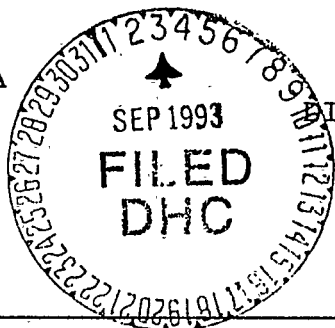


14383

NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
92 DHC 21

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

DAVID J. TURLINGTON III,
Attorney

Defendant

FINDINGS OF FACT

AND

CONCLUSIONS OF LAW

This matter came on to be heard and was heard on August 20, 1993 before a hearing committee composed of Frank E. Emory Jr., Chairman, James Lee Burney, and Paul L. Jones. Fern E. Gunn represented the North Carolina State Bar and Joseph C. Cheshire V and Alan Schneider represented the Defendant. Based upon the admissions of the Defendant in his answer to the complaint in this matter, the stipulations on prehearing conference, and the evidence presented at the second phase of the hearing, the hearing committee finds the following to be supported by clear, cogent, and convincing evidence:

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, David Turlington, was admitted to the North Carolina State Bar on November 3, 1987, 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. During all of the periods referred to herein, the Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Greensboro, Guilford County, North Carolina.

4. From July 1, 1990 to December 31, 1990 and from

January 1, 1991 to June 17, 1991, the Defendant made unauthorized telephone calls to adult entertainment numbers on the telephones of the Guilford County Courthouse. During that time, the Defendant made telephone calls totalling \$8,771.89 and the calls were charged to the Guilford County Courthouse.

5. The Defendant was charged with two counts of avoiding or attempting to avoid payment of telecommunication services, in violation of N.C. Gen. Stat. Section 14-333.4.

6. On March 20, 1992, the Defendant pled guilty to and was found guilty of two counts of avoiding or attempting to avoid payment of telecommunication services. He was given a six-month active sentence. The sentence was suspended and the Defendant was placed on unsupervised probation for one year.

7. The Defendant was ordered to make restitution to the Administrative Office of the Court in the amount of \$8,771.89 for the telephone calls and \$55.00 for costs of court. The Defendant has made restitution to the Administrative Office of the Court.

8. On May 18, 1992, Judge Ben Haines suspended the Defendant's law license for 30 days as a result of Defendant's conviction of the criminal charges. The Defendant was also ordered to receive psychiatric counselling and follow any recommended course of treatment. Judge Haines reinstated the Defendant's law license on June 22, 1992.

9. The criminal offenses (avoiding or attempting to avoid payment of telecommunication services) for which the Defendant was convicted are serious crimes as defined in Section 3(NN) of Article IX of the Discipline and Disbarment Procedures of the North Carolina State Bar.

10. On November 4, 1992, the Defendant's law license was suspended pending disposition of this disciplinary proceeding pursuant to Section 15(A) and (D) of the Discipline and Disbarment Procedures of the North Carolina State Bar by Disciplinary Hearing Commission Chairman Maureen Demarest Murray. The Defendant's interim suspension became effective December 24, 1992 and he is presently suspended from the practice of law.

11. The Defendant was convicted of indecent exposure on November 10, 1992 in Guilford County District Court. Judge Ben Haines imposed a 6-month sentence, suspended for two years on condition that Defendant pay a \$15.00 fine, court costs, continue psychiatric treatment and any other treatment recommended. He was also placed on unsupervised probation and ordered not to be convicted of a similar offense.

12. Defendant appealed the indecent exposure conviction to Superior Court on November 10, 1992. On July 6, 1993, the matter was remanded to district court upon the Defendant's motion.

13. On September 18, 1992, the North Carolina State Bar initiated a grievance against the Defendant regarding the indecent exposure charge, file number: 92G0932(III).

14. Both the Plaintiff and the Defendant wished to resolve all issues raised in grievance file number 92G0932(III). The Defendant waived a finding of probable cause by the Grievance Committee of the North Carolina State Bar. He also waived the filing of a formal complaint regarding that grievance. All parties stipulated that the hearing committee could hear and decide those issues raised in grievance file number 92G0932(III) and the Defendant further waived his right to appeal or challenge in any way the validity of the findings and order entered with respect to the allegations in that grievance.

15. Defendant suffered from a mood disorder at the times he engaged in the criminal conduct referred to herein.

16. Defendant is presently receiving psychiatric treatment for his condition.

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

CONCLUSIONS OF LAW

The conduct of the Defendant, as set out above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. Sec. 84-28(b)(1) and (2) as follows:

(a) Defendant's convictions of avoiding or attempting to avoid payment of telecommunication services involve criminal offenses showing professional unfitness in violation of N.C. Gen. Stat. Section 84-28(b)(1) and reflect adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects in violation of Rule 1.2(B).

(b) Defendant's conduct violated N.C. Gen. Stat. Sec. 84-28(b)(2) in that Defendant violated the N.C. Rules of Professional Conduct as follows:

By making unauthorized telephone calls totalling \$8,771.89 which were charged to the Guilford County Courthouse, Defendant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 1.2(C) and committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 1.2(B).

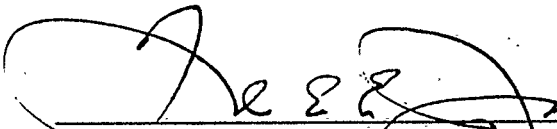
(c) Defendant's conviction of indecent exposure

involves a criminal offense showing professional unfitness in violation of N.C. Gen. Stat. Section 84-28(b)(1) and reflects adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects in violation of Rule 1.2(B).

(d) Defendant's conduct violated N.C. Gen. Stat. Sec. 84-28(b)(2) in that Defendant violated the N.C. Rules of Professional Conduct as follows:

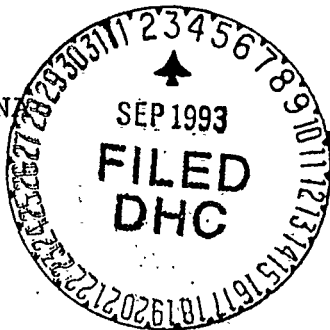
By exposing his private parts to a woman in public, Defendant committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 1.2(B).

Signed by the undersigned Chairman with the full knowledge and consent of the other members of the hearing committee, this the 30th day of August, 1993.



Frank E. Emory Jr.
Chairman
Hearing Committee

NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR

92 DHC 21

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

DAVID J. TURLINGTON, III, Attorney
Defendant

ORDER OF DISCIPLINE

Based upon the Findings of Fact and Conclusions of Law in this case, and further based upon the evidence presented at the second phase of the hearing in this matter, the hearing committee of the Disciplinary Hearing Commission composed of Frank E. Emory Jr., Chairman, James Lee Burney, and Paul L. Jones, finds the following:

FACTORS IN AGGRAVATION

1. Dishonest or selfish motive; and
2. Multiple offenses.

FACTORS IN MITIGATION

1. Absence of a prior disciplinary record;
2. Timely restitution;
3. Character or reputation; and
4. Physical or mental disability or impairment.

The hearing committee further finds that the mitigating factors outweigh the aggravating factors.

Based upon all of the factors listed above, the hearing committee enters the following:

ORDER OF DISCIPLINE

1. The Defendant, David J. Turlington III, is suspended from the practice of law in North Carolina for a period of one year, with all but 30 days of that suspension stayed for five years upon the following conditions:

(a) During the period of the stay, the Defendant shall continue psychiatric treatment;

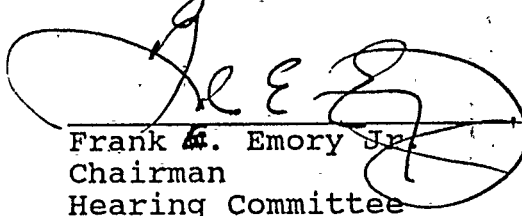
(b) During the period of the stay, a certified or licensed mental health care professional shall certify to the Office of Counsel of the North Carolina State Bar on or before the 5th of each month that the Defendant is complying with the prescribed course of treatment; and

(c) During the period of the stay, the Defendant shall not violate state or federal laws and the Rules of Professional Conduct.

2. The order of discipline in this matter is effective as of the date entered on this order. Furthermore, Defendant's 30-day active suspension begins as of the date entered on this order.

3. The Defendant is taxed with the costs of this proceeding as assessed by the Secretary and he shall pay the costs on or before the expiration of the 30-day active suspension period.

Signed by the undersigned Chairman with the full knowledge and consent of the other members of the hearing committee this 30th day of August, 1993.


Frank W. Emory Jr.
Chairman
Hearing Committee