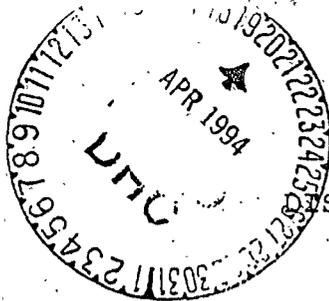


NORTH CAROLINA
WAKE COUNTY



6617

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

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

LINWOOD O. FOUST, ATTORNEY
Defendant

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

THIS MATTER was heard by a Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar consisting of Stephen T. Smith, Chair; Richard Doughton and James Lee Burney on April 7 and April 8, 1994. The Defendant was represented by Irving Joyner. The Plaintiff was represented by Carolin Bakewell. Based upon the pleadings, prehearing stipulations and the evidence herein, the Hearing 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, Linwood O. Foust, was admitted to the North Carolina State Bar in 1975, 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.
3. During all of the periods referred to herein, the Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Charlotte, Mecklenburg County, North Carolina.
4. In approximately June 1990, Defendant was contacted by a non-attorney named Anthony King. King told Defendant that he had a lawyer referral service business called Charlotte Referral Service. King further indicated that Charlotte Referral Service included among its clients individuals who had been involved in automobile accidents and who needed legal representation. King offered to refer potential clients to Defendant in return for a fee.

5. King initially asked Defendant to pay \$1,500 per week to CRS, in addition to a set up fee. Defendant declined to pay this amount and instead agreed to pay Charlotte Referral Service \$100 for each client who Defendant ultimately agreed to represent. Defendant also paid a \$175 set up fee to CRS.

6. The \$100 per client fee which Defendant paid to CRS was not related to CRS' administrative or advertising costs.

7. In June 1990 King told Defendant that he located potential clients through King's contacts throughout the black community in Charlotte. King also told Defendant that Charlotte Referral Service distributed brochures or leaflets at various locations and that the service advertised in the Yellow Pages of the local telephone directory and the Black Pages, a publication widely disseminated throughout the black business community in Charlotte.

8. Between June 1990 and June 1991, when Defendant was associated with CRS, non-attorney employees of CRS contacted individuals who had been involved in automobile accidents in person and by telephone. Charlotte Referral Service employees recommended that these individuals contact a physician and/or a lawyer.

9. Between July 1990 and approximately June 1991, Charlotte Referral Service referred 45 - 50 clients to Defendant. Three or four clients were referred to Defendant in July 1990 and most of the remaining referrals were made in April and May 1991. Defendant ultimately agreed to represent 36 persons who were referred to him by the Charlotte Referral Service.

10. Sabrina Miller, Jennie Lynch and Renee Lockhart were among the 36 clients referred to Defendant by CRS. Each was contacted in person or by phone by a CRS employee shortly after she was involved in automobile accidents. Defendant ultimately provided legal services to Miller, Lynch and Lockhart respecting their accidents.

11. At no time did Anthony King or anyone else from Charlotte Referral Service reveal to Defendant that employees of CRS were contacting potential clients in person or by telephone.

12. In approximately June 1991, two fellow attorneys told Defendant that they understood CRS was contacting clients in person or by telephone. This was the first time Defendant had heard a question raised about CRS' contacts with clients. Defendant immediately terminated his association with CRS and did not accept any other client referrals from CRS.

13. None of the clients who testified at the disciplinary hearing of this matter had any complaint about the services provided by Defendant. There was no evidence that any client referred to Defendant by CRS was harmed or prejudiced in any way.

Based upon the foregoing FINDINGS OF FACT, the Hearing

Committee hereby makes the following:

CONCLUSIONS OF LAW

1. By participating in a lawyer referral service whose employees and/or agents engaged in in-person solicitation of prospective clients, the Defendant violated Rule 2.2(C)(4) of the Rules of Professional Conduct.

2. By paying CRS \$100 for each client referred to him whom he ultimately agreed to represent, the Defendant gave value to a person for recommending the Defendant's services, in violation of Rule 2.2(C) of the Rules of Professional Conduct.

3. The Plaintiff has failed to prove by clear, cogent and convincing evidence the other charges alleged in the Complaint against the Defendant and the same are dismissed.

Signed by the Chair with the consent of all Committee members.

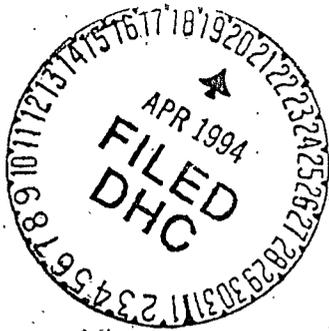
This the 18 day of April, 1994.



Stephen T. Smith, Chair

00270

NORTH CAROLINA
WAKE COUNTY



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

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

LINWOOD O. FOUST, ATTORNEY
Defendant

ORDER OF DISCIPLINE

THIS MATTER was heard by a Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar consisting of Stephen T. Smith, Chair; Richard Doughton and James Lee Burney on April 7 and April 8, 1994. Based upon the evidence presented at the hearing and the argument of counsel, the Hearing Committee makes the following:

FINDINGS IN MITIGATION

1. There was no evidence that any of the three clients who appeared at the disciplinary hearing was harmed or prejudiced in any way. Each received good representation from Defendant.

2. Defendant withdrew from participation in Charlotte Referral Service as soon as a question was raised regarding whether its operation complied with the Rules of Professional Conduct.

Based upon the evidence presented at the hearing and the arguments of counsel, the Hearing Committee also makes the following

FINDINGS IN AGGRAVATION

1. The Defendant received a Public Censure from the N.C. State Bar in 1988 for misconduct unrelated to the matters set out in the Findings of Fact herein.

2. The Defendant had substantial experience in the practice of law at the time of the violations referred to herein.

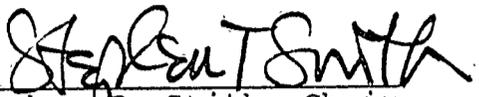
Based upon the Findings of Fact and Conclusions of Law and the Findings in Mitigation and Aggravation, the Hearing Committee enters the following:

ORDER OF DISCIPLINE

1. The Defendant is hereby Reprimanded.
2. The Defendant shall pay the costs of this proceeding.

Signed by the Chair with the consent of all Hearing Committee members.

This the 18 day of April, 1994.


Stephen F. Smith, Chair

been involved in automobile accidents and by distributing CRS business cards to individuals at accident scenes.

Rule 2.2 provides that an attorney may not participate in a referral service whose employees engage in in-person solicitation of potential clients. By participating in a lawyer referral service whose employees and/or agents engaged in in-person solicitation of prospective clients, you violated Rule 2.2(C)(4) of the Rules of Professional Conduct.

Although you were apparently unaware that CRS' employees were engaging in in-person solicitation of potential clients, Rule 2.2(C) expressly provides that lawyers who participate in a referral service are professionally responsible for the operation of the service. This responsibility attaches regardless of whether the lawyer has actual knowledge of violations committed by non-attorney employees of the referral service.

In June 1991, two of your fellow attorneys told you that CRS might be contacting clients in person or by telephone. This was the first time you had heard a question raised about the way CRS was contacting clients. It is to your credit that you immediately terminated your association with CRS and did not accept any other client referrals from CRS. The Hearing Committee is confident that you now understand your obligation regarding lawyer referral services and that, in the future, you will be more careful regarding the selection of any referral service with which you associate yourself.

The Hearing Committee found in mitigation of your conduct in this matter that none of the clients who testified at the disciplinary hearing of this matter had any complaint about your services and that there was no evidence that any client referred to you by CRS was harmed in any way.

You are hereby reprimanded by the North Carolina State Bar for your violations of the Rules of Professional Conduct set out above. The Disciplinary Hearing Committee trusts that this reprimand will be heeded by you, that it will be remembered by you and that it will be beneficial to you and other members of the bar. This Committee trusts that you will never again allow yourself to depart from the adherence to the high ethical standards of the legal profession. To remain a respected member of the legal profession whose conduct can be relied upon without question, you must in the future carefully weigh your responsibility to the public, your clients and your fellow attorneys. The Disciplinary Hearing Committee expects that no professional misconduct will occur in the future.

Signed by the Chair with the consent of all Committee members.

This the 18 day of April, 1994.

Stephen T. Smith

Stephen T. Smith, Chair