

NORTH CAROLINA
WAKE COUNTY



8672

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
04 DHC 53

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

DEWEY R. BUTLER, Attorney,
Defendant

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

On March 4, 2005, this matter came on to be heard before a hearing committee of the Disciplinary Hearing Commission composed of Carlyn G. Poole, Chair; Karen Eady-Williams, and Johnny A. Freeman. A. Root Edmonson represented the North Carolina State Bar and the Defendant did not appear and was not represented by counsel. Based upon the facts alleged in the Complaint that are deemed admitted by the Defendant's default, the hearing committee finds the following has been established 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, Dewey R. Butler ("Butler"), was admitted to the North Carolina State Bar on August 19, 1979 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, Butler actively engaged in the private practice of law in the State of North Carolina and maintained a law office in the city of Dunn, Harnett County, North Carolina.

4. During the times relevant to this complaint, Butler maintained an attorney trust account at Fidelity Bank, account number 0091000176 ("trust account") and an attorney operating account at Fidelity Bank, account number 0095204432 ("operating account").

5. On February 4, 2004, Butler closed a refinance loan for Don and Kathy Strutz ("the Strutzes"). Butler deposited \$77,000.00 received from the Strutzes' lender into his trust account on that date.

6. Prior to the deposit of the Strutzes' loan proceeds, the balance in Butler's trust account was \$4.56.

7. Butler was directed by his clients to disburse their loan proceeds according to the Strutzes' HUD-1 Settlement Statement ("Strutz Hud-1").

8. On February 4, 2004, Butler wrote trust account check number 3578 to himself for the \$600.00 the Strutz Hud-1 showed he was to receive.

9. On February 4, 2004, Butler wrote trust account check number 3620 to himself for \$7,500.00 that was paid with the Strutzes' funds without the Strutzes' knowledge or consent.

10. On February 9, 2004, Butler wrote trust account check number 3621 to himself for \$5,600.00 that was paid with the Strutzes' funds without the Strutzes' knowledge or consent.

11. Butler appropriated funds the Strutzes had entrusted to him in a fiduciary capacity to his own use in violation of N.C. Gen. Stat. § 14-90.

12. On or after June 18, 2004, Butler closed a refinance loan for Sylvia Rose Lee ("Lee"). On June 23, 2004, \$103,702.87 from Lee's lender was deposited into Butler's trust account.

13. Prior to the deposit of Lee's loan proceeds, the balance in Butler's trust account was \$2,564.13.

14. Butler was directed by his client to disburse her loan proceeds according to Lee's HUD-1 Settlement Statement ("Lee Hud-1").

15. On June 23, 2004, Butler wrote trust account check number 3665 to himself for the \$475.00 the Lee Hud-1 showed he was to receive.

16. Also on June 23, 2004, without Lee's knowledge or consent, Butler wrote trust account check number 3669 to Lee for \$26,972.62 although the Lee HUD-1 showed that she was only to receive \$972.62.

17. On the same date, without Lee's knowledge or consent, Butler forged Lee's endorsement on trust account check number 3669 and deposited it into his operating account.

18. Thereafter, Butler paid loans and other personal obligations from his operating account with Lee's funds without Lee's knowledge or consent.

19. Butler forged Lee's endorsement on trust account check number 3669 in violation of N.C. Gen. Stat. § 14-120. Butler appropriated funds Lee had entrusted to him in a fiduciary capacity to his own use in violation of N.C. Gen. Stat. § 14-90.

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

CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee of the Disciplinary Hearing Commission and the hearing committee has jurisdiction over Butler and the subject matter.

2. Butler's conduct, as set out above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(a) & (b)(2) as follows:

- (a) by appropriating the Strutzes' entrusted funds to his own use without their knowledge and consent, Butler committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b); engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c); and failed to maintain the Strutzes' entrusted property in his trust account separate from his property in violation of Rule 1.15-2(a).
- (b) by forging Lee's endorsement on trust account check number 3669, Butler committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c)
- (c) by appropriating Lee's entrusted funds to his own use without her knowledge or consent, Butler committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b); engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c); and failed to maintain Lee's entrusted property in his trust account separate from his property in violation of Rule 1.15-2(a).

BASED UPON the foregoing Findings of Fact, the Conclusions of Law, and the evidence presented at the hearing, the hearing committee hereby makes the following:

FINDINGS OF FACT REGARDING DISCIPLINE

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

- (a) dishonest or selfish motive;
- (b) a pattern of misconduct
- (c) multiple offenses; and
- (d) substantial experience in the practice of law.

2. Butler's misconduct is mitigated by the following factor:

- (a) absence of a prior disciplinary record.

3. The aggravating factors outweigh the mitigation factors.

CONCLUSIONS OF LAW REGARDING DISCIPLINE

1. An order calling for discipline short of Butler's disbarment would not sufficiently protect the public for the following reasons:

- (a) An attorney's duty to preserve a client's funds entrusted to the attorney is one of the most sacred duties that an attorney undertakes. An attorney should never violate that duty or the trust the client has in the attorney to honor that duty.
- (b) On two different occasions Butler violated that duty and his clients' trust. In doing so, Butler caused significant harm to his clients.
- (c) Butler's violation of his duty to preserve his clients' entrusted funds caused significant harm to the legal profession.
- (d) Entry of an order imposing lesser discipline would fail to acknowledge the seriousness of the offenses that Butler committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar in this State.
- (e) The protection of the public requires that Butler not be permitted to resume the practice of law until he demonstrates that he has reformed, that he understands his obligations to his clients and that reinstatement would not injure the standing of the legal profession. Disbarred attorneys must show reformation, among other things, before they resume the practice of law, whereas no such showing of reformation is required of an attorney whose license is merely suspended for a term certain.

BASED UPON the foregoing Findings of Fact Regarding Discipline and the argument of counsel, the hearing committee hereby enters the following:

ORDER OF DISCIPLINE

1. The Defendant, Dewey R. Butler, is hereby DISBARRED.
2. Butler shall surrender his license and membership card to the Secretary within 30 days of the effective date of this order.
3. Butler shall comply with the requirements of 27 NCAC 1B, §.0124.
4. The costs of this proceeding are taxed to Butler and shall be paid as assessed by the Secretary with 90 days of the effective date of this order.

Signed by the chair with the consent of the other hearing committee members, this
the 4 day of March, 2005.



Carlyn G. Poole, Chair
Hearing Committee