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JAN 3 1997

STATE OF

ROCKINGHAM COUNTY

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IN THE GENERAL COURT OF JUSTICE

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DISTRICT COURT DIVISION

ROCKINGHAM CO., C.S.C.

FILE NO. 94 CVD 1008

LESLIE TAYLOR SWARTZLANDER,
Plaintiff

BY

vs.

ORDER OF CENSURE OF ATTORNEY

JAMES MATTHEW DWAYNE DAVID
SWARTZLANDER,
Defendant

This matter came on to be heard before the undersigned on August 20, 1996, on the court's Order to Show Cause issued against the defendant, James Matthew Dwayne David Swartzlander, and his counsel, William L. Funderburk, Jr., to appear and show cause as to why each of them should not be held in contempt for failure to abide by the rules of court regarding scheduling of this case on the July 8, 1996, term of civil district court.

FINDINGS OF FACT

1. That the defendant by mailing a copy of the said notice to defendant's attorney of record, William L. Funderburk, Jr. on March 27, 1996. That the said case was not reached for hearing during the May 6, 1996, term of court.
2. That the court placed this matter on the July 8, 1996, calendar and counsel for both parties were properly notified. Defendant's attorney was present on July 8, 1996, when the calendar was called.
3. That on July 8, 1996, at calendar call counsel for defendant stated that defendant had traveled outside the State of North Carolina, and counsel implied defendant's travel was due to the alleged illness of defendant's mother. In fact, the defendant was in California on a scheduled prearranged visit with his mother. No written motion to continue was filed. Attorney Funderburk never appeared for hearing on his oral motion. No continuance was granted.
4. That in the regular course of business of calendaring for the week, the undersigned announced in open court at around 10:30 - 11:00 a.m. on July 8, 1996, the order in which cases would be heard with this case being set for 9:00 a.m. Friday, July 12.

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5. That William L. Funderburk, Jr. failed to inquire of the legal assistant to the judge or of the clerk of court as to the setting of the case.
6. That on July 10, 1996, counsel for defendant was reminded as a courtesy by the office of the district court judge that the said case was scheduled for hearing at 9:00 a.m. on Friday, July 12, 1996.
7. That William L. Funderburk, Jr. failed to secure court approval for a continuance of the case herein prior to counsel's authorization to the defendant to leave the State of North Carolina.
8. That William L. Funderburk, Jr. failed to have his client present when there was a pending show cause order for the defendant for failure to comply with a support order, which was issued by the Clerk of Superior Court on 10-9-95 as well as pending motions of both the plaintiff, filed February 6, 1996, and the defendant, filed August 30, 1995.
9. That at 8:45 a.m. on July 12, 1996, the office of the district court judge received information from counsel for defendant that said counsel was allegedly ill from food poisoning and was going to the doctor.
10. That William L. Funderburk, Jr. failed to have his client present for hearing on July 12, 1996, even though the case was set for the 12th of July on Monday, July 8th. That at 9:00 a.m. on July 12, 1996, when the said case was called for hearing, the defendant nor defendant's counsel appeared.
11. That William L. Funderburk, Jr. alleged and implied that the undersigned judge could not be fair and impartial because of some political, professional or business relationship between counsel for the plaintiff and undersigned judge, such information being the unverified assertion by Counsel Funderburk that counsel for the plaintiff, Ms. Jones-Obeng, had acquired a law practice from the judge, said information not being true; and further that Attorney Funderburk and his client alleged that the court would not be fair and impartial or appear to be fair and impartial as a result of such relationship.
12. That at all times, William L. Funderburk, Jr. was an attorney licensed to practice in North Carolina and maintaining a practice in partnership with Douglas R. Hux in Eden, North Carolina, Rockingham County and, therefore, an Officer of the Court.

13. The court notes that the defendant, James Matthew Dwayne David Swartzlander, in open court has issued an apology for his absence and the untruthful allegations in his affidavit both to the court and to Mrs. Eunice Jones-Obeng, counsel for the plaintiff, Leslie Taylor Lipford, formerly Mrs. Swartzlander; and the court has accepted that apology. Attorney William L. Funderburk, Jr. did not offer any apology nor make any effort to amend his written motion or affidavit upon learning that his allegations were untrue.
14. That the actions of Attorney William L. Funderburk, Jr. were willful and grossly negligent.
15. That Attorney William L. Funderburk, Jr. has previously been cited for contempt for his failure to be on time for a one-day session of juvenile court when he was assigned as "attorney for the day" by court appointment. All matters before the juvenile court were delayed several hours awaiting arrival of Attorney Funderburk following a call by the court to inquire about the attorney's absence. The undersigned found Attorney Funderburk not to be in contempt of court.
16. That Attorney Funderburk was warned off the record by the undersigned in chambers regarding his several-hour tardiness at another juvenile court day. On that occasion, Attorney Funderburk's office notified the undersigned that he was unavailable because he was in court in Guilford County. Upon inquiry, this information proved to be false. When confronted by the undersigned, Attorney Funderburk admitted to the deliberate communication of untruthful information about his whereabouts and admitted that his absence was due to a "personal problem" and not a court conflict. Attorney Funderburk was warned at that time to be truthful with the court. His tardiness caused substantial delay in and interference with the business of the court and inconvenienced parties, witnesses, and other attorneys.

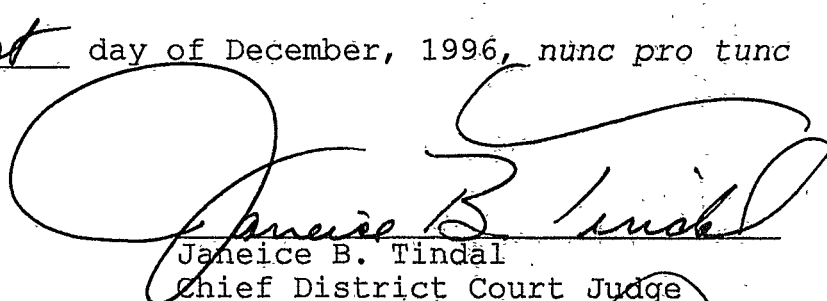
CONCLUSIONS OF LAW

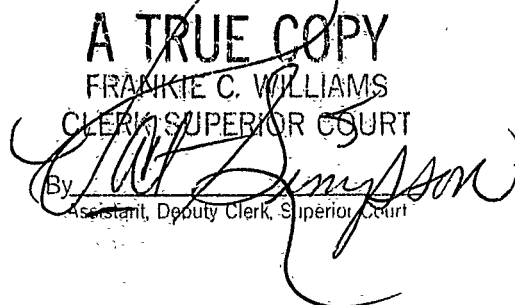
1. Attorney William L. Funderburk, Jr. is an attorney licensed to practice in North Carolina and maintains a practice in partnership with Douglas R. Hux in Eden, North Carolina, Rockingham County and, therefore, is an Officer of the Court.
2. The court has jurisdiction over the attorney and subject matter jurisdiction.

3. The willful and grossly negligent failure of Attorney William L. Funderburk, Jr. to abide by the Rules of Practice for the Superior and District Courts, the Local Rules of Practice and the Code of Professional Conduct of the N. C. State Bar caused a substantial interference with the business of the court.
4. The court has the inherent authority to discipline attorneys.
5. The actions of Attorney William L. Funderburk, Jr. caused substantial delay in and interference with the business of the court and the administration of justice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Attorney William L. Funderburk, Jr. is hereby censured by the undersigned. The court orders that this censure be established as notice on the record of the attorney's violation of N.C.G.S. 5A-11(7), the General Rules of Practice over the Superior and District Courts, the Local Rules of Practice, and the Code of Professional Conduct of the North Carolina State Bar.

1. Signed this the 31st day of December, 1996, *nunc pro tunc*
August 20, 1996.


Janeice B. Tindal
Chief District Court Judge

A TRUE COPY
FRANKIE C. WILLIAMS
CLERK SUPERIOR COURT
By 
Assistant, Deputy Clerk, Superior Court