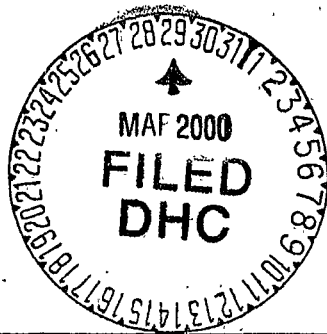


WAKE COUNTY
NORTH CAROLINA



8502
BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
99 DHC 11

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

ROBERT E. SHEAHAN, Attorney,
Defendant

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER OF DISCIPLINE

This matter was heard on the 1st day of September, 1999 before a hearing committee of the Disciplinary Hearing Commission composed of Franklin E. Martin, Kenneth M. Smith, and Anthony E. Foriest. The Plaintiff was represented by Clayton W. Davidson, III. The Defendant, Robert E. Sheahan, was represented by David C. Pishko. Based upon the pleadings and the evidence introduced at the hearing, the hearing committee hereby enters the following:

DIRECTED VERDICT OF THIRD CLAIM FOR RELIEF

The Plaintiff failed to prove the violations alleged in the Third Claim for Relief by clear, cogent, and convincing evidence, consequently, the Defendant's motion to dismiss the Third Claim for Relief made at the close of the Plaintiff's evidence was, and is hereby granted, and the Third Claim for Relief is hereby DISMISSED.

FINDINGS OF FACT

1. The Plaintiff, the North Carolina State Bar (the "State Bar") is a body duly organized under the laws of the State of North Carolina and is the proper body to bring this proceeding under the authority granted to it in Chapter 84 of the General Statutes of

North Carolina and the rules and regulations of the State Bar promulgated pursuant thereto (the "State Bar Rules and Regulations").

2. The Defendant, Robert E. Sheahan, (the "Defendant") was admitted to the State Bar in 1978 and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina subject to the State Bar Rules and Regulations and the Rules of Professional Conduct of North Carolina.
3. During all or a part of the relevant periods referred to herein, Defendant was engaging in the practice of law in the State of North Carolina and maintained a law office in High Point, North Carolina (the "Law Office").
4. In or about December 1992, Husted and Husted Associates, Inc. ("Husted") retained the Defendant to represent them in a lawsuit filed in Federal Court in the Middle District of North Carolina 92CV00770 (the "Lawsuit").
5. At issue in the Lawsuit was an environmental site assessment that Husted had performed on real property (the "Property") for an electroplating company (the "Company").
6. The Property was subsequently foreclosed by the Company's creditor bank (the "Bank").
7. The Bank brought an action alleging that Husted's site assessment was negligent and failed to disclose certain chemical leaks that required remediation.
8. Husted retained the Defendant to represent him in the matter.
9. Over the course of the representation, the Defendant billed Husted for in excess of \$63,000, and collected in excess of \$45,000.
10. The Defendant's total charges were substantially more than the fees charged by another law firm, Smith, Helms, Mulliss, and Moore to a co-defendant in the matter. The amount

of legal time and effort required to defend Husted was roughly comparable to the amount of legal time and effort required to defend the co-defendant.

11. Respondent was responsible for assigning individuals to work on the Husted file.
Respondent assigned two summer associates and an associate to work on the file. Each individual billed a substantial amount of time to the file, including a substantial amount of time spent researching environmental law. Much of the time spent on the file by the associates was duplicative of earlier work.
12. A substantial portion of the legal fees charged was for interest on past due amounts. The Defendant and Husted never entered into any contract or agreement that would allow interest to be charged for past due legal fees, and the rate of interest exceeded the legal rate.
13. In 1995, the Defendant filed a motion for summary judgment accompanied by a brief. The motion and brief were prepared by a law student who was a summer clerk with the Defendant, and who had no law license and no experience in environmental law or litigation.
14. Subsequent to the filing of the motion for summary judgment, Husted settled the matter for payment of \$10,000.
15. On or about July 2, 1996 the Defendant had a telephone conversation with James Husted at a time when James Husted individually and Husted and Husted Associates, Inc. were represented by another attorney, Robert R. Schoch ("Schoch"), concerning a dispute over the fees paid by Husted to the Defendant.
16. Defendant had previously been informed that Schoch represented Husted. During that conversation, the Defendant threatened to sue Husted for treble damages for bad faith

refusal to pay legal bills, which action and which damages would not be authorized by the laws of the state of North Carolina.

17. Husted informed the Defendant during the telephone conversation that he was represented by Schoch.
18. After being informed by Husted that Husted was represented by another attorney, the Defendant continued the conversation, and attempted to induce Husted to settle the fee dispute without involving Schoch in the conversation.
19. In referring to Schoch, the Defendant stated
[Y]ou couldn't think of a worse person. . . . [T]here's nobody in town that has any respect for him. He's an asshole, he's a cokehead, he's . . . he's a shit . . .
20. The statements made by the Defendant were false in that, among other things, Schoch has never used cocaine and is not a "cokehead."
21. The Defendant further attempted to induce Husted to sign a confession of judgment without advising Husted of his right to arbitration under the North Carolina State Bar's fee arbitration program.
24. In or about 1992, Charles E. Crotts ("Crotts") retained the Defendant to represent him in a matter involving consulting work that Crotts had performed for a Delaware corporation, Lamplighter Industries ("Lamplighter").
25. The Defendant agreed to represent Crotts for the purpose of filing an action to compel Lamplighter to issue stock, which Lamplighter had agreed to provide as compensation for the work done by Crotts, or in the alternative, to obtain injunctive relief and damages.
26. In August 1994, the Defendant presented a bill to Crotts in the amount of \$28,718.89.

27. A portion of the bill, approximately \$8,625.61, was interest on allegedly past due amounts.
28. Crotts never signed any agreement or otherwise entered into any contract allowing the Defendant to charge interest for past due amounts, and the amount of interest charged exceeded the legal rate.
29. On or about August 8, 1994, the Defendant requested that Crotts sign a confession of judgement for the amount of legal fees owed, without informing Crotts of the existence of the North Carolina State Bar's fee arbitration program. While Crotts never disputed the bill, the Defendant did not adequately explain the bill to Crotts, and the Defendant knew or should have known that there were substantial reasons to dispute the amount of the bill.
30. The Defendant ultimately attempted to collect over \$72,000 in legal fees from Crotts and Knightsbridge, Inc.
31. No legal proceedings on behalf of Crotts of Knightsbridge, Inc. were ever filed.

Based on the foregoing findings of fact, the hearing committee enters the following:

CONCLUSIONS OF LAW

The Defendant violated the North Carolina Rules of Professional Conduct¹ as follows:

- a) By charging excessive fees in the Husted matter, the Defendant violated Rule 2.6.
- b) By making untrue statements about Robert R. Schoch, the Defendant violated Rule 1.2.

¹ The conduct in this matter occurred prior to July 24, 1997, the effective date of the adoption of the Revised Rules of Professional Conduct, consequently the superseded Rules of Professional Conduct apply to this action.

- c) By attempting to have Husted execute a confession of judgment without informing Husted of the North Carolina State Bar's fee arbitration program, the Defendant violated Rule 2.6.
- d) By charging excessive fees in the Crotts matter, the Defendant violated Rule 2.6.
- e) By charging interest in excess of the legal rate when there was no contract for interest, the Defendant violated Rule 1.2.
- f) By having Crotts execute a confession of judgment without informing Crotts of the North Carolina State Bar's fee arbitration program, the Defendant violated Rule 2.6.

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the evidence and arguments at trial concerning the appropriate discipline, the hearing committee hereby makes the additional:

FINDINGS OF FACT REGARDING DISCIPLINE

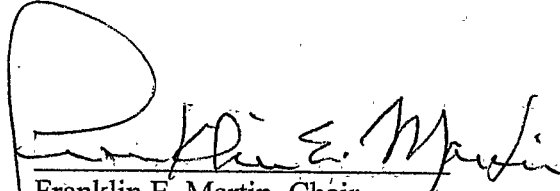
1. The Defendant's misconduct is aggravated by the following factors:
 - a. A dishonest or selfish motive;
 - c. A pattern of misconduct;
 - d. Multiple offenses; and
 - e. Substantial experience in the practice of law.
2. The Defendant's misconduct is mitigated by the following factor:
 - a. Absence of a prior disciplinary record.
3. The aggravating factors outweigh the mitigating factor.

Based upon the foregoing Findings of Fact and Conclusions of Law and the Findings of Fact Regarding Discipline, the hearing committee hereby enters the following:

ORDER OF DISCIPLINE

1. The Defendant is hereby censured for his misconduct in the form attached hereto.

Signed by the undersigned chair with the full knowledge and consent of all other members of the hearing committee this 27th day of March, 2000.


Franklin E. Martin, Chair

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
99 DHC 11

IN THE MATTER OF)

ROBERT E. SHEAHAN,)
ATTORNEY AT LAW)

CENSURE

This matter was heard on the 1st day of September, 1999 before a hearing committee of the Disciplinary Hearing Commission composed of Franklin E. Martin, Kenneth M. Smith, and Anthony E. Foriest. Based upon the pleadings and the evidence introduced at the hearing, the hearing committee voted to issue this Censure to you.

A Censure is a written form of discipline more serious than a Reprimand, issued in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct and has caused significant harm or potential significant harm to a client, the administration of justice, the profession or a member of the public, but the misconduct does not require suspension of the attorney's license.

In or about December 1992, Husted and Husted Associates, Inc. ("Husted") retained you to represent them in a lawsuit filed in Federal Court in the Middle District of North Carolina 92CV00770 (the "Lawsuit"). At issue in the Lawsuit was an environmental site assessment that Husted had performed on real property (the "Property") for an electroplating company (the "Company"). The Property was subsequently foreclosed by the Company's creditor bank (the "Bank"). The Bank brought an action alleging that Husted's site assessment was negligent and failed to disclose certain chemical leaks that required remediation.

Over the course of your representation of Husted, you billed Husted for in excess of \$63,000, and collected in excess of \$45,000. Your total charges were substantially more than the fees charged by another law firm to a co-defendant in the matter. The amount of legal time and effort required to defend Husted was roughly comparable to the amount of legal time and effort required to defend the co-defendant. You were responsible for assigning individuals to work on the Husted file. You assigned two summer associates and an associate to work on the file. Each individual billed a substantial amount of time to the file, including a substantial amount of time spent researching environmental law. Much of the time spent on the file by the associates was duplicative of earlier work. A substantial portion of the legal fees charged was for interest on past due amounts. You and Husted never entered into any contract or agreement that would allow interest to be charged for past due legal fees, and the rate of interest exceeded the legal rate. By charging excessive fees in the Husted matter, you violated Rule 2.6 of the North Carolina Rules of Professional Conduct. By charging interest in excess of the legal rate when there was no contract for interest, you violated Rule 1.2

On or about July 2, 1996 you had a telephone conversation with James Husted at a time when James Husted individually and Husted and Husted Associates, Inc. was represented by another attorney, Robert R. Schoch ("Schoch"), concerning a dispute over the fees paid by Husted to you. You had previously been informed that Schoch represented Husted. During that conversation, you threatened to sue Husted for treble damages for bad faith refusal to pay legal bills, which action and which damages would not be authorized by the laws of the state of North Carolina. Husted informed you during the telephone conversation that he was represented by Schoch. After being informed by Husted that Husted was represented by another attorney, you continued the conversation, and attempted to induce Husted to settle the fee dispute without involving Schoch in the conversation. In referring to Schoch, you stated:

[Y]ou couldn't think of a worse person. . . . [T]here's nobody in town that has any respect for him. He's an asshole, he's a cokehead, he's . . . he's a shit . . .

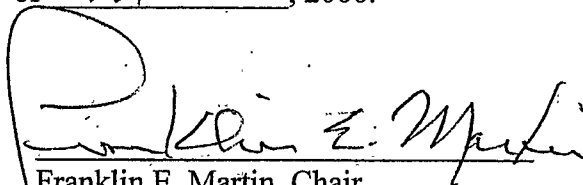
The statements made by you were false in that, among other things, Schoch has never used cocaine and is not a "cokehead." You also attempted to induce Husted to sign a confession of judgment without advising Husted of his right to arbitration under the North Carolina State Bar's fee arbitration program. By making untrue statements about Robert R. Schoch, you violated Rule 1.2. By attempting to have Husted execute a confession of judgment without informing Husted of the North Carolina State Bar's fee arbitration program, you violated Rule 2.6.

On or about 1992, Charles E. Crotts ("Crotts") retained you to represent him in a matter involving consulting work that Crotts had performed for a Delaware corporation, Lamplighter Industries ("Lamplighter"). You agreed to represent Crotts for the purpose of filing an action to compel Lamplighter to issue stock, which Lamplighter had agreed to provide as compensation for the work done by Crotts, or in the alternative, to obtain injunctive relief and damages. In August 1994, you presented a bill to Crotts in the amount of \$28,718.89. A portion of the bill, approximately \$8,625.61, was interest on allegedly past due amounts. Crotts never signed any agreement or otherwise entered into any contract allowing you to charge interest for past due amounts, and the amount of interest charged exceeded the legal rate. On or about August 8, 1994, you requested that Crotts sign a confession of judgment for the amount of legal fees owed, without informing Crotts of the existence of the North Carolina State Bar's fee arbitration program. While Crotts never disputed the bill, you did not adequately explain the bill to Crotts, and you knew or should have known that there were substantial reasons to dispute the amount of the bill. You ultimately attempted to collect over \$72,000 in legal fees from Crotts and Knightsbridge, Inc. No legal proceedings on behalf of Crotts of Knightsbridge, Inc. were ever filed. By charging excessive fees in the Crotts matter, you violated Rule 2.6 of the North Carolina Rules of Professional Conduct. By charging interest in excess of the legal rate when there was no contract for interest, you violated Rule 1.2. By having Crotts execute a confession of judgment without informing Crotts of the North Carolina State Bar's fee arbitration program, you violated Rule 2.6.

You are hereby censured by the North Carolina State Bar for your violation of the Rules of Professional Conduct. The Disciplinary Hearing Commission trusts that you will ponder this Censure, recognize the error that you have made, and that you will never again allow yourself to depart from adherence to the high ethical standards of the legal profession. This Censure should serve as a strong reminder and inducement for you to weigh carefully in the future your responsibility to the public, your clients, your fellow attorneys and the courts, to the end that you

do not demean yourself as a respected member of the legal profession whose conduct may be relied upon without question.

Done and ordered, this 27th day of March, 2000.


Franklin E. Martin, Chair
Disciplinary Hearing Committee