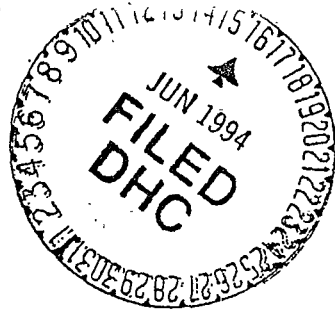


2273

NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
93 DHC 35

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

JUNE DARIUS HURST, ATTORNEY
Defendant

FINDINGS OF FACT

AND

CONCLUSIONS OF LAW

This matter coming on to be heard and being heard on May 19, 1994 before a hearing committee of the Disciplinary Hearing Commission composed of Paul L. Jones, Frank E. Emory, Jr. and William H. White; with Defendant appearing pro se, Harriet P. Tharrington representing the North Carolina State Bar; and based upon the pleadings, the Stipulation on Prehearing Conference, the exhibits admitted into evidence and the testimony of the witnesses, the hearing committee finds the following to be supported by clear, cogent and convincing evidence:

FINDINGS OF FACT

1. All parties are properly before the Hearing Committee and the Hearing Committee has the jurisdiction over the Defendant and the subject matter.
2. In or around October 1991, Hurst undertook to represent Mrs. Mary Upright regarding her claims for personal injury arising out of an automobile accident in October 1991.
3. Also in October 1991, Hurst agreed to handle the wrongful death claim for the estate of Mrs. Upright's husband, Ray Upright, who was killed in the October 1991 wreck.
4. Hurst was to receive as a fee 33% of the amount recovered for Ray Upright's estate and 20% of the amount recovered for Mary Upright.
5. Hurst settled both cases in August 1992. The settlement for Ray Upright's case was \$18,000. The settlement for Mary Upright's case was \$25,000.
6. In August 1992, Hurst deposited all the proceeds of the settlements referred to in paragraph 5 into his trust account number 807388 at First Charter National Bank (hereafter, attorney trust account).
7. After withdrawing money for his fees, Hurst

transferred the remainder of the proceeds from Ray Upright's estate to Security Bank and left the proceeds from Mary Upright personal injury claim, which was approximately \$20,000, in his attorney trust account.

8. On or about December 3, 1992, Mr. Hurst asked Mary Upright if she would agreed to lend \$10,000 to Hurst from the funds which he held in trust for her. She agreed to let Hurst borrow the money.
9. Hurst did not advise Mrs. Upright to consult with independent counsel before lending him the \$10,000.
10. Mary Upright, who only has a tenth grade education, is unsophisticated in business matters.
10. On or about December 3, 1992, Hurst signed a promissory note promising to pay Mrs. Upright \$10,000 at a rate of \$200 every two weeks (hereafter, promissory note).
11. The promissory note was unsecured and provided that no interest would accrue on the unpaid balance.
12. Hurst failed to make timely payments to Mary Upright.
13. Hurst had not paid Mary Upright all the money back that he borrowed from her at the time of the hearing.
14. As of the date of the hearing, Defendant still owed Mary Upright \$3,740 of the \$10,000 he had borrowed in December 1992.
15. As of the date of the hearing, defendant held in his trust account \$59.21 in his trust account for Mary Upright.
16. From 1982 until at least July 19, 1993, Hurst failed to maintain files or ledgers containing a record for each person or entity from whom or for whom trust funds had been received and failed to maintain records of the current balance of funds held for each person or entity.
17. From 1982 until at least July 19, 1993, Hurst failed to maintain a file of deposit slips reflecting client and fiduciary funds which he had received.

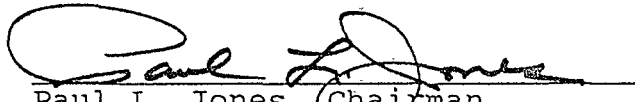
BASED UPON the foregoing Findings of Fact, the hearing committee makes the following:

CONCLUSIONS OF LAW

The conduct of Defendant, as set forth above, constitutes grounds for discipline pursuant to N. C. Gen. Stat. Section 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

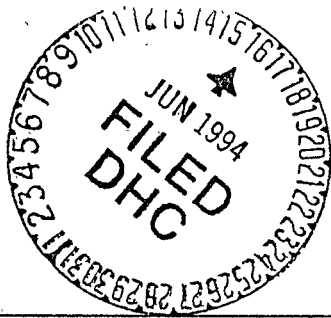
1. By borrowing a portion of the funds which he held in trust for Mary Upright without providing for the payment of interest, without securing the loan, and without advising Upright to consult independent counsel before agreeing to the loan, Defendant entered into a business transaction with his client in which they had differing interests without protecting his client's interests in violation of Rule 5.4(A) of the Rules of Professional Conduct.
2. By failing to maintain files or ledgers containing a record for each person or entity from whom or for whom trust funds had been received and failing to maintain records of the current balance of funds held for each person or entity, Hurst failed to maintain the minimum records of funds which he received and disbursed on behalf of his clients in violation of Rule 10.2(B) and Rule 10.2(C)(3).
3. By failing to maintain a file of deposit slips reflecting client and fiduciary funds which he had received, Hurst failed to maintain the minimum records of funds which he received and disbursed on behalf of his clients in violation of Rule 10.2(B) and Rule 10.2(C)(1).

Signed by the undersigned chairman with the full knowledge and consent of the other hearing committee members, this the 8th day of June, 1994.


Paul L. Jones, Chairman
Disciplinary Hearing Committee

#403

NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
93 DHC 35

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

JUNE DARIUS HURST, ATTORNEY
Defendant

ORDER OF DISCIPLINE

This cause was heard on May 19, 1994 by a hearing committee of the Disciplinary Hearing Commission composed of Paul L. Jones, Chair, Frank E. Emory, Jr., and William H. White. After entering the Findings of Fact and Conclusions of Law in this matter, the committee received evidence and considered arguments of counsel concerning the appropriate discipline to be imposed. Based upon the evidence and arguments presented, the committee finds the following aggravating and mitigating factors:

AGGRAVATING FACTORS

1. Dishonest or selfish motive;
2. Multiple offenses;
3. Refusal to acknowledge wrongful nature of conduct;
4. Vulnerability of victim;
5. Substantial experience in the practice of law;

MITIGATING FACTORS

1. Absence of prior disciplinary record.

Based upon the Findings of Fact and Conclusions of Law and the above aggravating and mitigating factors, the committee hereby enters this

ORDER OF DISCIPLINE

1. Defendant is hereby suspended from the practice of law for a period of two years, commencing 30 days after service of this order upon defendant.
2. One year of the suspension is stayed for a period of three years on the following conditions:
 - (a) During the first year of the three-year stay period, defendant shall attend a seminar conducted by Bruno DeMolli, or his successor, dealing with the

operation and management of trust accounts. The defendant shall provide written documentation to the Secretary of the North Carolina State Bar demonstrating compliance with this condition no later than one week after the defendant completes the seminar.

(b) Within one month of the date of this order, defendant shall schedule an appointment to participate at his own expense in the Lawyers' Management Assistance Program for one year. Defendant shall begin the one-year Lawyers' Management Assistance Program within one month after recommencing the practice of law and shall successfully complete the one-year program. During the one year program, Defendant shall arrange for at least two audits of his practice by the Lawyers Management Assistance Program and the creation of a law practice management plan by the Program. Defendant shall comply with all provisions of the law practice management plan and shall cooperate fully with all representatives of the Program.

(c) Within one month after recommencing the practice of law, Defendant shall employ a certified public accountant at his own expense to audit his trust account and all other accounts in which fiduciary or client funds are held. Defendant shall provide a written report from the certified public accountant, certifying that Defendant's trust account and other accounts in which fiduciary and client funds are held comply with Rule 10.1 and Rule 10.2 of the Rules of Professional Conduct. The first written report will be due no later than 30 days after the Defendant resumes the practice of law. Thereafter, Defendant shall file a written report with the Secretary of the N.C. State Bar every 120 days throughout the remainder of the stay period.

(d) Defendant shall comply with all provisions of law and the Rules of Professional Conduct regarding the handling of client and fiduciary funds and maintenance of trust account records throughout the three year stay period.

(e) Within 30 days after this order is entered Defendant shall pay Mary Upright the sum of \$3,529.21. Defendant shall provide written proof to the Secretary of the N.C. State Bar that he has paid Mary Upright the sum listed above.

(f) Defendant shall submit to random audits of his trust account and any accounts in which client or fiduciary funds are held at any time during the three-year stay period.

2. Defendant shall violate no laws of the State of North Carolina and shall violate no provisions of the Rules of Professional Conduct during the three year stay.

3. Defendant shall comply with all the provisions of Article IX, Section 24 of the Rules and Regulations of the North Carolina State Bar.

4. Defendant is taxed with the costs of this proceeding.

Signed by the Chair of the hearing committee with the full knowledge and consent of all parties and the other members of the hearing committee this the 8th day of June, 1994.


Paul L. Jones, Chair
Disciplinary Hearing Committee