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WAKE COUNTY
NORTH CAROLINA

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
96 DHC 9

THE NORTH CAROLINA STATE BAR)	
PLAINTIFF)	FINDINGS OF FACT
)	CONCLUSIONS OF LAW
v.)	AND ORDER OF DISCIPLINE
)	
SCOTT L. WILKINSON, ATTORNEY)	
DEFENDANT)	

THIS MATTER was heard on the 20th day of June, 1997 before a hearing committee of the Disciplinary Hearing Commission composed of Henry C. Babb, Jr., Chair; James C. Fox, and James Lee Burney. The defendant, Scott Wilkinson, was represented by Eileen C. Moore. The plaintiff was represented by Carolin Bakewell. Based upon the pleadings and the evidence introduced at the hearing, the hearing committee hereby enters the following:

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, Scott Wilkinson, was admitted to the North Carolina State Bar in 1987, 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 all of the relevant periods referred to herein, Wilkinson was actively engaged in the practice of law in the State of North Carolina and was employed by the U.S. government as an assistant U.S. attorney in the City of Raleigh, Wake County, North Carolina.

4. Prior to Dec. 15, 1993, the United States government instituted an investigation of alleged criminal misconduct by Mark C. Kirby, then an attorney in practice in Raleigh, N.C..

5. Prior to Dec. 15, 1993, pursuant to his duties as an assistant United States attorney, Wilkinson was assigned to handle the investigation and prosecution of Kirby.

6. On the morning of Dec. 15, 1993, Wilkinson appeared before a federal grand jury and presented a sixteen count indictment against Kirby which included charges of racketeering, mail fraud, bank fraud and impeding the functions of the Resolution Trust Corporation, a federal agency.

7. Before 1 p.m. on Dec. 15, 1993, Wilkinson had a telephone conversation with Sarah Avery, a reporter for the Raleigh News & Observer newspaper. Wilkinson told Avery a number of details about the Kirby indictment, including the number of counts and some of the substantive violations set out in the indictment.

8. After speaking with Wilkinson, Avery telephoned Thomas C. Manning, one of Kirby's attorneys, and told Manning about the Kirby indictment. Manning indicated that he was unaware of the indictment and could not comment on it.

9. At 1 p.m. on Dec. 15, 1993, after speaking with Avery, Manning telephoned Wilkinson and recounted his conversation with Avery. Manning asked Wilkinson whether an indictment had in fact been returned against Kirby.

10. Wilkinson knew that the Kirby indictment had been returned at the time of the telephone call from Manning.

11. During the telephone conversation with Manning, Wilkinson falsely told Manning that Kirby had not been indicted and stated that he did not know what the reporter was talking about.

12. Manning then asked Wilkinson if Wilkinson planned to seek an indictment against Kirby that week or before Christmas or before New Year's 1994. To each of these questions, Wilkinson said no.

13. On Dec. 16, 1993, Wilkinson telephoned Manning and apologized to Manning for lying to Manning in their telephone conversation of Dec. 15, 1993.

14. On Dec. 16, 1993, Manning drafted a letter to Douglas McCullough, then the acting United States Attorney and Wilkinson's supervisor, memorializing and describing the Dec. 15, 1993 conversation between Manning and Wilkinson.

15. Manning gave the Dec. 16, 1993 letter to Joseph B. Cheshire V, then his law partner, to review and edit. Cheshire edited the letter to remove some of the harsher language. The edited version of the letter to McCullough is dated Dec. 23, 1993.

16. On Oct. 18, 1995, the N.C. State Bar notified Wilkinson that a grievance file had been established, in which it was alleged that Wilkinson had made false statements to Manning in the Dec. 15, 1993 telephone conversation.

17. On Nov. 2, 1995, Wilkinson responded in writing to the State Bar's letter of notice.

18. In his Nov. 2, 1996 response to the Grievance Committee, Wilkinson indicated that the Kirby indictment had not been returned and was not public at the time of his telephone conversation with Tommy Manning on Dec. 15, 1993.

19. Wilkinson's response to the N.C. State Bar Grievance Committee contained materially false statements and was misleading in that Wilkinson knew that the Kirby indictment was public at the time of the phone conversation between Wilkinson and Manning in which Wilkinson stated that Kirby had not been indicted and that Wilkinson did not know what the reporter was talking about.

20. In his Nov. 2, 1995 response to the N.C. State Bar Grievance Committee, Wilkinson further stated that he did not "at any time during [the Dec. 15, 1993 conversation with Manning] . . . or at any other time, state or represent to Manning that 'no indictment was imminent' or that Kirby 'would not be indicted until well into 1994' or words to that effect, nor did I 'specifically assure Manning . . . that no indictment would be issued until 1994.'"

21. Wilkinson's response to the N.C. State Bar Grievance Committee contained materially false statements and was misleading, in that Wilkinson had in fact told Manning that Kirby would not be indicted, in effect, until after the 1993 Christmas holidays.

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 the Defendant, Scott L. Wilkinson, and of the subject matter.

2. The Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(3) as follows:

a. By telling Manning that Kirby had not been indicted and that he did not know what the newspaper reporter was talking about at a time when he knew that the indictment was public and when he had already disclosed the indictment to the news media, Wilkinson 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).

b. By falsely stating to Thomas C. Manning that the government would not seek an indictment against Mark C. Kirby during the week of Dec. 15, 1993, or before Christmas 1993 or before 1994, at a time when Wilkinson had already presented the Kirby indictment to the Grand Jury, Wilkinson 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 filing a response with the State Bar Grievance Committee in which he indicated that the Kirby indictment was not public at the time when Wilkinson told Manning that Kirby had not been indicted, Wilkinson knowingly made a false statement of material fact to a disciplinary authority in violation of Rule 1.1(a).

d. By filing a response with the State Bar Grievance Committee in which he denied that he had told Manning that Kirby would not be indicted until 1994, Wilkinson knowingly made a false statement of material fact to a disciplinary authority in violation of Rule 1.1(a).

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 the additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. The Defendant's conduct is aggravated by the following factors:
 - a. Submission of false statements during the disciplinary process.
 - b. Refusal to acknowledge wrongfulness of misconduct.
 - c. Substantial experience in the practice of law.
2. The Defendant's misconduct is mitigated by the following factors:

a. Good reputation for honesty and truthfulness.

b. No prior discipline.


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

ORDER OF DISCIPLINE

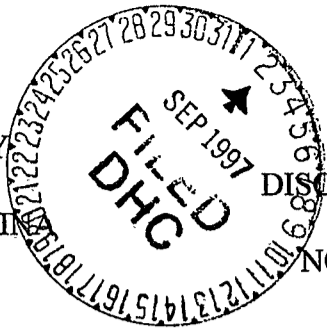
1. The Defendant is hereby reprimanded.

2. The Defendant shall pay the costs of this proceeding as assessed by the Secretary.

Signed by the Chair with the consent of the other hearing committee members this the 29 day of August, 1997.


Henry C. Babb, Jr., Chair
Hearing Committee

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DEFENDANT

REPRIMAND

On June 20, 1997, following a hearing, a hearing committee of the Disciplinary Hearing Commission voted to impose a Reprimand against you in this matter.

A Reprimand is a written form of discipline more serious than an admonition issued in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct and has caused harm or potential harm to a client, the administration of justice, the profession, or a member of the public, but the misconduct does not require a Censure.

The hearing committee was of the opinion that a censure is not required in this case and issues this Reprimand do you. As chairman of the hearing committee assigned to this matter, it is my duty to issue this Reprimand to you and I trust that you will fully understand the spirit in which this duty is performed.

Prior to Dec. 15, 1993, you were the Assistant U.S. Attorney assigned to handle the investigation of certain alleged criminal violations by Mark C. Kirby. Kirby was represented by Joseph B. Cheshire V and his then-law partner, Thomas C. Manning. By the fall of 1993, it was apparent to the defense attorneys that the government intended to seek Mr. Kirby's indictment. The timing of the expected indictment was a matter of considerable concern to Mr. Kirby and his attorneys, as Mr. Kirby had small children with whom he wished to spend the 1993 Christmas holidays.

On the morning of Dec. 15, 1993, you appeared before a federal grand jury and presented a lengthy, 16-count indictment respecting Mr. Kirby. The indictment recited a number of alleged offenses, including RICO violations, bank fraud and obstructing the Resolution Trust Corporation (RTC), a federal agency.

Prior to 1 p.m. on Dec. 15, 1993, you had a telephone conversation with Sara Avery, a reporter for the News & Observer Newspaper, who had been covering the Kirby investigation for some time. In that conversation, you told Ms. Avery about the Kirby indictment, including information about the substantive allegations and the number of counts in the indictment. After her conversation with you, Ms. Avery telephoned the law firm of Cheshire, Parker & Manning. She spoke with Mr. Manning and asked him for a comment about the Kirby indictment. Mr. Manning told Ms. Avery that he had no information and declined to comment. At 1 p.m. on Dec. 15, 1993, Mr. Manning telephoned you and indicated that a reporter had told him that Mr. Kirby had been indicted. Although you were aware that the Kirby indictment had been returned by this time, you nevertheless told Mr. Manning that Mr. Kirby had not been indicted and that you did not know what the reporter was talking about. In response to further questions from Mr. Manning, you told him that Kirby would not be indicted until after the 1993 Christmas holidays, or words to that effect.

After this conversation, you evidently thought better of your conduct and consulted Douglas McCullough, who was then the acting U.S. Attorney. You told McCullough that you had misled Mr. Manning about the timing of the Kirby indictment and he advised you to apologize to Mr. Manning. The following day, Dec. 16, 1993, you did apologize to Mr. Manning for lying to him.

In October 1995, you were served with a letter of notice respecting these matters by the Grievance Committee of the N.C. State Bar. In your response, dated Nov. 2, 1995, you denied that you had lied to Mr. Manning about the timing of the Kirby indictment. You took the position that, at the time of the telephone conversation, the indictment had been presented to the grand jury but had not been returned before a magistrate judge and therefore, technically speaking, there was no indictment. You denied having told Mr. Manning that Kirby would not be indicted until after the Christmas 1993 holidays or until after New Year's 1994 or words to that effect.

In fact, the evidence presented in this case demonstrates that the Kirby indictment was public at the time of your conversation with Mr. Manning on Dec. 15, 1993. Consequently, your statement that Mr. Kirby had not been indicted and that you did not know what the reporter was talking about was false and misleading. Your conduct in this regard involved dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(c) and a knowing false statement of fact in violation of Rule 7.2(a)(4). You violated these same rules by telling Mr. Manning that Mr. Kirby would not be indicted before Christmas or until New Year's 1994 or words to that effect. Finally, your response to the Grievance Committee regarding your conversation with Mr. Manning was untruthful and therefore violated Rule 1.1.

Of all the troubling aspects of this case, the one most disquieting to the hearing committee was your refusal to acknowledge your own misconduct. The committee is willing to believe that your initial false statement to Mr. Manning, while certainly

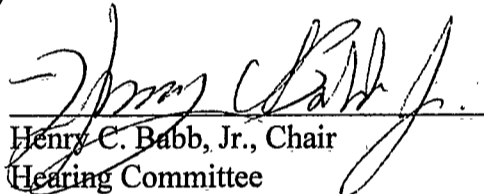
improper, was made in the heat of the moment. Had you simply admitted this misconduct when the Grievance Committee inquired about it, perhaps nothing further would have come of the matter. As it was, you submitted false evidence to the Grievance Committee and compounded a relatively minor violation of the Rules by a much greater one. By so doing, you damaged both the legal profession and your own previously good reputation for honesty. Indeed, but for your lack of prior discipline and the fact that the Grievance Committee had recommended imposition of admonition, the hearing committee would have imposed much more substantial discipline in this case.

The hearing committee reminds you that attorneys cannot continue to remain self regulating if members of the Bar do not respond forthrightly and honestly about matters before the Grievance Committee. The committee also reminds you of the comment to Rule 7.3, which specifies that a prosecutor is not simply an advocate for a party, but has a higher duty to seek justice. Concomitant with the enormous power wielded by an attorney for the government is the obligation to avoid being influenced by personal dislike for an opponent or falling into a win-at-any-cost mentality.

The hearing committee trusts that you will take this Reprimand to heart, benefit from it and never again allow yourself to stray from strict adherence to the Rules of Professional Conduct.

Signed by the chair with the consent of all committee members.

This the 29th day of August, 1997.


Henry C. Babb, Jr., Chair
Hearing Committee