

2848

NORTH CAROLINA

WAKE COUNTY

FILED

1980 FEB 19 AM 9 30

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
79 DHC 25

THE NORTH CAROLINA STATE BAR,
Plaintiff,

-vs-

JOE S. MAJOR, III, Attorney
Defendant.

FINDINGS OF FACTANDCONCLUSIONS OF LAW

THIS CAUSE coming on to be heard and being heard before the undersigned Committee of the Disciplinary Hearing Commission of the North Carolina State Bar on January 25, 1980, and the said Hearing Committee, having heard the evidence and arguments of counsel, makes 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 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, Joe S. Major, III, was admitted to the North Carolina State Bar in September, 1973, and is and was at all times referred to herein, as Attorney at Law, licensed to practice law in the State of North Carolina, subject to the Rules, Regulations, Canons of Ethics and Code of Professional Responsibility of The North Carolina State Bar and of the laws of the State of North Carolina.

3. That at and during all of the times hereinafter referred to, 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 Charlotte, Mecklenburg County, North Carolina.

4. That Marie E. Young Worthy retained the services of the Defendant to represent her in the administration of the estate of her deceased sister, Creola Young Howell.

5. That Mrs. Worthy qualified as administratrix in her sister's estate, Letters of Administration being issued on April 17, 1978, this being approximately one year after Mrs. Worthy employed the services of the Defendant.

6. That on April 25, 1978, a checking account #0451065386 was opened at Northwestern Bank, Charlotte, North Carolina in the name of "Estate of Creola Young Howell by Marie E. Worthy, Administratrix or Joe Major, Attorney"

with an initial deposit of TWO THOUSAND SEVEN HUNDRED EIGHTY-TWO DOLLARS AND SEVENTY-NINE CENTS (\$2,782.79).

7. That on April 25, 1978, the Defendant wrote a check on the estate account #0451065386 payable to the Defendant in the amount of TWO THOUSAND SIX HUNDRED DOLLARS (\$2,600.00) as an "attorney's fee."

8. That the amount of said attorney's fee was based on an estimate of the total fee the Defendant would earn.

9. That Mrs. Worthy indicated to the Defendant by letter of August 28, 1978:

(a) that she no longer desired the services of the Defendant;

(b) That she wanted the Defendant to return all written documents and material concerning her sister's estate which were in the possession of the Defendant; and

(c) that she desired a statement from the Defendant so that she could make final settlement with him for his services.

10. That at the time the Defendant's services were terminated, he had earned approximately ONE THOUSAND DOLLARS (\$1,000.00) of the TWO THOUSAND SIX HUNDRED DOLLARS (\$2,600.00) fee that he had received.

11. That the Defendant never responded to Mrs. Worthy's request for a statement for the purpose of making a final settlement for his services.

12. That Mrs. Worthy subsequently retained new counsel to represent her in closing out her sister's estate.

13. That on numerous occasions beginning in September, 1978, Mrs. Worthy, through her new counsel, requested that the Defendant turn over the estate file of Creola Young Howell.

14. That the Defendant did not deliver the estate file until April, 1979.

15. That after further inquiries into the authorization for and appropriateness of the funds received by the Defendant from the estate checking account, the Defendant returned the entire TWO THOUSAND SIX HUNDRED DOLLARS (\$2,600.00) by check dated April 24, 1979.

BASED UPON THE FOREGOING FINDINGS OF FACT THE HEARING COMMITTEE CONCLUDES that the conduct of the Defendant as set forth above constitutes a violation of Chapter 84, Section 28(b) (2) of the General Statutes of North Carolina, in that:

A. By his silence to Mrs. Worthy's August 29, 1978 request for a final settlement of his fee, the Defendant misrepresented to his client that he had earned the entire fee in violation of Disciplinary Rule 1-102(A) (4) of the

Code of Professional Responsibility.

B. The Defendant failed to promptly deliver to his client as requested by his client properties in his possession which his client was entitled to receive when he failed to promptly turn over the estate file of Creola Young Howell to Marie E. Young Worthy in violation of Disciplinary Rule 9-102(B) (4) of the Code of Professional Responsibility.

C. The Defendant engaged in professional conduct that adversely reflects on his fitness to practice law in violation of Disciplinary Rule 1-102(A) (6) of the Code of Professional Responsibility.

This the 18th day of February, 1980.

Harold K. Bennett
Harold K. Bennett, Chairman

J. Mac Boxley
J. Mac Boxley

Nona McDonald
Nona McDonald

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
79 DHC 25

THE NORTH CAROLINA STATE BAR,
Plaintiff,

-vs-

JOE S. MAJOR, III, Attorney
Defendant.

ORDER OF PUBLIC CENSURE

THIS CAUSE COMING on to be heard and being heard before the undersigned Hearing Committee of the Disciplinary Hearing Commission of The North Carolina State Bar on January 25, 1980; and

The Plaintiff represented by its counsel, Aldert Root Edmonson and the Defendant by Michael P. Carr, and the Hearing Committee having heard the evidence and argument of counsel, and having made certain findings of fact and conclusions of law, all appearing of record herein;

NOW, THEREFORE, based upon such findings of fact and conclusions of law, the Hearing Committee of the Disciplinary Hearing Commission hereby issues the following Order of Public Censure to Joe S. Major, III, Attorney:

Pursuant to Section 23 of the Discipline and Disbarment Procedures of The North Carolina State Bar this Public Censure is delivered to you. You have been found to have violated the Code of Professional Responsibility of The North Carolina State Bar by a Hearing Committee of the Disciplinary Hearing Commission sitting on January 25, 1980.

The fact that this Public Censure is not the most serious of possible discipline provided for in General Statutes 84-28 should not be taken by you to indicate that The North Carolina State Bar in any way feels that your conduct in this matter was excusable or was considered by the members of the Hearing Committee of the Disciplinary Hearing Commission to be any less than a very serious and substantial violation of the Code of Professional Responsibility.

You received a fee in your representation of Marie E. Young Worthy which was based partly upon an estimate of work to be performed in the future. When Mrs. Worthy terminated your services, she requested a statement from you for the purpose of making a final settlement of your fee. By your silence to this request, you misrepresented to your client that you had earned the entire fee when in actuality you had not. You also failed to promptly deliver to

your client as requested property which belonged to the client when you failed to deliver the estate file to Mrs. Worthy until approximately six (6) months after first being requested to do so.

Your conduct was prejudicial to the administration of justice. This conduct is a direct violation of the Code of Professional Responsibility and in addition is a reflection upon you and the entire Bar of this State. Your conduct was unprofessional. It violated not only the letter but also the spirit of the Code of Professional Responsibility of The North Carolina State Bar. It was not such conduct as is expected of a member of the legal profession. It brings discredit upon you and tends to place the courts of this State and your fellow members of the Bar in disrepute and further damages both in the eyes of the public.

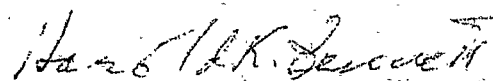
Failure of attorneys to represent clients within the law and within the bounds of the Code of Professional Responsibility is the most serious complaint against our profession, and your failure to represent Mrs. Marie E. Young Worthy adequately was your error here. You placed a privilege that you hold as a lawyer to serve the public in serious jeopardy.

The North Carolina state Bar is confident that this Public Censure will be heeded by you, that it will be remembered by you, and that it will be beneficial to you. We are confident that you will never again allow yourself to depart from strict adherence to the highest standards of the legal profession. Accordingly, we sincerely trust that this Public Censure, instead of being a burden, will actually serve as a profitable reminder to weigh carefully your responsibility to the public, your clients, your fellow attorneys, and the court, with the result that you will be known as a respected member of our profession whose word and conduct may be relied upon without question.

Pursuant to Section 23 of the Rules of Disciplinary Procedure, it is ordered that a certified copy of this Public Censure be entered upon the judgment docket of the Superior Court of Mecklenburg County and also upon the minutes of the Supreme Court of North Carolina.

IT IS FURTHER ORDERED that the costs of this disciplinary action be paid by the Defendant, Joe S. Major, III.

This the 18th day of February, 1980.


Harold K. Bennett, Chairman

(Signatures continued on following page.)

J. Mac Boxley
J. Mac Boxley

Nona McDonald
Nona McDonald