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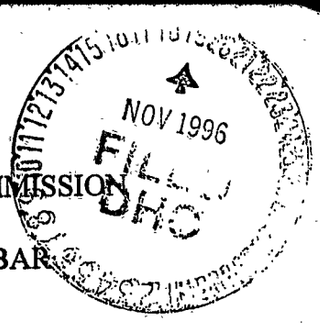

WAKE COUNTY

NORTH CAROLINA

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
96 DHC 6

THE NORTH CAROLINA STATE BAR PLAINTIFF	)	FINDINGS OF FACT
	)	AND CONCLUSIONS OF LAW
v.	)	AND ORDER OF DISCIPLINE
LARRY R. LINNEY, ATTORNEY DEFENDANT	)	

THIS CAUSE was heard on Oct. 10 - 11, 1996 before a hearing committee of the Disciplinary Hearing Commission composed of Henry C. Babb, Jr., Chair; Richard T. Gammon and A. James Early III. The Defendant, Larry R. Linney appeared on his own behalf. The Plaintiff was represented by Carolin Bakewell. Based upon the pleadings herein and the evidence admitted at trial, the hearing committee hereby makes 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, Larry R. Linney, was admitted to the North Carolina State Bar in 1989, 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 periods referred to herein, the Defendant, Larry R. Linney (hereafter, Linney), was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Asheville, Buncombe County, North Carolina.

4. Linney was properly served with process and the hearing was held with due notice to all parties.

5. On Sept. 2, 1992, Linney was appointed guardian ad litem for Georgiana Alexander (hereafter Alexander), an elderly incompetent woman.

6. Linney served as guardian ad litem for Alexander until her death on June 29, 1994.

7. On July 21, 1994, Linney was named administrator CTA of Alexander's estate.

8. On July 20, 1993, Linney went to Wachovia Bank acting in his capacity as guardian for Alexander and cashed a $10,000 certificate of deposit belonging to Alexander (hereafter, Wachovia CD). He obtained a cashier's check for the proceeds of the certificate of deposit in the amount of $10,006.04.

9. On the same day, Linney deposited the $10,006.04 cashier's check into his business/operating account number 1591001724 at Branch Banking & Trust Co. (hereafter BB&T operating account). Linney personally filled out the deposit slip whereby the proceeds of the cashier's check were deposited into his BB&T operating account. The deposit slip was clearly labeled to indicate that it related to the BB&T operating account.

10. Immediately before the $10,006.04 cashier's check was deposited into his BB&T operating account, the balance in Linney's BB&T operating account was $961.64.

11. On Sept. 14, 1993, Linney issued check number 1482 to himself in the amount of $5,000 drawn on his BB&T operating account. Linney filled out and endorsed the $5,000 check and used the proceeds of the check to pay personal and law office expenses.

12. The balance in the BB&T operating account on Sept. 14, 1993 immediately before Linney issued check number 1482 to himself was $12,276.83.

13. Linney did not have $5,000 of personal funds in the BB&T operating account at the time he issued check number 1482 to himself. At most, Linney had only $2,270.79 in personal funds in the operating account as of Sept. 14, 1993. Consequently, all or a portion of the $5,000 check was in fact drawn on funds belonging to Alexander.

14. On Oct. 13, 1993, Linney issued check number 1490 to himself in the amount of $1,300 and on Dec. 15, 1993, he issued check number 1506 to himself in the amount of $3,000. These checks were drawn on Linney's BB&T operating account and all or a portion of the checks were funded by money belonging to Alexander.
Linney filled out and endorsed the $5,000 check and used the proceeds of the check to pay personal and law office expenses.

15. Linney did not have permission to use any portion of the proceeds of the $10,006.04 Wachovia CD for his own use or for the benefit of any third party other than Alexander.

16. On Dec. 15, 1995 and on Jan. 30, 1996, the State Bar's investigator, Donald H. Jones, met with Linney to discuss his handling of the Alexander estate. During the interviews, Jones asked Linney what had happened to the $10,000 Wachovia CD. Jones specifically indicated that he was inquiring about the certificate of deposit which Alexander had owned and which had been on deposit at Wachovia.

17. Linney falsely told Jones that he had deposited the proceeds of Alexander's $10,000 Wachovia CD into Linney's attorney trust account at Branch Banking & Trust Co.

18. On Dec. 25, 1995, Linney filed a written response with the N.C. State Bar Grievance Committee respecting his handling of the $10,000 Wachovia CD. In his response to the Grievance Committee, Linney falsely stated that he deposited the proceeds of the $10,000 certificate of deposit into his trust account, where it remained until he changed banking institutions, at which point he transferred the money into the Alexander estate account.

19. Alexander died testate and in her will left her house at 15 Pine Grove Ave. Asheville (hereafter, 15 Pine Grove Ave. house) to her son, George Fred Alexander, Jr. She left $1,000 to her granddaughter, Gail Carmen Spencer and made other bequests to her daughter, Joyce Davis.

20. George Fred Alexander, Jr., died intestate on July 29, 1994, one month after his mother.

21. George Fred Alexander, Jr., was survived only by his sister, Joyce Davis, and his niece, Gail Carmen Spencer. Following the death of George Fred Alexander, Jr., the only parties claming an interest in the 15 Pine Grove Ave. house were Gail Carmen Spencer and her aunt, Joyce Davis.

22. On July 22, 1994, in his capacity as administrator for Alexander's estate, Linney rented the 15 Pine Grove Ave. house to Sharon Renee Wedlaw and her husband, Keith Wedlaw (hereafter, the Wedlaws). The lease provided that the Wedlaws were to pay $375 per month in rent for the house, plus a $375 security deposit.

23. Between July 28, 1994 and Aug. 16, 1994, Linney received three checks totaling $900 from Sharon Renee Wedlaw's mother, Loretta Douglas (hereafter, Douglas). These payments represented the rent for July, and August 1994, a $25 late fee and the $375 security deposit for the 15 Pine Grove Ave. house.

24. The $900 which Linney received from Douglas should have been held in trust at all times for the benefit of the Georgiana Alexander estate or her devisees or the George Fred Alexander heirs or devisees, separate and apart from Linney's personal funds.

25. Between July 28, 1994 and Aug. 16, 1994, Linney deposited the $900 which he had received from Douglas into his personal bank account number 1217968356 at First Citizens Bank. Thereafter, Linney used all or a portion of the $900 for his own benefit or the benefit of third parties, without the knowledge and consent of Spencer, the Alexander heirs or the Buncombe County Clerk of Court.

26. On Sept. 1, 1994, after the Wedlaws had moved out of the 15 Pine Grove Ave. house, Linney issued a check in the amount of $375 to Sharon Renee Wedlaw. This check was drawn on an account at Wachovia Bank which Linney had opened in the name of the Alexander estate (hereafter, Wachovia Alexander estate account). The $375 check was designated as a refund of the $375 security deposit which had been paid by Ms. Wedlaw or on her behalf, despite the fact that Linney had deposited the $375 security deposit which he received from Wedlaw into his personal account.

27. No portion of the $900 in rent proceeds, late fees and security deposit had been deposited into the Wachovia Alexander estate account as of Sept. 1, 1994, when Linney issued the $375 refund check to Ms. Wedlaw.

28. Linney failed to reveal that he had received rental income from the 15 Pine Grove Ave. house on any of the estate accountings which he filed with the Buncombe County Clerk of Court and failed to reveal that he had placed the rental proceeds into his personal bank account.

29. In November, 1995, Linney falsely told Gail Spencer that the 15 Pine Grove Ave. house had not been rented and that no rental income had been received.

30. In July, 1994, shortly after Alexander's death, acting as administrator of Alexander's estate, Linney conducted a sale of a portion of her household belongings. Sharon Wedlaw and Loretta Douglas each purchased some small items for which they paid Linney a total of $6 in cash. Neither was given a receipt.

31. Other personal belongings of Alexander are no longer in the 15 Pine Grove Ave. house and have not been accounted for.

32. Linney did not deposit any portion of the $6 in cash which he received from Ms. Wedlaw and Ms. Douglas into the Alexander estate account.

33. On Sept. 18, 1995, Linney filed an annual accounting for the Alexander estate with the Buncombe County Clerk of Court. In this report, he indicated that he had collected $1,372.37 in "cash and personal checks" from the sale of household goods belonging to Alexander.

34. Between December, 1994 and March, 1995, Linney did deposit a total of $1,372.37 into the Alexander estate checking account number 451040562 at Wachovia Bank & Trust Co. (hereafter, Alexander estate checking account). In fact, all but $41 of the $1,372.37 ($1,331.37) which Linney deposited into the Alexander estate checking account represented insurance payments, Medicare refunds and the proceeds of annuity checks which had been paid by mistake after Alexander's death.

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 and the committee has jurisdiction over the person of the Defendant, Larry R. Linney and 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) as follows:

a. By misappropriating all or a portion of the proceeds of the $10,000 certificate of deposit for his own benefit or the benefit of third parties other than Alexander, her estate or heirs, without the knowledge and consent of Alexander, her heirs or the Buncombe County Clerk of Court, Linney committed criminal acts which reflect adversely on his honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 1.2(b), engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(c) and failed to hold in trust funds belonging to a client in violation of Rule 10.1(a).

b. By falsely representing to Donald H. Jones and to the Grievance Committee of the N.C. State Bar that he had placed the proceeds of the $10,000 Wachovia certificate of deposit into a trust account and that the proceeds had remained in the account until transferred into the Alexander estate account, Linney engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(c) and knowingly made a false statement of material fact to the State Bar in connection with a disciplinary matter in violation of Rule 1.1(a).

c. By misappropriating all or a portion of the proceeds of the $900 which he received from Loretta Douglas for rent and the security deposit on the 15 Pine Grove Ave. house for his own benefit or the benefit of third parties other than the Alexander estate or the Alexander heirs, without the consent of the heirs or the Clerk of Court, Linney committed criminal acts which reflect adversely on his honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 1.2(b), engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(c), failed to hold in trust funds belonging to a client in violation of Rule 10.1(a) and prejudiced a client in violation of Rule 7.1(a)(3).

d. By falsely telling Gail Spencer that the 15 Pine Grove Ave. house had not been rented and that no rental proceeds had been received, Linney engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(c).

e. By failing to report to the Buncombe County Clerk of Court that he had received income from the rent of the 15 Pine Grove Ave. house, Linney engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(c).

f. By depositing the $900 which he received from Loretta Douglas into his personal bank account at First Citizens Bank, Linney commingled personal and client funds in violation of Rule 10.1(a) and failed to hold in trust funds received in a fiduciary capacity, in violation of Rule 10.1(c).

g. By failing to deposit $6 in proceeds from the sale of Ms. Alexander's household goods into a trust account or the Alexander estate account, Linney failed to hold in trust funds belonging to a client in violation of Rule 10.1(a).

3. The State Bar has failed to prove by clear, cogent and convincing evidence that Linney actually received $1,372.37 from the sale of Alexander's household goods and therefore failed to prove by clear, cogent and convincing evidence that Linney misappropriated all or a portion of these funds.

4. The State Bar failed to prove by clear, cogent and convincing evidence that Linney engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(c) by filing a sworn report with the Buncombe County Clerk of Court which stated that the $1,372.37 in proceeds from the sale of Alexander's household goods were being held in a Wachovia checking account or Linney's BB&T trust account.

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

FINDINGS OF FACT REGARDING DISCIPLINE

1. Linney failed to comply with the order of the Chair requiring him to respond fully to discovery requests of the Plaintiff by 3 p.m. on Monday, October 7, 1996.

2. Linney did not promptly provide to the State Bar copies of his bank statements, deposit slips, deposited items, canceled checks and other materials relating to bank accounts into which client and fiduciary funds had been deposited. Linney did not cooperate with the State Bar's investigation of his handling of Alexander's money.

3. Linney met with Sharon Renee Wedlaw, one of the witnesses who had been subpoenaed to the disciplinary hearing in this matter by the N.C. State Bar on Oct. 9, 1996. During that meeting, Linney attempted to obstruct the disciplinary hearing by telling Wedlaw that it was not necessary for her to appear at the hearing.

4. The defendant's misconduct is mitigated by the following factors:

a. evidence of former good character.

b. absence of a prior disciplinary record.

5. The defendant's misconduct is aggravated by the following factors:

a. selfish motive.

b. pattern of misconduct.

c. multiple offenses.

d. bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency.

e. submission of false evidence, false statements or other deceptive practices during the disciplinary process.

f. refusal to acknowledge wrongful nature of conduct.

g. vulnerability of victim.

h. substantial experience in the practice of law.

i. indifference to making restitution.

6. The aggravating factors outweigh the mitigating factors.

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

ORDER OF DISCIPLINE

1. The defendant, Larry R. Linney, is hereby disbarred from the practice of law in North Carolina beginning 30 days from the service of this order upon the defendant.

2. The 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 the defendant.

3. As a condition precedent to seeking reinstatement of his law license in this jurisdiction, Linney shall pay all costs of this proceeding in the amount of $2,932.25.

4. As a condition precedent to seeking reinstatement of his law license in this jurisdiction, Linney shall make full restitution to the Alexander estate of the following amounts: a) $10,006.04 certificate of deposit; b) $900 rent; c) $375 security deposit; d) $6 in yard sale proceeds. Restitution shall include interest at the legal rate accruing from the date of this order.

5. The 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 undersigned hearing committee chair with the knowledge and consent of the other hearing committee members this the 14th day of November, 1996.

Henry C. Babb, Jr., Chair
Hearing Committee