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NORTH CAROLINA

WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
94 DHC 1

THE NORTH CAROLINA STATE BAR, )  
Plaintiff )

vs. )

STEVEN BOWDEN, ATTORNEY )  
Defendant )

CONSENT ORDER  
OF  
DISCIPLINE

This matter came on before a hearing committee of the Disciplinary Hearing Commission composed of Stephen T. Smith, Chair, Paul L. Jones, Esquire, and Anthony E. Foriest; with Joseph B. Cheshire, V and Alan M. Schneider representing the Defendant, and Harriet P. Tharrington representing the North Carolina State Bar; and pursuant to Section 14(H) of Article IX of the Rules of Regulations of the North Carolina State Bar; and it appearing that both parties have agreed to waive a formal hearing in this matter; and it further appearing that both parties stipulate and agree to the following Findings of Fact and Conclusions of Law recited in this Consent Order and to the discipline imposed, the Hearing Committee therefore enters the following:

FINDINGS OF FACT

1. 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. R. Steve Bowden was admitted to the North Carolina State Bar on September 5, 1979 and was at all time relevant hereto 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 times relevant hereto, defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the Greensboro, North Carolina area.

4. On or about June 3, 1993, defendant began representing Ms. Angela L. McClurkin (hereafter, McClurkin) in a personal injury matter arising out of an automobile accident which occurred on April 29, 1993 (hereafter, McClurkin's claim).

5. Prior to June 3, 1993, McClurkin had received a check from State Farm Insurance Company for \$1,432.24 as partial payment on McClurkin's claim.

6. McClurkin negotiated directly with Jennifer C. Dolianitis, the claims adjuster for State Farm, for the \$1,432.24 advance payment prior to retaining Defendant.

7. The settlement memorandum for McClurkin dated December 8, 1993, indicates a "recovery" of \$9,000.00.

8. On the settlement memorandum, defendant deducted \$1,432.94 from the \$9,000.00 as an amount that McClurkin had already been paid by State Farm.

9. The actual amount defendant obtained for McClurkin on her claim, not including the \$1,432.24 advanced to Ms. McClurkin prior to retaining Defendant, was \$7,567.06.

10. On or about December 8, 1994, defendant took as his fee for McClurkin's claim one quarter (1/4) of the total settlement amount of \$9,000.00 which amounted to \$2,250.00, rather than taking 1/4 of \$7,567.06, the amount received after he was retained.

11. On or about December 3, 1993, defendant loaned McClurkin \$350.00 for her personal use until her claim was settled.

12. At the time defendant advanced McClurkin the \$350.00, defendant had not received any funds from State Farm on behalf of McClurkin.

13. Defendant deducted the \$350.00 from the total due McClurkin on December 8, 1993 when McClurkin's claim was settled.

14. Prior to settlement, John Hancock Mutual Life Insurance Company gave notice of its subrogation claim in the amount of \$815.20 for payment made on behalf of McClurkin.

15. Defendant did not pay John Hancock Mutual Life Insurance Company (hereafter, John Hancock) \$815.20 on its subrogation claim; instead, defendant, with John Hancock's knowledge, consent and authorization, paid John Hancock \$611.40 and retained \$203.80 (1/4 of the \$815.20) for himself as a procurement fee on the subrogation claim.

16. Absent some agreement to the contrary, the \$203.80 procurement fee retained by defendant should have been paid to McClurkin to reduce her overall attorney's fees.

17. From December 1993 until July 1994, defendant settled personal injury claims for fourteen (14) clients other than Angela McClurkin where there was a subrogation claim relating to the settlement proceeds.

18. In each of the fourteen (14) cases referred to in paragraph 17, defendant, with the knowledge and consent of the lienholders, retained a portion of the amount of the subrogation claim as a procurement fee.

19. Absent some agreement to the contrary, the procurement fees retained by defendant in each of these fourteen (14) cases should have been paid to the client to reduce attorney's fees.

20. Defendant mistakenly believed that he was entitled to a portion of the subrogation claims as a procurement fee for paying and discharging the subrogation claim and/or protecting the lien.

21. Defendant was unaware of the impropriety of such a practice and consequently such was done absent any dishonest or deceitful motive.

22. After learning that the State Bar was questioning his handling of the subrogation claims, defendant immediately cooperated with the North Carolina State Bar, implemented procedures for the proper handling of subrogation claims and voluntarily refunded to clients the procurement fees he retained on the subrogation claims.

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

#### CONCLUSIONS OF LAW

1. By including \$1,432.24 in the calculation for his fee of (1/4) of the proceeds from the settlement of McClurkin's claim when said advance was obtained prior to his engagement, Defendant collected an excessive fee in violation of Rule 2.6 of the Rules of Professional Conduct.

2. By loaning McClurkin \$350.00 before McClurkin's claim was settled, Defendant violated Rule 5.3(B) by advancing a client living expenses while representing her in connection with contemplated or pending litigation.

3. By retaining \$203.00 as a procurement fee from John Hancock's subrogation claim, Defendant collected an excessive fee in violation of Rule 2.6.

4. By failing to pay McClurkin the \$203.00 referred to in the preceding paragraph, Defendant failed to promptly pay or deliver to McClurkin monies to which she was entitled in violation of Rule 10.2(E).

5. By retaining procurement fees on subrogation claims in 14 other cases, Defendant collected an excessive fee in violation of Rule 2.6.

6. By failing to pay his clients the procurement fees referred to in paragraph 5, Defendant failed to promptly pay or deliver to his clients monies to which they were entitled to in violation of Rule 10.2(E).

Based upon the Committee's Findings of Fact and Conclusions of Law and upon the consent of the parties, the Committee enters the following

## ORDER OF DISCIPLINE

1. The license of R. Steven Bowden to practice law in the State of North Carolina is hereby suspended for one year. The suspension of the Defendant's law license is stayed for a period of two years from the effective date of the entry of the Order herein, based upon the following conditions:

(a) Within one month of the entry of any consent order, Defendant shall schedule an appointment to participate, at his own expense, in the Law Management Assistance Program for one year during which a law practice management plan shall be implemented and monitored by Nancy Byerly Jones.

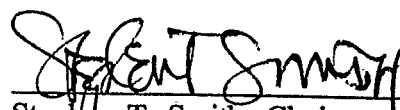
(b) Defendant shall submit to random audits of his trust account by the North Carolina State Bar at any time during the two year stay period. He shall also provide copies of any settlement disbursement sheets and other documentation relevant thereto as requested by the North Carolina State Bar at any time during the two year stay period.

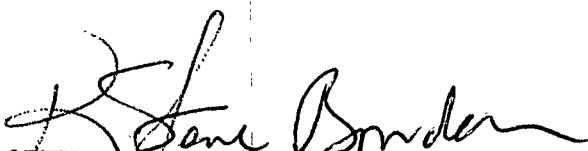
(c) Defendant shall violate no provisions of the Rules of Professional Conduct during the two year stay period.

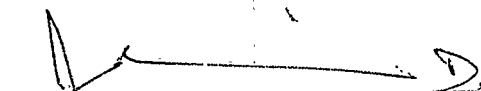
(d) Defendant shall violate no laws of the State of North Carolina during the two year stay period.

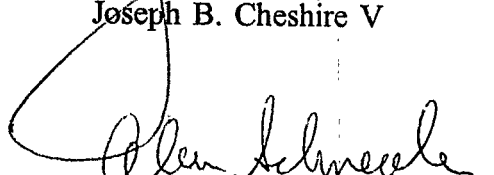
(e) Defendant shall be assessed with the costs of this proceeding as determined by the Secretary of the North Carolina State Bar.

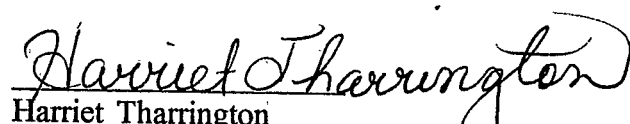
Signed by the undersigned chairman with the full knowledge and consent of the other hearing committee members, this the 27 day of MARCH, 1995.

  
Stephen T. Smith, Chairman  
Hearing Committee

  
R. Steven Bowden

  
Joseph B. Cheshire V

  
Alan M. Schneider

  
Harriet Tharrington