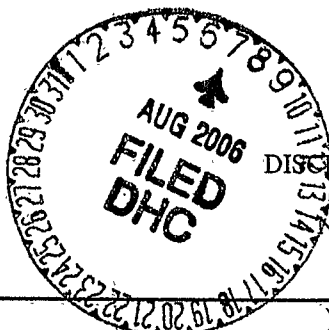


NORTH CAROLINA
WAKE COUNTY



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

THE NORTH CAROLINA STATE BAR,
Plaintiff,

V.

RICHARD G. BADGETT,
Defendant.

ORDER OF DISCIPLINE

THIS MATTER was heard on July 7, 2006 before a Hearing Committee of the Disciplinary Hearing Commission composed of Chair T. Richard Kane and members Sharon B. Alexander and Donald G. Willhoit, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). The Defendant Richard G. Badgett was present and represented by Frederick K. Sharpless. The Plaintiff was represented by William N. Farrell, Deputy Counsel. Based upon the record and the evidence introduced at the hearing, the Hearing Committee, by clear, and cogent, and convincing evidence, hereby makes the following:

FINDINGS OF FACT

1. 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, Richard G. Badgett, (hereinafter "Defendant"), was admitted to the North Carolina State Bar on September 25, 1959, 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. During all relevant periods referred to herein, Defendant was actively engaged in the practice of law in the City of Winston-Salem, Forsyth County, North Carolina.

3. James Wilkerson Gordon a/k/a J. Wilkerson Gordon, Wick Gordon, and J. W. Gordon, (hereinafter "Wick Gordon"), died December 13, 1994, and was domiciled in Surry County, North Carolina on the date of his death.
4. At the time of his death, Wick Gordon's survivors, under the intestacy laws of North Carolina, included: Lela Gordon Christy, sister; Nannie Gordon Riggs, sister; Alice Gordon Knowles, sister; Richard G. Badgett (Defendant) W. Frank Badgett and Emily B. Taylor, all children of deceased sister Ada Gordon Badgett; Jane Cooper, daughter of deceased sister Stella Gordon Redmond; and Allen N. Martin, son of deceased sister Mary Gordon Martin.
5. On December 30, 1994, the Clerk of Superior Court of Surry County appointed W. Frank Badgett (hereafter Frank Badgett) as the administrator of the Estate of Wick Gordon (hereafter "Gordon Estate"). The Gordon Estate was assigned file number 94 E 466, Surry County.
6. After the Gordon Estate was open, Alice Gordon Knowles died, leaving as her only heir her son, S. Gordon Knowles.
7. After the Gordon Estate was open, Nannie Gordon Riggs died. Her estate (hereafter "Riggs Estate") was probated as a testamentary estate.
8. Defendant acted as attorney for the Gordon Estate and the Riggs Estate.
9. During the time of the administration of the Gordon Estate and the Riggs Estate, Defendant was a general partner in Badgett & Taylor, a North Carolina partnership (hereafter "Badgett and Taylor"). The partners in Badgett and Taylor were Defendant, his brother Frank Badgett, and Emily B. Taylor, their sister.
10. Wick Gordon was the majority shareholder in Fit-All Sportswear, Inc., a North Carolina corporation (hereafter "Fit-All") on the date of his death. Defendant and Frank Badgett were also shareholders in Fit-All on the date of Wick Gordon's death. Defendant's share ownership was less than 5% of the outstanding stock of Fit-All.
11. The 90-day inventory of the Gordon Estate, incorporated by reference herein, lists Fit-All stock at no value.
12. The Form 706 Tax return listed the Fit-All Stock at no value. The Internal Revenue Service adjusted the value of stock, on audit, to approximately \$125,000.00.

13. At the time of Wick Gordon's death, Fit-All was struggling financially and required loans if it was to continue operating in the ordinary course of business.

14. During his lifetime, J. Wilkerson Gordon was the majority shareholder of Fit-All Sportswear. He was a founder and officer of Fit-All and was active in the business. He loaned money to Fit-All and guaranteed substantial debt of Fit-All, and secured that debt with pledges of personally owned marketable securities.

15. Defendant, acting as attorney for the Gordon Estate, wrote the beneficiaries of the estate, by a letter dated March 10, 1995, incorporated by reference herein. The letter stated, in part, that "[T]he administration of Wick's estate does not permit the estate to make loans or invest in anything except almost 100% guaranteed safety of investments and, therefore, we need your consent as we discussed over the telephone to the estate going ahead and meeting all its guarantees of payment." Enclosed with this letter, when it was sent to the beneficiaries, was a "Short History of 'Fit-All' Sportswear, Inc."

16. Defendant also enclosed with the letter, a "Consent and Agreement" by which the beneficiary acknowledged that Frank Badgett, administrator of the Gordon Estate, could pay off all present and contingent debt which Wick Gordon had set up on behalf of Fit-All from estate assets. This "Consent and Agreement" also provided that the administrator could include an infusion of cash up to \$150,000.00 from estate assets if Frank Badgett and Defendant "both deem it necessary to keep Fit-All Sportswear, Inc. solvent". All beneficiaries consented, as requested.

17. During the administration of the Gordon Estate:

- a. The estate of J. Wilkerson Gordon paid debt of Fit-All Sportswear that had been guaranteed by J. Wilkerson Gordon during his lifetime in the amount of \$969,573.77, and received from Fit-All property valued at 750,000.00 and a note for the difference, \$219,573.77.
- b. The estate of J. Wilkerson Gordon loaned to Fit-All Sportswear during 1995 \$909,438.55, and received repayment during 1995 of \$20,000.00, for net additional loans of \$889,483.55. The additional loans exceeded the \$150,000.00 consent by \$739,483.55. Documentation exists for each of the loans and the repayment, and they are shown on the 1st Annual account.

- c. During 1996, the estate of J. Wilkerson Gordon loaned to Fit-All Sportswear \$60,500.00.
Documentation exists for the loans, and they are shown on the 2nd Annual account.
- d. During 1997, the estate of J. Wilkerson Gordon loaned to Fit-All Sportswear \$22,800.00.
Documentation exists for those loans, and they are shown on the 3rd Annual account.
- e. During 1998, the estate of J. Wilkerson Gordon loaned to Fit-All Sportswear \$2,600.00.
Documentation exists for those loans, and they are shown on the 4th Annual account.

18. The loans from the Gordon Estate to Fit-All were evidenced by a series of unsecured promissory notes from Fit-All to the Estate, which notes were payable on demand. The notes were listed on the disbursement schedule and receipt schedule of the annual accounts for the Gordon Estate, which are incorporated by reference herein.

19. Defendant was the attorney for the Gordon Estate, was an officer in Fit-All and was a shareholder in Fit-All during the periods described above. Defendant also became a director in Fit-All after the death of J. Wilkerson Gordon. Defendant solicited the consent described in paragraph 16.

20. During the administration of the Gordon Estate, while acting as attorney for the estate, Defendant personally received \$104,000.00 from the Estate by a series of Estate checks signed by Frank Badgett, the Administrator of the Estate, as follows:

Check No.	Date	Paid	Amount
13	February 8, 1995	Richard G. Badgett	\$8,000.00
16	February 19, 1995	Richard G. Badgett	\$7,000.00
1005	March 6, 1995	Richard G. Badgett	\$15,000.00
1012	March 20, 1995	Richard G. Badgett	\$6,000.00
1019	March 31, 1995	Richard G. Badgett	\$12,000.00
1023	April 12, 1995	Richard G. Badgett	\$7,000.00
1029	April 28, 1995	Richard G. Badgett	\$10,000.00
1036	May 12, 1995	Richard G. Badgett	\$10,000.00
1047	May 29, 1995	Richard G. Badgett	\$10,000.00
	June 18, 1995	Richard G. Badgett	\$8,000.00
1061	June 30, 1995	Richard G. Badgett	\$4,000.00

1068	August 17, 1995	Richard G. Badgett	\$4,000.00
1075	November 29, 1995	Richard G. Badgett	\$3,000.00

The checks are incorporated by reference herein.

21. On the occasions that Defendant received the aforesaid checks he executed unsecured interest bearing promissory notes payable to the Estate of James Wilkinson Gordon with the same dates and amounts of the Estate checks made payable to him. These notes are incorporated by reference herein.

22. Interest on the notes described in paragraph 21 was paid by Defendant to the estate in 1996 in the amount of \$5,779.00. \$20,000.00 in principal was offset against Defendant's attorney fees in 1996. In 1997, \$55,000.00 was offset against Defendant's attorney fees. The \$55,000.00 consisted of principal in the amount of \$48,297.68 and \$6,702.32 in interest. After 1997 the principal balance remaining on the notes as shown by the notes and the estate account was \$35,481.32. The Gordon Estate forgave \$75,000.00 of Defendant's notes to the estate as compensation for legal services rendered. \$75,000.00 was listed as legal fees on the Form 706 Estate tax return.

23. Defendant and the administrator of the Gordon Estate have given sworn testimony that the payments and notes represented in writing what Defendant expected to charge for legal fees either earned or to be earned. The depositions of Defendant and the administrator Frank Badgett are incorporated by reference herein.

24. Nannie G. Riggs died testate on August 26, 1996. Defendant and Frank Badgett were appointed co-executors of the Riggs Estate. The Estate was assigned file number 96 E 349, Surry County.

25. Persons entitled to share in the Riggs Estate under her Last Will and First Codicil were Defendant, Frank Badgett, Emily B. Taylor, Allen W. Martin, Jane R. Cooper, Gordon Knowles, Tom Christy and Bill Christy.

26. Prior to the death of Nannie Gordon Riggs, the Badgett & Taylor partnership borrowed \$72,000.00 from Ms. Riggs, as evidenced by a series of unsecured promissory notes from Badgett and Taylor to Ms. Riggs, which notes were listed on schedule V of the 90-day inventory for the Riggs Estate. The 90-day inventory is incorporated by reference herein.

27. As a general partner in Badgett & Taylor, Defendant had actual or constructive knowledge of the loans to Badgett & Taylor from Ms. Riggs.

28. The pre-death loans obtained from Ms. Riggs by Badgett and Taylor were payable on demand.
29. \$66,000.00 of the \$72,000.00 pre-death loans from Ms. Riggs to Badgett and Taylor were outstanding at her death.
30. The proceeds from the pre-death loans from Ms. Riggs to Badgett and Taylor went through Badgett and Taylor for the benefit of Fit-All.
31. Defendant knew that the money borrowed was to go to Fit-All and considered the Badgett and Taylor Partnership, which owned Real Property and which had as its general partners Defendant, Frank Badgett and Emily Taylor to be in better financial shape compared to Fit-All.
32. After the death of Ms. Riggs on August 26, 1996, the Badgett and Taylor partnership obtained additional loans in the amount of \$192,000.00 from the Riggs Estate. Defendant and Frank Badgett were co-executors of the Riggs Estate and general partners in Badgett and Taylor at the time of these loans. The post-death loans were evidenced by a series of unsecured promissory notes from Badgett and Taylor to the Estate of Nannie G. Riggs. These notes are listed on the annual account (9-12-96 to 7-31-98) of the Riggs Estate, which account is incorporated by reference herein.
33. As with the pre-death loans, after receiving the post death loans from the Riggs Estate, Badgett and Taylor loaned all of the proceeds to Fit-All, taking back promissory notes from Fit-all to Badgett and Taylor with the same dates and amount as the promissory notes to the Riggs Estate from Badgett and Taylor.
34. These notes from Fit-All to Badgett and Taylor were evidenced by a series of unsecured notes which were payable on demand. These notes are incorporated by reference herein.
35. Defendant did not receive the written consent of Allen N. Martin, Jane R. Cooper, Gordon Knowles, William R. Christy, and Thomas G. Christy, beneficiaries of the Riggs Estate, to make the post-death loans from the Riggs Estate to Badgett and Taylor.
36. Defendant did not disclose to Allen N. Martin, Jane R. Cooper, and S. Gordon Knowles, William R. Christy, or Thomas G. Christy that the post-death loans from the Riggs Estate to Badgett and Taylor were intended to go to Fit-All through loans to Fit-all from Badgett and Taylor.

37. At the time the loans were made from the Riggs Estate to Badgett and Taylor and from Badgett and Taylor to Fit-All, Defendant served as co-executor and attorney of the Riggs Estate, was a general partner in Badgett and Taylor, and was an officer, director, and shareholder in Fit-All.

38. During the administration of the Riggs Estate and the distribution to beneficiaries therewith, certain promissory notes from Badgett and Taylor to Nannie Riggs were assigned by Defendant and Frank Badgett, as co-executors of the Estate, to Badgett and Taylor for collection.

39. These "Assignments" were prepared by Defendant and are found in the Riggs' Estate file, which is incorporated by reference herein.

40. Defendant previously testified under oath, in regards to the intent of the "Assignment" as follows:

[T]he intent was to enable Badgett and Taylor to collect on the notes and pay to the respective parties their respective interest, that if the notes bounced, didn't get paid, then it would not be a—as—Badgett and Taylor as assigned would not be responsible for them. But the only way that Badgett and Taylor would be responsible for them would be if they made demand on Badgett and Taylor for the Badgett and Taylor notes themselves.

I was to keep them from making demand until after the Fit-All had paid off.

41. A similar "Assignment" of the Riggs Estate's one-sixth interest in the Gordon Estate was also assigned to Badgett and Taylor for collection and distribution. As a part of the resolution of civil litigation between some of the beneficiaries, and Defendant and Frank Badgett, all of the notes were satisfied.

42. A civil lawsuit was instituted in the Superior Court of Surry County by Allen Martin, Jane Cooper, Gordon Knowles, William Christy, Lela Christy and Thomas Christy against Frank Badgett and Defendant, case 00 CVS 1877. This action was settled in 2003, and as a part of the settlement, monetary compensation was paid to the plaintiffs in that action, and real property transferred through transfer of stock of a corporation. Plaintiffs in that action relinquished any claims they had to additional distributions, or for damages arising out of the administration of either Estate. Plaintiffs cancelled all promissory notes previously received, including the notes described in paragraphs 26-41, and the portion of notes previously given by defendant to the Estate, not yet forgiven, referenced in paragraph 21.

43. The Defendant has no prior disciplinary record with the North Carolina State Bar.

44. The Defendant has at all time been cooperative with the State Bar's investigation of this matter.

Based upon the foregoing Findings of Fact, the Hearing Committee enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Committee and the Committee has jurisdiction over Defendant Richard G. Badgett and the subject matter.
2. Defendant's conduct, as set out in the Findings of Fact above, constitute grounds for discipline pursuant to N.C. Gen. Stat. §84-28(b)(2) as follows:
 - a. By taking personal loans from the Gordon Estate, and giving unsecured promissory notes in return while serving as attorney for the estate, Defendant engaged in a conflict of interest in violation of Rule 5.1(b) and Rule 5.4 of the Rules of Professional Conduct, which were in effect until July 24, 1997.
 - b. By assisting in the making of unsecured loans to Fit-All from the Gordon Estate, while serving as attorney for the estate and also being an officer, director and shareholder in Fit-All, Defendant engaged in a conflict of interest in violation of Rule 5.1(b) and Rule 5.4 of the Rules of Professional Conduct, which were in effect until July 24, 1997, and Rule 1.7(a) and (b) of the Revised Rules of Professional Conduct, which were in effect from July 24, 1997 until February 27, 2003.
 - c. By making unsecured loans from the Riggs Estate to Badgett and Taylor, while Defendant was a partner in Badgett and Taylor, Defendant engaged in a conflict of interest in violation of Rule 5.1(b) and Rule 5.4 of the Rules of Professional Conduct, which were in effect until July 24, 1997 and Rule 1.7(a) and (b) and Rule 1.8 of the Revised Rules of Professional Conduct, which were in effect from July 24, 1997 until February 27, 2003.
 - d. By assigning the pre-death promissory notes made by Badgett and Taylor to Nannie G. Riggs, to Badgett and Taylor for collection, while defendant was a partner in Badgett and Taylor and a director and shareholder in Fit-All, defendant engaged in a conflict of interest in violation of Rule 1.7(b) of the Revised Rules of Professional Conduct, which were in effect from July 24, 1997 until February 27, 2003.

- e. By failing to make full disclosure of his own personal interests in Badgett and Taylor and Fit-All, and by failing to give an explanation of the implications of the common representation of the Riggs Estate, Badgett and Taylor, and Fit-All to the beneficiaries, of the Riggs Estate, Defendant engaged in a conflict of interest in violation of Rule 5.1(a) and (b) of the Rules of Professional Conduct, which were in effect until July 24, 1997 and Rule 1.7(a) and (b) of the Revised Rules of Professional Conduct, which were in effect from July 24, 1997 until February 27, 2003.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Committee hereby makes the following:

FINDINGS REGARDING DISCIPLINE

1. Defendant's misconduct is aggravated by the following factors:
 - a. Multiple offenses; and
 - b. Substantial experience in the practice of law.
2. Defendant's misconduct is mitigated by the following factors:
 - a. Absence of a prior disciplinary record;
 - b. Absence of a dishonest or selfish motive;
 - c. Full and free disclosure to the Hearing Committee or cooperative attitude toward the proceedings;
 - d. Character and reputation; and
 - e. Delay in disciplinary proceedings through no fault of the Defendant.
3. Defendant's conduct, as described in the Findings of Fact, caused significant harm to his clients, the Gordon Estate and the Riggs Estate, and to the beneficiaries of those estates.
4. Under N.C. Gen Stat. §84-28, a public censure is defined as a written form of discipline more serious than a reprimand in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct and has caused significant harm to a client, the administration of justice, the legal profession, or members of the public, but the protection of the public does not require a suspension of the attorney's license.

5. Defendant has violated one or more provisions of the Rules of Professional Conduct and the Revised Rules of Professional Conduct and has caused significant harm to clients, to beneficiaries of the Gordon and Riggs Estates, and the profession as discussed above. In light of such significant harm, the Committee finds that discipline less than a censure would not sufficiently protect the public. The Committee finds that a censure will be sufficient to protect the public and that suspension of Defendant's license is not necessary based upon the facts as recited herein.

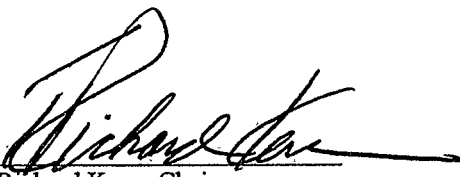
Based upon the foregoing Findings of Fact, Conclusions of Law, and the Findings Regarding Discipline, the Hearing Committee enters the following:

ORDER OF DISCIPLINE

1. The Defendant, Richard G. Badgett, is hereby censured.
2. The Defendant shall pay the costs of this matter within 30 days of service upon him of a statement of costs.

Signed by the undersigned Hearing Committee Chair with the consent of the other Hearing Committee members.

This the 3d day of August, 2006.


T. Richard Kane, Chair
Disciplinary Hearing Committee