

2709

WAKE COUNTY  
NORTH CAROLINA

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
04 DHC 38

THE NORTH CAROLINA STATE BAR	)	
PLAINTIFF	)	FINDINGS OF FACT
	)	CONCLUSIONS OF LAW
v.	)	AND ORDER OF DISCIPLINE
	)	
ROBERT K. LEONARD, ATTORNEY	)	
DEFENDANT	)	

THIS MATTER came on to be heard and was heard on May 16 - 17, 2005 before a duly assigned hearing committee of the Disciplinary Hearing Commission composed of Carlyn Poole, Chair; M. Ann Reed and Johnny Freeman. Carolin Bakewell and Katherine E. Jean appeared for the North Carolina State Bar. David Freedman and Dudley Witt represented the defendant, Robert K. Leonard. Based upon the pleadings herein and the evidence introduced at trial, the hearing committee hereby makes the following:

FINDINGS OF FACT

1. 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, Robert K. Leonard, ("Leonard"), was admitted to the North Carolina State Bar in 1970 and is, and was at all relevant 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 all periods relevant hereto Leonard was engaged in the practice of law in Winston-Salem, North Carolina.
4. Prior to July 1999, Leonard undertook to represent Betty Wilson ("Ms. Wilson") regarding a personal injury claim.

5. Leonard and Ms. Wilson agreed that Leonard would be paid 25% of any damages recovered for Ms. Wilson if Leonard settled her claim without filing a lawsuit.

6. Leonard settled Ms. Wilson's claim for \$52,000 without filing a lawsuit. He deposited the settlement proceeds into his attorney trust account at Branch Banking & Trust Co. ("BB&T trust account") on July 1, 1999.

7. On July 6, 1999, Leonard paid himself his entire \$13,000 attorney fee from Ms. Wilson's settlement funds.

8. After Leonard withdrew his attorney fee, he knew that he was not entitled to receive any further payments from the remaining funds on deposit for Ms. Wilson in his BB&T trust account.

9. On Jan. 28, 2000, Leonard disbursed \$21,927 of Ms. Wilson's settlement funds to her.

10. On Dec. 26, 2000, Leonard disbursed \$489 of Ms. Wilson's settlement funds to Forsyth Radiology to pay a portion of Ms. Wilson's health care expenses related to the accident.

11. At all times after Dec. 26, 2000 a total of \$16,584 should have remained in Leonard's BB&T trust account for Ms. Wilson.

12. By no later than April 2000, Leonard knew that Ms. Wilson would be entitled to receive at least \$13,066.92 of the settlement funds even after Medicare and her medical bills were paid.

13. Leonard did not disburse any additional funds to Ms. Wilson until April 2003.

14. For the period July 1999 forward, Leonard handled all of the bookkeeping for his law practice and handled all disbursements from and deposits into his trust and operating accounts.

15. Between Dec. 26, 2000 and June 30, 2002, Leonard knowingly and intentionally wrote a number of checks drawn on his BB&T trust account that were payable to himself and to the Forsyth County Clerk of Superior Court. Funds belonging to Ms. Wilson were used to pay these checks, although the payments were made for Leonard's benefit and the benefit of clients other than Ms. Wilson without her knowledge or consent.

16. Between May 2001 and May 30, 2002, Leonard knowingly and intentionally disbursed all but \$110.20 of Ms. Wilson's funds to himself and other clients without Ms. Wilson's knowledge or consent.

17. The balance in the BB&T trust account remained below \$16,584 between May 25 – July 8, 2001 and July 17, 2001 – June 30, 2002.

18. Leonard made no deposits to or disbursement from his BB&T trust account between Nov. 11, 2001 and May 30, 2002.

19. The fact that there was no activity in the BB&T trust account between Nov. 11, 2001 and May 30, 2002 is evidence that Leonard was aware that he had misappropriated Ms. Wilson's funds.

20. In late June 2002, Leonard received a check for \$50,077.52 from the Administrative Office of Courts ("AOC") in payment of work he had done in one or more appointed criminal matters. Leonard deposited the AOC check into a personal bank account at Piedmont Federal on June 26, 2002.

21. On June 28, 2002, Leonard wrote a check on his personal Piedmont Federal bank account in the amount of \$19,750. On June 28, 2002, Leonard deposited the personal check into his BB&T trust account, which brought the balance in the BB&T trust account above the sum he should have held for Ms. Wilson. The \$19,750 deposited into the BB&T trust account was Leonard's personal funds.

22. The fact that Leonard deposited personal funds into the BB&T trust account immediately after receiving a large fee from AOC indicates that Leonard knew that he had misappropriated funds belonging to Ms. Wilson and that he did not have enough funds on hand in the BB&T trust account to reimburse her.

23. On Oct. 4, 2002, Leonard transferred \$17,260 from the BB&T trust account to his trust account at Southern Commercial Bank ("Southern Commercial trust account").

24. On Jan. 21, 2003, Leonard paid \$2,840.31 from the funds in the Southern Commercial trust account to Medicare on Ms. Wilson's behalf.

25. On April 22, 2003, Leonard paid to Ms. Wilson the remaining \$14,232.69 owed to her from the personal injury settlement.

26. Leonard never told Ms. Wilson that he had used her funds for his benefit or that of other clients and never provided an annual accounting to her regarding the funds.

27. In April 1996, Leonard undertook to represent Olin C. Robinson ("Robinson") in a domestic relations case.

28. Leonard did little, if anything, to prepare for the Robinsons' equitable distribution trial on Jan. 26, 1999. Consequently, an order was entered on April 18, 2000 awarding most of the Robinsons' marital property to Robinson's ex-wife, including a significant portion of Robinson's retirement benefits.

29. On Dec. 28, 2001, Leonard filed a notice of appeal on Robinson's behalf.
30. Also on or about Dec. 28, 2001, at Leonard's request, Robinson paid Leonard \$2,650 "to finance the appeal."
31. Leonard failed to take any steps to perfect the appeal.
32. Leonard provided very little information about the status of the case to Robinson, despite Robinson's requests for information.
33. In May 2003, Robinson discharged Leonard and, when he received the client file, learned for the first time that Leonard had withdrawn the notice of appeal without Robinson's consent.
34. In 1997 or 1998, Leonard met Richard Mears ("Mears"), a convicted felon who had served 11 years in a federal prison for fraud.
35. Despite his knowledge of Mears' conviction, Leonard agreed to work with Mears to handle motions for appropriate relief for prison inmates and their families.
36. Between late 1997 or early 1998 and April 2002, Leonard worked with Mears on 15 - 20 post-conviction cases. Mears charged inmates and their families \$5,000 - \$6,000 for each post-conviction case. In most cases, Mears and Leonard divided the fee equally.
37. The fees paid to Mears were not based on the amount of work Mears actually performed in a given case.
38. Between late 1997 or early 1998 and April 2002, Mears maintained an office in his home in Mount Airy, N.C. and only periodically visited Leonard's office.
39. Leonard did not supervise Mears' activities, including communications with clients and his handling of fees collected by Mears from clients.
40. In mid-2000, Mears proposed that he and Leonard engage in a scheme whereby Mears would promise to have inmates released from prison via use of Mears' alleged political contacts, in return for payment of a substantial sum of money.
41. Leonard told Mears that his proposal was illegal and declined to participate in it. Leonard continued to handle ordinary post-conviction cases with Mears, however.
42. By early 2001, Mears told Leonard that he had actually proceeded with his illegal scheme and that he had received substantial sums from inmates and their families by promising to obtain the inmates' release from prison through Mears' political contacts. Although there was no evidence that Leonard directly participated in Mears' illegal influence peddling scheme or that Leonard received any of the funds Mears collected

from the inmates in the influence peddling cases, Leonard did not report Mears' conduct to law enforcement officials and he continued to handle post-conviction cases jointly with Mears.

43. Mears was later charged with and convicted of various federal criminal offenses relating to his illegal influence peddling scheme.

44. On May 12, 1999, Leonard signed a contract with Rev. D. L. Chatham ("Rev. Chatham"), whereby Leonard agreed to seek post-conviction relief on behalf of Johnny Chatham ("Chatham"), Rev. Chatham's brother, who was and is serving a prison sentence with the N.C. Department of Corrections.

45. Pursuant to the May 12, 1999 contract, Leonard agreed to file a motion for appropriate relief for Chatham and a petition for certiorari in the appellate courts if the MAR was denied.

46. Rev. Chatham paid Leonard a \$5,000 fee on his brother's behalf. Leonard received half of the fee and paid half to Mears.

47. Leonard did not visit Chatham or otherwise communicate with him.

48. In May 2000, a year after undertaking the case, Leonard filed a motion for appropriate relief on Chatham's behalf.

49. Leonard attended a hearing on the motion for appropriate relief in 2001, which was the first time he had met or communicated with Chatham.

50. The motion for appropriate relief was denied in January 2002.

51. Leonard failed to file a petition for certiorari on Chatham's behalf and declined to refund any portion of the \$5,000 fee.

52. In February 2001, Leonard signed a contract of employment to represent Clifton Ferrell ("Clifton Ferrell"), then an inmate in the N.C. Department of Corrections, "in his State criminal appeal known as a 'motion for appropriate relief.' "

53. Wilbert Ferrell, Clifton Ferrell's brother, paid Leonard a total of \$3,500 toward a \$5,000 fee. Leonard paid \$1,500 of the fee to Mears and retained the remaining \$2,000.

54. Leonard did not visit or communicate with Clifton Ferrell.

55. Leonard did not file any pleadings on behalf of Clifton Ferrell nor did he produce any evidence that he or Mears performed any work for Clifton Ferrell when Wilbert Ferrell requested this information.

56. Leonard did not return the client file to Clifton Ferrell or his family when it became clear that Clifton Ferrell's family was not going to pay the remaining \$1,500 fee.

57. Leonard did not refund the unearned portion of the \$3,500 fee paid by Wilbert Ferrell on his brother's behalf.

58. In March 2001, Carolyn Stover ("Ms. Stover"), paid Mears \$15,500 to file a clemency proceeding for her son, Larry Allred ("Allred"), who was and is serving a prison sentence in the N.C. Department of Corrections.

59. Mears promised Ms. Stover that he would refund the \$15,500 fee if he was unable to obtain Allred's release by Dec. 31, 2001.

60. In January 2002, when Allred had not been released from prison, Ms. Stover contacted Leonard and told him about her problems with Mears.

61. Leonard agreed to file a motion for appropriate relief on Allred's behalf and, if that proved unsuccessful, agreed to file a petition for certiorari in the appellate court.

62. On April 22, 2002 Leonard filed a motion for appropriate relief that had been prepared by Mears and that was unaccompanied by affidavits or supporting documents. Leonard failed to take adequate steps to determine whether the motion prepared by Mears was legally sufficient.

63. Leonard did not meet with Allred or communicate with him and did little, if anything, to assist Allred.

64. The motion for appropriate relief was denied as legally insufficient.

65. Leonard did not file a petition for certiorari for Allred or take any other action on his behalf.

#### CONCLUSIONS OF LAW

1. By using funds that he received on behalf of Betty Wilson for his benefit and/or the benefit of third parties, Leonard used entrusted funds for personal benefit or for the benefit of a person or persons other than the beneficial owner of the property in violation of Rule 1.15-2(j) and failed to hold a client's funds in trust in violation of Rule 1.15-2(a).

2. By knowingly and intentionally disbursing funds that he should have held in trust for Betty Wilson for his benefit and/or the benefit of third parties without Ms. Wilson's knowledge and consent, Leonard committed criminal acts that reflect adversely on his honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

3. By depositing \$19,750 of his personal funds into the BB&T trust account to replenish funds belonging to Betty Wilson, Leonard commingled personal and trust funds in violation of Rule 1.15-2(a).

4. By waiting until April 2003 to disburse all funds owed to Ms. Wilson, Leonard failed to promptly disburse client funds in violation of Rule 1.15-2(a) and (m).

5. By failing to take sufficient steps to prepare for Robinson's domestic trial and by failing to perfect an appeal on his behalf, Leonard failed to act with reasonable competence, diligence and promptness in representing a client in violation of Rules 1.1 and 1.3.

6. By failing to keep Robinson informed about the status of his case and the appeal, Leonard violated Rule 1.4(a).

7. By failing to explain matters pertaining to the case and the appeal to the extent reasonably necessary to permit Robinson to make informed decisions about the representation, Leonard violated Rule 1.4(b).

8. By failing to file a motion for appropriate relief on behalf of Clifton Ferrell and by failing to pursue appellate review of the denial of the motions for appropriate relief filed for Johnny Chatham and Larry Allred, Leonard neglected client matters in violation of Rule 1.3.

9. By failing to refund the unearned portion of the fees paid to him by the relatives of Clifton Ferrell and Johnny Chatham, Leonard violated Rule 1.5(d).

10. Leonard failed to undertake an adequate, independent review of the motion for appropriate relief drafted by Mears on behalf of Allred, in violation of Rules 1.1 and 1.3.

11. Leonard failed to make reasonable efforts to ensure that Mears, a non-lawyer with whom he was associated, conducted himself in a fashion that was compatible with Leonard's ethical obligations to Allred, Chatham and Ferrell, in violation of Rule 5.3.

12. Leonard divided fees that he received from or on behalf of Chatham and Ferrell with a non-lawyer, Richard Mears, in violation of Rule 5.4(a).

Based upon the foregoing Findings of Fact, the Conclusions of Law and the evidence presented at the hearing, the hearing committee also makes the following:

## ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE

1. Leonard received \$2,650 from Olin Robinson in late December 2001 to "finance the appeal" for Robinson from an equitable distribution judgment.
2. Leonard failed to hold any portion of the \$2,650 which he received from Robinson in trust and diverted the funds to his own use and benefit without Robinson's knowledge or consent.
3. After Robinson discharged Leonard, he asked Leonard to return the \$2,650 to him. When Leonard did not respond, Robinson filed a grievance against Leonard with the N.C. State Bar.
4. Although Leonard advised the Grievance Committee in a letter dated October 17, 2003 that he would "attempt to resolve" the refund issue with Robinson, he did not do so. In July 2004, Robinson filed suit against Leonard and ultimately obtained a judgment against him in small claims court. Leonard then appealed to district court and it was not until October 2004, on the eve of arbitration, that Leonard reimbursed the \$2,650 to Robinson.
5. By January 2000, Leonard had opened a trust account at Piedmont Federal which he designated as a "cost account" ("Piedmont Federal cost account") to hold funds entrusted to him by clients whose traffic matters Leonard was handling.
6. From January 1, 2000 forward, Leonard regularly deposited into the Piedmont Federal cost account funds that had been paid to him by clients for the purpose of paying the clients' court costs.
7. On 17 occasions between January 2000 and July 2001, Leonard paid his personal American Express bill with client funds in the Piedmont Federal cost account.
8. Leonard did not have his clients' consent to use funds in the Piedmont Federal cost account for his personal benefit.
9. Leonard temporarily misappropriated \$90 in costs that he should have held in trust for a client named James K. Culbertson in late 2000.
10. Leonard's conduct is aggravated by the following facts:
  - a) He was motivated in part by a dishonest or selfish motive.
  - b) He engaged in a pattern of misconduct.
  - c) He engaged in multiple violations of the Rules of Professional Conduct.



- d) He failed to make timely restitution to all clients.
- e) He has substantial experience in the practice of law.
- f) He failed to acknowledge wrongdoing.
- g) Several of the victims of his misconduct were elderly, uneducated or in prison and thus were particularly vulnerable.
- h) Leonard was uncooperative with Bar Counsel's attempts to conduct discovery in this matter and failed to produce copies of his American Express monthly statements and related documents as commanded by a subpoena.

11. The Hearing Committee found that Leonard's misconduct is mitigated by the following facts:

- a) He has no prior discipline.
- b) A number of lawyers and judges from his home county and surrounding counties testified as to his good character.

12. The aggravating factors outweigh the mitigating factors.

Based on the foregoing findings of fact, the Committee enters the following:

1. Leonard's dishonest conduct has caused significant harm and posed the threat of significant potential harm to his clients.

2. Leonard's misconduct has also harmed the standing of the legal profession by undermining trust and confidence in lawyers and the legal system.

3. Disbarment is the only sanction that can adequately protect the public for the following reasons:

- a) An attorney's duty to preserve client funds entrusted to the attorney is one of the most sacred that an attorney undertakes. An attorney should never violate that duty or the trust that the client has in the attorney.
- b) An order of discipline less than disbarment would not sufficiently protect the public because Leonard committed misdeeds involving moral turpitude and violations of the public trust.
- c) Leonard's misconduct occurred over a substantial period of time and therefore appears to be the result of a character flaw, rather than an aberration.

d) Leonard has failed to show any evidence that he has addressed whatever trait or flaw contributed to his misconduct and therefore the Committee concludes that there is a risk that he would continue to engage in further misconduct if he were to remain licensed to practice law.

e) Entry of an order imposing lesser discipline would fail to acknowledge the seriousness of the offenses that Leonard committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar in North Carolina.

f) The protection of the public requires that Leonard not be permitted to resume the practice of law unless and until he demonstrates that he has reformed, that he understands his obligations to his clients, the public, the courts and the legal profession, and that reinstatement would not injure the standing of the legal profession. Disbarred attorneys must show reformation among other things, before they may resume the practice of law, whereas no such showing of reformation is required of attorneys whose licenses are suspended for a term certain.

Based upon the foregoing Findings of Fact, Conclusions of Law and Findings of Fact Regarding Discipline, and any mixed findings of fact and conclusions of law howsoever designated, the Hearing Committee hereby enters the following:

#### ORDER OF DISCIPLINE

1. Robert K. Leonard is hereby DISBARRED from the practice of law.
2. Leonard shall surrender his law license and membership card to the Secretary of the State Bar no later than 30 days from service of this order upon him.
3. Leonard shall pay the costs of this proceeding, including the cost of all depositions taken by the N.C. State Bar, as assessed by the Secretary of the N.C. State Bar no later than 30 days from service of this order upon Leonard.
4. Leonard shall comply with all provisions of 27 NCAC 1B § .0124 of the North Carolina State Bar Discipline & Disability Rules ("Discipline Rules").
5. Prior to seeking reinstatement of his law license, Leonard must present satisfactory written evidence to the Office of Counsel that he has made restitution of the sum of \$3,500 to Wilbert Ferrell.

Signed by the undersigned Committee Chair with the full knowledge and consent  
of the other Hearing Committee members, this the 14 day of June  
2005.

*Carlyn G. Poole*

Carlyn Poole  
Chair, Disciplinary Hearing Committee