

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
92 DHC 17

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
vs.)
KENNETH FRANK IREK, ATTORNEY)
Defendant)

FINDINGS OF FACT
& CONCLUSIONS OF LAW

This matter came on for hearing and was heard on Friday, Jan. 8, 1993, by a Hearing Committee of the Disciplinary Hearing Commission composed of Maureen Murray, Chair; Henry Babb and A. James Early III. Carolin Bakewell appeared for the N.C. State Bar. The Defendant, Kenneth F. Irek, did not appear nor was he represented by counsel. Based upon the pleadings and the evidence the Committee 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, Kenneth Frank Irek (hereafter, Irek), was admitted to the North Carolina State Bar in 1980, 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, Irek was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Raleigh, Wake County, North Carolina.

4. On Oct. 31, 1991, Irek deposited a total of \$974.99 into his attorney trust account number 086 12 62 977 at First Citizens Bank (hereafter, attorney trust account). These funds related to the closing of residential real estate from Mary Jane Mills Gaddis (hereafter, Ms. Gaddis) to Anthony Parks.

5. On Oct. 31, 1991 Irek disbursed a total of \$369.50 from the Gaddis-Parks closing funds, which should have left \$605.49 in

Irek's attorney trust account.

6. Ms. Gaddis should have received the remaining \$605.49 from the closing proceeds, according to the HUD-1 settlement statement drafted by Irek.

7. Irek should have maintained \$605.49 in his attorney trust account on Ms. Gaddis' behalf at all times following Oct. 31, 1991.

8. Irek has not paid any portion of the \$605.49 to Ms. Gaddis.

9. The balance in Irek's attorney trust account dropped below \$605.49 on a number of occasions after Oct. 31, 1991.

10. Irek appropriated all or part of the \$605.49 owed to Ms. Gaddis for his own use or the use of third parties other than Ms. Gaddis without her knowledge or permission.

11. In May 1991, Irek undertook to handle a legal matter for Crystal Bateman.

12. On May 22, 1991, Irek deposited \$570 belonging to Ms. Bateman into his attorney trust account.

13. Prior to Aug. 20, 1991, Ms. Bateman discharged Irek as her attorney.

14. On or about August 20, 1991, Irek returned \$535 of Ms. Bateman's money to her. Irek retained \$35 as a fee for the legal work he had done for Ms. Bateman.

15. Between May 22, 1991 and August 20, 1991 at least \$535 should have remained in Irek's attorney trust account at all times on Ms. Bateman's behalf.

16. The balance in Irek's attorney trust account dropped below \$535 on a number of occasions between May 22, 1991 and August 20, 1991.

17. Irek temporarily converted all or part of Ms. Bateman's money to his own benefit or the benefit of third parties without Ms. Bateman's knowledge or permission.

18. On or about May 28, 1991, Irek deposited \$85,981.39 into his attorney trust account relating to the sale of real estate from Norman Acker to Mohammad Kazemian.

19. On or about Sept. 4, 1992, Irek deposited \$148.96 into his attorney trust account relating to the Acker-Kazemian closing.

20. Between May 28, 1991 and October 8, 1991, Irek disbursed a total of \$85,630.35 to or on behalf of Kazemian and Acker, leaving a balance of \$500 in Irek's attorney trust account.

21. The \$500 left in Irek's attorney's trust account should have gone to Kazemian, pursuant to a rental agreement he had entered into with Acker.

22. The balance in Irek's attorney trust account fell below \$500 on a number of occasions after May 28, 1991.

23. Irek has not paid any portion of the \$500 to Kazemian.

24. Irek appropriated all or part of Kazemian's \$500 to his own benefit or the benefit of third parties without Kazemian's knowledge or permission.

25. On or about May 28, 1991, Irek deposited \$25,000 into his attorney trust account, relating to the sale of real estate from Annie Hicks Jacobs to Neal and Shana Allison.

26. Irek was directed to use \$1,091.87 of the closing funds to pay off two judgments which had been filed with the Wake County Clerk of Court against Ms. Jacobs.

27. On or about May 24, 1991 Irek disbursed \$875.79 of the closing funds to pay off one of the judgments against Ms. Jacobs.

28. Irek did not pay off the second judgment against Ms. Jacobs nor did he disburse the \$216.08 to or on her behalf.

29. Following the Allison-Jacobs closing on May 24, 1991, a total of \$216.08 should have remained in Irek's attorney trust account at all times on Ms. Jacobs' behalf.

30. The balance in Irek's attorney trust account fell below \$216.08 on several occasions after May 24, 1991.

31. Irek appropriated all or part of Ms. Jacobs' funds for his own benefit or the benefit of third parties other than Ms. Jacobs without Ms. Jacobs' knowledge or permission.

32. On or about Jan. 3, 1985, Ruth O'Neal conveyed property she owned at 609 E. Martin Street, Raleigh (hereafter, Martin Street property) to her stepson, James O'Neal, Jr., and stepdaughter, Barbara Overby.

33. In October 1986, James O'Neal and Ms. Overby conveyed the property to Dr. Connell Covington and Nathaniel Curry. Pursuant to a promissory note and deed of trust, Curry and Covington were to make monthly payments on the property and a final balloon payment in November 1989.

34. When the balloon payment became due, Curry and Covington defaulted.

35. In April 1991, Ruth O'Neal hired Irek to collect the payment due pursuant to the deed of trust and promissory note signed by Curry and Covington.

36. On April 30, 1991, Covington and Curry conveyed the Martin Street property to Ruth O'Neal.

37. In May 1991, James and Ruth O'Neal paid Irek a total of \$8,500 for his services regarding the Martin Street property.

38. As of May, 1991, the Martin Street property was rented and the tenants paid the monthly rent to a rental management company.

39. In May 1991, Irek directed the rental management company to forward the rent checks generated by the Martin Street property to Irek rather than to Ruth O'Neal without her knowledge or permission.

40. Between June and September 1991, Irek converted a total of \$3,798.56 belonging to Ruth and/or James O'Neal by depositing five rent checks generated by the Martin Street property into his attorney trust account and later disbursing the proceeds to himself.

41. Irek did not have the permission of Ruth O'Neal or James O'Neal to retain any portion of the rental proceeds of the Martin Street property as a fee or for any other purpose.

42. Irek received a total of \$12,298.56 belonging to Ruth and James O'Neal. Irek has failed and refused to return any portion of the sums, despite requests therefore from Ruth and James O'Neals and their attorneys.

43. Irek failed to perform sufficient work for Ruth and James O'Neal to justify retention of the fees received by him.

44. On three occasions between Aug. 15, 1991 and Nov. 14, 1991, Irek deposited a total of \$875 of personal funds into his attorney trust account.

45. On Oct. 18, 1991, James C. Wilkinson (hereafter, Wilkinson), gave Irek \$25,000 to place into Irek's attorney trust account. The \$25,000 represented a portion of the proceeds of a pension plan which were distributed to Wilkinson when he left his former job.

46. Irek deposited the \$25,000 into his attorney trust account on Oct. 18, 1991.

47. Between Nov. 8, 1991 and Nov. 14, 1991, Irek disbursed \$2,000 of the \$25,000 he was holding to Wilkinson. Irek also disbursed \$13,000 of Wilkinson's funds to United Carolina Bank to purchase an IRA for Wilkinson.

48. In October 1991 Wilkinson directed Irek to invest the remaining \$10,000 in a company called Associated Craftsmen General Corporation (hereafter, ACGC) which was owned by Irek.

49. Irek used part of the \$10,000 earmarked for the ACGC investment for his personal expenses rather than for the improvement and/or expansion of ACGC.

50. Irek did not fully disclose to Wilkinson the risks involved in investing the \$10,000 in ACGC nor did he advise Wilkinson to seek independent counsel before making the investment in ACGC.

51. On March 13, 1992, a consent order of preliminary injunction was entered by the Wake County Superior Court. The order provided that Irek had mishandled client funds in two instances.

52. Irek signed the consent order of preliminary injunction and was therefore aware no later than March 13, 1992 that the N.C. State Bar was investigating his handling of client funds.

53. The last known official address on file with the North Carolina State Bar for Kenneth Frank Irek is P.O. Box 98284, Raleigh, N.C. 27624.

54. Letters of notice and other communications sent by the State Bar to Irek's last known official address in May and June 1992 were returned unclaimed.

55. Between mid-August and Sept. 9, 1992, the N.C. State Bar attempted to serve Irek personally with the summons and complaint in this proceeding through the Wake County Sheriff's Department.

56. The Wake County Sheriff's Department was unable to serve Irek and returned the process unserved to the N.C. State Bar after Sept. 9, 1992.

57. On Sept. 22, 1992, the N.C. State Bar mailed a copy of the summons and complaint herein to Irek by certified mail at his last known residence address, 7304 Bay Hill Court, Raleigh, N.C. 27615. The letter, which also enclosed a copy of the notice of publication prepared by the State Bar, was returned unclaimed.

58. Prior to Oct. 6, 1992, the N.C. State Bar received information that members of Irek's family were residing at 2411 Old Chapel Hill Road, Hillsborough, N.C. 27278.

59. On Oct. 6, 1992, the N.C. State Bar sent an alias & pluries summons and the complaint herein to the Orange County Sheriff's Department to attempt service upon Irek at the Hillsborough address.

60. On Oct. 7, 1992, the N.C. State Bar mailed a copy of the alias & pluries summons and the complaint herein to Irek by certified mail to Irek at the Hillsborough address. The letter was returned unclaimed.

61. The Orange County Sheriff's Department attempted service upon Irek at the Hillsborough address on Oct. 21, 1992. The

return of service indicates that Irek's wife informed the sheriff's deputy that Irek was living in Florida as of Oct. 21, 1992.

62. On Nov. 5, 1992, David J. Frederick, a staff investigator employed by the N.C. State Bar, contacted Irek's wife and father by telephone. Both indicated that they did not know where Irek was. Mrs. Irek stated that she believed Irek was in Florida but that she did not have his address.

63. Following May 1992, the N.C. State Bar had no reliable information regarding Irek's whereabouts and its attempts to serve Irek with various documents by certified mail and in person were unsuccessful.

64. The North Carolina State Bar served Irek with the complaint in this matter by publication pursuant to N.C. Gen. Stat. Section G.S. 1A-1, Rule 4(j1). The notice of the instant disciplinary proceeding appeared in the Raleigh News & Observer Newspaper on Sept. 28, Oct. 5 and Oct. 12, 1992.

65. Pursuant to Rule 4(j1), Irek had until Nov. 9, 1992 in which to file an answer to the State Bar's complaint filed herein.

66. Irek did not file an answer to the complaint.

67. On Nov. 13, 1992, the N.C. State Bar filed a motion for entry of default, based on Irek's failure to file timely answer. The State Bar attached to its motion an affidavit setting out the circumstances justifying service of process by publication and an affidavit of publication, as required by Rule 4(j1) of the Rules of Civil Procedure.

68. On Nov. 13, 1992, the Secretary of the N.C. State Bar entered default against Irek, pursuant to Section 14(F) of the Discipline & Disbarment Procedures of the N.C. State Bar and Rule 55 of the N.C. Rules of Civil Procedure.

CONCLUSIONS OF LAW

1. Irek was properly served with notice of the State Bar complaint in this matter by publication in September and October, 1992.

2. The Disciplinary Hearing Commission has personal and subject matter jurisdiction to proceed in this matter.

3. By misappropriating all or part of the \$605.49 due Ms. Gaddis to his own use or the use of third parties without Ms. Gaddis' knowledge or permission, Irek committed a criminal act which reflects adversely on his honesty, trustworthiness or fitness to practice in violation of Rule 1.2(B) of the Rules of Professional Conduct, engaged in conduct involving dishonesty,

fraud, deceit or misrepresentation in violation of Rule 1.2(C) of the Rules of Professional Conduct and failed to pay over sums owed to a client or third party as directed by a client in violation of Rule 10.2(E) of the Rules of Professional Conduct.

4. By converting to his own use a portion of the \$10,000 which should have been invested in ACGC on Wilkinson's behalf, Irek engaged in criminal conduct which adversely reflects on Irek's honesty, trustworthiness or fitness as a lawyer in other respects, and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C) of the Rules of Professional Conduct.

5. By misappropriating all or part of the \$535 due Ms. Bateman to his own use or the use of third parties without her knowledge or permission, Irek committed a criminal act which reflects adversely on his honesty, trustworthiness or fitness to practice in violation of Rule 1.2(B) of the Rules of Professional Conduct, engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C) of the Rules of Professional Conduct and failed to pay over sums owed to a client or third party as directed by a client in violation of Rule 10.2(E) of the Rules of Professional Conduct.

6. By misappropriating all or part of the \$500 due to Kazemian to his own use or the use of third parties without Kazemian's knowledge or permission, Irek committed a criminal act which reflects adversely on his honesty, trustworthiness or fitness to practice in violation of Rule 1.2(B) of the Rules of Professional Conduct, engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C) of the Rules of Professional Conduct and failed to pay over sums owed to a client or third party as directed by a client in violation of Rule 10.2(E) of the Rules of Professional Conduct.

7. By misappropriating all or part of the \$197.19 due Ms. Jacobs to his own use or the use of third parties without Ms. Jacobs' knowledge or permission, Irek committed a criminal act which reflects adversely on his honesty, trustworthiness or fitness to practice in violation of Rule 1.2(B) of the Rules of Professional Conduct, engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C) of the Rules of Professional Conduct and failed to pay over sums owed to a client or third party as directed by a client in violation of Rule 10.2(E) of the Rules of Professional Conduct.

8. By retaining \$8,500 paid to him by Ruth and James O'Neal, without performing sufficient legal work to justify the fee, Irek charged or collected an illegal or clearly excessive fee in violation of Rule 2.6(A) of the Rules of Professional Conduct.

9. By converting \$3,798.56 in rent checks belonging to Ruth and/or James O'Neal without their prior knowledge or permission, Irek committed a criminal act which reflects adversely on his honesty, trustworthiness or fitness to practice in violation of Rule 1.2(B) of the Rules of Professional Conduct, engaged in

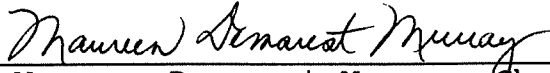
conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C) of the Rules of Professional Conduct and failed to deliver funds owed to a client to the client in violation of Rule 10.2(E) of the Rules of Professional Conduct.

10. By depositing a total of \$875 in personal funds into his attorney trust account, Irek commingled personal and client funds in his trust account in violation of Rule 10.1(C) of the Rules of Professional Conduct.

11. By advising Wilkinson to invest \$10,000 in Irek's business without advising Wilkinson to seek independent counsel regarding the investment and without fully disclosing the risks involved in the investment, Irek entered into a business transaction with a client which was unfair to the client, in violation of Rule 5.4(A) of the Rules of Professional Conduct and engaged in a conflict of interest in violation of Rule 5.1 of the Rules of Professional Conduct.

Signed by the Chair with the consent of all parties and the Committee members.

This the 8th day of January, 1993.



Maureen Demarest Murray, Chair

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vs.)
KENNETH FRANK IREK, ATTORNEY)
Defendant)

ORDER OF DISCIPLINE

This cause was heard by a Hearing Committee of the Disciplinary Hearing Commission composed of Maureen Murray, Chair; Henry Babb and A. James Early III on Friday, Jan. 8, 1993. Based upon the evidence presented, the Committee finds the following aggravating factors:

1. The Defendant, Kenneth F. Irek, engaged in multiple violations of the Rules of Professional Conduct.
2. The Defendant's misconduct was motivated by selfish considerations.

Based upon the Findings of Fact and Conclusions of Law the Hearing Committee enters the following:

ORDER OF DISCIPLINE

1. The Defendant, Kenneth Frank Irek, is hereby DISBARRED.
2. The Defendant shall pay the costs of this proceeding.

Signed by the Chair with the consent of all Committee members.

This the 8th day of January, 1993.

Maureen Demarest Murray
Maureen Demarest Murray, Chair
Disciplinary Hearing Committee