

NORTH CAROLINA  
WAKE COUNTY

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

THE NORTH CAROLINA STATE BAR )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 D. STEPHEN JONES, ATTORNEY )  
 )  
 Defendant )

FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW

This cause was heard by a Hearing Committee of the Disciplinary Hearing Commission consisting of James E. Ferguson, II, Chairman, W. Harold Mitchell and R. Powell Majors on Friday, February 10, 1989. The Plaintiff was represented by Carolin Bakewell and the Defendant was represented by Sandra Johnson and W. A. Johnson. Based upon the pleadings, the pre-trial stipulations and the evidence, the 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, D. Stephen Jones, was admitted to the North Carolina State Bar in 1953 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, Code of Professional Responsibility and/or 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, Jones was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the Town of Clinton, Sampson County, North Carolina.
4. Plaintiff's First and Tenth Claims for Relief were dismissed on the grounds of res judicata.

5. Plaintiff dismissed Plaintiff's Second, Third, Fourth and Seventh Claims for Relief prior to the hearing of this action.

6. Defendant's motion to dismiss Plaintiff's Eleventh Claim for Relief was granted at the close of Plaintiff's evidence.

7. Defendant had an attorney-client relationship with Annie Wright Rackley as of January, 1984.

8. Defendant borrowed \$60,000 from Ms. Rackley in January, 1984 without first fully advising Ms. Rackley of his financial condition, of the risks involved in the loan and without advising Ms. Rackley to seek independent legal counsel.

9. Defendant did not provide any collateral to Ms. Rackley for the \$60,000 loan.

10. Defendant drafted a promissory note evidencing the \$60,000 loan, which did not include a provision for attorney's fees or late fees upon default.

11. Ms. Rackley's capacity or ability to handle her own business and financial affairs was highly questionable and she relied upon defendant to protect her interests in connection with the loan, as the Defendant knew or reasonably should have known.

12. Defendant did not repay the \$60,000 loan to Ms. Rackley.

13. Ms. Rackley, through new counsel, filed suit against Defendant in 1987 and a confession of judgment was signed by Defendant in 1988. Defendant has made no payments pursuant to the confession of judgment.

14. Beginning in approximately 1960 and continuously thereafter, Defendant handled a variety of legal and financial matters for Mildred F. Powell.

15. Prior to February 8, 1982, Defendant owed Ms. Powell approximately \$25,000.

16. On or about February 8, 1982, Defendant borrowed an additional \$75,000 from Ms. Powell and signed a promissory note for \$100,000 evidencing his total debt to Ms. Powell.

17. Defendant lead Ms. Powell, who was in her 80's, to believe that the 1982 note would be adequately secured by demand notes and debentures of Bay Lakes Corporation, when, in fact, the said security was not adequate as the defendant knew or reasonably should have known.

18. Ms. Powell relied upon Defendant to protect her interests in connection with the loan.

19. The demand notes securing the \$100,000 note were payable to Defendant from Bay Lakes Corporation, a real estate development company owned in part by Defendant.

20. Thereafter, Bay Lakes Corporation paid off a portion of the demand notes to Defendant. Defendant failed to notify Ms. Powell of the payments and failed to substitute other collateral to secure his debt to Ms. Powell.

21. At the time of the 1982 loan from Ms. Powell, Defendant and Bay Lakes Corporation were in poor financial condition.

22. Defendant failed to disclose to Ms. Powell fully the risks involved in the loan, nor did he advise Ms. Powell to seek independent legal counsel prior to making the 1982 loan.

23. Defendant did not make all interest and principal payments due under the 1982 note on a timely basis.

24. The \$100,000 promissory note was later re-negotiated and, at the time of Ms. Powell's death in September, 1988, Defendant owed Ms. Powell approximately \$30,000.

25. In September, 1984, Defendant handled a sale of land for Haywood Jordan.

26. Between September 4 and October 15, 1984, Defendant permitted Ernest Wells, a friend and client, to use approximately \$6,000 of the proceeds of the sale of Jordan's land, which was in Defendant's attorney trust account.

27. Defendant failed to obtain Jordan's permission prior to permitting Wells to use Jordan's money.

28. Defendant has a good reputation for honesty and integrity among members of his community.

29. With the exception of a private reprimand, which the Defendant received in 1985 respecting matters connected with the subject of the present disciplinary action, Defendant has no disciplinary record with the North Carolina State Bar.

30. Defendant's misconduct is mitigated by the lapse of time between the events in question and the present disciplinary action, and the fact that Defendant apparently has abided by the Rules of Professional Conduct and Code of Professional Responsibility since 1985.

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

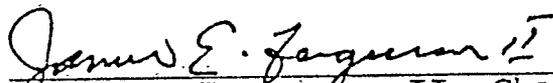
(a) By accepting a loan from Ms. Rackley, without fully disclosing to her the risks and without advising her to consult independent legal counsel, Defendant violated DR 5-101(A) and DR 5-104(A).

(b) By borrowing \$100,000 from Mildred Powell without fully disclosing to her the risks and without advising her to consult independent legal counsel, Defendant violated DR 5-101(A) and DR 5-104(A).

(c) By eliminating some of the security for the 1982 loan without Ms. Powell's knowledge and consent and by misleading Ms. Powell to believe that the loan was adequately secured, Defendant violated DR 1-102(A)(4).

(d) By permitting Ernest Wells to use Haywood Jordan's funds without Jordan's prior consent, the Defendant violated DR 1-102(A)(3) and DR 1-102(A)(4) and engaged in professional conduct adversely reflecting on his fitness to practice law, in violation of DR 1-102(A)(6).

This 23rd day of May, 1989.

  
James E. Ferguson, II, Chairman  
For The Committee

NORTH CAROLINA  
WAKE COUNTY

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

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THE NORTH CAROLINA STATE BAR	)	
Plaintiff,	)	
v.	)	ORDER OF DISCIPLINE
D. STEPHEN JONES, ATTORNEY	)	
Defendant	)	

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This cause was heard on February 10, 1989, by a hearing committee of the Disciplinary Hearing Commission of the North Carolina State Bar composed of James E. Ferguson, II, Chairman, R. Powell Majors and W. Harold Mitchell. Based upon the Findings of Fact and Conclusions of Law and the arguments of Counsel for the Defendant and for the Plaintiff, the Hearing Committee enters the following ORDER OF DISCIPLINE:

The Defendant is hereby suspended from the practice of law for a period of twelve months commencing 30 days from service of this order. This suspension is stayed for three years, upon the following conditions:

1. That Defendant violated no provisions of the Rules of Professional Conduct during the three year stay period.

2. That within 60 days from the date of this Order the Defendant begin paying restitution to Ms. Annie Wright Rackley. That the Defendant pay \$1,000 to Ms. Rackley each month, no later than the 5th day of each month, during the three-year stay period.

3. That at the end of the three-year stay period, prior to seeking reinstatement with the North Carolina State Bar, Defendant pay in full to Ms. Rackley the remaining amount due and owing under the promissory note of January, 1984, including principal and all accrued interest.

4. That beginning no later than 60 days from the date of this Order, the Defendant begin making monthly payments of interest to the estate of Ms. Mildred F. Powell at the rate set out in the Promissory Note of December 20, 1985 as modified by the Modification Agreement of February 12, 1988. The interest payment shall be due no later than the fifth day of each month.

5. That no later than the end of the three-year stay period, prior to seeking reinstatement with the North Carolina State Bar, Defendant pay in full to the estate of Ms. Powell all principal and interest then owing on the debt as evidenced by the Promissory Note of December 20, 1985 and Modification Agreement of February 12, 1988.

6. That Defendant submit written proof of compliance with the conditions set out in Paragraphs 2 - 5 to the North Carolina State Bar once each quarter, beginning April 1, 1989, and continuing throughout the three-year stay period.

7. That Defendant pay the costs of this proceeding.

This 23rd day of May, 1989.

James E. Ferguson II  
James E. Ferguson, II, Chairman

R. Powell Majors  
R. Powell Majors

W. Harold Mitchell  
W. Harold Mitchell