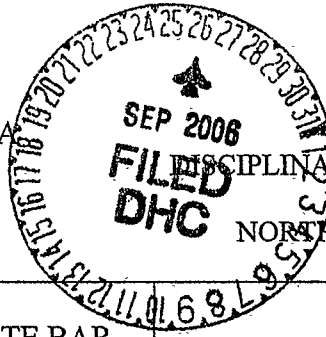


STATE OF NORTH CAROLINA

WAKE COUNTY



27322

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
06 DHC 13

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

PAUL R. SCHELL, Attorney,

Defendant

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

This matter was heard on September 15, 2006 before a hearing committee of the Disciplinary Hearing Commission composed of the Chair, F. Lane Williamson, and members Karen Eady-Williams and Donald G. Willhoit. Jennifer A. Porter represented the Plaintiff, the North Carolina State Bar. Defendant, Paul R. Schell, did not appear and was not represented. Based upon the pleadings and the admissions considered pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(f), the hearing committee hereby finds by clear, cogent, and convincing evidence 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. Defendant, Paul R. Schell ("Schell"), was admitted to the North Carolina State Bar in 2000, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Revised Rules of Professional Conduct.

3. During all or part of the relevant periods referred to herein, Schell was engaged in the practice of law in the State of North Carolina and maintained a law office in Charlotte, Mecklenburg County, North Carolina.

4. Schell was served with the State Bar's complaint and summons in this case by publication in the Spartanburg Herald-Journal and his answer was due no later than August 9, 2006.

5. Schell did not file an answer to
6. The insurance company, State Farm Mutual Automobile Insurance Company, issued a check to Schell and Hicks in the amount of \$88,000.00 on March 27, 2003.
7. Schell and Hicks endorsed the check and Schell deposited the \$88,000.00 into his trust account on March 31, 2003.
8. Schell provided Hicks with a letter dated March 28, 2003 confirming the settlement and detailing how the funds would be distributed.
9. the complaint and his default was entered by the Secretary of the North Carolina State Bar on August 16, 2006.
10. Schell was properly served with process, a hearing in this matter was set, and the matter came before the hearing committee with due notice to all parties.
11. Schell had a trust account for his law practice for entrusted and fiduciary funds pursuant to Rule 1.15-2 of the North Carolina State Bar Revised Rules of Professional Conduct at First Citizens Bank, account number ending with the digits "9483," from about July 2000 through July 2005.
12. Beatrice Hicks ("Hicks") was in an automobile accident on or about October 29, 2002. Shortly thereafter, she retained Schell to represent her in pursuing recovery for her resulting injuries.
13. Schell agreed to represent her in negotiations with the pertinent insurance company on a contingency fee basis. Schell was to receive twenty-five percent (25%) of any settlement.
14. Schell negotiated a settlement of Hicks' claim in the amount of \$88,000.00. This letter showed a distribution of \$22,000.00 to Schell for the legal fee, with a notation of "(25%)" apparently referencing their contingency fee agreement.
15. The letter showed Schell retaining \$28,812.00 to pay medical providers and the remaining \$37,188.00 to be distributed to Hicks. In the letter, Schell explained that it may be possible for him to return some of the \$28,812.00 retained for medical bills if he is able to negotiate discounts to the medical bills.
16. Schell did not list any amounts owed to him for costs or otherwise due to him beyond the \$22,000.00 fee.
17. Schell disbursed \$37,188.00 to Hicks from his trust account by check number 1035 dated April 15, 2003.

18. Schell disbursed \$22,000.00 to himself from his trust account by check number 1036 dated April 15, 2003. The note "Hicks Legal fee" appears in the memo line of the check.

19. \$22,000.00 is twenty-five percent (25%) of \$88,000.00 and constituted Schell's fee in the Hicks' matter pursuant to their contingency fee agreement.

20. Schell maintained the \$28,812.00 in his trust account on behalf of Hicks until September 3, 2003. On that date he issued a check to Miller Orthopedic to pay Hicks' orthopedic surgeon from his trust account by check number 1037 in the amount of \$7,052.00.

21. After the disbursement of the \$7,052.00, \$21,760.00 remained of the funds Schell was or should have been maintaining in his trust account on behalf of Hicks.

22. Schell maintained the \$21,760.00 in this trust account on behalf of Hicks until November 3, 2003.

23. On or about November 3, 2003, Schell issued check number 1043 from his trust account in the amount of \$796.00 to PMAB Inc., a collection agency assigned to collect the amount Hicks owed to Charlotte Medical Clinic.

24. After disbursement of the \$796.00, \$20,964.00 remained of the funds Schell was or should have been maintaining in his trust account on behalf of Hicks.

25. Schell maintained the \$20,964.00 in his trust account on behalf of Hicks until March 2004.

26. In March 2004, Schell began making unauthorized disbursements to himself from these funds.

27. By check number 1046 dated March 12, 2004, Schell disbursed \$7,040.00 from his trust account to himself. The memo line contains the note "Hicks Cont. fee."

28. Schell had already received his contingency fee of \$22,000.00, which constituted his full 25% fee in this matter. Hicks had not retained Schell to represent her in any other matter and did not otherwise authorize the disbursement of \$7,040.00 to Schell.

29. By check number 1048 dated March 29, 2004, Schell disbursed \$5,280.00 from his trust account to himself. The memo line contains the note "Hicks last pay - (waived cost)."

30. Schell's disbursement summary to Hicks did not list any amount due for costs or any other payment owed.

31. Hicks did not authorize disbursement of the \$5,280.00 to Schell.

32. By check number 1049 dated April 9, 2004, Schell disbursed \$2,640.00 from his trust account to himself. The memo line says "Hicks."

33. Schell was not due any amount from the funds he held in trust for Hicks at the time he disbursed the \$2,640.00 to himself.

34. Hicks did not authorize Schell to disburse the \$2,640.00 to himself.

35. Schell disbursed the \$6,004.00 remaining of the \$28,812.00 Schell had retained to pay Hicks' medical bills in April and May 2004 as follows: Schell paid a medical bill of Hicks' in the amount of \$3,169.32, gave \$1,000 to Hicks to pay for medication expenses, and disbursed the balance of \$1,834.68 to himself. These disbursements were made by trust account checks numbered 1050, 1051, 1052 and 1053.

36. Between March 2004 and May 2004, Schell disbursed \$16,794.68 of the \$28,812.00 that he had held in trust for Hicks for the payment of her medical bills to himself for his own use. Hicks did not authorize these disbursements to Schell. The funds Schell disbursed to himself were not used on behalf of Hicks. Schell was not entitled to these funds and knew he was not entitled to these funds at the time of the unauthorized disbursements.

37. Hicks asked Schell for an accounting of the funds he retained in trust to pay her medical bills. Schell would not provide this accounting.

38. In August 2002, Kenneth B. Lacy ("Lacy"), a resident of Florida, hired Schell to represent him in a traffic ticket matter.

39. In a letter dated August 22, 2002, Schell sent Lacy a letter instructing Lacy to send him a check for \$250.00 for the representation. Schell indicated this amount would cover all fines and court costs.

40. Lacy paid Schell \$250.00 by check dated August 26, 2002. The memo line of the check indicates that \$150 was intended for "fee" and \$100.00 was intended for "court costs."

41. The funds intended to pay fines and/or court costs in the traffic matter constituted client funds.

42. Schell did not deposit this check containing client funds into his trust account and did not otherwise maintain the funds from Lacy intended to pay fines or court costs owed in the traffic matter in his trust account on Lacy's behalf.

43. Schell did not appear in court for Lacy and did not pay any amount in fines or court costs in Lacy's traffic matter on behalf of Lacy.

44. Lacy attempted to communicate with Schell by telephone and by letter. Schell did not respond to Lacy's telephone messages or letters and did not otherwise communicate with Lacy about the status of the representation.

45. Schell has not refunded any of the \$250.00 paid to him by Lacy for the traffic matter.

46. On or about December 31, 2004, Thomas O. Jones ("Jones") retained Schell to represent him in seeking a reduction in his monthly child support obligation. Jones had already filed the motion and sought Schell's assistance with the court hearing on the matter.

47. Schell told Jones he would handle the matter for \$400.00. Jones paid Schell a flat fee of \$400.00 for Schell to represent him on his motion.

48. After paying Schell the \$400.00, Jones made several attempts to talk with Schell regarding the upcoming hearing. Schell did not return Jones' calls until a message was left for Schell demanding a return of the money if Schell would not return Jones' calls.

49. Schell arranged a meeting with Jones on the Saturday immediately prior to the Monday hearing date set for Jones' motion.

50. Schell did not appear for the meeting at the appointed time.

51. Jones called Schell repeatedly and was finally able to reach Schell. Schell met with Jones approximately two hours after the time they had set to meet on that Saturday prior to the hearing.

52. Schell did not appear at the hearing or otherwise represent Jones in the child support reduction matter.

53. Jones has not seen or heard from Schell since that Saturday prior to the scheduled hearing date on his motion.

54. Schell did not refund any amount of the \$400.00 he collected from Jones to represent Jones on Jones' child support reduction motion.

55. On or about January 10, 2005, Carlos D. Loyd ("Loyd") retained Schell to represent him in a child support matter.

56. Schell required a retainer of \$800.00. Loyd paid him \$400.00 of the retainer on or about January 10, 2005.

57. Loyd wanted to file a court proceeding by which an order would be issued setting Loyd's child support obligation. Schell proposed that Schell first write a letter to the child's mother proposing the resolution Loyd desired, to see if the matter could be settled informally.

58. On or about January 23, 2005, Loyd became aware that the child's mother had initiated a court action for child support. Loyd was notified that he needed to attend a mandatory Front End Status Conference in the case, set for February 8, 2005.

59. Loyd talked to Schell by telephone and notified him of the court action and the Front End Status Conference. Schell told Loyd that Schell would attend the conference for Loyd.

60. Loyd attended the conference on February 8, 2005. Schell failed to attend the conference and did not represent Loyd at the conference.

61. Loyd attempted to contact Schell on February 8, 2005. Loyd left Schell a telephone message.

62. Schell did not return Loyd's February 8<sup>th</sup> telephone call.

63. Between February 10, 2005 and March 30, 2005, Loyd made several more attempts to obtain information on the status of his case from Schell, by leaving several telephone messages and by sending written correspondence. Schell did not return Loyd's telephone calls and did not respond to Loyd's letter.

64. Schell did not write a letter to the mother of Loyd's child to seek an informal resolution of the child support matter.

65. Schell did not otherwise represent Loyd in Loyd's child support matter.

66. Loyd submitted a written request to Schell for a refund of the \$400.00.

67. Schell did not refund any amount of the \$400.00 he collected from Loyd to represent Loyd on Loyd's child support matter.

68. Loyd filed a Petition for Resolution of Disputed Fee with the State Bar on or about April 21, 2005.

69. The State Bar sent Loyd's fee dispute to the Fee Dispute Resolution Committee of the Mecklenburg County Bar for local investigation and/or mediation.

70. The Mecklenburg County Bar assigned the matter to attorney Erik M. Rosenwood.

71. Mr. Rosenwood sent Schell a letter by certified mail, scheduling a mediation of the fee dispute for May 16, 2005. The letter was received at Schell's address in Charlotte, NC on or about May 2, 2005. Schell did not respond to the letter and he did not appear at the mediation.

72. Mr. Rosenwood subsequently left three telephone messages for Schell. Schell did not return these calls.

73. Schell did not otherwise participate in the fee dispute resolution process.

74. On or about April 1, 2003, Matisse A. Morrison ("Morrison") retained Schell to represent him in four (4) traffic ticket matters.

75. Schell told Morrison that his fee to handle all four traffic tickets was \$950.00.

76. On or about April 1, 2003, Morrison paid Schell \$950.00 to represent him on the 4 tickets.

77. Morrison was seeking to return to employment as a truck driver at that time. Proper resolution of the traffic tickets was integral to his ability to be employed as a truck driver. Morrison communicated this information to Schell.

78. Schell indicated he understood the urgency of the matter and told Morrison he would have the 4 tickets resolved within a few weeks.

79. Morrison provided Schell with the court dates scheduled for each ticket.

80. Schell did not appear for the court dates for any of the 4 tickets.

81. Schell did not otherwise resolve the 4 ticket matters.

82. Between approximately April 1, 2003 to May 28, 2004, Morrison made several attempts by telephone and one attempt by letter to contact Schell.

83. Schell did not return Morrison's calls or respond to Morrison's letter.

84. Schell did not refund any amount of the \$950.00 he collected from Morrison to represent Morrison on the 4 traffic tickets.

85. Morrison filed a Petition for Resolution of Disputed Fee with the State Bar on or about November 4, 2004.

86. The State Bar sent Morrison's fee dispute to the Fee Dispute Resolution Committee of the Mecklenburg County Bar for local investigation and/or mediation.

87. The Mecklenburg County Bar assigned the matter to attorney Kimberly Q. Cacheris.

88. Ms. Cacheris had difficulty obtaining Schell's participation in the fee dispute matter.

89. Ms. Cacheris left a total of approximately 15 – 20 voicemail messages for Schell while trying to resolve this fee dispute. Of those, Schell returned only a few.

90. Ms. Cacheris requested that Schell provide her with the fee agreement between him and Morrison and with documents showing work he had performed in representation of Morrison. Schell failed to provide these documents, despite Ms. Cacheris' several requests and multiple deadlines.

91. Ms. Cacheris had worked out a potential settlement of the fee dispute matter with Morrison and communicated that to Schell. Although Schell seemed willing

to settle the matter on the terms reached by Ms. Cacheris, he failed to sign and return the form to finalize the agreement.

92. Schell did not respond to Ms. Cacheris's subsequent messages regarding completing settlement of the fee dispute.

93. On or about January 25, 2005, Knight Saythany ("Saythany") retained Schell to represent him in a child custody matter.

94. Saythany wanted Schell to write a letter to his ex-wife proposing a custody arrangement Saythany desired. Schell told Saythany that his fee to provide this service was \$800.00. Schell was to draft the letter and provide it to Saythany to review before sending the letter to Saythany's ex-wife.

95. On or about January 25, 2005, Saythany paid Schell \$400.00. Saythany notified Schell he would pay the remainder at later dates. Schell did not indicate that he would not write the letter for Saythany until the entire \$800.00 was paid.

96. From about January 26, 2005 to February 29, 2005, Saythany did not hear anything from Schell nor did he receive the draft letter.

97. Even though Saythany had not heard from Schell and had not received the draft letter, Saythany made another payment towards Schell's fee, in the amount of \$200.00, on or about February 29, 2005.

98. Saythany left several telephone messages for Schell seeking information on the status of the matter between about February 29, 2005 to March 10, 2005. Schell did not return Saythany's calls.

99. Saythany called Schell on March 11, 2005 and was able to talk to him that day. Schell still had not drafted the letter for which he had been retained.

100. While Saythany was on the telephone, Schell used another telephone line to call Saythany's ex-wife and offer the arrangement sought by Saythany over the telephone. Saythany's ex-wife rejected the arrangement.

101. Saythany was not happy with Schell's actions, since he had paid Schell to make a written offer.

102. Schell told Saythany that he would call Saythany within the next few days after March 11, 2005. Schell did not call Saythany in that time period.

103. On or about March 19, 2005, after Saythany went to Schell's office to express his dissatisfaction with Schell, Schell called Saythany.

104. Saythany asked for his money back. Schell refused to refund the money.



105. Schell did not send Saythany or Saythany's ex-wife the letter for which Saythany retained Schell.

106. In about April 2005, Saythany submitted a letter of complaint to the Mecklenburg County Bar.

107. The State Bar opened a fee dispute resolution file upon notification by the Mecklenburg County Bar of Saythany's complaint. The matter was retained at the Mecklenburg County Bar for local investigation and/or mediation.

108. The Mecklenburg County Bar assigned the matter to committee member C. Cliff Edahl.

109. After reviewing the matter, Mr. Edahl set a mediation date for the fee dispute.

110. Mr. Edahl notified Schell of the mediation date with two letters and two telephone calls.

111. Schell did not attend the mediation and did not otherwise participate in the fee dispute program.

112. On or about May 13, 2004, Demples Waters ("Waters") hired Schell to assist her son, Joseph Franckewitz ("Franckewitz"), and her brother, Martin Watts ("Watts"), in their respective legal matters. She paid Schell \$4,700.00 as the total fee for both representations.

113. For Franckewitz, Schell was asked to get his traffic ticket placed back on the court docket for resolution.

114. Although it took longer than Schell initially indicated to Waters, Schell did get a court date set on the matter for July 2, 2004.

115. For Watts, who was incarcerated, Schell was asked to file a Motion for Appropriate Relief.

116. Waters provided Schell with a transcript of Watts' trial with important items marked by an attorney with whom she had previously consulted.

117. Schell visited Watts in prison one time, in about the end of July or beginning of August 2004.

118. Watts authorized Schell to communicate with Waters on his behalf.

119. Waters tried to communicate with Schell on behalf of Watts after this visit on multiple occasions from August 2004 through March 2005.

120. Schell did not respond to Waters' telephone messages or to her letters.

121. Other than on the one prison visit described above, Schell did not communicate directly with Watts about the status of his representation of Watts.

122. On about March 16, 2005, Watts sent Schell a letter terminating the attorney-client relationship. Watts directed Schell to deliver his client file to Waters and to send Waters an accounting of the funds paid by Waters and a refund of the unearned portion of the fee.

123. Schell called Waters on about March 23, 2005 and said there was less than \$1,000 left of the funds she had paid. Waters asked for an accounting of the funds and for the return of Watts' trial transcript. Schell promised to produce both.

124. Schell did not provide Waters with the accounting of funds nor with Watts' trial transcript.

125. Waters left Schell a telephone message on about April 8, 2005. Schell has not returned Waters' telephone call.

126. Schell did not file a Motion for Appropriate Relief on behalf of Watts.

127. On or about August 23, 2004, Charles E. Pruitt ("Pruitt") hired Schell to file a Motion for Appropriate Relief in Iredell County. Pruitt paid Schell \$500.00 to represent him in that matter. Pruitt agreed to pay Schell another \$500.00 to file a Motion for Appropriate Relief in Mecklenburg County in another matter.

128. Pruitt attempted to contact Schell on multiple occasions after August 23, 2004. Pruitt left several telephone messages for Schell, which Schell did not return.

129. Pruitt went to Schell's office on multiple occasions after August 23, 2004 in an attempt to discuss his case with Schell, but was not able to discuss his case with Schell when he made these visits.

130. On one occasion, Pruitt was able to set an appointment to meet with Schell at Schell's office. Pruitt arrived at the appointed time but Schell did not meet with him and did not discuss his case with him.

131. By May 2005, Schell had not filed a Motion for Appropriate Relief on behalf of Pruitt in Iredell County, nor had he communicated the status of his representation of Pruitt to Pruitt.

132. On about May 17, 2005, Pruitt terminated the attorney-client relationship with Schell.

133. Schell did not refund the \$500.00 Pruitt paid him to file the Motion for Appropriate Relief in Iredell County.

134. Because of Schell's failure to file the Motion for Appropriate Relief in Iredell County on his behalf, Pruitt did not pay Schell the additional \$500.00 to file a Motion for Appropriate Relief in Mecklenburg County.

135. In May 2005, Pruitt hired an attorney in Iredell County and an attorney in Mecklenburg County to represent him in the matters on which he had previously sought representation from Schell. He paid one attorney \$300.00 and the other attorney \$500.00. These attorneys resolved these matters for him by mid-June 2005.

136. On or about February 12, 2005, Lynne Heintz ("Heintz") retained Schell to represent her in a child support and custody matter, in which litigation was already pending. Heintz paid Schell \$1,000.00 to represent her in that matter.

137. Schell advised Heintz that her counterclaim would need to be amended and that he would amend the counterclaim for her if she hired him. Schell failed to amend her counterclaim.

138. There was a hearing date set regarding temporary child support in March 2005. Schell was at the courthouse in the morning but left prior to completing the matter before the Court. Despite assurances that he would return that afternoon, Schell did not return to Court. Although the parties reached an agreement on the temporary child support matter, Schell failed to file the agreement with the Court.

139. Heintz and Schell spoke on April 15, 2005, and Schell stated he would draft a custody, visitation, and support agreement and would send it to her no later than April 22, 2005. Schell did not provide her with this agreement.

140. Heintz wrote Schell a letter dated April 27, 2005 in which she terminated her attorney-client relationship with Schell and asked him to file a motion to withdraw in her domestic litigation. She asked for the return of her documents and a refund of any unearned fees.

141. Schell did not respond to Heintz's letter.

142. Schell did not return Heintz's documents.

143. Schell did not refund any of the \$1,000.00 Heintz paid for representation in her child support and visitation matter.

144. Schell did not file a motion to withdraw in her case.

145. On or about May 19, 2005, Heintz submitted a letter of complaint to the Mecklenburg County Bar.

146. The State Bar opened a fee dispute resolution file upon notification by the Mecklenburg County Bar of Heintz's complaint. The matter was retained at the Mecklenburg County Bar for local investigation and/or mediation of the fee dispute.

147. The Mecklenburg County Bar assigned the matter to attorney Douglas M. Jarrell.

148. Mr. Jarrell set a mediation date of June 21, 2005 for the fee dispute and notified both Heintz and Schell by letter.

149. Heintz appeared for the mediation but Schell did not.

150. Mr. Jarrell sent Schell a letter dated June 21, 2005 calling Schell's attention to his failure to attend the fee dispute mediation and requesting that he contact Mr. Jarrell no later than June 28, 2005.

151. Schell left Jarrell a voicemail message on June 27, 2005. Jarrell's assistant made attempts to contact Schell by telephone in response to the message but was unable to reach Schell.

152. Jarrell sent Schell a letter dated July 7, 2005 requesting that Schell contact him no later than July 15, 2005.

153. Schell did not make any further contact with Jarrell and did not otherwise participate in the fee dispute program.

154. The State Bar had also opened a Grievance Committee file upon Heintz's complaint in May 2005.

155. On or about June 8, 2005, Schell received a Letter of Notice from the Chair of the Grievance Committee of the North Carolina State Bar regarding the grievance filed by Heintz. By Bar rule, Defendant was required to respond to the Letter of Notice within 15 days of receipt. Defendant did not respond to the Letter of Notice.

156. In February 2005, Dennis C. Mobley ("Mobley") hired Schell to represent him in obtaining the release of tax refunds being held by the IRS pursuant to collection efforts of delinquent child support. Mobley paid Schell \$400.00 for this representation.

157. Mobley is not aware of any action taken by Schell on his behalf in the IRS matter.

158. Mobley expected Schell to file a motion to obtain release of the tax refunds. Schell did not file such a motion.

159. Mobley attempted to contact Schell on multiple occasions after their initial meeting. Mobley left several telephone messages for Schell, which Schell did not return.

160. Mobley went to Schell's office on multiple occasions after their initial meeting in an attempt to discuss his case with Schell but could not catch him in the office.

161. Mobley wrote Schell a letter dated April 27, 2005 asking that Schell provide him with the status of his case and a description of what actions Schell had taken to resolve the matter. Mobley asked Schell to respond or refund his \$400.00 within ten days of receiving the letter.

162. Schell did not respond to Mobley's letter.

163. Schell did not refund the \$400.00 Mobley paid him to obtain the release of his tax refunds.

164. Schell did not obtain the release of Mobley's tax refunds from the IRS and did not otherwise provide representation to him in that matter.

165. On or about February 18, 2005, Sean Greene ("Greene") hired Schell to represent him in a child custody matter, in which Greene needed Schell's assistance with an emergency custody order, child support, and a permanent custody order. Greene paid Schell 1,500.00 to represent him in that matter.

166. After paying Schell the \$1,500.00 at their second meeting, Greene attempted to contact Schell on multiple occasions, with no success.

167. Greene left several telephone messages for Schell, which Schell did not return.

168. Greene went to Schell's office but Schell was not there.

169. By April 2005, Schell had not filed any document on Greene's behalf in court on the child custody and child support matter. Greene was not aware of any action taken by Schell on Greene's behalf.

170. Greene sent Schell a letter dated April 29, 2005 asking for a refund of the \$1,500.00.

171. Schell did not respond to Greene's letter.

172. Schell did not refund the \$1,500.00 Greene paid him for representation in his child support and custody matter.

173. On or about June 8, 2005, Schell received a Letter of Notice from the Chair of the Grievance Committee of the North Carolina State Bar regarding the grievance filed by Greene. By Bar rule, Defendant was required to respond to the Letter of Notice within 15 days of receipt. Defendant did not respond to the Letter of Notice.

174. In April 2004, Linda Kirkpatrick ("Kirkpatrick") hired Schell to file a lawsuit on behalf of her husband's estate. She paid him \$2,500.00 for this representation on or about April 25, 2004.

175. Kirkpatrick contacted Schell in June 2004 for the status of her case. Schell said he had contacted two of the list of witnesses she had provided him, but was not ready to proceed. He said he needed to contact more witnesses.

176. Kirkpatrick called him at least once a month after that for the status of her case. She left telephone messages for Schell. Schell did not return her calls.

177. Kirkpatrick sent Schell a letter in October 2004 providing updated contact information for witnesses, expressing her desire that Schell file the lawsuit soon, and asking Schell to contact her. Schell did not respond to her letter.

178. In January 2005, Kirkpatrick contacted the person who had referred her to Schell to complain that Schell had not taken action and was not returning her calls. Shortly thereafter, Schell called Kirkpatrick and left her a message apologizing for the delay.

179. At the end of January 2005, Schell called Kirkpatrick and said he was sending the complaint to her to review and sign. Kirkpatrick did not receive the complaint.

180. Kirkpatrick called Schell on February 8 and February 15, 2005 to indicate she had not received the complaint. Schell called her on February 18, 2005 and said he would work all weekend and mail her the complaint. Kirkpatrick did not receive the complaint.

181. Kirkpatrick left Schell several telephone messages in March 2005. Schell did not return her calls.

182. On March 21, 2005, Kirkpatrick sent Schell a letter terminating their attorney-client relationship and requesting her file and a refund of the \$2,500.00.

183. On about March 23, 2005, Schell called Kirkpatrick. He indicated that there was no money to return to her and that she should allow him to continue with the case. Kirkpatrick agreed. Schell set an appointment to meet her at a restaurant that was about halfway between where he was located in Charlotte, NC and where she was located in Badin, NC. Schell did not come to the appointment. He called her at the restaurant and said he did not realize how far it was to the restaurant and said he could not make it. He said he had the complaint ready and would mail it to her.

184. Kirkpatrick did not receive the complaint.

185. Kirkpatrick called Schell on March 28, 2005 and March 31, 2005 to indicate she had not received the complaint. Schell did not return her calls.

186. Schell did not return Kirkpatrick's file materials to her or to Kirkpatrick's subsequent attorney.

187. Schell did not refund the \$2,500.00 Kirkpatrick paid him for representation in the lawsuit.

188. On or about June 8, 2005, Schell received a Letter of Notice from the Chair of the Grievance Committee of the North Carolina State Bar regarding the grievance filed by Kirkpatrick. By Bar rule, Defendant was required to respond to the Letter of Notice within 15 days of receipt. Defendant did not respond to the Letter of Notice.

189. In about October 2004, Shirley Caldwell ("Shirley") and her daughter Jamillah Caldwell ("Jamillah") retained Schell to represent them in a pending matter with the Mecklenburg County Department of Social Services (DSS). Jamillah's granddaughter was in the custody of DSS and an action had been filed to have the granddaughter adopted. Shirley was seeking custody of the child.

190. Schell quoted the Caldwells a flat fee of \$3,000.00. The Caldwells paid him \$2,510.00 prior to May 2005 as follows:

DATE	AMOUNT	FORM	SOURCE
10-15-04	\$660.00	Check	Jamillah
10-15-04	\$100.00	Cash	Jamillah
10-22-14	\$120.00	Cash	Jamillah
11-17-04	\$180.00	Check	Jamillah
12-03-04	\$100.00	Check	Jamillah
12-12-04	\$100.00	Money order	Shirley
02-08-05	\$500.00	Money order	Shirley
02-11-05	\$100.00	Money order	Shirley
02-15-05	\$200.00	Money order	Shirley
02-25-05	\$400.00	Money order	Shirley
04-05-05	\$ 50.00	Money order	Shirley

191. Schell appeared in court once on Shirley's behalf in November 2004. He was late for that appearance. The matter was not resolved at that time.

192. Thereafter, the court communicated with Schell rather than Shirley. The Caldwells knew another court date would be set but they did not know when.

193. Jamillah's last contact with Schell was in March 2005. Jamillah subsequently called Schell on several occasions but he would not return her telephone calls.

194. Concerned because of the lack of contact and the lack of information on the court date, Jamillah went to Schell's office in April 2005. Schell was not in. The person with whom Jamillah spoke in the area in which Schell has his office did not know how to contact him.

195. The court date in the DSS matter was set for a date in May 2005. Schell did not notify the Caldwells of the date. The Caldwells were unaware of the date and did not appear for the hearing.

196. Schell did not appear at the hearing on Shirley's behalf.

197. The court allowed the adoption of Jamillah's granddaughter that Shirley had sought to oppose with Schell's representation.

198. After learning that the hearing had occurred and that the adoption had been allowed, Jamillah went to Schell's office and requested a refund of the money they had paid. Schell was not there. The person with whom Jamillah spoke in the area where Schell had his office said Jamillah would be contacted. Schell did not contact Jamillah.

199. Schell did not refund any amount of the \$2,510.00 paid by the Caldwells for representation in the case with DSS.

200. From about October 2004 through July 2005, Schell deposited personal funds into his trust account in the amount of approximately \$11,166.31.

201. Additionally, during this time period Schell deposited personal funds in the form of portions of flat fees collected from clients into his trust account, including as listed below.

- a. Schell collected a flat fee of \$400.00 from Jones on or about December 31, 2004, as described in the Third Claim for Relief. Schell retained \$80.00 of the \$400.00 and deposited the remaining \$320.00 into his trust account on or about January 3, 2005;
- b. Schell collected a flat fee of \$400.00 from Loyd on or about January 10, 2005, as described in the Fourth Claim for Relief. Schell retained \$20.00 of the \$400.00 and deposited the remaining \$380.00 into his trust account on or about January 11, 2005;
- c. Schell collected \$200.00 from Shirley Caldwell on or about February 15, 2005 as partial payment of his \$3,000.00 flat fee in that representation, as described in the Thirteenth Claim for Relief. Schell retained \$50.00 of the \$200.00 and deposited the remaining \$150.00 into his trust account on or about February 17, 2005; and
- d. Schell collected \$400.00 from Shirley Caldwell on or about February 24, 2005 as partial payment of his \$3,000.00 flat fee in that representation, as described in the Thirteenth Claim for Relief. Schell retained \$200.00 of the \$400.00 and deposited the remaining \$200.00 into his trust account on or about February 28, 2005.



202. During this same time period from about October 2004 through July 2005, Schell disbursed, or attempted to disburse, funds from his trust account to himself or for his benefit in the amount of approximately \$13,197.06.

#### CONCLUSIONS OF LAW

1. All the parties are properly before the hearing committee and the committee has jurisdiction over the Defendant, Paul R. Schell, and the subject matter.

2. The Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-28(b)(2) as follows:

a. By knowingly and willfully misappropriating client funds belonging to Hicks and Lacy and converting those funds for his own use, Schell committed criminal acts that reflect adversely on his honesty, trustworthiness, or fitness in other respects in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);

b. By failing to disburse Hicks' funds for her medical expenses and disbursing the funds to himself for his own use, Schell failed to promptly pay or deliver client funds as directed by the client in violation of Rule 1.15-2;

c. By failing to provide an accounting of funds held in trust for Hicks for her medical expenses at her request, Schell failed to render to his client a written accounting of the receipts and disbursements of all trust account funds upon her reasonable request in violation of Rule 1.15-3;

d. By collecting fees from Lacy, Jones, Loyd, Morrison, Saythany, Waters, Pruitt, Heintz, Mobley, Greene, Kirkpatrick, and the Caldwells to represent them in their legal matters and then failing to provide the legal representation for which he received the fees and failing to return any unearned fees, Schell collected clearly excessive fees in violation of Rule 1.5 and neglected a client matters in violation of Rule 1.3;

e. By failing to respond to his clients' attempts to communicate with him, including by letter and by telephone, Schell failed to promptly comply with his clients' reasonable requests for information in violation of Rule 1.4;

f. By failing to return Jamillah's telephone calls and messages and failing to notify the Caldwells of the hearing date, Schell failed to promptly comply with the client's reasonable requests for information and

failed to keep the client reasonably informed about the status of the matter in violation of Rule 1.4;

g. By failing to deposit and maintain the funds from Lacy intended for court costs or fines for Lacy's traffic matter in his trust account, Schell failed to hold and maintain entrusted property in violation of Rule 1.15-2;

h. By failing to appear at the fee dispute mediations concerning the fee dispute petition filed by Loyd, Saythany, and Heintz, and by failing to provide the information requested by the fee dispute mediator in the Morrison fee dispute, and by failing to return messages left by the appointed mediator in the Loyd and Morrison fee dispute matters, Schell failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f);

i. By failing to return client documents, by failing to refund unearned fees of his clients upon termination of the representation, and by failing to file a motion to withdraw in Heintz's case, Schell failed to take reasonable steps to protect his clients' interests upon termination of the representation in violation of Rule 1.16;

j. By failing to respond to the letter of notice issued by the Chair of the Grievance Committee pertaining to clients Heintz, Greene, and Kirkpatrick, Defendant failed to respond to an inquiry by the Bar in violation of Rule 8.1(b) of the Revised Rules of Professional Conduct and N.C. Gen. Stat. §84-28(b)(3);

k. By depositing and/or retaining personal funds in his attorney trust account, Schell deposited funds belonging to a lawyer in the trust account of the lawyer in violation of Rule 1-15-2.

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the evidence and arguments presented at the hearing concerning appropriate discipline, the hearing committee hereby finds by clear, cogent, and convincing evidence the following additional

#### FINDINGS OF FACT REGARDING DISCIPLINE

1. Schell's misconduct is aggravated by the following factors:
  - a. Dishonest or selfish motive;
  - b. A pattern of misconduct;
  - c. Multiple offenses;


- d. Refusal to acknowledge the wrongful nature of his conduct; and
  - e. Vulnerability of the victims.
2. Schell's misconduct is mitigated by the following factor:
- a. Absence of a prior disciplinary record.
3. The aggravating factors substantially outweigh the mitigating factors.
4. Schell's conduct has resulted in significant harm to the profession. Schell's neglect, failure to communicate with clients, and failure to return unearned fees caused his clients to feel their trust had been betrayed. Several of Schell's former clients expressed a sense of distrust of the legal profession in general due to Schell's conduct.
5. Schell's conduct resulted in potential significant harm to the profession. The legal profession is entrusted with the privilege of self-regulation. The State Bar can only regulate the profession if its members respond to inquiries of the State Bar and otherwise participate in this self-regulation. Schell's failure to participate in this self-regulation jeopardizes the profession's ability to remain self-regulating.
6. Schell's conduct resulted in significant harm to his clients. Schell's theft of Hicks' funds has left her with outstanding medical bills and ongoing collection efforts by medical providers who should have been paid by the money Schell embezzled. Schell's conduct jeopardized his clients' ability to pursue claims or relief, including but not limited to Heintz's ability to bring a claim on behalf of her husband's estate and Watts' ability to file a Motion for Appropriate Relief. Additionally, Schell's failure to attend the child custody hearing on behalf of the Caldwells and his failure to notify the Caldwells of the hearing date so they could attend resulted in the child custody issue being decided against the Caldwells. This result then allowed this child, who was Jamillah's granddaughter and Shirley's great-granddaughter, to be adopted outside the family.
7. The hearing committee has considered lesser sanctions and finds that disbarment is the only appropriate discipline in this case. The hearing committee finds that disbarment is the only sanction that can adequately serve to protect the public from future transgressions by this attorney given the clear demonstration of misappropriation of client funds, the substantial pattern of neglect resulting in significant client harm, and the pattern of dishonesty established by the evidence.

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

## ORDER OF DISCIPLINE

1. The Defendant, Paul R. Schell, is hereby DISBARRED from the practice of law in North Carolina.
2. The costs of this action are taxed to Schell. He must pay the costs within 30 days of service of the statement of costs by the Secretary.
3. Schell may not seek reinstatement of his license to practice law until he submits written proof to the Office of Counsel of the State Bar that he has made restitution to the Client Security Fund of the North Carolina State Bar of all amounts paid by the Fund to his former clients before filing a petition for reinstatement of his law license.

Signed by the Chair with the consent of the other hearing committee members, this the 21st day of September, 2006.

  
F. Lane Williamson, Chair  
Disciplinary Hearing Committee