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STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
91 DHC 6

THE NORTH CAROLINA STATE BAR,  
Plaintiff

vs.

CONSENT ORDER OF DISCIPLINE

SAMUEL L. WHITEHURST, JR.,  
Defendant

This matter, coming before the undersigned Hearing Committee of the Disciplinary Hearing Commission pursuant to Section 14(8) of Article IX of the Discipline & Disbarment Procedures of the North Carolina State Bar; and it appearing that both parties have agreed to waive a formal hearing in this matter; and it further appearing that both parties stipulate and agree to the following Findings of Fact and Conclusions of Law recited in this Consent Order and to the discipline imposed, the Hearing Committee therefore enters 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 Statutes of North Carolina and the rules and regulations of the North Carolina State Bar promulgated thereunder.

2. The Defendant, Samuel L. Whitehurst, Jr., was admitted to the North Carolina State Bar in 1969 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 the Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During all of the relevant periods referred to herein, Whitehurst was engaged in the practice of law in the State of North Carolina and maintained a law office in New Bern, Craven County, N.C.

4. In September, 1988, Whitehurst agreed to represent the estate of Joyce Forbes respecting the estate's claim for the wrongful death of Forbes.

5. Whitehurst was hired by Ms. Forbes' mother, Gertie Mae Boomer, who was the administratrix of the Forbes' estate. Ms. Boomer agreed to pay Whitehurst one-third of the recovery as his fee.

6. Whitehurst settled the wrongful death claim in October 1988 for \$25,000. Pursuant to his fee agreement with Ms. Boomer, Whitehurst should have remitted \$16,666.66 of the settlement proceeds to Ms. Boomer for the benefit of the Forbes estates.

7. On or about Nov. 2, 1988, Whitehurst deposited the \$25,000 settlement check into his attorney trust account, no. 1191097153 at Branch Banking & Trust Co. in New Bern, N.C.

8. Whitehurst did not disburse any portion of the proceeds of the \$25,000 check to or for the benefit of Ms. Boomer of the Forbes estate.

9. As of Feb. 28, 1990, the balance in Whitehurst's attorney trust account was \$16.27.

10. Whitehurst misappropriated the \$16,666.66 belonging to the Forbes estate for his own benefit or the benefit of third parties other than Ms. Boomer or the Forbes estate without Ms. Boomer's consent or knowledge.

11. Prior to August 1990, Ms. Boomer filed a grievance with the N.C. State Bar, alleging, inter alia, that Whitehurst had mishandled the settlement funds belonging to the Forbes estate.

12. The N.C. State Bar sent Whitehurst a letter of notice dated Aug. 1, 1990, and a substance of grievance summarizing Ms. Boomer's grievance.

13. The letter of notice and substance of grievance were received in Whitehurst's office on Aug. 3, 1990.

14. On Aug. 17, 1990, Whitehurst responded to the letter of notice. In his response, Whitehurst failed to disclose that he had misappropriated \$16,666.66 belonging to the Forbes estate. Whitehurst also falsely stated that the actual proceeds of the settlement were in his trust account, when in fact those actual proceeds were not.

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

#### CONCLUSIONS

1. By misappropriating \$16,666.66 belonging to the estate of Joyce Forbes without the permission of Ms. Boomer or the Forbes estate, Whitehurst committed an act which reflects adversely on his honesty, trustworthiness or fitness as a lawyer 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) and failed to deliver funds of a client to a client, in violation of Rule 10.2(E).

2. By failing to disclose that he had misappropriated \$16,666.66 belonging to the Forbes estate and by falsely stating that he had the settlement funds in his trust account in his response to the letter of notice to the Grievance Committee of the N.C. State Bar, Whitehurst engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C) and knowingly made a false statement of material fact in connection with a disciplinary matter in violation of Rule 1.1(B).


Based upon the consent of the parties and the foregoing Findings of Fact and Conclusions of Law, the Committee hereby enters the following:

ORDER OF DISCIPLINE

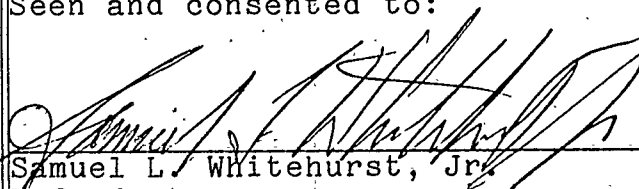
1. The Defendant, Samuel L. Whitehurst, is hereby disbarred.
2. The Defendant shall pay the costs of this proceeding.

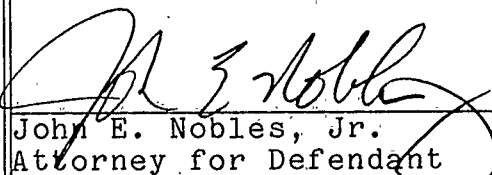
This the 11 day of May, 1991.

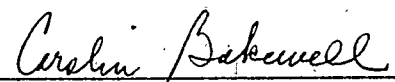
Signed by the Chairman for the Committee with the express consent of all committee members and parties hereto.

  
Karen P. Boyle, Chairman  
Disciplinary Hearing Committee

Seen and consented to:

  
Samuel L. Whitehurst, Jr.  
Defendant

  
John E. Nobles, Jr.  
Attorney for Defendant

  
Carolin Bakewell  
Attorney for the N.C. State Bar