



the foregoing Factors in Aggravation & Mitigation and the consent of the parties given following the hearing, the Hearing Committee enters the following:

ORDER OF DISCIPLINE

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

3. The Defendant shall pay \$6,065.88 in restitution to the Estate of Harriet Smith by making monthly payments of \$500.00 per month beginning no later than 30 days from the date of this order. The Defendant shall pay interest on the \$6,058.88 at the rate of eight percent (8%) calculated from April 6, 1993. Defendant shall execute a Note to this effect no later than 30 days from the date of this order and his license shall be suspended for six (6) months if he fails to make the monthly payments as ordered herein.

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

This the 14th day of April, 1994.

Maureen Demarest Murray  
Maureen Demarest Murray, Chair  
Disciplinary Hearing Committee

Seen and consented to:

Marvin Schiller  
Marvin Schiller, Attorney for Defendant

William L. Durham  
William L. Durham, Defendant

Carolyn Bakewell  
Carolyn Bakewell, Attorney for Plaintiff

NORTH CAROLINA  
WAKE COUNTY

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
93 DHC 17

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THE NORTH CAROLINA STATE BAR, )  
Plaintiff )  
 )  
vs. )  
 )  
WILLIAM L. DURHAM, ATTORNEY )  
Defendant )

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FINDINGS OF FACT  
AND CONCLUSIONS OF LAW

This cause was heard by a Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar consisting of Maureen Demarest Murray, Chair; W. Harold Mitchell and James Lee Burney on Friday, Feb. 25, 1994. The Defendant was represented by Marvin Schiller and the Plaintiff was represented by Carolin Bakewell. Based upon the pleadings, pretrial stipulations and evidence presented at the hearing, 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, William L. Durham (hereafter, Durham), was admitted to the North Carolina State Bar in 1972, 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 Durham was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Winston-Salem, Forsyth County, North Carolina.
4. In late August 1989, Deborah Pinnix and Elizabeth Weideman, co-executrixes of the estate of Harriet W. Smith

(hereafter, Smith estate), paid Durham \$300 to defend the Smith estate against a claim which had been filed by Frances Bowen (hereafter, Bowen) in Forsyth County District Court on Aug. 10, 1989.

5. Prior to September 1990, Durham delegated some of the work regarding the Bowen case to an associate, Darwin Littlejohn. In approximately September 1990, Littlejohn left Durham's employment and Durham resumed responsibility for the defense of the Bowen case.

6. Throughout 1991, it was the custom and practice of the Forsyth County Clerk of Court's office to compile and distribute a tentative trial calendar at least several weeks before each session of court. It was also the custom and practice of the Clerk of Court's office to compile and distribute a final trial calendar at least a week before each session of court.

7. Throughout 1991 the tentative and final court calendars were delivered to attorneys of record in matters appearing on Forsyth County District Court calendars by one of two methods. Attorneys who maintained a law office within Forsyth County were assigned a box in the Forsyth County Courthouse. The clerk of court's office placed copies of court calendars in the boxes of all attorneys listed as counsel of record in matters appearing on the calendar. The clerk's office mailed copies of the court calendars to out-of-county attorneys appearing as counsel of record in matters appearing on the calendar.

8. Throughout 1991, Durham maintained an office in the City of Winston-Salem and was assigned a box in the Forsyth County Courthouse. Durham was aware that court calendars were placed in his box by the clerk's office and that it was his responsibility to check his box and collect the calendars.

9. As of 1991, it was the custom and practice of the Forsyth County Clerk of Court's office to calendar cases for trial on its own motion, once the cases reached a certain age.

10. Prior to July 1, 1991, the Forsyth County Clerk of Court's office calendared the Bowen case for hearing for the week of July 1, 1991 on its own motion, owing to the age of the case.

11. Prior to July 1, 1991, copies of the tentative and final calendars for the July 1, 1991 session of Forsyth County District Court were prepared by the clerk of court's office and were distributed to attorneys of record for matters appearing on the calendars. The tentative and final calendars showed that the Bowen case would be heard at the July 1, 1991 session of Forsyth County District Court.

12. Prior to July 1, 1991, Michale Bennett, the attorney for Frances Bowen, received his copies of the tentative and final trial calendars for the July 1, 1991 session of Forsyth County Court.

13. On July 1, 1991, Bowen's case was called for hearing in Forsyth County District Court. Neither Durham nor any representative of his firm was present when Bowen's case was called. Bennett was present when the Bowen case was called on July 1, 1991.

14. On July 1, at the direction of the presiding judge, Dickie Wood, a deputy clerk of court, telephoned Durham's law office and left a message stating that Bowen's case would be heard on the following day, July 2, 1991.

15. On July 2, 1991, Wood again telephoned Durham's law office and left a message that the Bowen case would be heard that day, July 2, 1991.

16. Neither Durham nor any other representative of his firm appeared in Forsyth County District Court on July 2, 1991 on behalf of Ms. Pinnix and Ms. Weideman.

17. Durham should have been on notice and should have known that the Bowen case had been calendared for the week of July 1, 1991 and was being heard on July 2, 1991 due to the two telephone calls to his law office by Dickie Wood.

18. Durham's office calendar reflects that he was in Davidson County District Court on another matter on July 2, 1991.

19. As a result of Durham's failure to appear in court, judgment was entered against the Smith estate on July 2, 1991 (hereafter, July 2, 1991 judgment) in favor of Bowen in the amount of \$3,900, plus interest, and \$1,500 in attorney's fees.

20. The July 2, 1991 judgment provided that counsel of record for the defendants in the Bowen matter had notice of the hearing date by "published calendar and by telephone by the Clerk of Court."

21. Durham did not have adequate procedures in place as of June and July 1991 to ensure that information regarding court dates was properly received and handled by his non-attorney office staff.

22. Prior to and after July 1, 1991, Durham failed to communicate regularly with either Ms. Pinnix or Ms. Weideman about the status of the Bowen case.

23. Durham failed to notify either Ms. Pinnix or Ms. Weideman that the Bowen case would not be heard on July 29, 1991. Pinnix and Weideman both appeared in Forsyth County District Court on July 29, 1991. Durham was not present in court on that date.

24. Pinnix and Weideman contacted Durham later in the day on July 29, 1991 and learned for the first time that an adverse judgment had been entered against the Smith estate on July 2, 1991 and that Durham had failed to appear in court on their behalf.

25. On Aug. 9, 1991, Durham filed a motion to set aside the July 2, 1991 judgment.

26. On Sept. 16, 1991, a hearing was held in Forsyth County District Court before Hon. Margaret Sharpe on Durham's motion to set aside the July 2, 1991 judgment.

27. During the Sept. 16, 1991 hearing, Durham was permitted to introduce affidavits and other evidence supporting his motion to set aside the judgment. Following the presentation of the evidence, Judge Sharpe denied Durham's motion to set aside the judgment.

28. The affidavits which were introduced on Durham's behalf during the disciplinary hearing of this matter were the same affidavits which Durham presented in court on Sept. 16, 1991 in support of his motion to set aside the July 2, 1991 order. None of the three non-attorneys staff members who were employed by Durham as of July 1991 testified at the disciplinary hearing.

29. Durham filed a notice of appeal to the N.C. Court of Appeals. The Court of Appeals upheld the trial court's order and declined to set aside the July 2, 1991 judgment. The judgment is now final and has been paid by the Smith estate.

30. The Bowen judgment consumed most of the assets of the Harriet Smith estate which remained after payment of the other estate debts.

Based upon the foregoing FINDINGS OF FACT, the Hearing Committee enters the following:

#### CONCLUSIONS OF LAW

1. By failing to appear in court on July 1 and July 2, 1991 behalf of the Smith estate, the Defendant neglected a legal matter in violation of Rule 6(B)(3) of the Rules of Professional Conduct.

2. By failing to ensure that his office had adequate procedures in place to ensure that information regarding court dates were handled properly, Defendant failed to adequately supervise nonlawyer assistants in violation of Rule 3.3 of the Rules of Professional Conduct.

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

This the 14<sup>th</sup> day of April, 1994.

Maureen Demarest Murray  
Maureen Demarest Murray, Chair  
Disciplinary Hearing Committee

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NORTH CAROLINA  
WAKE COUNTY

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
93 DHC 17

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THE NORTH CAROLINA STATE BAR, )  
Plaintiff )

vs. )

WILLIAM L. DURHAM, ATTORNEY )  
Defendant )

PUBLIC CENSURE

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This Public Censure is delivered to you pursuant to Sections 14(Z)(1) and 23 of Article IX of the Discipline & Disbarment Rules of the N.C. State Bar as ordered by a Hearing Committee of the N.C. State Bar Disciplinary Hearing Commission and upon consent of all parties following a hearing in the above-captioned proceeding on Feb. 25, 1994. At that hearing, the Hearing Committee found that you violated two provisions of the Rules of Professional Conduct in connection with your representation of the Estate of Harriet Smith.

Specifically, in late August 1989, Deborah Pinnix and Elizabeth Weideman, co-executrixes of the estate of Harriet W. Smith (hereafter, Smith estate), retained you to defend the Smith estate against a claim which had been filed against the Smith estate by Frances Bowen (hereafter, Bowen) in Forsyth County District Court on Aug. 10, 1989. Prior to July 1, 1991, the Forsyth County Clerk of Court's office calendared the Bowen case for hearing for the week of July 1, 1991 on its own motion, owing to the age of the case.

On July 1, 1991, the Bowen case was called for hearing in Forsyth County District Court. Neither you nor any other attorney from your firm was present. The case was actually reached the following day, July 2, 1991. Again, neither you nor any other attorney from your firm was present to represent the Smith estate. As a result of your failure to appear in court, judgment was entered against the Smith estate on July 2, 1991 in favor of Bowen in the amount of \$3,900, plus interest, and \$1,500 in attorney's fees. The adverse judgment against the estate consumed most of the estate's assets.

You contended throughout the disciplinary hearing of this matter that you were unaware that the Bowen case had been calendared for the week of July 1, 1991. The Hearing Committee

concluded that your office was notified twice by telephone by Dickie Wood, an Assistant Clerk of Court, on July 1, 1991 and July 2, 1991 that the matter was on the calendar and was being called for hearing by the Court. Your office received sufficient notice of the matter and you should have been aware and received notice of it. Consequently, the Committee found that you neglected a client matter in violation of Rule 6.(B)(3) by failing to appear in court on July 1 and July 2, 1991 on behalf of the Smith estate.

The Committee also concluded that you failed to supervise non-attorney staff members sufficiently regarding this matter, in violation of Rule 3.3 of the Rules of Professional Conduct. In this regard, the Committee was concerned that your staff apparently did not relay telephone messages left at your office regarding the Bowen hearing by Dickie Wood, an assistant clerk of court, on July 1, 1991 and July 2, 1991. Moreover, there was evidence that your office did not respond promptly to requests of Ms. Pinnix and Ms. Weideman for information about the Bowen case.

The Hearing Committee, after hearing all of the evidence in this matter, and upon the express consent of all parties, imposes this Public Censure upon you. The fact that the Committee has agreed to impose a Public Censure, instead of some more serious form of discipline, should not be interpreted as an indication that the Committee believed your conduct was excusable. Rather, the Committee is convinced that the discipline imposed in this case, coupled with your agreement to make restitution to the Smith estate in the amount of \$6,065.88, is sufficient to protect the public and is likewise convinced that you will never again allow yourself to depart from the strict adherence to the highest standards of the legal profession.

Signed by the undersigned Chair with the full knowledge and consent of the other members of the hearing committee, this the 14th day of April, 1994.

*Maureen Demarest Murray*  
Maureen Demarest Murray, Chair  
Disciplinary Hearing Committee