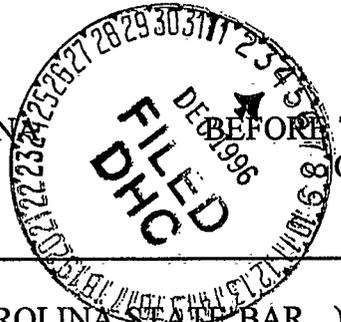


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NORTH CAROLINA
WAKE COUNTY



BEFORE THE DISCIPLINARY HEARING COMMISSION
OF THE NORTH CAROLINA STATE BAR
96 DHC 5

THE NORTH CAROLINA STATE BAR,)
)
Plaintiff,)
)
vs.)
)
OTTWAY BURTON, ATTORNEY)
)
Defendant.)

CONSENT ORDER OF DISCIPLINE

THIS MATTER, coming before the undersigned Hearing Committee of the Disciplinary Hearing Commission composed of Henry C. Babb, Jr., Chair, Franklin E. Martin and Robert B. Frantz pursuant to Section .0114(h) of the Discipline and Disability Rules of the North Carolina State Bar; and it appearing that both parties have agreed to waive a formal hearing in this matter and it further appearing that both parties stipulate and agree to the following Findings of Fact and Conclusions of Law recited in this consent order and to the discipline imposed, the Hearing Committee therefore enters the following:

FINDINGS OF FACT

1. The North Carolina State Bar (hereinafter "Plaintiff"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under this 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. Defendant, Ottway Burton (hereafter "Burton"), was admitted to the North Carolina State Bar in 1945, 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 relevant periods referred to herein, Burton was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Asheboro, Randolph County, North Carolina.

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4. On or about October 28, 1983, Burton represented Charles O'Connor (hereafter "O'Connor"), respecting a charge of driving while intoxicated (DWI) and an associated license revocation proceeding to their finality.

5. Since O'Connor did not have the funds to pay for Burton's legal services at the time, Mr. O'Connor signed a confession of judgment to secure payment of the \$1,000.00 flat fee Burton charged for legal representation. The confession of judgment provided that O'Connor was indebted to Burton in the amount of \$1,000.00 in attorney's fees, and provided that interest would accrue at the rate of fifteen percent (15%) annually until paid.

6. Burton performed the legal services which he was retained to perform on behalf of O'Connor in a manner satisfactory to O'Connor.

7. From October 28, 1983 until October 1991, O'Connor failed to pay Burton any compensation for legal services rendered on his behalf as agreed upon.

8. On October 24, 1991, Burton filed a suit against O'Connor for the purpose of renewing the judgment for another 10 years. Burton asked for a judgment in the amount of \$1,000.00 as compensation for the legal work that he had performed on O'Connor's behalf plus 15% interest from October 28, 1983 until the date of payment.

9. On or about November 15, 1985, Burton represented John Kimrey (hereafter "Kimrey"), respecting a child custody action and a 50B action filed against Kimrey by his wife.

10. Since Kimrey did not have the funds to hire Burton at that time, Kimrey signed a confession of judgment to secure payment of the \$1,500.00 legal fee Burton charged for representation. The confession of judgment specifically provided that Kimrey was indebted to Burton in the amount of \$1,500.00 in attorney's fees, and provided that interest would accrue at the rate of fifteen percent (15%) annually until paid.

11. On or about February 20, 1986, Burton represented Kimrey respecting the 50B action.

12. On or about February 20, 1986, Kimrey signed a second confession of judgment. The confession of judgment also provided that Kimrey was indebted to Burton in the amount of \$1,500.00 in attorney's fees, and provided that interest would accrue at the rate of fifteen percent (15%) annually until paid. The \$1,500.00 fee charged covered representation before the North Carolina Court of Appeals on both 85 CvD 973 and 86 CvD 2.

13. Burton performed the legal services which he was retained to perform on behalf of Kimrey in both the trial division and appellate division of the General Court of Justice of North Carolina as agreed upon.

14. On or about May 27, 1985, Burton represented Nathan Hunt, Jr. (hereafter "Hunt"), respecting a criminal charge of assault with a deadly weapon to its finality.

15. Since Hunt did not have the money to pay for Burton's legal services on May 27, 1985, Hunt signed a confession of judgment to secure payment of the \$1,000.00 flat fee Burton charged for legal representation. The confession of judgment provided that Hunt was indebted to Burton in the amount of \$1,000.00 in attorney's fees, and provided that interest would accrue at the rate of fifteen percent 15% annually until paid.

16. Burton performed the legal services which he was retained to perform on behalf of Hunt in a manner satisfactory to Hunt.

17. From May 27, 1985 until May 27, 1995 Hunt failed to make any payments to Burton for legal services rendered on his behalf as agreed upon.

18. On May 5, 1995, Burton filed suit against Hunt for the purpose of renewing the judgment for another 10 years. As of May 1, 1995, the total amount due upon the confession of judgment was \$4,173.38, including principal and interest.

19. Although attorney's may charge a rate of interest up to eighteen percent (18%) annually on open accounts, once judgment has been entered against a client, interest accrues at the legal or judgment rate of eight percent (8%).

BASED UPON the foregoing Findings of Fact, the Committee enters the following:

CONCLUSION OF LAW

(1) By charging an interest rate in excess of the legal or judgment rate, Burton violated Rule 5.4(a) of the North Carolina Rules of Professional Conduct.

Based on the foregoing FINDINGS OF FACT and CONCLUSION OF LAW and upon the consent of the parties, the Hearing Committee enters the following:

ORDER OF DISCIPLINE

1. Burton is hereby suspended from the practice of law for six months. This suspension shall be stayed for one year based on the following conditions:

(a) With respect to any legal fee presently secured by a confession of judgment or any pending legal actions resulting therefrom Burton hereby agrees to waive any and all right to collect any interest accrued on unpaid legal fees and to refrain from taking any action on any existing confessions of judgment other than to collect the principal amount owed plus any costs

due and owing on any outstanding accounts receivable;

(b) Burton shall pay the costs of this proceeding as determined by the Secretary of the North Carolina State Bar.

Signed by the Hearing Committee Chair with the consent of the other members of the hearing committee.

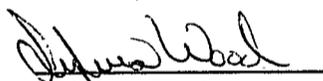
This the ^{21st} 20 day of November, 1996.


Henry C. Babb, Jr. Chair
Disciplinary Hearing Committee

consented to:


Ottway Burton, Defendant


Alan M. Schneider
Attorney for Defendant


Sylvia Wood
Attorney for Plaintiff