren Polo tank item that he set down before leaving the premises.

25. In his responses to the Grievance Committee, Mills also affirmatively represented that he did not place in his shopping bag the item he took off the clothes hanger after his first purchase but rather carried this item around the store with him and placed it down on the second floor before leaving the store.

26. Mills's representations set forth in paragraphs 23-25 were made in response to a lawful demand for information from a disciplinary authority.

27. Mills' representations set forth in paragraphs 17 and 18 (a)-(c) were material.

28. Mills' representations set forth in paragraphs 23-25 were material.

29. After reviewing the evidence presented at the hearing, the Committee finds that, after making his first purchase, Mills removed the Calvin Klein camisole from a clothes rack and hanger, folded it up, put it in his shopping bag, and intentionally removed it from Hudson Belk without paying for it.

30. The Committee further finds that Mills knew the representations set forth in paragraphs 17 and 18(a)-(c) were materially false at the time Mills testified at his criminal trial.

31. The Committee further finds that Mills knew the representations set forth in paragraphs 23-25 were materially false at the time Mills responded to the Grievance Committee.

32. After the hearing concluded but before the written order of discipline was entered, the Chair of the DHC and this Committee, Henry C. Babb, was elected as the councilor for the 7th District of the State Bar Council and thus resigned his position on the DHC.

33. Thereafter, the undersigned, James R. Fox, was substituted as the chair of this Committee.

34. The undersigned, James R. Fox, as duly substitute Committee member and Committee chair, reviewed and considered the record of the disciplinary hearing in its entirety and based on that review thereafter deliberated fully with the other members of the Committee before signing this order with their approval.

35. The parties have no objection to the substitution of the undersigned as a Committee member or his execution of this order as chair of the Committee.

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 it has jurisdiction over Mills and the subject matter.

2. Mills' conviction of misdemeanor larceny, as set out in the Findings of Fact 5-9 above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(1) & (2) and the North Carolina Revised Rules of Professional Conduct ("Revised Rules") in that, Mills:

- (a) committed a criminal act that reflects adversely on his honesty, trustworthiness and fitness as a lawyer in other respects in violation of Revised Rule 8.4(b); and

- (b) engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Revised Rule 8.4 (c).

3. Mills' foregoing conduct constitutes grounds for discipline pursuant to NCGS Sec. 84-28(b)(2) in that while testifying in Wake County Superior Court, Mills:

- (a) knowingly made false statements of material fact to a tribunal in violation of Revised Rule 3.3(a)(1),
- (b) engaged in conduct involving misrepresentation in violation of Revised Rule 8.4(c), and
- (c) engaged in conduct prejudicial to the administration of justice in violation of Revised Rule 8.4 (d).

4. Mills' foregoing conduct constitutes grounds for discipline pursuant to NCGS Sec. 84-28(b)(2) & (3) in that in response to the State Bar's inquiries, Mills:

- (a) knowingly made a false statement of material fact in connection with a disciplinary matter in violation of NCGS Sec. 84-28(b)(3) and Revised Rule 8.1(a), and
- (b) engaged in conduct involving misrepresentation in violation of Revised Rule 8.4 (c).

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the evidence, the hearing committee hereby makes additional:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Mills' misconduct is aggravated by the following factors:
 - a. dishonest or selfish motive;
 - b. submission of false statements during the disciplinary process; and
 - c. substantial experience in the practice of law.
2. Mills' misconduct is mitigated by the absence of a prior disciplinary record.
3. The aggravating factors outweigh the mitigating factors.
4. The discipline imposed is the result of the unique facts involved in this particular matter.

Based upon the foregoing Findings of Fact, Conclusions of Law, additional findings of fact regarding discipline, the evidence and the arguments of the parties, the hearing committee hereby enters the following:

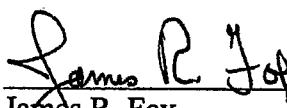
ORDER OF DISCIPLINE

1. The license of the defendant, Michael T. Mills, is hereby suspended for two years, effective 30 days from service of this order upon him. The period of suspension is stayed for three years upon the following conditions:

- a. Mills shall not violate any state or federal laws during the three year period of the stayed suspension.
- b. Mills shall not violate any provisions of the Revised Rules of Professional Conduct during the three-year period of stayed suspension.
- c. Mills shall pay all costs incurred in connection with this proceeding, including all deposition and transcript expenses, within 30 days of receipt of a bill of costs from the Secretary.

2. The Committee retains jurisdiction over this matter during the period of the stayed suspension.

Signed by the chair with the consent of the other hearing committee members, this the 25th day of February 2000.


James R. Fox
Hearing Committee Chair