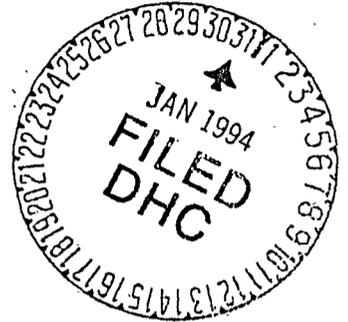


18478

BEFORE THE DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR

93 DHC 11



THE NORTH CAROLINA STATE BAR,)	
Plaintiff)	FINDINGS OF FACT
vs.)	AND
AMY ELIZABETH LONG, ATTORNEY,)	CONCLUSIONS OF LAW
Defendant)	

This cause was heard by a hearing committee of the Disciplinary Hearing Commission consisting of Maureen Demarest Murray, Chair; Richard L. Doughton, Esq.; and Mr. James Lee Burney on Friday, November 19, 1993. Plaintiff was represented by Mr. R. David Henderson and defendant was represented by Mr. Samuel B. Winthrop. Based upon the Stipulation on Prehearing Conference, the evidence presented at trial and the arguments of counsel, the committee, by clear, cogent and convincing evidence, makes 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. Amy Elizabeth Long was admitted to the North Carolina State Bar on September 13, 1991 and was at all times relevant 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.
3. During all times relevant hereto, defendant was actively engaged in the practice

of law as an associate with the firm of Benbow and Phillips, P.C. ("the Firm"), located in the City of Statesville, Iredell County, North Carolina.

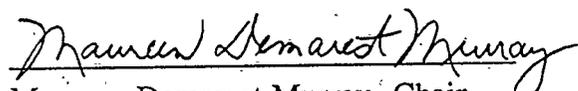
4. On December 3, 1992, defendant was in district court in Iredell County when Michael Summers asked her to represent him in a child support matter that was scheduled to be heard that day. Defendant agreed to do so for the sum of \$75 which Mr. Summers immediately paid in cash.
5. At the time Mr. Summers paid this money to defendant, defendant, as an associate of the Firm, had no right to keep any portion of this fee. However, instead of paying the \$75 to the Firm, defendant converted these funds to her own use and benefit. Defendant misappropriated this money without the knowledge or consent of the Firm.
6. On January 7, 1993, Judy C. Crouch met with defendant and paid her, in cash, the sum of \$250. This money was to be used as follows: \$60 for court costs and \$190 towards a fee owed of \$300.
7. Upon payment of the \$250, defendant gave Ms. Crouch a Firm receipt but intentionally failed to document this payment in the Firm receipt book in an attempt to conceal her taking of these funds from the Firm.
8. Thereafter, defendant misappropriated the \$250 paid to her by Ms. Crouch for her own use and benefit. Defendant misappropriated this money without the knowledge or consent of Ms. Crouch and the Firm.
9. On February 2, 1993, Marialisa M. Baker met with defendant and paid her, by check, the sum of \$235 for legal fees owed the Firm. That afternoon, defendant deposited said check in her personal checking account at the First Union National Bank in Statesville, NC.
10. Defendant misappropriated the \$235 paid to her by Ms. Baker for her own use and benefit. Defendant misappropriated this money without the knowledge or consent of the Firm.

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

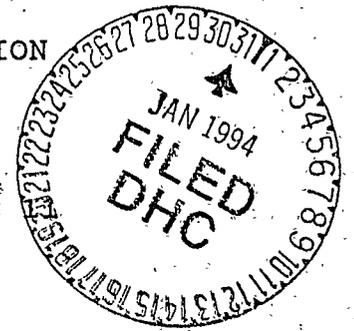
CONCLUSIONS OF LAW

1. By misappropriating the Michael Summers funds which belonged to the Firm, defendant: (a) committed a criminal act that reflects adversely on her honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 1.2(B) of the Rules of Professional Conduct, and (b) engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C) of the Rules of Professional Conduct.
2. By misappropriating funds belonging to Ms. Crouch and the Firm, defendant: (a) committed a criminal act that reflects adversely on her honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 1.2(B) of the Rules of Professional Conduct, and (b) engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C) of the Rules of Professional Conduct.
3. By intentionally failing to note in the Firm receipt book that she had received \$250 from Ms. Crouch, defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C) of the Rules of Professional Conduct.
4. By misappropriating the Marialisa M. Baker funds which belonged to the Firm, defendant: (a) committed a criminal act that reflects adversely on her honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 1.2(B) of the Rules of Professional Conduct, and (b) engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C) of the Rules of Professional Conduct.

Signed by the undersigned Chair with the full knowledge and consent of the other committee members, this the 28th day of January, 1993.


Maureen Demarest Murray, Chair

BEFORE THE DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR



STATE OF NORTH CAROLINA : CASE NO. 93 DHC
COUNTY OF WAKE :
THE NORTH CAROLINA STATE BAR :
Plaintiff :
vs. : ORDER OF DISCIPLINE
AMY ELIZABETH LONG :
Defendant :

This cause was heard by a hearing committee of the Disciplinary Hearing Commission consisting of Maureen Demarest Murray, Chair; Richard L. Doughton, Esq.; and Mr. James Lee Burney on Friday, November 19, 1993. After entering the Findings of Fact and Conclusions of Law in this matter, the committee received evidence and considered arguments of counsel concerning the appropriate discipline to be imposed. Based upon the evidence and arguments presented, the committee finds the following aggravating and mitigating factors:

AGGRAVATING FACTORS

1. Dishonest or selfish motive; and
2. Pattern of misconduct.

MITIGATING FACTORS

1. Absence of prior discipline;
2. Personal or emotional problems;
3. Timely good faith efforts to make restitution;
4. Full and free disclosure to the hearing committee; and
5. Inexperience in the practice of law.

Based upon the Findings of Fact and Conclusions of Law and the above aggravating and mitigating factors, the committee hereby enters the following:

ORDER OF DISCIPLINE

1. Defendant is hereby suspended from the practice of law for a period of five years, commencing February 10, 1993.
2. Two of the five years shall be stayed upon the following conditions:
 - (a) During the period of suspension (both active and stayed), and as a condition of reinstatement, defendant shall continue to take at least the minimum number and type continuing legal education hours required of all active lawyers and certify such attendance to the State Bar.
 - (b) During the period of suspension, and as a condition of reinstatement, defendant shall speak to five different ethics classes, at the North Carolina law school(s) of her choice, concerning the facts of this case, the importance of complying with the Rules of Professional Conduct, and the consequences of failing to do so.
 - (c) As a condition of reinstatement, defendant shall enroll and obtain a passing grade in a financial counseling course, which includes establishing a plan for defendant to manage her finances and which is approved by the State Bar.
 - (d) As a condition of reinstatement, defendant shall retain the services of the Law Practice Assistance Program for a one day session to review appropriate office and risk management programs and to make sure defendant understands her ethical duties under Rules 10.1 and 10.2 of the Rules of Professional Conduct and the record keeping systems necessary to comply with these rules.
 - (e) If defendant is in a solo practice during the stayed portion of the suspension, defendant shall retain a CPA firm to help establish and monitor at least semi-annually her business and financial systems, accounts and procedures and shall cooperate with the State Bar by providing, upon request, all information necessary to verify that defendant is in compliance with Rules 10.1

5. On Dec. 12, 1993, Morgan was personally served with the summons and complaint herein by the Johnston County Sheriff's Department.

6. Morgan's Answer or other responsive pleading herein was due no later than Jan. 3, 1994.

7. Morgan did not file Answer or any responsive pleading at any time prior to the hearing of this matter.

8. On Jan. 5, 1994, on motion of the Plaintiff, default was entered in this matter against Morgan by the Secretary of the N.C. State Bar pursuant to G.S. 1A-1, Rule 55 of the Rules of Civil Procedure.

9. On Jan. 5, 1994, the N.C. State Bar served Morgan with a copy of the Motion for Entry of Default, Entry of Default, Motion for Order of Discipline and Notice of Hearing by mailing copies of the documents to Morgan at his last known addresses on file with the N.C. State Bar.

10. During all of the periods relevant hereto, Morgan was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the Town of Benson, Johnston County, North Carolina.

11. In January 1993, Morgan undertook to represent Brenda and Conrad Smith (hereafter, the Smiths) regarding personal injuries which Ms. Smith received in December 1992, when the scooter on which she was riding was struck by an automobile.

12. Prior to April 9, 1993, Morgan settled the Smiths' claim without their knowledge or consent.

13. On or about April 9, 1993, Universal Insurance Company issued three checks totalling \$52,615 made out to the Smiths and Morgan in settlement of the Smiths' claim.

14. On or about April 15, 1993, Morgan deposited the Smiths' three settlement checks into his attorney trust account number 534112801 at First Federal Savings & Loan in Benson, N.C. (hereafter, attorney trust account).

15. Morgan, or an agent or employee acting at his direction, endorsed the Smiths' names to the settlement checks without the Smiths' knowledge or consent.

16. Morgan has not disbursed any portion of the \$52,615 in settlement funds to the Smiths or to third parties for their benefit.

17. On or about April 21, 1993, Morgan issued to himself

check number 1428 in the amount of \$15,835 drawn on his attorney trust account, which represented his fee in the Smiths' case.

18. At all times on and after April 21, 1993, at least \$36,780 should have remained in Morgan's attorney trust account on the Smiths' behalf.

19. The balance in Morgan's attorney trust account dropped below \$36,780 on numerous occasions after May 20, 1993.

20. Morgan misappropriated part or all of the \$36,780 which he should have held for the Smiths, without the Smiths' knowledge or consent.

21. In April 1993, Brenda Smith attempted to discharge Morgan as her attorney.

22. After Mrs. Smith attempted to discharge him, Morgan threatened to sue Mrs. Smith for his fee and purported to read to her portions of a complaint which he said he had drafted and was prepared to file against her. Morgan stated that he would "sue her for every nickel" of his fee and would "fight her tooth and bone" if she discharged him. Morgan further told Mrs. Smith that he only had to "pick up the phone and call a judge" and suit would be filed against her.

23. Shortly after Mrs. Smith attempted to discharge Morgan, Morgan visited Mr. & Mrs. Smith at their home. Morgan attempted to get the Smiths to agree to settle their case. When they refused to settle, Morgan became angry and left the Smiths' house.

24. Mr. & Mrs. Smith did not discover until approximately August 1993 that Morgan had actually accepted and endorsed the settlement checks from the insurance company in their case.

25. As of Feb. 18, 1994, Morgan had not paid the Smiths any portion of the \$52,615 which he received on their behalf.

26. On or about Sept. 24, 1993, Morgan met with Donald H. Jones, the N.C. State Bar's investigator. Morgan acknowledged that the Smiths were entitled to at least \$36,780 of the settlement proceeds from Universal Insurance Company.

27. During the Sept. 24, 1993 interview, Morgan falsely told Jones that he had sent the Smiths a check for \$36,780 on May 16, 1993.

28. Prior to Feb. 8, 1993, Morgan settled Mrs. Smith's medical payments claim for \$2,000. He deposited the \$2,000 payment into his attorney trust account on or about Feb. 8, 1993. Morgan deducted \$600 from this sum as a fee and paid the

and 10.2 of the Rules of Professional Conduct.

- (f) Defendant shall violate no laws of the United States or State of North Carolina and shall violate no provisions of the Rules of Professional Conduct during the period of suspension.
- (g) Defendant shall comply with all the provisions of Article IX, Section 24 of the Rules and Regulations of the North Carolina State Bar.

3. Defendant shall pay the costs of this action.

Signed by the Chair of the committee with the knowledge and consent of the other committee members, this the 28th day of January, 1994.

Maureen Demarest Murray
Maureen Demarest Murray, Chair
The Disciplinary Hearing Commission
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Greensboro, North Carolina 27420
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Copies to:

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James Lee Burney
David Henderson, Attorney for State
Samuel B. Winthrop, Attorney for Defendant