

NORTH CAROLINA
WAKE COUNTY

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BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
91 DHC 22

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
vs.)
BILLY D. FRIENDE, JR., ATTORNEY)
Defendant)

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

This cause was heard by a Hearing Committee of the Disciplinary Hearing Commission consisting of Fred Folger, Chairman; Frank Emory and Frank Boushee on Friday, March 20, 1992. The Defendant was represented by James B. Maxwell and Carolin Bakewell appeared for the Plaintiff. Based upon the pleadings, evidence introduced herein and arguments of counsel, 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, Billy Friende, was admitted to the North Carolina State Bar in 1976, 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, Friende was actively engaged in the practice of law in the State of North Carolina and maintained a law office in Forsyth County, North Carolina.
4. In late 1989 or early 1990, Friende undertook to represent Janie Gilmore, who was the administratrix of the estate of her sister, Leonia G. Saunders.
5. On Nov. 20, 1990, Friende filed the final accounting in the Saunders estate. The proceeds of the estate were disbursed on the same date.

6. By Dec. 20, 1990, Friende learned that the Bowman Gray School of Medicine Department of Clinics had filed a claim against the Saunders estate for an additional \$6,028.94 in October, 1990.

7. Bowman Gray did not serve a copy of its claim upon Friende although a copy was sent to the Clerk of Court of Forsyth County.

8. Friende informed Gilmore in late December 1990 that the Bowman Gray claim would have to be resolved, as the Saunders estate was solvent and the Bowman Gray claim was timely. Friende offered to try to negotiate a settlement of the Bowman Gray claim for a lesser amount.

9. On Dec. 28, 1990, after receiving Gilmore's permission to try to settle the claim, Friende called Angela Kellam, an estate counselor in Bowman Gray's Patient Accounts Services Department, and offered to settle the Saunders bill for \$2,000.

10. During the Dec. 28, 1990 conversation, Kellam told Friende that she would have to check with her supervisor regarding the \$2,000 settlement offer. Neither Kellam nor Friende ever discussed settling the claim for any sum other than \$2,000.

11. On Jan. 2, 1991 or Jan. 3, 1991, Kellam telephoned Friende and accepted the \$2,000 offer to settle the Bowman Gray claim against the Saunders estate. Friende asked Kellam to send him a letter confirming that the matter had been settled.

12. On Jan. 3, 1991, Kellam wrote to Friende, confirming that Bowman Gray had agreed to settle the claim against the Saunders estate for \$2,000.

13. On Jan. 2 or 3, 1991, Friende telephoned Gilmore and told her that Bowman Gray had agreed to settle the claim for \$3,000. At the time of the telephone call, Friende knew that the claim had actually been settled for \$2,000.

14. On Jan. 4, 1991, Gilmore delivered a check for \$3,000 to Friende's office to pay the Bowman Gray claim against the Saunders estate.

15. On Jan. 4, 1991 Gilmore's \$3,000 check was deposited into Friende's attorney trust account.

16. On Jan. 7, 1991, Friende issued a \$2,000 trust account check to Bowman Gray in payment of the Saunders estate debt.

17. On Jan. 7, 1991, Friende's secretary, Dorothy Williams, transferred the remaining \$1,000 which had been received from Gilmore into Friende's general office account. Williams transferred the money because she believed the money represented Friende's fee.

18. Between Jan. 4 and Jan. 9, 1991, Miriam Clemons, another secretary employed by Friende, altered a copy of Kellam's letter of Jan. 3, 1991 to indicate that the Bowman Gray claim had been settled for \$3,000.

19. Clemons altered the letter because she believed that the figure \$2,000 in the original letter from Kellam was a typographical error. Friende did not direct Clemons to alter the letter, nor did Clemons immediately notify him that she had altered the letter.

20. Clemons mailed a copy of the altered letter to Gilmore, who received it between Jan. 7 and Jan. 9, 1991.

21. On Jan. 9, 1991, Gilmore telephoned Kellam and learned that Bowman Gray had settled the debt against Saunders' estate for \$2,000.

22. In a telephone conversation with Gilmore on Jan. 9, 1991, Friende agreed to return the entire \$1,000 to Gilmore.

23. Gilmore received the \$1,000 from Friende shortly after Jan. 9, 1991.

Based upon the foregoing Findings of Fact, the Committee makes the following:


CONCLUSIONS OF LAW

1. By falsely telling Gilmore that Bowman Gray had agreed to settle the claim against the Saunders estate for \$3,000 when Friende knew that that Bowman Gray's representatives had agreed to accept \$2,000, Friende engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, in violation of Rule 1.2(C) of the Rules of Professional Conduct and knowingly made a false statement of fact in violation of Rule 7.2(A)(4) of the Rules of Professional Conduct.

2. The N.C. State Bar has failed to prove by clear, cogent and convincing evidence that Friende violated any other provisions of the Rules of Professional Conduct.

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

This the 21 day of August, 1992.


Fred Folger, Chairman
For the Committee

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ORDER OF DISCIPLINE

This cause was heard by a Hearing Committee of the Disciplinary Hearing Commission consisting of Fred Folger, Chairman; Frank Emory and Frank Boushee on Friday, March 20, 1992. The Committee received evidence relating to the appropriate measure of discipline and based upon the evidence and the arguments of counsel makes the following findings:

1. The Defendant has not been the subject of professional discipline in the past.
2. The Defendant has a good reputation in his community for honesty and truthfulness.
3. The Defendant promptly returned all funds belonging to Ms. Gilmore.
4. The Defendant was cooperative with the N.C. State Bar throughout the investigation of this matter.
5. There are no facts present which aggravate the Defendant's misconduct.

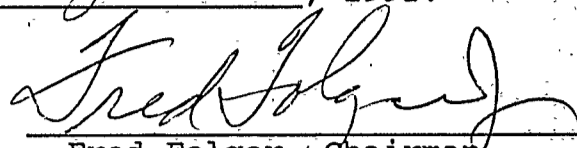
Based upon the Findings of Fact and Conclusions of Law entered in this cause and the foregoing findings relating to discipline, the Hearing Committee enters the following

ORDER OF DISCIPLINE

1. The Defendant is hereby reprimanded.
2. The Defendant shall pay the costs of this proceeding.

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

This the 21 day of August, 1992.



Fred Folger, Chairman
For the Committee