

NORTH CAROLINA  
WAKE COUNTY



8826

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
94 DHC 22

THE NORTH CAROLINA STATE BAR,  
Plaintiff

vs.

CINDY C. HUNTSBERRY, ATTORNEY  
Defendant

CONSENT ORDER  
OF DISCIPLINE

This cause coming before a Hearing Committee composed of L. Patten Mason, Chair, Paul L. Jones and B. Stephen Huntley; with Richard T. Gammon representing the Defendant and Carolin Bakewell representing the N.C. State Bar; and based upon the Defendant's admissions as evidenced by her consent to the signing of this Order, the Hearing Committee 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, Cindy C. Huntsberry (hereafter, Huntsberry), was admitted to the North Carolina State Bar in 1979, 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, Huntsberry was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the Town of Smithfield, Johnston County, North Carolina.

4. In January 1991, Huntsberry hired a paralegal, Peggy Levinson, to assist her in preparing and filing fee petitions in Social Security cases.

5. Prior to November 1989, Huntsberry undertook to represent Alma Phillips regarding Phillips' claim for Social Security

100604

disability benefits.

6. On or about Nov. 7, 1989, Phillips paid Huntsberry a fee of \$3,000 in cash.

8. Huntsberry did not hold in trust the \$3,000 fee which she received from Phillips.

9. On or about Feb. 25, 1991, Levinson prepared and filed a fee petition with the Social Security Administration, seeking approval of a \$3,217.50 fee in Phillips' case.

10. On or about June 14, 1991, the Social Security Administration authorized Huntsberry to receive a \$3,217.50 fee in Phillips' case.

11. On or about Dec. 6, 1988, Huntsberry undertook to represent Ruby Speights regarding Speights' claim for Social Security disability benefits.

12. On or about Sept. 25, 1989, Speights paid Huntsberry a fee of \$1,247.66 in cash.

13. Huntsberry did not hold in trust the \$1,247.66 fee paid by Speights.

14. On or about Aug. 31, 1991, Levinson prepared and filed a petition with the Social Security Administration, seeking approval of a \$1,247.66 fee in Speights' case.

15. On or about Nov. 6, 1991, the Social Security Administration authorized Huntsberry to receive a \$1,247.66 fee in Speights' case.

16. On or about May 13, 1985, Huntsberry undertook to represent Lora Adams regarding Adams' claim for Social Security disability benefits.

17. On or about Oct. 6, 1989, Adams paid Huntsberry a fee of \$2,092.19 by check.

18. Huntsberry did not hold in trust the \$2,092.19 fee which she received from Adams pending approval of the fee by the Social Security Administration.

19. On or about July 19, 1991, Levinson prepared and filed a petition with the Social Security Administration, seeking approval of a \$2,092.19 fee in Adams' case.

20. On or about May 14, 1992, the Social Security Administration authorized Huntsberry to receive a \$2,092.19 fee in Adams' case.

21. Prior to September 1989, Huntsberry undertook to represent Melissa Capps regarding Capps' claim for supplemental security benefits for her minor daughter, Tabetha Capps.

22. On or about Sept. 21, 1989, Ms. Capps paid Huntsberry a fee of \$200.

23. Huntsberry did not hold in trust the \$200 fee which she received from Ms. Capps pending approval of the fee by the Social Security Administration.

24. On or about Sept. 16, 1991, Levinson prepared and filed a petition with the Social Security Administration, seeking approval of a \$200 fee in Ms. Capps' case.

25. On or about April 21, 1992, the Social Security Administration issued an order which declined to award any fee to Huntsberry.

26. Huntsberry filed notice of appeal from the order of April 21, 1992 and on August 5, 1993, the Social Security Administration awarded Huntsberry a fee of \$100 regarding Capps' case.

27. On or about Aug. 10, 1993, Huntsberry issued a refund in the amount of \$100 to Capps by writing a check drawn on her attorney business account.

28. Prior to July 10, 1990, Huntsberry undertook to represent Sarah Phillips regarding a Social Security matter.

29. On or about July 10, 1990, Phillips paid Huntsberry a fee in the amount of \$1,826.70.

30. Huntsberry did not hold in trust the \$1,826.70 fee which she received from Phillips pending approval of the fee by the Social Security Administration.

31. On or about Feb. 27, 1991 Levinson prepared and filed a petition with the Social Security Administration, seeking approval of a \$1,826.70 fee in Phillips' case.

32. On or about Oct. 29, 1991, the Social Security Administration authorized Huntsberry to receive a fee of \$800 in Phillips' case.

33. On or about Nov. 4, 1991, Huntsberry refunded \$1,026.70 to Phillips.

34. Prior to May 1990, Huntsberry undertook to represent Bertha Massey regarding a Social Security matter.

35. On or about May 21, 1990, Massey paid Huntsberry a fee in the amount of \$386.

36. Huntsberry did not hold in trust the \$386 fee which she received from Massey pending approval of the fee by the Social Security Administration.

37. On or about July 5, 1991 Levinson drafted and filed a petition with the Social Security Administration, seeking approval of a \$386 fee in Massey's case.

38. On or about Dec. 31, 1991, the Social Security Administration authorized Huntsberry to receive a \$386 fee in Massey's case.

39. Pursuant to Social Security Administration regulations and the Rules of Professional Conduct, Huntsberry was required to hold in trust the fees which she received from Alma Phillips, Ruby Speights, Lora Adams, Melissa Capps, Sara Phillips and Bertha Massey until the fees were approved by the Social Security Administration.

40. The fee petitions filed in the cases of Alma Phillips, Ruby Speights, Lora Adams, Melissa Capps and Bertha Massey falsely stated that the fees paid to Huntsberry were being held in trust or escrow for the clients, pending approval of the fee by the Social Security Administration.

41. Huntsberry failed to adequately supervise Levinson's work and to review the fee petitions filed in the cases of Alma Phillips, Ruby Speights, Lora Adams, Melissa Capps, and Bertha Massey to ensure that all representations on the fee petitions were accurate.

42. The false statements on the fee petitions were the result of negligence on the part of Huntsberry and her staff, and were not part of an intentional or malicious intent to mislead anyone.

43. On or about June 14, 1993, the North Carolina State Bar served Huntsberry by certified mail with a letter of notice respecting a grievance filed against Huntsberry by Melissa Capps. The grievance was summarized in a Substance of Grievance served upon Huntsberry along with the Letter of Notice.

44. Pursuant to Art. IX, Section 12(C) of the Discipline & Disbarment Rules of the N.C. State Bar, Huntsberry was required to file a full and fair disclosure of all the facts and circumstances relating to the misconduct alleged in the Substance of Grievance and Letter of Notice no later than June 29, 1993.

45. On July 2, 1993, Huntsberry responded to the Letter of Notice in Ms. Capps' case. Huntsberry's July 2, 1993 did not contain a full and fair disclosure of all the facts and circumstances relating to the misconduct alleged in the Substance of Grievance and Letter of Notice.

46. On July 13, 1993, Counsel for the N.C. State Bar wrote to Huntsberry, requesting additional information.

47. On Sept. 21, 1993, Harry B. Warren, the N.C. State Bar's Director of Investigations, telephoned Huntsberry and asked her to respond to Bar Counsel's July 13, 1993 letter. Huntsberry assured Warren that she would do so promptly.

48. On Oct. 5, 1993, Bar Counsel wrote to Huntsberry, again asking her to respond to the July 13, 1993 letter by Oct. 15, 1993.

49. Huntsberry did not respond to Bar Counsel's letter of July 13, 1993 or Bar Counsel's letter of Oct. 5, 1993.

50. On Oct. 15, 1993, the Secretary of the N.C. State Bar issued a subpoena, commanding Huntsberry to appear in the Offices of the N.C. State Bar to provide a full and fair response to Capps' grievance.

51. Huntsberry appeared as commanded on Nov. 22, 1993.

Based upon the foregoing Findings of Fact, the Hearing Committee makes the following

#### CONCLUSIONS OF LAW

1. By failing to hold in trust fees which she received from Alma Phillips, , Ruby Speights, Lora Adams, Melissa Capps, Sarah Phillips and Bertha Massey until the fees had been approved by the Social Security Administration, Huntsberry received excessive or illegal fees in violation of Rule 2.6 and failed to hold in her trust account funds to which she might be entitled as fees until actually authorized to receive the fee, in violation of Rule 10.1(C)(2).

2. By failing to adequately supervise her staff and by failing to prevent the filing of fee petitions regarding Alma Phillips, Ruby Speights, Lora Adams, Melissa Capps, and Bertha Massey which falsely represented that these clients' fees were being held in trust, Huntsberry engaged in conduct prejudicial to the administration of justice in violation of Rule 1.2(D) and failed to ensure that her paralegal's conduct was compatible with her own professional obligations, in violation of Rule 3.3.

3. By failing to provide a full and fair disclosure of all the facts and circumstances pertaining to the alleged misconduct alleged in Capps' grievance in her initial response to the grievance and by failing to respond promptly to Bar Counsel's letters of July 13, 1993 and Oct. 5, 1993 and to inquiries from the N.C. State Bar Director of Investigations, Huntsberry failed to respond to an inquiry of a disciplinary authority in violation of Rule 1.1(B).

In addition to the foregoing Findings of Fact and Conclusions of Law, based upon the parties' consent, the Hearing Committee enters the following:

#### FINDINGS REGARDING AGGRAVATING & MITIGATING FACTORS

1. Huntsberry's conduct is aggravated by the following factors:

a. Huntsberry was reprimanded on October 17, 1990 for failing to hold fees collected in Social Security cases between 1986 and 1988 in trust. Huntsberry was served with the letter of notice in that case in December 1988 and thus was on notice of the need to hold fees in trust at the time of the misconduct referred to herein.

b. Huntsberry was publicly censured on July 11, 1991 for telling the State Bar in January 1991 that the fee paid to her by a client named Evelyn Ellis was in her trust account and that a petition had been filed when this was not the case. Huntsberry was served with the letter of notice in the Ellis case on Dec. 27, 1990.

2. Huntsberry's conduct is mitigated by the following factors:

a. The misconduct referred to herein occurred prior to 1992.

b. The State Bar's review of Huntsberry's trust account records indicates that she opened a new trust account in June 1991 and that the funds in that account have been handled properly.

Based upon the foregoing Findings of Fact, Conclusions of Law, Findings Regarding Aggravating & Mitigating Factors and the parties' consent, the Hearing Committee hereby enters the following:

#### ORDER OF DISCIPLINE

1. Huntsberry should be suspended from the practice of law for one year, with the suspension stayed for a period of two years, on the following conditions:

a. Huntsberry shall violate no provisions of the Rules of Professional Conduct during the two-year stay period.

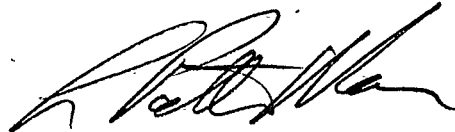
b. Huntsberry shall permit the N.C. State Bar to audit her attorney trust account and any firm business or

operating account upon demand at any time during the two-year stay period.

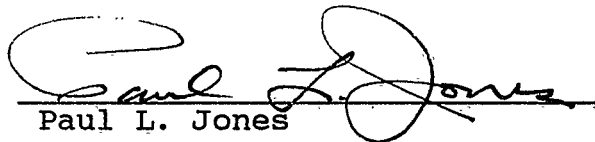
- c. Huntsberry shall hire a certified public accountant to audit her trust account at six-month intervals throughout the two-year stay period. Within 14 days of completion of each of the semi-annual audits, Huntsberry will provide a written statement from the CPA to the N.C. State Bar certifying that Huntsberry is complying with the Rules of Professional Conduct regarding her handling of client and fiduciary funds. The first of the audits shall be performed no later than 30 days from the date of this order.

2. Huntsberry shall pay the costs of this action.

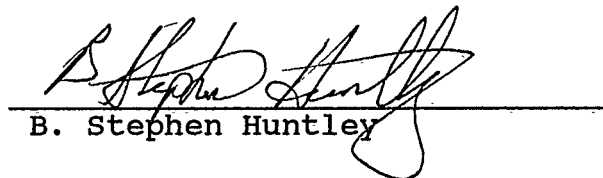
This the 20 day of February, 1995.



L. Patten Mason, Chair  
Disciplinary Hearing Committee



Paul L. Jones



B. Stephen Huntley

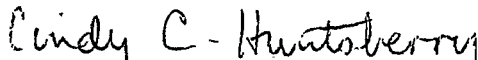
Seen & Consented to:



Richard T. Gammon, Attorney  
for the Defendant



Carolin Bakewell, Attorney  
for the Plaintiff



Cindy Huntsberry, Defendant