

**FILED**

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OCT 1 1993

CLERK, SUPREME COURT

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IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,  
Complainant,

Case No. 81,463

TFB File No. 93-00416-08A

v.

GRAFTON BERNARD WILSON, II,  
Respondent.

REPORT OF REFEREE

I. Summary of Proceedings:

Pursuant to the appointment of the undersigned as referee, a disciplinary hearing was held on September 1, 1993. The Florida Bar was represented by John V. McCarthy and Grafton B. Wilson was represented by Nicholas P. Sardelis.

The allegations against Grafton B. Wilson concern his conduct between 1983 to 1989. At the beginning of the hearing The Florida Bar amended the complaint to include violation of Integration Rule, Art. 11-02(3), Moral Conduct, and Disciplinary Rules 1-102(A)(3) (conduct involving moral turpitude) and 1-102(A)(4) (conduct involving dishonesty, fraud, deceit, or misrepresentation that were in effect prior to the amendments that were effective January 1, 1987.

## II. Findings of Fact:

Upon consideration of the pleadings, evidence, arguments of counsel, and the numerous letters attesting to Grafton B. Wilson's good character, the hearing examiner finds that Grafton B. Wilson was convicted of grand larceny and conspiracy in the State of New York. The indictment alleged that he, along with others, committed the offense of grand larceny by reporting fictitious and inflated costs to the State of New York so that Greenhurst Health Care Center, a nursing home, and its owners, Anthony and Joseph Liuzzo, could illegally obtain funds from the New York medicaid program. The indictment also alleged that Grafton B. Wilson, along with the other defendants, conspired to report fictitious and inflated costs that they knew would be used by the State of New York to reimburse Greenhurst Health Care Center with public medicaid funds. A jury found Grafton B. Wilson guilty as charged and the judge sentenced him to five years probation on each of the charges to run concurrent. He was ordered to pay restitution of \$100,000.00 as a condition of probation and to pay the probation office \$10,000.00 for collection. He has appealed the convictions.

In late 1983 New York advised nursing homes that the State would make future medicaid reimbursements based on costs reported for 1983. It appears that this decision by New York precipitated the initial fraud. In November or December, 1983, Anthony Liuzzo contracted with Grafton B. Wilson and National Health Care, Inc. for management services and computer software for two New York

nursing homes. They back dated the agreements to July, 1983. They may have back dated the agreements and reported fictitious expenses to protect future reimbursements or, as the New York prosecutor believes, it may have been a fraudulent operation from the beginning. It makes little difference. The expenses that were reported in 1983 for services from National Health Care, Inc. were false.

After the State of New York began investigating the medicaid reimbursements in 1986, Grafton B. Wilson assisted the Liuzzos to cover up the earlier fraud. His active participation in the cover up eliminates any possibility that he was an innocent party caught up in the Liuzzo's fraudulent scheme. It also confirms that the 1983 expenses were false. There was no reason to create documents in 1986 and 1987 to make it look like the relationship between Wilson and Liuzzo began in March, 1983. Stationary with the National Health Care, Inc. letterhead was purchased in Alachua County, Florida in 1986. A letter was prepared on this letterhead that contained the purported signature of Grafton B. Wilson. Mr. Wilson denies ordering the letterhead in 1986 or signing a letter on that letterhead dated 1983, but he admits delivering other false documents to the investigator purportedly signed by Grafton B. Wilson. Also, Mr. Wilson was taped during the investigation using an informant. In that conversation he discussed a scholarship agreement that was created in 1986 and predated to December 31, 1983. The money to fund the scholarship agreement was never paid,

but it was added to the 1983 costs submitted to the State of New York. The guilty verdicts were based on this evidence and the additional evidence outlined by Mr. Michael T. Kelly, the New York prosecutor.

Mr. Wilson committed these crimes knowingly and intentionally. He is an experienced, intelligent attorney and businessman. He has served as a law enforcement officer and a federal prosecutor. It is not reasonable to believe that he committed these acts by negligence or mistake. And it is not reasonable to believe that he was a victim of a fraudulent scheme conceived and carried out by the Liuzzos with his unwitting participation.

The actual or potential injury caused by Grafton B. Wilson's criminal conduct is hard to assess. Michael T. Kelly, the New York prosecutor, testified that Mr. Wilson's company, National Health Care, Inc., did not perform any services in return for the money they were paid. He claims that the company was set up only to help the Liuzzos document fictitious costs at their New York nursing homes. He estimates that Grafton B. Wilson received \$190,000.00 in medicaid money that he did not earn.

Grafton B. Wilson presented evidence that National Health Care, Inc. was not a shell and that it provided all of the services that were billed to the New York nursing homes. He claims and his accountant verified that he was never paid for some of those services. He estimates his losses at \$200,000.00. Also, he points out that National Health Care, Inc. managed a third nursing home in

Florida and that there were no improprieties discovered in an audit by the Florida Department of Health and Rehabilitative Services.

Thomas P. Cleary, a former New York prosecutor, explained that New York owed the Liuzzos more money than they received as a result of the fraudulent 1983 figures. This resulted from recent court decisions that have required reimbursement for each year based on the actual cost incurred, rather than the costs incurred in 1983. In some cases the recalculation resulted in New York owing nursing homes millions of dollars.

Based on the evidence presented the referee finds that the injury to the State of New York was \$100,000.00. The New York judge who heard all of the evidence ordered restitution in this amount. There is nothing to suggest that this is an unreasonable conclusion. Grafton B. Wilson has repaid \$10,000.00.

### III. Recommendation on Guilt or Innocence:

These unlawful, dishonest, and fraudulent acts by Grafton B. Wilson violated Rule 3-4.3 (any act that is contrary to honesty and justice), Rule 4-8.4(b) (a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer), and Rule 4-8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation) of the Rules of Professional Conduct of The Florida Bar. These acts also violated the Integration Rules, Article 11.02(3) (moral conduct involving dishonesty or conviction of a crime) and Disciplinary Rules 1-102(A)(3) (illegal conduct involving moral turpitude) and 1-102(A)(4) (conduct involving

dishonesty, fraud, deceit, or misrepresentation) that were in effect prior to January 1, 1987. The evidence against him is clear and convincing. He should be found guilty.

**IV. Personal History and Past Disciplinary Record:**

Grafton B. Wilson contends that the referee should recommend suspension rather than disbarment because of the following mitigating circumstances: 1) absence of a prior disciplinary record; 2) absence of a dishonest or selfish motive; 3) character and reputation; 4) imposition of other penalties or sanctions; 5) remorse; and 6) remoteness of prior offense.

The evidence establishes four of the mitigating factors. Grafton B. Wilson does not have a prior disciplinary record with The Florida Bar. His character and reputation in the community of Alachua County are impeccable. Mr. Wilson has been sentenced to probation and restitution already. And Mr. Wilson is obviously remorseful for his "mistakes," even though he has been less than candid in discussing exactly what "mistakes" he made.

The Florida Bar argues that Grafton B. Wilson should be disbarred because he was convicted of two serious felonies. The Bar contends that Grafton B. Wilson used his knowledge and position as an attorney to help the defendants defraud the State of New York. The Bar relies on the following aggravating circumstances: 1) a dishonest or selfish motive; 2) a pattern of misconduct; 3) multiple offenses; 4) refusal to acknowledge the wrongful nature of his conduct; 5) vulnerability of the victim; and 6) substantial

experience in the practice of law. The evidence supports all of these aggravating circumstances.

Grafton B. Wilson denies that he had a dishonest or selfish motive. A dishonest or selfish motive is inherent in the crimes he committed. Given the former status of Joseph Liuzzo in Alachua County, it is quite possible that Mr. Wilson was motivated more by ambition than a desire for financial gain, but selfish motivation is not confined to financial gain. Grafton B. Wilson also argues that any improprieties in New York were isolated incidents and were remote in time. The New York offenses are out of character for Mr. Wilson. In that sense they do not establish a pattern of conduct. But the fraudulent activity began in 1983 and was followed by fraudulent activities in 1986 and 1987. Medicaid reimbursements were paid by New York in 1989 based on the original fraud. For these reasons the illegal activity establish a pattern of conduct in New York that is not remote in time.

Mr. Wilson relies primarily on his character and reputation as a reason why disbarment is inappropriate. There is much good in Grafton B. Wilson. He is 52 years old and was admitted to the bar in 1973. The scheme to defraud the State of New York is the only blemish on his record. He has served his community in many capacities, always with distinction. As a member of the legal profession he has been able to influence and inspire individuals whose lives are better today because of their relationship with him. He is loved and respected by many people, very influential

people and common folks. To their credit and to his, they have supported him throughout the proceedings. Their support is based on their personal relationship rather than any understanding of the New York evidence.

V. Recommendation of Disciplinary Measures:

Bar discipline should protect the public from unethical conduct, punish the offender while encouraging rehabilitation, and deter others who might be tempted to commit similar violations. The Florida Bar v. Neu, 597 So. 2d 266 (Fla. 1992). "A lawyer who wilfully misappropriates public funds commits a disciplinary offense as serious as misuse of client funds." The Florida Bar v. Anderson, 594 So. 2d 302, 303 (Fla. 1992). When a client's funds are misused, disbarment is the presumed sanction. The Florida Bar v. Stark, 18 F.L.W. 206, 207 (Fla. April 1, 1993). However, disbarment is not automatic. The Florida Bar v. Jahn, 509 So. 2d 285 (Fla. 1987). The presumption may be overcome by evidence of mitigation, such as cooperation and restitution. The Florida Bar v. MacMillan, 600 So. 2d 457 (Fla. 1992). For example, in Stark the court found that a 65 year old attorney who practiced for 40 years without a blemish on his record, who paid full restitution, who showed significant remorse, and who presented 22 character witnesses had overcome the presumption.

The hearing officer finds that the aggravating circumstances in this case are more compelling than the mitigating circumstances presented by Grafton B. Wilson. The substantial character evidence



is not sufficient to overcome clear and convincing evidence that Grafton B. Wilson committed two serious felonies involving theft of public medicaid money. Based on this finding the hearing examiner recommends disbarment of Grafton B. Wilson retroactive to the date of his emergency suspension with leave to reapply for admission to The Florida Bar at the end of five years, provided he has made full restitution as required by his New York sentence.

**VI. Taxation of Costs:**

I find the following costs were reasonably incurred by the Florida Bar:

Administrative Costs, pursuant to Rule 3-7.6(k)(1), Rules of Discipline	\$ 500.00
Court Reporter Fees and Transcripts	890.00
Bar Counsel Travel Expenses	123.72
Long Distance Service	<u>13.62</u>
TOTAL	\$1,527.34

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses together with the foregoing itemized costs be charged to the respondent.

Dated this 29 day of September, 1993.

  
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RAYMOND T. McNEAL  
REFEREE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above report of referee has been furnished by U.S. Mail to John V. McCarthy, Assistant Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, John T. Berry, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 and Nicholas P. Sardelis, Attorney for Respondent, Post Office Box 49221, Sarasota, Florida 34230-6221 this 29 day of September, 1993.

  
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DIANE P. BRECHTEL