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NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
89 DHC 20

THE NORTH CAROLINA STATE BAR)
Plaintiff)
v.)
HUGH F. WILLIAMS, JR., ATTORNEY)
Defendant)

FINDINGS OF FACT & CONCLUSIONS
OF LAW

This cause was heard by a Hearing Committee of the Disciplinary Hearing Commission consisting of John B. McMillan, chairman, Robert Bryan and J. Richard Futrell on Friday, Dec. 22, 1989. The Plaintiff was represented by Carolin Bakewell. Defendant, Hugh F. Williams, Jr., was not present or represented by counsel. Based upon the Plaintiff's Complaint and the Order of Default entered against Defendant on Nov. 28, 1989, and evidence presented by the Plaintiff at the hearing, the Committee 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, Hugh F. Williams, Jr. (hereafter, Williams), was admitted to the North Carolina State Bar in 1981 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, Code of Professional Responsibility, Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During most of the relevant periods referred to herein, Williams was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Morganton, Burke County, North Carolina.

4. On August 8, 1989, Williams was served with a copy of the State Bar's complaint in this matter. Williams failed to file a timely answer and an order of default was entered on August 31, 1989. A hearing was held in this matter on October 30, 1989, at which time, the previous entry of default was set aside, at Williams' request. Williams was given until Nov. 20, 1989 in which to file an answer or other responsive pleading to the complaint. Williams failed to file an answer or other responsive pleading and an order of default was entered on Nov. 28, 1989.

5. In November, 1987, Williams was retained by Janice Maynard to handle a domestic matter. Maynard paid Williams \$500 on Nov. 9, 1987.
6. Williams never placed the \$500 fee in his trust account.
7. Williams failed to take any action on Maynard's behalf.
8. Williams has failed to refund any portion of the \$500 fee paid to Maynard.
9. In 1984, Williams was appointed guardian ad litem for Keith Warren, an incompetent adult.
10. Pursuant to his duties as guardian, Williams established a bank account into which he deposited funds received on Warren's behalf, beginning with a deposit of \$10,689.40 in March, 1984.
11. While serving as guardian for Warren, Williams misappropriated approximately \$4,018.44 belonging to the Warren estate.
12. Prior to August, 1987, the Clerk of Burke County Superior Court questioned the way Williams was handling the Warren estate and demanded an accounting.
13. Williams refused to render an accounting and was removed as guardian in 1987.
14. In 1988, Williams undertook to represent Katherine Willis respecting an automobile accident in which Willis had been involved.
15. In March, 1988, pursuant to his representation of Willis, Williams received a check for \$4,716.00 from the Travelers Insurance Company, in settlement of Ms. Willis' claim arising out of the automobile accident.
16. The check was deposited into Williams' attorney trust account on or about March 28, 1988.
17. On or about April 15, 1988, Williams disbursed \$2,216 to Ms. Willis.
18. Ms. Willis died in July, 1988.
19. Williams has failed and refused to disburse the remaining \$2,500 to Ms. Willis or to the representative of Ms. Willis' estate.
20. Williams appropriated all or part of the \$2,500 for his own use.
21. In 1988, Williams undertook to represent Ophelia McElrath respecting an automobile accident in which Ms. McElrath had been involved.
22. In April, 1988, Williams received a check in the amount of \$8,000 from Aetna Insurance Co., in settlement of Ms. McElrath's claim arising out of the accident.

23. The \$8,000 check was deposited into Williams' attorney trust account on or about April 14, 1988.

24. Between April 13 and May 10, 1988, Williams deducted \$2,200 from the funds held in his trust account as his fee for handling the McElrath matter.

25. In April, 1988 Williams paid a total of \$716 to individuals and corporations which had rendered medical services to McElrath.

26. Williams paid \$2,225 to McElrath.

27. A total of \$2,859 should have remained in Williams' trust account for Ms. McElrath's benefit.

28. Williams has failed and refused to pay the remaining \$2,859 to Ms. McElrath.

29. Williams appropriated all or part of the \$2,859 for his own use.

30. In late 1986 or early 1987, Williams undertook to represent Karen Brittain respecting an automobile accident in which she was involved.

31. In January 1987, pursuant to his representation of Brittain, Williams received a check for \$1,000 from General Accident Insurance Co. on behalf of Ms. Brittain.

32. The \$1,000 check was deposited into Williams' trust account on or about Jan. 12, 1987.

33. Williams failed and refused to disburse any portion of the \$1,000 check to or on behalf of Ms. Brittain.

34. Williams appropriated all or part of the \$1,000 for his own use.

35. In the fall of 1988, Williams abandoned the practice of law in Morganton, N.C. and left the state of North Carolina.

36. Prior to leaving North Carolina, Williams failed to provide notice to his clients, failed to return file materials to clients and failed to take any steps to ensure that his clients' legal matters would not be prejudiced by his departure.

37. Between March 1987 and April, 1988, Williams deposited \$3,502 of his own funds into his attorney trust account no. 7018112724 at First Union National Bank, Morganton, N.C.

38. In 1987 and 1988, Williams failed to maintain proper records and failed to follow procedures required by the Rules of Professional Conduct concerning his attorney trust account at First Union National Bank, Morganton. The trust account records and procedures were defective in the following particulars:

(a) Deposits were placed into the account with insufficient

information to determine the source of the deposited funds;

(b) Items were drawn on the trust account payable to cash;

(c) Williams failed to maintain a file or ledger containing a record for each individual for whom he held trust funds with the current balance of trust funds held.

39. On June 5, 1989, a letter of notice was sent to Williams by the N.C. State Bar regarding the grievance of Randy Huffman, assigned file no. 89G 0321.

40. On March 20, 1989, a letter of notice was sent to Williams by the N.C. State Bar regarding the grievance of Rance Henderson, assigned file no. 88G 0670. Delivery of the letter of notice was attempted again on April 28, 1989 and May 26, 1989.

41. On April 25, 1989, a letter of notice was sent to Williams by the N.C. State Bar regarding the grievance of Neel Lee Hudson, assigned file no. 89G 0237.

42. On Nov. 11, 1988, a letter of notice was sent to Williams by the N.C. State Bar regarding the grievance of Ted Lambert, assigned file no. 88G 0621. The letter of notice was sent again on or about April 27, 1989 and on or about May 27, 1989.

43. On March 29, 1989, a letter of notice was sent to Williams by the N.C. State Bar regarding the grievance of the N.C. State Bar assigned file no. 89G 0191. The letter of notice was sent again on April 25, 1989.

44. On June 22, 1989, a letter of notice was sent to Williams by the N.C. State Bar regarding the State Bar grievance respecting the Warren estate and assigned file no. 89G 0432.

45. On June 5, 1989, a letter of notice was sent to Williams by the N.C. State Bar regarding Eliza Gammon, assigned file no. 89G 0376.

46. On or about August 29, 1988, a letter of notice was sent to Williams by the N.C. State Bar regarding the grievance of Janice Maynard assigned file no. 88G 0490. The letter of notice was sent again on or about April 27, 1989 and May 26, 1989.

47. On June 5, 1989, a letter of notice was sent to Williams by the N.C. State Bar regarding the grievance of Betty Mainer, assigned file no. 89G 0374.

48. On or about May 22, 1989, a letter of notice was sent to Williams by the N.C. State Bar regarding the grievance of Ophelia McElrath, assigned file no. 89G 0318.

49. Williams failed to respond to any of the letters of notice referred to in paragraphs 39 through 48 in a timely fashion.

50. On June 22, 1989, Williams was served with a subpoena ordering him to appear in the offices of the N.C. State Bar at 1:30 p.m. July 7, 1989.

51. Williams failed to appear on July 7, 1989 as ordered by the subpoena.

52. In 1988, Williams undertook to represent Eliza Gammon regarding a civil claim against a Christopher Kelly.

53. Kelly, through his attorneys, filed a counterclaim against Gammon.

54. Williams failed to file a reply to the counterclaim in a timely fashion.

55. A judgment of default was entered against Ms. Gammon on Nov. 9, 1988. Williams failed to appear at the hearing on the defendant's motion for judgment of default.

56. An order of default was entered against Ms. Gammon in the amount of \$2,287.58 in damages and \$420 in attorneys fees as a result of Williams' failure to respond to Kelly's counterclaim.

57. In August, 1987, Betty Ann Mainer retained Williams to represent her regarding claims for workers' compensation and Social Security disability payments.

58. Ms. Mainer paid Williams an advance fee of \$1,000.

59. Williams failed to take any action on Ms. Mainer's behalf in either matter.

60. Williams failed to obtain approval of the N.C. Industrial Commission or the Social Security Commission before collecting a fee from Ms. Mainer.

61. Williams has failed and refused to return the \$1,000 fee to Ms. Mainer.

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

(a) By failing to take any action on behalf of Ms. Maynard or Ms. Mainer, Williams neglected legal matters entrusted to him in violation of Rule 6(B)(3) and prejudiced his clients in violation of Rule 7.1(A)(3).

(b) By accepting a \$1,000 fee from Ms. Mainer without the approval of the N.C. Industrial Commission or the Social Security Administration, Williams charged and collected an excessive and/or illegal fee in violation of Rule 2.6.

(c) By refusing to refund the unearned portion of the advance fees paid to him by Ms. Maynard and Ms. Mainer, Williams violated Rule 2.8(A)(3)

and misappropriated client funds in violation of Rule 1.2(B).

(d) By failing to deposit the \$500 advance fee he received from Ms. Maynard into his trust account, Williams violated Rule 10.1(A) and (C).

(e) By misappropriating funds belonging to the Warren estate, Ms. McElrath, Ms. Willis and Ms. Brittain, Williams committed a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, in violation of Rule 1.2(B) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of Rule 1.2(C).

(f) By failing to render an accounting respecting the Warren estate when requested to do so by the clerk of court, Williams neglected a legal matter in violation of Rule 6(B)(3).

(g) By failing to notify his clients and failing to take steps to obtain alternative representation for his clients prior to abandoning his law practice, Williams violated Rules 2.8(A)(2), 6(B)(1), 6(B)(3) and 7.1(A)(1).

(h) By failing to respond to Christopher Kelly's counterclaim against Eliza Gammon in a timely fashion, and failing to appear at the hearing on the defendant's motion for default, Williams neglected a legal matter entrusted to him in violation of Rule 6(B)(3) and prejudiced a client in violation of Rule 7.1(A)(3).

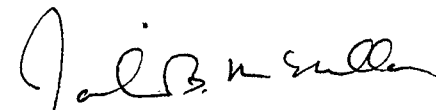
(i) By failing to respond to letters of notice sent him by the N.C. State Bar, Williams failed to answer a formal inquiry of the N.C. State Bar.

(j) By refusing to appear as commanded by a subpoena of the N.C. State Bar, Williams is guilty of contempt of the Grievance Committee of the N.C. State Bar and failed to answer a formal inquiry of the N.C. State Bar in violation of N.C. Gen. Stat. Section 84-28(b)(3) and Rule 1.1(B).

(k) By failing to keep a file or ledger of balances maintained for clients, failing to ensure that deposit slips contained sufficient identifying information and by drawing items on his attorney trust account payable to cash, Williams violated Rule 10.2(C).

(l) By commingling personal funds with client funds in his attorney trust account, Williams violated Rule 10.1(A).

This the 27th day of December, ¹⁹⁸⁹ 1990.



John B. McMillan, Chairman
For the Committee

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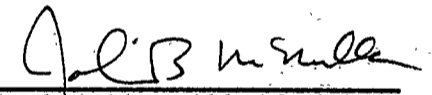
ORDER OF DISCIPLINE

This cause was heard by a Hearing Committee of the Disciplinary Hearing Commission consisting of John B. McMillan, chairman, Robert Bryan and J. Richard Futrell on Friday, Dec. 22, 1989. Based upon the evidence introduced at the hearing and the arguments of Counsel, the Committee makes the following:

ORDER OF DISCIPLINE

1. The Defendant shall be and hereby is disbarred;
2. The Defendant shall pay the costs of this proceeding;
3. Prior to seeking readmission to the N.C. State Bar, the Defendant shall pay \$4,029.38 to the Client Security Fund of the North Carolina State Bar in reimbursement of sums paid to Robert Ervin, Esq. for his service as trustee of the files of the Defendant. The Defendant shall also reimburse the Client Security Fund for all sums paid by the Client Security Fund to former clients of the Defendant.

This the 27th day of December, 1989.


John B. McMillan, Chairman
For the Committee