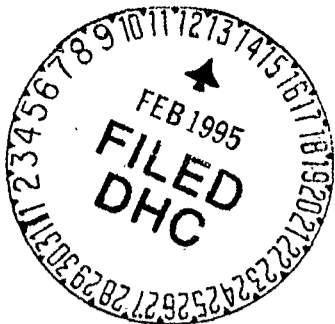


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NORTH CAROLINA
WAKE COUNTY

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

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

J. STEWART BANKHEAD, ATTORNEY
Defendant

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

THIS CAUSE was heard by a Hearing Committee of the Disciplinary Hearing Commission composed of Maureen Demarest Murray, Chair; Samuel Jerome Crow and Anthony J. Foriest on Friday, Jan. 20, 1995. The Defendant, J. Stewart Bankhead, appeared pro se. The Plaintiff was represented by Carolin Bakewell. Based upon the pleadings and the evidence introduced at the hearing, 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, J. Stewart Bankhead (hereafter, Bankhead), was admitted to the North Carolina State Bar in 1990, 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. At all times pertinent hereto, Bankhead was actively engaged in the practice of law in the State of North Carolina.
- 4. Between mid-1991 and September 1993, Bankhead practiced with a firm then known as Kaylor, Bankhead & Luffman in Hendersonville. Bankhead had two law partners, Steve Kaylor and Robin Luffman. No other attorneys were associated with or worked for Kaylor, Bankhead & Luffman between mid-1991 and September 1993.
- 5. In September 1993, Bankhead left the firm of Kaylor, Bankhead & Luffman and moved to Charlotte to engage in the solo

practice of law. Bankhead was engaged in the solo practice and maintained an office in his home in Charlotte as of Jan. 20, 1995.

6. Between mid-1991 and September 1993, Kaylor, Bankhead & Luffman had two non-attorney employees, Charlene McGraw and Nancy Brady. Ms. McGraw performed general secretarial and receptionist duties for the firm. Ms. Brady worked as the firm's paralegal.

7. Prior to 1993, Bankhead represented a client named David Corn (hereafter, Corn) regarding several traffic offenses with which Corn had been charged.

8. Prior to April 1993, Corn and his wife, Norma, contacted Bankhead and Bankhead volunteered to help them raise funds to purchase a wheelchair for the Corns' handicapped son, Christopher, who was then three years old. The Corns requested Bankhead's assistance because Bankhead had represented Mr. Corn in the past and because they trusted him.

9. Bankhead agreed to help the Corns raise funds to purchase a wheelchair for Chris Corn. Bankhead agreed not to charge any fee for his services in assisting Chris Corn.

10. Between April 12, 1993 and May 3, 1993, Bankhead received at least \$465 which had been donated on behalf of Chris Corn by various individuals.

11. Between April 12, 1993 and May 3, 1993, Bankhead deposited the \$465 with which he had been entrusted on Chris Corn's behalf into account number 618011020 at NationsBank in Hendersonville (hereafter 1020 NationBank account).

12. The 1020 NationsBank account was a joint personal checking account set up in the names of Bankhead and his room-mate, Stuart Cantrell (hereafter, Cantrell).

13. Cantrell is not a lawyer and has never been licensed to practice law in North Carolina.

14. Between Jan. 27, 1993, when the NationsBank 1020 account was opened and June 23, 1993, when the account was closed, Bankhead and/or Cantrell made a number of deposits of personal funds into the NationsBank 1020 account.

15. Personal funds belonging to Bankhead and/or Cantrell were present in the NationsBank 1020 account when Bankhead deposited the Chris Corn funds in the account.

16. Bankhead misappropriated the \$465 in checks which he held for Chris Corn's benefit and used the proceeds for his own benefit or the benefit of third persons other than Chris Corn, without the knowledge or consent of Chris Corn or Corn's family.

17. No disbursements were made from the NationsBank 1020 account to or on behalf of Chris Corn at any time.

18. As of June 15, 1993, the balance in the NationsBank 1020 account was overdrawn and had a negative balance of \$4.00.

19. On or prior to July 12, 1993, Bankhead received a check from Locust Grove Baptist Church in the amount of \$416.00 which represented donations made by church members for the benefit of Chris Corn.

20. On July 12, 1993 Bankhead deposited the \$416.00 check from Locust Grove Baptist Church into a personal checking account number 618013570 at NationsBank in Hendersonville, N.C. (hereafter NationsBank 3570 account).

21. The NationsBank 3570 account was a joint checking account set up in the names of Bankhead and Cantrell.

22. Between July 12, 1993, when the NationsBank 3570 account was opened, and Sept. 23, 1993, when it was closed, Bankhead and/or Cantrell made a number of deposits of personal funds into the NationsBank 3570 account.

23. Personal funds belonging to Bankhead and/or Cantrell were present in the NationsBank 3570 account on July 12, 1993 when Bankhead deposited the \$416 check from Locust Grove Baptist Church into the NationsBank 3570 account.

24. Bankhead misappropriated the \$416 check and used the proceeds for his own benefit or the benefit of third persons other than Chris Corn, without the knowledge or consent of Chris Corn or Corn's family.

25. The balance in the NationsBank 3570 account dropped below \$416.00 on a number of occasions after July 12, 1993. As of Sept. 20, 1993, the account had a negative balance of \$20.43.

26. No disbursements were made from the NationsBank 3570 account to or on behalf of Chris Corn at any time.

27. In the summer of 1993, Chris Corn obtained a wheelchair through the assistance of a public agency called Helping Hands. Helping Hands donated \$4,300 toward the \$5,000 purchase price of the wheelchair, with the understanding that the remaining \$700 would be paid to the former owner, Richard Clark, by Bankhead from the sums which Bankhead had collected on behalf of Chris Corn.

28. Bankhead was not involved in negotiating or consummating the purchase of the wheelchair from Clark. Bankhead did not collect or handle any portion of the \$4,300 which was ultimately paid to Clark for the wheelchair.

29. Bankhead made one payment of \$100 to Clark prior to April 7, 1993, but has made no other payments to Clark.

30. Following April 12, 1993, Norma Corn attempted to contact Bankhead on a number of occasions to determine how much

money he had collected on Chris Corn's behalf. Bankhead did not initially respond to Ms. Corn's inquiries and refused to provide her with a written accounting of the funds he had collected.

31. In early 1994, Norma Corn contacted an attorney in Hendersonville named Boyd Massagee Jr. to assist her in determining what had happened to the sums collected by Bankhead on her son's behalf.

32. On Feb. 22, 1994 Massagee wrote to Bankhead and inquired about the status of the funds collected by Bankhead for Chris Corn.

33. Bankhead responded to Massagee by letter dated April 7, 1994.

34. In his April 7, 1994 letter, Bankhead falsely stated that he had collected less than \$700 on behalf of Chris Corn.

35. Bankhead also falsely stated in the April 7, 1994 letter that the funds which he had collected on Corn's behalf had been expended to "offset the cost of paperwork" and his secretarial and paralegal expenses associated with the wheelchair fund drive.

36. Neither Bankhead nor the law firm of Kaylor, Bankhead & Luffman incurred any secretarial or paralegal expenses as a result of the Chris Corn wheelchair fund drive.

37. No "paperwork" was generated by the law firm of Kaylor, Bankhead & Luffman as a result of the wheelchair fund drive other than a small receipt book which was maintained by Bankhead.

38. Neither Kaylor nor Ms. Luffman performed any work relating to the wheelchair fund drive. Ms. McGraw and Ms. Brady answered a few telephone inquiries from individuals who wished to donate to the fund, but performed no other work relating to the wheelchair fund drive.

39. None of the attorneys or employees of the law firm of Kaylor, Bankhead & Luffman expected or made any demand for compensation to Bankhead for work performed relating to the wheelchair fund drive. It was understood that Bankhead was assisting the Corns as a personal favor to them and as a charitable project.

40. No funds collected by Bankhead on behalf of Chris Corn were deposited into any bank account maintained by Kaylor, Bankhead & Luffman.

41. No funds collected by Bankhead on behalf of Chris Corn were ever paid to or received by any attorney or employee of Kaylor, Bankhead & Luffman other than Bankhead.

42. On May 26, 1994, Don Jones, the State Bar's investigator, served a Letter of Notice and Substance of Grievance regarding the Chris Corn matter upon Bankhead.

Bankhead was also served with a subpoena for cause audit, commanding him to produce all records relating to the Chris Corn funds no later than June 1, 1994.

43. Bankhead told Jones that he had records relating to sums he had collected for Corn and would produce them by June 1, 1994.

44. Pursuant to Art. IX, Section 12 of the N.C. State Bar Discipline & Disbarment Rules, Bankhead's response to the Letter of Notice was due no later than June 1, 1994.

45. Bankhead failed to file any response to the Letter of Notice served upon him by the N.C. State Bar. Bankhead failed to produce any bank records to the N.C. State Bar or otherwise comply with the subpoena for cause audit.

46. Bankhead did not subpoena any records from Kaylor, Bankhead & Luffman.

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

CONCLUSIONS OF LAW

1. By misappropriating \$881 entrusted to him on behalf of Chris Corn without the knowledge and consent of the Corn family, Bankhead engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C) and committed criminal acts in violation of Rule 1.2(B).

2. By depositing \$881 entrusted to him by third parties for the benefit of Chris Corn into a checking account into which personal funds had also been deposited, Bankhead commingled fiduciary and personal funds in violation of Rule 10.1(A).

3. By falsely stating in his April 7, 1993 letter to Boyd Massagee Jr. that he had collected less than \$700 on behalf of Chris Corn and by falsely stating that he had expended the sums collected to offset the costs of paperwork and secretarial and paralegal expenses, Bankhead engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C).

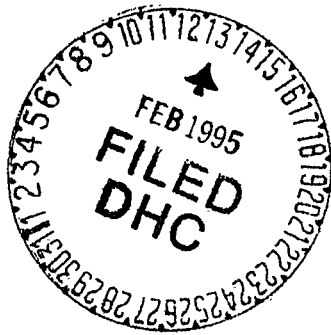
4. By failing to respond to the State Bar's Letter of Notice and Substance of Grievance regarding the Chris Corn matter, Bankhead knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 1.1(B).

This the 9th day of February, 1995.

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

Maureen Demarest Murray
Maureen Demarest Murray, Chair

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Defendant

ORDER OF DISCIPLINE

THIS CAUSE was heard by a Hearing Committee of the Disciplinary Hearing Commission composed of Maureen Demarest Murray, Chair; Samuel Jerome Crow and Anthony J. Foriest on Friday, Jan. 20, 1995. Based upon the evidence presented, the Committee makes the following additional:

FINDINGS OF FACT

1. The Defendant, J. Stewart Bankhead failed to respond to the N.C. State Bar's First Request for Production of Documents or the N.C. State Bar's First Interrogatories which were served on him on him on or about Nov. 28, 1994.

2. The following mitigating factors are present: The Defendant has no prior discipline.

3. The following aggravating factors are present:

- a. The Defendant acted out of a dishonest or selfish motive.
- b. The Defendant displayed indifference to making restitution.
- c. The victim of Defendant's misconduct, Chris Corn, was extremely vulnerable.
- d. The Defendant made false statements during the disciplinary process.
- e. The Defendant engaged in bad faith attempts to obstruct the investigation of the grievance which gave rise to this proceeding.
- f. The Defendant has refused to acknowledge the wrongful nature of his conduct.

Based upon the Findings of Fact entered herein, the Hearing Committee enters the following:

ORDER OF DISCIPLINE

1. The Defendant, J. Stewart Bankhead, is hereby DISBARRED from the practice of law.
2. The Defendant shall pay the costs of this action.
3. The Defendant shall comply with Section 24 of the Discipline & Disbarment Rules of the N.C. State Bar regarding the wind-down of his law practice.

This the 9th day of February, 1995.

Maureen Demarest Murray
Maureen Demarest Murray, Chair
Disciplinary Hearing Committee