

STATE OF NORTH CAROLINA
COUNTY OF WAKE

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BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
91 DHC 20

THE NORTH CAROLINA STATE BAR,)
Plaintiff,)
v.)
THOMAS L. JONES, SR.,)
Defendant.)

CONSENT ORDER ON FINDINGS
OF FACT AND CONCLUSIONS OF
LAW

WHEREAS there are certain charges of violations of the Rules of Professional Conduct against Thomas L. Jones, Sr. currently before the Disciplinary Hearing Committee in this proceeding; and

WHEREAS the North Carolina State Bar seeks to discharge its responsibilities under N.C.G.S. §§ 84-28, et seq, and Article IX of the Rules of the North Carolina State Bar in a just and equitable manner; and

WHEREAS Thomas L. Jones, Sr. is seventy-one years of age, is beginning to experience some decline in health and now wishes to retire from the practice of law; and

WHEREAS the North Carolina State Bar and Thomas L. Jones, Sr. mutually desire to resolve the charges against Jones in this proceeding in the manner provided for herein, counsel for the North Carolina State Bar and Jones agree and consent to the following:

FINDINGS OF FACT

1. The State Bar is a body duly organized under the laws of the State of North Carolina and is the proper party to bring

proceedings to discipline Jones, as an attorney licensed to practice law, under the authority granted the State Bar and Chapter 84 of the North Carolina General Statutes, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. Thomas L. Jones, Sr. was admitted to the North Carolina State Bar on October 15, 1951 and is, and has been at all times since, 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. At all times relevant to the matters addressed herein, Jones was actively engaged in practicing law in Hertford County, North Carolina.

4. On October 18, 1991 the State Bar filed a Complaint in the present proceeding containing certain factual allegations, alleging that Jones was subject to discipline for professional misconduct and specifically alleging that Jones engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of DR1-102 and/or Rule 1.2(C) and that Jones had engaged in an unfair business transaction with Mr. James Williams while Williams was his client, in violation of DR5-104 and/or Rule 5.4.

5. Jones has admitted some of the allegations contained in the Complaint filed in this proceeding and denied other of those

allegations, as reflected in the Answer filed in this proceeding on Jones' behalf.

6. By North Carolina General Warranty Deed dated July 18, 1979 Allstate Development Corporation conveyed a certain tract of land located in Hertford County to Jones for the sum of \$6,000. On or about October 15, 1979 Jones entered into an installment land contract with Patsy Porter and Clinton Moore wherein Jones agreed to convey title to that property to Ms. Porter and Mr. Moore in exchange for the purchase price of \$6,500 to be paid as follows: \$500 on delivery of the contract and the remaining \$6,000 in equal payments of \$65.00 per month, with interest to accrue at the rate of fifteen percent (15%) per annum. In addition, Ms. Porter and Mr. Moore were responsible for paying all taxes and insurance on the property.

7. As of the date of that contract, the maximum interest allowed by law for this type of loan was twelve percent (12%) per annum. Jones, as an attorney, should have known that the interest rate of fifteen percent (15%) per annum was prohibited by law.

8. Jones knew that if interest accrued at the rate of fifteen percent (15%) per annum on a principal balance of \$6,000, that by making payments of \$65 per month, Porter and Moore would never be able to pay off this debt. He discussed this with Porter and Moore and Porter and Moore subsequently began to make payments at the rate of \$100 per month.

9. Between October, 1979 and January of 1989, Porter and Moore paid Jones approximately \$9,621 pursuant to the contract.

10. During the period 1979 through 1989 Jones' paid taxes of \$723.65 on this property and insurance of \$679.00 on the property. The total taxes and insurance on the property paid by Jones was \$1,402.65.

11. Porter and Moore last made a last payment to Jones pursuant to the contract in January of 1989. At that time, if the debt of Moore and Porter had been calculated based on an annual interest rate of twelve percent (12%), which was the maximum interest rate permitted by law at that time, then the principal and interest balance owed by Moore and Porter at that time would have been \$1,807.37, plus taxes and interest totalling \$1,402.65 for a total owed by Moore and Porter of \$3,210.02.

12. In his dealings with Moore and Porter, Jones failed to specify how much of each payment was allocable to principal and interest; to recompute the principal amount owed after each payment; to charge a lawful rate of interest; and failed to deliver title to Moore and Porter upon their demand that he do so.

13. In 1991, in settlement of a civil action brought against Jones by Moore and Porter, Jones deeded the property in question to Moore and Porter.

14. On or about January 4, 1971 Mr. and Mrs. James Williams

executed a demand Promissory Note and Deed of Trust in favor of Tarheel Bank and Trust Company in the amount of \$7,368.60, which included the principal amount of \$5,668.43, plus interest thereon at six percent (6%) per annum totaling \$1,700.17. This amount was to be repaid in sixty monthly payments of \$122.81.

15. On or about April 20, 1974 the Williams were in default under the Promissory Note and Jones, at the Williams' request, purchased the Note and Deed of Trust from Tarheel Bank and Trust Company. The outstanding balance owed on the Note at that time was \$4,627.36. In addition to paying Tarheel Bank and Trust Company for assignment of the Note and Deed of Trust, Jones was required to pay certain additional expenses incurred by Tarheel Bank and Trust Company in connection with its preparation to foreclose on the property.

16. From 1974 until 1990 Mr. and Mrs. Williams paid Jones at least \$9,295 on this obligation. Jones improperly calculated the balance owed on this obligation based on the original face amount of the note. As a result Mr. and Mrs. Williams overpaid Jones on this obligation.

17. Jones claimed that the balance owed on the Tarheel Bank and Trust Company was \$7,368.60 when it was owed to him, however, Jones paid Tarheel Bank and Trust Company less than this sum for assignment of the Note and Deed of Trust. On more than one occasion Jones misrepresented the balance owed on this debt to the Williams. For example, on the receipt which Jones

gave the Williams on April 4, 1989 Jones represented that the Williams still owed him \$14,061.94.

18. Jones failed to specify how much of each payment made by the Williams was allocable to principal and interest; he failed to recompute the principal amount owed after each payment; he failed to report to the Williams the amount of interest paid each year; and he failed to cancel the Deed of Trust on the Williams' property upon receipt of a demand that he do so.

19. In February of 1981 Mr. and Mrs. Williams were in default on the Note. Jones commenced a foreclosure action in Hertford County Superior Court as a result of that default and Mr. and Mrs. Williams made necessary arrangements with Jones to cure that default.

20. In April of 1988 the Williams were in default on the Note. Jones drafted a Notice of Hearing on Foreclosure and presented that document to Mr. and Mrs. Williams, representing to Mr. and Mrs. Williams that foreclosure on the property was imminent. A foreclosure action was not brought against the Williams' property in 1988.

21. Around 1984 Jones represented Mr. Williams in connection with certain criminal charges. Mr. Williams was not Jones' client at the time the Tarheel Bank Note and Deed of Trust was assigned to Jones, but the Williams were in a business

relationship with Mr. Jones at the time Jones represented Mr. Jones in connection with the said criminal charges.

22. Jones further agrees and consents to the active suspension of his license to practice law as a result of the foregoing findings of fact relating to the present proceeding for a period of two years, commencing on June 1, 1992.

23. In the event that any other grievances should be filed with the State Bar concerning Jones during the period of suspension provided for herein, it would be preferable and in the best interest of the efficient utilization of the State Bar's resources if the Grievance Committee would, and this Hearing Committee hereby recommends that the Grievance Committee defer pursuit of any such grievance until such time as Jones may exercise his right to seek reinstatement of his license to practice law as provided for in N.C.G.S. § 84-32(c) and Section 25 of Article IX of the Rules, Regulations and Organization of the North Carolina State Bar.

24. In view of Jones' age and desire to retire and the compromise which has allowed a negotiated resolution of these charges, Jones should be allowed up through June 1, 1992 to wind down his law practice.

Based upon the foregoing findings of fact, and the consent of the parties, the Committee of the Disciplinary Hearing Commission assigned to hear this case makes the following:

CONCLUSIONS OF LAW

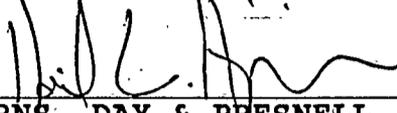
Based upon the foregoing findings of fact, Jones' actions constitute grounds for discipline pursuant to N.C.G.S. § 84-28(b)(2) in that Jones violated the Code of Professional Responsibility and the Rules of Professional Conduct as follows:

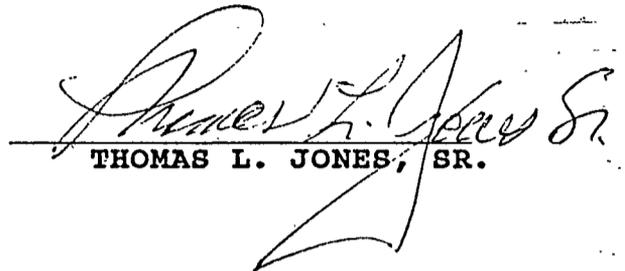
- (a) by attempting to collect a rate of interest prohibited by law from Porter and Moore, Jones engaged in misconduct in violation of DR1-102 and Rule 1.2(C);
- (b) by misrepresenting to Moore, Porter and the Williams the balances owed on their debts to him, Jones engaged in misconduct in violation of DR1-102 and Rule 1.2 (C); and
- (c) by misrepresenting the balance of the Tarheel Bank & Trust Co. loan when it was assigned to him Jones engaged in misconduct in violation of DR1-102 and Rule 1.2(C).

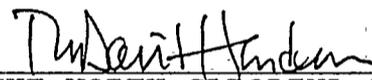
Signed by the undersigned Chairman with the full knowledge
and consent of the parties and the other Hearing Committee
members, this the 27th day of March, 1992.


Harold Mitchell
Chairman
Hearing Committee

WE CONSENT:


BURNS, DAY & PRESNELL, P.A.
Daniel C. Higgins
Attorneys for Thomas L. Jones, Sr.


THOMAS L. JONES, SR.


THE NORTH CAROLINA STATE BAR
R. David Henderson
Deputy Counsel

0325a/100,3

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COUNTY OF WAKE

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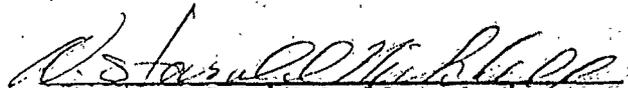
THOMAS L. JONES, SR.
Defendant

CONSENT ORDER OF DISCIPLINE

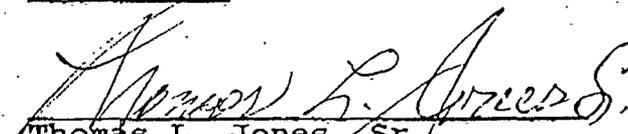
Based on the Findings of Fact and Conclusions of Law of even date herewith, and the consent of the parties, the hearing committee hereby enters the following Order of Discipline:

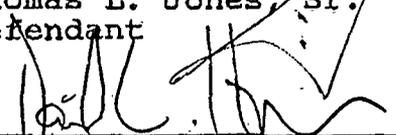
1. Thomas L. Jones, Sr. is hereby suspended from the practice of law in North Carolina for a period of two years.
2. Defendant shall comply with the requirements of Section 24 of Article IX of the Rules and Regulations of the North Carolina State Bar, except that Defendant is allowed until June 1, 1992 to wind down his practice.
3. Defendant shall surrender his license certificate and permanent membership card to the Secretary of the North Carolina State Bar as provided in Section 24(D).
4. Defendant is taxed with the cost of this proceeding as assessed by the Secretary.

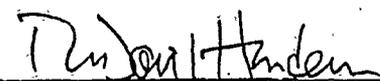
Signed by the undersigned chairman with the knowledge and consent of the other members of the hearing committee, this the 21st day of March, 1992.


W. Harold Mitchell, Chairman
Hearing Committee

WE CONSENT


Thomas L. Jones, Sr.
Defendant


Daniel C. Higgins
Attorney for Defendant


R. David Henderson
Attorney for Plaintiff

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