

WAKE COUNTY
NORTH CAROLINA



12754

BEFORE THE DISCIPLINARY HEARING COMMISSION
OF THE NORTH CAROLINA STATE BAR
00 DHC 27

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
v.)
EDWARD P. HAUSLE, ATTORNEY)
Defendant)

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER OF DISCIPLINE

This matter was heard on the 2nd day of February 2001, before a hearing committee of the Disciplinary Hearing Commission composed of Elizabeth Bunting, Chair; Kenneth M. Smith, and Robert B. Frantz. Defendant was not present at the hearing and was not represented by counsel. Douglas J. Brocker represented plaintiff. Based upon the pleadings and the evidence introduced at the hearing, the hearing committee hereby enters the following:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar (hereafter "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. Defendant, Edward P. Hausle, (hereafter "Hausle"), was admitted to the North Carolina State Bar on February 28, 1985 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 the times relevant to this complaint, Hausle actively engaged in the practice of law in the State of North Carolina and maintained a law office in the cities of Winterville, Chapel Hill, and Greenville, North Carolina.

Appellate Representation of Gary Allan Kemp

4. Gary Allan Kemp (hereafter "Kemp") was a party to a domestic relations action against his ex-wife in Guilford County District Court, file number 94 CVD 6673. The Kemp action included claims for permanent alimony.

5. Attorney Diane Q. Hamrick represented Kemp in the district court proceedings.

6. The Honorable William L. Daisey entered a permanent alimony order and an order awarding attorneys' fees on April 30, 1998 (hereafter "Alimony and Fees Orders").

Failure to Perfect Kemp's Appeal

7. Kemp retained Hausle in May 1998 to appeal the Alimony and Fees Orders.

8. Kemp paid Hausle a fee of \$2,500 in May 1998 to retain his services to appeal the Alimony and Fee Orders.

9. Hausle filed the notice of appeal on behalf of Kemp on June 1, 1998.

10. Hausle thereafter failed to perfect the appeal of the Alimony and Fees Orders.

11. Hausle was required to file an appellant's brief for Kemp on or before March 24, 1999.

12. On March 23, 1999, Hausle filed a motion for extension of time to file the appellant's brief for Kemp.

13. In the Motion, Hausle represented to the Court of Appeals that he had "reviewed the record in this matter, and there are numerous meritorious arguments to be presented on appeal."

14. The Court of Appeals granted Hausle's motion and allowed him until April 23, 1999 to file the appellant's brief.

15. Hausle failed to file the appellant's brief for Kemp by April 23, 1999.

16. On May 6, 1999, opposing counsel filed a motion to dismiss the appeal.

17. On May 18, 1999, Hausle filed a response to the motion to dismiss, along with a motion for an enlargement of time.

18. In the motion, Hausle requested until May 21, 1999, to file the appellant's brief.

19. Hausle failed to file the appellant's brief by May 21, 1999.
20. Hausle filed the appellant's brief for Kemp on May 26, 1999.
21. On March 7, 2000, the Court of Appeals entered a decision denying Hausle's motion for an enlargement of time and granting opposing counsel's motion to dismiss the appeal based on Hausle's failure to file the appellant's brief in a timely manner.

Misrepresentation to Court of Appeals to Cover up Neglect

22. Hausle made misrepresentations of material fact to the North Carolina Court of Appeals in representing Kemp.

23. In his May 18, 1999 response to the motion to dismiss, Hausle represented to the Court of Appeals that:

- (a) he filed the appellant's brief with the Court and served it on trial counsel for appellant, appellant, and counsel for appellee on April 22, 1999;
- (b) he took all reasonable steps to file and serve the appellant's brief; and
- (c) he in fact filed the appellant's brief in a timely manner.

24. Neither the Court of Appeals, trial counsel for appellant, appellant, nor counsel for appellee received the appellant's brief from Hausle.

25. Contrary to his representations in his response to the motion to dismiss the appeal, Hausle did not

- (a) file or serve the appellant's brief on April 22, 1999,
- (b) take all reasonable steps to file and serve the appellant's brief, or
- (c) file the appellant's brief in a timely manner.

26. Hausle made the above misrepresentations of material fact to the Court of Appeals in an attempt to cover up his failure to file the appellant's brief in a timely manner.

Failure to Communicate with Kemp

27. Hausle also failed to keep Kemp reasonably informed about the status of his appeal.

28. For example, Hausle failed to inform Kemp that:

- (a) he missed the initial April 23, 1999, deadline for filing the appellant's brief;
- (b) opposing counsel filed a motion to dismiss the appeal on May 6, 1999;

- (c) he filed a response to the motion to dismiss and a motion for an enlargement of time on May 18, 1999; and
- (d) he failed to file the appellant's brief by the time requested in his subsequent motion for enlargement of time.

29. Hausle had at least one communication with Kemp between May 26, 1999 and March 7, 2000, but gave Kemp no indication of any potential problems with the appeal.

30. Kemp was unaware of any potential problems with the appeal until he received from his trial attorney the Court of Appeals' March 7, 2000 order dismissing the appeal.

Failure to Respond to Kemp's Grievance

31. After learning that the Court of Appeals had dismissed his appeal because Hausle failed to file the appellant's brief in a timely fashion, Kemp filed a grievance with the North Carolina State Bar.

32. Hausle received a Letter of Notice from the State Bar Grievance Committee regarding Kemp's grievance on May 6, 2000. The Letter of Notice required Hausle to respond within 15 days of receipt of this letter.

33. Hausle failed to respond within 15 days of the receipt of the letter.

34. Hausle was subpoenaed to the State Bar Grievance Committee meeting in July 2000, to respond to the allegations in the Kemp grievance.

Appellate Representation of Carroll Wall

35. Carroll C. Wall, III (hereafter "Wall") was a party to a domestic relations action against his ex-wife in Randolph County District Court, file number 94 CVD 1714. The Wall action included claims for equitable distribution.

36. Attorney Lynn Burleson represented Wall in the district court proceedings.

37. The Honorable William N. Neely entered a judgment on the equitable distribution claims on June 26, 1998 (hereafter "Wall ED Judgment" or "ED Judgment").

Failure to Perfect Wall's Appeal

38. On or before July 15, 1998, Wall paid Hausle \$750 to review materials related to a possible appeal of the Wall ED Judgment.

39. Hausle thereafter agreed to represent Wall in the appeal of the ED Judgment.

40. Wall paid Hausle a fee of \$2,500 in September 1998 to retain his services to appeal the ED Judgment.

41. Hausle thereafter failed to perfect the appeal of the Wall ED Judgment.

42. The transcript relating to the Wall ED Judgment was delivered to Hausle on January 3, 1999.

43. Hausle was required to serve on opposing counsel a proposed record on appeal within 35 days after delivery of the transcript – on or about February 8, 1999.

44. Hausle failed to serve on opposing counsel a proposed record on appeal by February 8, 1999.

45. On February 22, 1999, opposing counsel filed a motion to dismiss Wall's appeal based on Hausle's failure to serve a proposed record on appeal.

46. On February 24, 1999, Wall discovered that opposing counsel had filed a motion to dismiss the appeal.

47. Wall thereafter contacted Hausle about the motion to dismiss.

48. On February 25, 1999, Hausle sent Wall a motion for an extension of time to serve a proposed record on appeal to be filed with the Randolph County District Court.

49. After a hearing, the District Court granted Hausle's motion for an extension and denied the opposing party's motion to dismiss.

50. The parties subsequently settled the proposed record on appeal.

51. Hausle was required to file the appellant's brief for Wall on or before August 6, 1999.

52. Hausle filed a motion for an extension of time to file the brief.

53. In his motion, Hausle represented to the Court of Appeals that he had "reviewed the pleadings in this matter and believes there is a meritorious basis underlying the appeal in this matter."

54. The Court of Appeals granted Hausle's motion and gave him an extension to file the appellant's brief until September 6, 1999.

55. Hausle failed to file the appellant's brief for Wall on or before September 6, 1999.

56. On September 28, 1999, opposing counsel filed a motion to dismiss the appeal.

57. On October 13, 1999, Hausle filed a response to the motion to dismiss and a second motion for extension of time to file the appellant's brief.

58. In his second motion, Hausle repeated the representations to the Court of Appeals set forth in paragraph 54 above.

59. The Court of Appeals allowed Hausle's second motion for extension of time to file the appellate brief until November 3, 1999.

60. Hausle failed to file the appellant's brief for Wall on or before November 3, 1999.

61. Opposing counsel filed another motion to dismiss the appeal on November 16, 1999.

62. Wall discovered that Hausle had failed to file the appellant's brief on approximately November 15, 1999.

63. On November 16, 1999, Wall filed a *pro se* response to the motion to dismiss and a motion to extend the deadline for filing the appellant's brief.

64. On November 19, 1999, the Court of Appeals granted Wall's *pro se* motion for an extension of time.

65. Wall retained another attorney to file the appellant's brief.

Misrepresentations to Wall to Cover up Neglect

66. Hausle made misrepresentations to Wall and his wife regarding his representation.

67. In February 1999, when opposing counsel filed the first motion to dismiss, Hausle represented to Wall that he had sent him, before the deadline passed, a motion for extension of time to serve the proposed record.

68. Wall never received any motion for extension from Hausle prior to February 25, 1999.

69. Contrary to his representation, Hausle never sent Wall a motion for an extension of time prior to February 25, 1999.

70. Hausle knowingly made the above misrepresentation to Wall in an attempt to cover up his failure to serve the proposed record on appeal in a timely manner.

71. After discovering that Hausle did not file the appellant's brief in November 1999, Wall and his office employees had conversations with Hausle, in which they requested that Hausle forward them the appellant's brief so they could file it with the Court of Appeals.

72. Hausle represented to Wall's wife, Mary Lou Wall, on or about November 23, 1999, that he had sent the appellant's brief to Wall's office by regular mail.

73. Wall did not receive the appellant's brief from Hausle by mail.

74. In a subsequent conversation on or about December 1, 1999, Hausle represented to Mrs. Wall that he believed someone had stolen the completed appellant's brief from his mailbox.

75. Contrary to his representations to Mrs. Wall, Hausle never completed the appellant's brief nor sent it to Wall by mail on or before November 23, 1999.

76. Hausle knowingly made the above misrepresentations to Mrs. Wall in an attempt to cover up his failure to complete and send the appellant's brief.

Failure to Communicate with Wall

77. Hausle also failed to keep Wall reasonably informed about the status of his appeal and respond to his reasonable requests for information.

78. For example, Hausle failed to inform Wall that:

- (a) he missed the September 6, 1999 deadline for filing the appellant's brief;
- (b) the opposing counsel filed a motion to dismiss the appeal on September 28, 1999;
- (c) he filed a motion for extension of time on October 13, 1999;
- (d) his motion for extension had been allowed until November 3, 1999; and
- (e) he failed to file the appellant's brief by the November 3, 1999 deadline.

79. Wall was unaware that the opposing side had filed any motions to dismiss with the Court of Appeals or that Hausle had failed to meet the deadlines for filing the appellant's brief until he contacted the Court of Appeals on or about November 15, 1999.

80. During the representation, Wall repeatedly attempted to contact Hausle by telephone, facsimile, e-mail, and certified letter about the status of the appeal.

81. Hausle repeatedly failed to respond to Wall's attempted contacts.

Failure to Respond to Wall's Grievance

82. After discovering that Hausle failed to file the appellant's brief for him, Wall filed a grievance with the North Carolina State Bar.

83. On or about December 16, 1999, Hausle received a Letter of Notice from the State Bar Grievance Committee regarding the Wall grievance.

84. Hausle responded to the Wall grievance on January 10, 2000.

85. Hausle received a letter from the State Bar on January 31, 2000 requesting additional information regarding the Wall grievance.

86. Hausle failed to respond to the January 31, 2000 letter.

87. The State Bar sent Hausle a follow-up letter on February 28, 2000 again requesting that he provide the information requested in the January 31, 2000 letter. Hausle received this letter on February 29, 2000.

88. Hausle failed to respond to the February 28, 2000 letter.

89. Hausle was subpoenaed to the State Bar Grievance Committee meeting in July 2000 to respond to these additional inquiries.

Appellate Representation of Donn Perkins

90. Donn Edward Perkins (hereafter "Perkins") was a party to a domestic relations action against his ex-wife, in Mecklenburg County District Court, file number 95 CVD 13949JV8. The Perkins action included claims for equitable distribution.

91. Ronald L. Chapman (hereafter "Chapman") represented Perkins in the district court proceedings.

92. The Honorable Jane V. Harper entered an Order and Judgment on the equitable distribution claims on January 14, 1997 (hereafter "Perkins ED Judgment" or "ED Judgment").

Failure to Perfect Perkins' Appeal

93. Perkins retained Hausle in February 1997 to represent him in appealing the ED Judgment.

94. Hausle filed a Notice of Appeal for Perkins on February 13, 1997.

95. Perkins paid Hausle \$6,000 plus expenses to represent him in appealing the ED Judgment.

96. Hausle thereafter failed to perfect the appeal of the Perkins ED Judgment.

97. On December 4, 1997, Hausle moved for an extension of time to file the appellant's brief for Perkins.

98. In his motion, Hausle represented to the North Carolina Court of Appeals that he had "reviewed the pleadings in this matter, and there is a meritorious basis for this appeal."

99. The Court of Appeals granted Hausle's motion and allowed him until January 20, 1998, to file the appellant's brief.

100. Hausle failed to file the appellant's brief by January 20, 1998, or thereafter.

101. On its own motion, the Court of Appeals entered an order on April 16, 1998, dismissing the appeal because Hausle failed to file the appellant's brief for Perkins.

Failure to Communicate with Perkins

102. Hausle also failed to keep Perkins reasonably informed about the status of his appeal during the representation.

103. For example, Hausle failed to inform Perkins that:

- (a) he had moved for an extension of time to file the appellant's brief;
- (b) he failed to file the appellant's brief by the extended deadline; and
- (c) the appeal had been dismissed as a result.

104. The Court of Appeals sent Hausle, contemporaneous with its entry, a copy of its April 16, 1998 order dismissing the appeal.

105. Hausle did not provide Perkins or Chapman with a copy of the April 16, 1998 order or otherwise inform them that the appeal had been dismissed.

106. Chapman obtained a copy of the order dismissing the appeal from opposing counsel and forwarded it to Perkins.

107. Perkins and Chapman thereafter repeatedly attempted to reach Hausle by telephone and e-mail regarding the dismissal.

108. Hausle repeatedly failed to respond to these attempted contacts by Perkins and Chapman.

Misrepresentations to Cover up his Neglect

109. Hausle made misrepresentations to Chapman regarding his representation of Perkins.

110. On August 9, 1998, Chapman sent Hausle a letter by facsimile and regular mail regarding the dismissal of the appeal for his failure to file the appellant's brief.

111. In response, Hausle sent a message to Chapman via facsimile on August 10, 1998.

112. In the facsimile message, Hausle asserted that:

- (a) the August 9, 1998 facsimile from Chapman was the first he had heard about the appeal being dismissed;
- (b) he had received nothing from opposing counsel, the opposing party, or the Court of Appeals regarding the dismissal of the appeal; and
- (c) he had filed the appellant's brief for Perkins.

113. Hausle's August 10, 1998 facsimile to Chapman also asserted that he would prepare a motion for reconsideration and petition for certiorari regarding the dismissal of the appeal.

114. Contrary to his assertions to Chapman in paragraph 115 above, Hausle:

- (a) knew prior to August 9, 1998 that the appeal had been dismissed;
- (b) previously received from the Court of Appeals the April 16, 1998 order dismissing Perkins' appeal; and
- (c) did not file the appellant's brief for Perkins.

115. Additionally, Hausle never prepared a motion for reconsideration or petition for certiorari regarding the dismissal of Perkins' appeal.

116. Hausle made these misrepresentations to Chapman to cover up his failure to file the appellant's brief and his failure to inform Perkins or Chapman regarding the dismissal of the appeal.

Failure to Return Unearned Fee

117. Hausle did not perform all of the services for which Perkins retained and paid him.

118. On October 25, 1999, Chapman wrote Hausle and demanded that Hausle return the fee Perkins paid to him for handling the appeal.

119. Hausle failed to return any portion of the fee paid by Perkins.

Failure to Respond to Grievance Regarding Perkins' Appeal

120. Hausle received a Letter of Notice on May 6, 2000, regarding his representation of Perkins, Mills, Pritsis, and Jackson set forth below. The Letter of Notice required him to respond within 15 days of its receipt.

121. Hausle failed to respond to the Letter of Notice regarding his handling of these appeals.

122. Hausle was subpoenaed to the State Bar Grievance Committee meeting in July 2000, to respond to the Letter of Notice regarding his handling of these appeals.

Appellate Representation of Christopher Pritsis

123. Christopher George Pritsis (hereafter "Pritsis") was a party to a domestic relations action against his ex-wife, in Forsyth County District Court, file number 94 CVD 5897. The Pritsis action included claims for equitable distribution.

124. C. R. Long, Jr. (hereafter "Long") represented Pritsis in the district court proceedings.

125. The Honorable Chester C. Davis entered an Order and Judgment on the equitable distribution claims on August 26, 1996 (hereafter "Pritsis ED Judgment" or "ED Judgment")

Failure to Perfect Pritsis' Appeal

126. Pritsis retained Hausle in September 1996 to represent him in appealing the ED Judgment.

127. Hausle filed a notice of appeal for Pritsis on August 11, 1997.

128. Hausle thereafter failed to perfect Pritsis' appeal.

129. On February 3, 1998, Judge Davis entered an order settling the record on appeal in the Pritsis matter.

130. On March 3, 1998, the Clerk of the Court of Appeals filed the notice of mailing of the printed record on appeal.

131. Hausle was required to file the appellant's brief for Pritsis on or before April 3, 1998.

132. Hausle failed to file the appellant's brief for Pritsis by April 3, 1998 or thereafter.

133. On April 13, 1998, opposing counsel filed a motion to dismiss the appeal based on Hausle's failure to file the appellant's brief.

134. On April 14, 1998, Hausle filed a motion for extension of time to file the brief.

135. On April 16, 1998, the Court of Appeals entered orders denying Hausle's motion for an extension of time, granting opposing counsel's motion to dismiss the appeal, and dismissed the appeal of the Pritsis ED Judgment.

Failure to Communicate with Pritsis

136. Hausle failed to keep Pritsis reasonably informed about the status of his appeal.

137. For example, Hausle failed to inform Pritsis or Long that:
- (a) he missed the April 3, 1998, deadline for filing the appellant's brief;
 - (b) opposing counsel filed a motion to dismiss the appeal on April 13, 1998; and
 - (c) the Court of Appeals dismissed the appeal.

138. The Court of Appeals provided Hausle, contemporaneous with its entry, a copy of its April 16, 1998 order dismissing the appeal.

139. Hausle failed to provide Pritsis or Long with a copy of the April 16, 1998 order or otherwise inform them that the appeal had been dismissed.

140. Long obtained from opposing counsel a copy of the order dismissing the appeal and informed Pritsis of the dismissal.

141. Pritsis was unaware of any problems with the appeal until Long informed him that the appeal had been dismissed.

Appellate Representation of William Mills

142. William L. Mills, III (hereafter "Mills") was a party to a domestic relations action against his ex-wife in Mecklenburg County District Court, file number 96 CVD 13550. The Mills action included claims for post-separation and child support.

143. Attorney L. Stanley Brown represented Mills in the district court proceedings.

144. The Honorable David S. Cayer entered an order on February 18, 1997 requiring Mills to pay post separation support and child support (hereafter "Support Order").

Failure to Perfect Mills' Appeal

145. Mills retained Hausle in approximately February 1997 to handle the appeal of the Support Order.

146. Mills paid Hausle a fee of \$3,500 to retain his services in appealing the Support Order.

147. Hausle filed a notice of appeal for Mills on May 8, 1997.

148. Hausle thereafter failed to perfect Mills' appeal of the Support Order.

149. On October 9, 1997, Hausle filed a motion for extension of time to settle the record on appeal.

150. In his motion, Hausle represented to the Court of Appeals that he had "reviewed the pleadings in this matter, and believes there is a meritorious basis underlying the appeal in this matter."

151. The Court of Appeals granted Hausle's motion for an extension of time until November 3, 1997.

152. Hausle failed to file the settled record on appeal by November 3, 1997.

153. On November 10, 1997, Hausle made a second motion for an extension of time to file the settled record on appeal.

154. The Clerk of the North Carolina Court of Appeals denied Hausle's motion for an extension of time on November 12, 1997.

155. Hausle failed to file the settled record on appeal until December 10, 1997.

156. On January 20, 1998, opposing counsel filed a motion to dismiss the appeal based on Hausle's failure to file timely the settled record on appeal.

157. On February 16, 1998, Hausle filed a response to the appellee's motion to dismiss.

158. On February 23, 1998, the Court of Appeals entered an order granting the appellee's motion to dismiss, dismissing the appeal, and requiring Mills to pay the costs of the appeal.

Failure to Communicate with Mills

159. Hausle also failed to keep Mills reasonably informed regarding the status of his appeal throughout the representation.

160. For example, Hausle failed to inform Mills that:

- (a) the Court of Appeals denied his second motion for an extension of time to settle the record on appeal on November 12, 1997;
- (b) he did not file the settled record on appeal until December 12, 1997; and
- (c) the Court of Appeals dismissed his appeal as a result.

161. The Court of Appeals sent Hausle, contemporaneous with its entry, a copy of the February 23, 1998 order dismissing the appeal.

162. Hausle failed to provide Mills with a copy of the February 23, 1998, order or otherwise inform Mills that the appeal had been dismissed.

163. Mills obtained a copy of Court of Appeals order dismissing the appeal from his trial attorney, Stanley Brown.

Appellate Representation of Eric Jackson

164. Eric B. Jackson (hereafter "Jackson") was the respondent in an action to terminate his parental rights in Pitt County Juvenile Court, file number 96J137.

165. The Honorable P. Gwynett Hilburn entered an order on May 29, 1997 terminating Jackson's parental rights (hereafter "TPR Order").

Failure to Perfect Jackson's Appeal

166. Jackson retained Hausle to represent him in appealing the TPR Order.

167. In July 1997, Hausle filed a notice of appearance in District Court for Jackson.

168. On March 5, 1998, Judge Hilburn entered an order denying Jackson's post-trial motions.

169. Hausle filed a Notice of Appeal for Jackson on March 16, 1998.

170. On April 30, 1998, the opposing counsel filed a motion to dismiss the appeal because Hausle had not ordered a transcript or served a proposed record on appeal within the deadlines set forth in the North Carolina Rules of Appellate Procedure.

171. On May 18, 1998, Hausle filed a motion for an enlargement of time.

172. On June 29, 1998, Judge Hilburn entered an order granting the motion to dismiss the appeal.

173. Judge Hilburn subsequently entered an order on August 20, 1998 allowing Hausle an enlargement of time to serve a proposed record on appeal, effectively reinstating the appeal.

174. On January 29, 1999, the Court of Appeals sent the notice of mailing of the record on appeal.

175. Hausle was required to file the appellant's brief for Jackson on or before March 1, 1999.

176. Hausle failed to file the appellant's brief by March 1st.

177. On March 8, 1999, opposing counsel filed a motion to dismiss the appeal based on Hausle's failure to file the appellant's brief.

178. On March 8, 1999, Hausle filed a motion for an extension of time to file his brief.

179. In his motion for an extension, Hausle represented that he had "reviewed the record in this case, and there are meritorious positions to be argued in support of this appeal."

180. The Court of Appeals granted Hausle's motion for an extension of time to file the brief until March 16, 1999.

181. Hausle failed to file the brief until March 18, 1999.

182. On March 22, 1999, opposing counsel filed a second motion to dismiss the appeal based on Hausle's failure to file the brief within his requested extension.

183. The Court of Appeals entered an order on March 30, 1999, granting the opposing party's motion to dismiss and dismissing Jackson's appeal of the TPR order.

Failure to Communicate with Jackson

184. Hausle failed to keep Jackson reasonably informed about the status of his appeal.

185. For example, Hausle failed to inform Jackson that:

- (a) he missed the March 1, 1999 deadline for filing the appellant's brief;
- (b) opposing counsel filed a motion to dismiss the appeal on March 8, 1999;
- (c) the Court of Appeals granted Hausle an extension of time to file the brief until March 16, 1999;
- (d) he failed to file the brief until March 18, 1999;
- (e) opposing counsel filed a second motion to dismiss the appeal on March 22, 1999, based on Hausle's failure to timely file the brief; and
- (f) the Court of Appeals dismissed the appeal.

Appellate Representation of Nancy Browning

186. Nancy Elizabeth Browning (hereafter "Browning"), was a party to a domestic relations action against her ex-husband, Eric Landers Helff, in Wake County District Court, file number 96 CVD 12581. The Browning action included claims for child custody.

187. Charles H. Montgomery represented Browning in the district court proceedings.

188. The Honorable Judge Anne B. Salisbury entered an order on July 7, 1998, prohibiting Mr. Helff from having any female person, not related by blood or marriage, stay overnight with him when the children were in his custody or control (hereafter "Cohabitation Order").

189. Helff appealed the Cohabitation Order.

190. Browning retained Hausle in September 1998 to represent her in defending the appeal of the Cohabitation Order.

191. Browning paid Hausle \$3,000 over the course of the representation to represent her on appeal.

192. Hausle thereafter failed to represent Browning's interests on appeal.

193. Opposing counsel filed an appellant's brief on December 18, 1998.

194. On January 21, 1999, Hausle filed a motion for extension of time to file the appellee's brief.

195. In his motion, Hausle represented to the Court of Appeals that he had "reviewed the record in this case, and there are meritorious positions to be argued in support of the order from which appeal has been taken."

196. The Court of Appeals allowed Hausle's motion for an extension of time and ordered that the appellee's brief be filed on or before February 19, 1999.

197. Hausle failed to file the appellee's brief for Browning by February 19, 1999, or thereafter.

198. The Court of Appeals subsequently entered a decision on January 18, 2000; vacating the trial court order Browning retained Hausle to defend.

199. Hausle never presented to the Court of Appeals the meritorious positions in support of the Cohabitation Order, which Browning retained Hausle to assert for her.

Failure to Communicate with Browning

200. Hausle also failed to keep Browning reasonably informed about the status of her appeal and respond to her reasonable requests for information after January 1999.

201. Browning repeatedly attempted to contact Hausle after January 1999, by telephone, e-mail, and certified letter requesting information regarding the status of her appeal.

202. For example, Browning sent messages to Hausle's e-mail address on July 14, and July 26, 1999.

203. Browning also sent Hausle a certified letter dated August 23, 1999, demanding that he contact her and inform her regarding the status of her appeal.

204. Hausle repeatedly failed to respond to Browning's attempted contacts.

205. Hausle also did not provide Browning with a copy of the Court of Appeals January 18, 2000, decision or otherwise notify her about the Court's ruling.

206. Hausle never informed Browning that he failed to file the appellee's brief on her behalf.

207. Browning obtained a copy of the Court's decision and discovered that Hausle failed to file her appellee's brief from her trial attorney, Charles Montgomery.

208. After obtaining a copy of the Court of Appeals decision and learning that Hausle failed to file her appellee's brief, Browning filed a grievance with the North Carolina State Bar.

Failure to Respond to Browning Grievance

209. On or about April 6, 2000, Hausle received a Letter of Notice from the State Bar Grievance Committee regarding Browning's grievance. The Letter of Notice required Hausle to respond within 15 days of its receipt.

210. Hausle failed to respond to the letter of notice within 15 days.

211. On or about May 11, 2000, Hausle received a follow-up letter from the State Bar requiring that he respond to the Browning grievance on or before May 19, 2000.

212. Hausle again failed to respond.

213. Therefore, Hausle was subpoenaed to the State Bar Grievance Committee meeting in July 2000, to respond to the Browning grievance.

Appellate Representation of Sandra Lang

214. Sandra Lang (hereafter "Lang") was the defendant in a child custody action involving her granddaughter Sara Michelle Simms in Mecklenburg County District Court, file number 97-CVD 10915.

215. Eloise W. Burke represented Lang in the district court proceedings.

216. The child custody matter was heard on March 2, 1999 before the Honorable Rickye McKoy-Mitchell.

217. Judge Mitchell orally announced to the parties her decision granting custody to the opposing party on April 21, 1999 (hereafter "Custody Decision").

218. Lang thereafter retained Hausle to appeal the Custody Decision.

219. In May 1999, Lang's mother, Bobby J. Katnic (hereafter "Katnic"), paid Hausle \$1,000 to represent Lang on appeal.

220. Hausle received the check from Katnic on May 4, 1998.

221. Judge Mitchell entered a written order regarding custody of Sara Simms on July 21, 1999 (hereafter "Custody Order").

222. Hausle failed to pursue the appeal of the Custody Order for Lang.

223. Hausle also failed to communicate with Lang or Katnic regarding the appeal the Custody Order.

224. After discovering that Hausle failed to pursue the appeal of the Custody Order, Katnic filed a grievance with the North Carolina State Bar.

225. On or about September 29, 2000, Hausle received a Letter of Notice from the State Bar Grievance Committee regarding Katnic's grievance. The Letter of Notice required Hausle to respond within 15 days of its receipt.

226. Hausle failed to respond to the letter of notice within 15 days.

227. On or about October 4, 2000, Hausle received a follow-up letter from the State Bar requiring that he respond to the Browning grievance on or before October 14, 2000.

228. Hausle again failed to respond.

229. The complaint, Service Notice, and Entry of Default in this action were filed on November 6, 2000.

230. Defendant herein was served with the summons and complaint by the Pitt County Sheriff's Department on November 13, 2000.

231. Defendant's answer to the complaint was due no later than the end of the day on December 3, 2000.

232. Defendant did not file an answer, motion to extend time to file an answer, or other pleading in this action.

233. Upon plaintiff's motion, the secretary entered default against defendant on January 2, 2001.

234. On January 16, 2001, plaintiff filed a motion for order of discipline and served on defendant notice of hearing on that motion for February 2, 2001.

Based upon the foregoing Findings of Fact, the hearing committee enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee and the committee has jurisdiction over defendant Edward P. Hausle and the subject matter.

2. Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) & (3) in that Hausle committed the following violations of the North Carolina Revised Rules of Professional Conduct (hereafter "Revised Rule"):

A. With regard to his representation of Gary A. Kemp:

- (1) By failing to file the appellant's brief for Kemp in a timely manner, Hausle:
 - (a) failed to act with reasonable diligence and promptness in representing Kemp in violation of Revised Rule 1.3, and
 - (b) prejudiced or damaged Kemp during the course of their professional relationship in violation of Revised Rule 8.4(g).
- (2) By misrepresenting to the North Carolina Court of Appeals that he had filed and served the appellant's brief for Kemp in a timely manner, Hausle:
 - (a) knowingly made a false statement of material fact to a tribunal while representing a client in violation of Revised Rule 3.3(a)(1),
 - (b) knowingly engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation in violation of Revised Rule 8.4(c), and
 - (c) engaged in conduct prejudicial to the administration of justice in violation of Revised Rule 8.4(d).
- (3) By failing to notify Kemp that he had missed relevant deadlines for filing the appellant's brief, Hausle violated Revised Rule 1.4(a) and (b).
- (4) By failing to respond timely to State Bar's Letter of Notice regarding Kemp's grievance, Hausle knowingly failed to respond promptly to a lawful demand for information from a disciplinary authority in violation of Revised Rule 8.1(b).

B. With regard to his representation of Carroll Wall,

- (1) By failing to file the appellate brief for Wall and otherwise perfect Wall's appeal of the ED Judgment, Hausle
 - (a) failed to act with reasonable diligence and promptness in representing Wall in violation of Revised Rule 1.3, and
 - (b) prejudiced or damaged Wall during the course of their professional relationship in violation of Revised Rule 8.4(g).
- (2) By misrepresenting to the Walls that he had sent Wall a motion for extension of time in February 1999 and that he had sent the completed appellant's brief in November 1999, Hausle engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Revised Rule 8.4(c).
- (3) By failing to respond to Wall's attempts to contact him, and failing to notify him about missing relevant deadlines for filing the appellant's brief, Hausle violated Revised Rules 1.4(a) and (b).
- (4) By failing to respond timely to the State Bar's January and February 2000 inquiries regarding Wall's grievance, Hausle knowingly failed to respond promptly to a lawful demand for information from a disciplinary authority in violation of Revised Rule 8.1(b).

C. With regard to his representation of Donn Perkins:

- (1) By failing to file the appellant's brief for Perkins, Hausle
 - (a) failed to act with reasonable diligence and promptness in representing Perkins in violation of Revised Rule 1.3, and
 - (b) prejudiced or damaged Perkins during the course of their professional relationship in violation of Revised Rule 8.4(g).
- (2) By misrepresenting to Chapman that he had filed the brief and had not received notice regarding the dismissal of Perkins' appeal, Hausle engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Revised Rule 8.4(c).
- (3) By failing to (a) notify Perkins that he had missed the relevant deadlines for filing the appellant's brief and that the appeal had been dismissed, and (b) respond to Perkins' and Chapman's attempts to contact him regarding the dismissal of the appeal, Hausle violated Revised Rules 1.4(a) and (b).

- (4) By failing to return any portion of the \$6,000 fee paid by Perkins after he failed to perfect his appeal and despite a written request, Hausle failed to refund an unearned fee in violation of Revised Rule 1.16(d).
- (5) By failing to respond to the State Bar's Letter of Notice regarding his handling of Perkins' appeal, Hausle knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Revised Rule 8.1(b).

D. With regard to his representation of Christopher Pritsis:

- (1) By failing to file the appellant's brief for Pritsis, Hausle
 - (a) failed to act with reasonable diligence and promptness in representing Pritsis in violation of Revised Rule 1.3, and
 - (b) prejudiced or damaged Pritsis during the course of their professional relationship in violation of Revised Rule 8.4(g).
- (2) By failing to notify Pritsis' regarding missing relevant deadlines for filing the appellant's brief and the dismissal of the appeal, Hausle violated Revised Rules 1.4(a) and (b).
- (3) By failing to respond to the State Bar's Letter of Notice regarding his handling of Pritsis' appeal as set forth in paragraphs 120-22 above, Hausle knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Revised Rule 8.1(b).

E. With regard to his representation of William Mills:

- (1) By failing to file the settled record on appeal in a timely fashion, Hausle
 - (a) failed to act with reasonable diligence and promptness in representing Mills in violation of Revised Rule 1.3, and
 - (b) prejudiced or damaged Mills during the course of their professional relationship in violation of Revised Rule 8.4(g).
- (2) By failing to notify Mills that he had missed relevant deadlines for filing the settled record on appeal and inform him that the appeal had been dismissed, Hausle violated Revised Rules 1.4(a) and (b).
- (3) By failing to respond to the State Bar's Letter of Notice regarding his handling of the Mills appeal as set forth in paragraphs 120-22 above, Hausle knowingly

failed to respond to a lawful demand for information from a disciplinary authority in violation of Revised Rule 8.1(b).

F. With regard to his representation of Eric B. Jackson:

- (1) By failing to contract with a court reporter, serve a proposed record on appeal, and file the appellant's brief for Jackson in a timely fashion, Hausle
 - (a) failed to act with reasonable diligence and promptness in representing Jackson in violation of Revised Rule 1.3, and
 - (b) prejudiced or damaged Jackson during the course of their professional relationship in violation of Revised Rule 8.4(g).
- (2) By failing to notify Jackson regarding missing relevant deadlines for filing the appellant's brief and the dismissal of the appeal, Hausle violated Revised Rules 1.4(a) and (b).
- (3) By failing to respond to the State Bar's Letter of Notice regarding his handling of Jackson's appeal, as set forth in paragraphs 120-22 above, Hausle knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Revised Rule 8.1(b).

G. With regard to his representation of Nancy Browning:

- (1) By failing to file the appellee's brief for Browning, Hausle
 - (a) failed to act with reasonable diligence and promptness in representing Browning in violation of Revised Rule 1.3, and
 - (b) prejudiced or damaged Browning during the course of their professional relationship in violation of Revised Rule 8.4(g).
- (2) By failing to respond to Browning's repeated attempts to contact him and failing to contact Browning after January 1999, and by failing to inform her that the Court of Appeals had vacated the trial court order, Hausle failed to keep Browning reasonably informed about the status of her appeal and promptly comply with her reasonable requests for information in violation of Revised Rule 1.4(a).
- (3) By failing to notify Browning that he had failed to file the appellee's brief on her behalf, Hausle failed to explain a matter to the extent reasonably necessary

to permit the client to make informed decisions regarding the representation in violation of Revised Rule 1.4(b).

- (4) By failing to respond to the State Bar's Letter of Notice and follow-up letter regarding Bowning's grievance, Hausle knowingly failed to respond promptly to a lawful demand for information from a disciplinary authority in violation of Revised Rule 8.1(b).

H. With regard to his representation of Sandra Lang:

- (1) By failing to pursue the appeal of the Custody Order for Lang, Hausle
 - (a) failed to act with reasonable diligence and promptness in representing Lang in violation of Revised Rule 1.3, and
 - (b) prejudiced or damaged Lang during the course of their professional relationship in violation of Revised Rule 8.4(g).
- (2) By failing to communicate with Lang or Katnic after being retained to pursue the appeal and failing to inform them that he had not pursued the appeal, Hausle violated Revised Rules 1.4(a) and (b).
- (3) By failing to respond to the State Bar's Letter of Notice and follow up letter regarding his handling of Lang's appeal, Hausle knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Revised Rule 8.1(b).

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the evidence and arguments of the parties concerning the appropriate discipline, the hearing committee hereby makes these additional:

FINDINGS OF FACT REGARDING DISCIPLINE

1. The defendant's misconduct is aggravated by the following factors:
 - a. Prior disciplinary offenses including:
 - i. Reprimand – August 17, 1999 – for failing to communicate with a client, losing a client's file, and failing to respond to the resulting grievance.
 - ii. Three-year suspension – January 5, 2000 - for neglecting two appeals, failing to communicate with clients, making misrepresentations to cover up neglect, and repeatedly failing to respond to the resulting grievances.
 - b. A significant pattern of misconduct
 - c. Multiple offenses
 - d. Substantial experience in the practice of law
 - e. Dishonest or selfish motive, and
 - f. Bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with the rules or orders of the disciplinary agency

2. The defendant's misconduct is mitigated by the following factors:

- a. Personal or emotional problems
- b. Mental disability or impairment

3. The aggravating factors outweigh the mitigating factors.

Based upon the foregoing aggravating and mitigating factors and the arguments of the parties, the hearing committee hereby enters the following

ORDER OF DISCIPLINE

1. Defendant, Edward P. Hausle, is hereby disbarred from the practice of law beginning 30 days from service of this order upon defendant.

2. Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon defendant.

3. Prior to reinstatement, defendant shall prove by clear, cogent, and convincing evidence all of the following conditions:

- a. Hausle complied with all the requirements of Discipline Rule .0124;
- b. Hausle complied with all the requirements of Discipline Rule .0125(a);
- c. Hausle completed participation in a Lawyers Management Assistance Program ("LMAP"), approved by the State Bar, at his own expense prior to filing his petition. Hausle shall attach to his petition for reinstatement documentation demonstrating his completion of such a LMAP, along with a release permitting the LMAP director to discuss with the State Bar his participation and completion of the program.
- d. Hausle paid all costs assessed by the Secretary in connection with this proceeding within 30 days of service of these costs by the Secretary;
- e. Hausle shall repay all fees paid by the clients at issue in this matter in the following amounts:
 1. Gary Kemp - \$7,500
 2. Carroll C. Wall, III - \$2,500
 3. Donn E. Perkins - \$6,000
 4. William L. Mills, III - \$3,500

5. Nancy Browning - \$3,000

6. Sandra Lang - \$1,000

- f. Hausle has not violated any federal or state laws;
- g. Hausle has not violated any provisions of the Revised Rules of Professional Conduct of the State Bar;
- h. Hausle has submitted a certification from his treating psychiatrist that:

(i) He has followed all recommendations for treatment of any diagnosed psychological condition, including depression, for the past six months; and

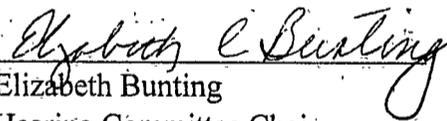
(ii) In the psychiatrist's opinion, Hausle's psychological condition will not prevent him from adequately performing the responsibilities of an attorney or pose a threat to the public if he is allowed to resume the practice of law.

The psychiatrist making such a certification must be one selected by, or acceptable to, the State Bar. If Hausle's treating psychiatrist is not one selected by, or agreeable to the State Bar, the State Bar shall have the right to have Hausle evaluated by a psychiatrist, selected by it, to determine if the conditions set forth in (i) and (ii) above have been satisfied. Hausle also must execute a release allowing the State Bar to obtain his medical records and attach that release to his petition for reinstatement.

- i. Hausle entered into and completed a Recovery Contract with the North Carolina State Bar Lawyers Assistance Program ("LAP"). Hausle shall attach to his reinstatement petition documentation demonstrating that he has completed a Recovery Contract with LAP. Hausle also must execute and attach to his petition for reinstatement a release permitting LAP to discuss with the State Bar his participation in and completion of a Recovery Contract.

Signed by the chair with the consent of the other hearing committee members, this:

the 12th day of February 2001.


Elizabeth Bunting
Hearing Committee Chair