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WAKE COUNTY
NORTH CAROLINA



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
02 BCR 1

IN RE REINSTATEMENT PETITION)	FINDINGS OF FACT AND
OF DAVID P. FORD)	ORDER RECOMMENDING
)	AGAINST REINSTATEMENT
)	

THIS MATTER came on to be heard and was heard before a duly appointed committee of the Disciplinary Hearing Commission of the North Carolina State Bar composed of Fred H. Moody, Jr., Chair; Lane Williamson and Marguerite Watts on May 24, 2002. The Petitioner, David P. Ford, was represented by Brian Aus. Carolin Bakewell represented the Respondent, the North Carolina State Bar. Based upon the evidence introduced at the hearing and the argument of counsel, the hearing committee makes the following:

FINDINGS OF FACT

1. Petitioner, David P. Ford (Ford), was licensed to practice law in North Carolina in 1977.
2. In April 1991, Ford hired a secretary named Charlene Teal (Teal).
3. Between November 1991 and April 1992, a total of \$31,871.13 was transferred from Ford's trust account into his operating account, primarily by Teal.
4. All but approximately \$9,000 of the \$31,871.13 transferred to the operating account belonged to Ford's clients and should have remained in his attorney trust account. Approximately \$9,000 of the funds transferred represented legitimate fees that had been earned by Ford. Between November 1991 and April 1992, the bulk of the fees that Ford earned were generated by real estate closings which he conducted.
5. Between November 1991 and April 1992, Ford disbursed more than \$10,500 from the operating account for personal expenses, such as groceries, his personal rent and gasoline. During the same period, Teal disbursed to herself approximately \$14,000 from the operating account.
6. Ford did not regularly review his operating or trust account records and discovered the problems with his trust account in April 1992.

7. In late June 1992, Ford closed his office and shortly thereafter, moved to Japan, where his wife had taken a job as a civilian engineer with the U.S. military.

8. Prior to closing his office and leaving for Japan, Ford failed to review all of his client files to ensure that all checks issued to title companies for title insurance had been mailed to the title companies. He did not notify his clients in those cases in which checks remained in the client files.

9. Ford failed to withdraw as attorney for Somerville Leasing Corporation before he left for Japan and failed to tell his client that he was closing his office. As a result, when his client's case was called for trial in July 1992, the action was dismissed for failure to prosecute. Ford was reprimanded for this conduct in November 1993.

10. Although Ford reported Ms. Teal's conduct to the District Attorney, Ms. Teal was never criminally charged or prosecuted.

11. Ford returned to the United States in the spring of 1994.

12. In August 1994, following a trial at which Ford was present and represented himself, the Disciplinary Hearing Commission entered an order disbaring Ford from the practice of law.

13. For a period after his disbarment, Ford was unemployed. Since 1995, however, he has been employed as a paralegal for Richard Peniston in Peniston's Durham, N.C. office.

14. Ford's duties with Peniston's law firm include maintaining the office computer system, conducting legal research and writing briefs. He does not have any bookkeeping responsibilities and does not handle client funds.

15. Ford presented the testimony of three witnesses who supported his petition for reinstatement. The witnesses included an editor of the Wilmington Star Newspaper, who is a former roommate and lifelong friend of Ford's; his current employer, Peniston; and an educator from Chapel Hill who is a lifelong friend. Although two of the character witnesses testified that Ford had matured since his disbarment, the character witnesses did not present any other evidence that Ford had changed, that he had reformed or that he had communicated his reformation to the public. Peniston testified that if Ford's license were reinstated, Peniston would hire him as an attorney and the other two witnesses indicated that they would hire Ford to perform legal services for them.

16. Other than the testimony of Mr. Peniston, Ford did not introduce the testimony of any attorneys or judges in support of his petition, either in person or by affidavit.

17. Ford presented no evidence indicating that he had participated in any civic or church-related activities since his disbarment.

18. Following his disbarment, Ford did not return to the Long Beach, N.C. area and has taken no action to demonstrate his rehabilitation to the attorneys and public there.

19. The order of disbarment required Ford, *inter alia*, to pay the costs of the disciplinary hearing and pay all costs and dues owed to the N.C. State Bar.

20. In his petition for reinstatement, which was filed on Feb. 6, 2002 Ford alleged that he had complied with the orders of the Disciplinary Hearing Commission, with certain exceptions.

21. In fact, as of Feb. 6, 2002, Ford had not complied with the order of disbarment in the following respects:

- a. Ford had failed to pay \$355 in costs assessed in the disbarment case.
- b. Ford failed to pay mandatory State Bar dues for the year 1992.
- c. Ford failed to pay a \$125 late fee owed to the Continuing Legal Education Department of the North Carolina State Bar.

22. Although Ford paid his mandatory dues and the disciplinary costs on May 24, the morning of trial, he failed still owes a \$125 late fee to the Continuing Legal Education Department of the N.C. State Bar.

23. At the time of hearing of this matter, the following individuals had still not been reimbursed for sums improperly withdrawn from Ford's trust account:

Richard & Patricia Connolly	\$169.10
R. T. Hines	\$203.58
Horace & Patricia Howard	\$18.76
Investors Title	\$226.91
Joseph Lenins	\$519.78
John & Shirley Floyd	\$142.08
Don & Helen Owen	\$26
Gary & Ruth Posey	<u>\$102.23</u>
	\$1,181.53

24. At or around the time he sought reinstatement of his law license, Ford contacted Lenins at his last known address, to attempt to tender restitution. Lenins did not respond to the letter and it appears that he has moved to another address.

25. Ford did not make any attempt to make restitution to the remaining former clients mentioned in paragraph 23, although he was on notice since at least 1995 that full restitution had not been paid to them.

26. In September 2001, Dr. James H. Hilkey, Ph.D., evaluated Ford to determine if Ford suffered from addiction to or abuse of alcohol or drugs. Dr. Hilkey did not find that Ford suffered from any addiction or alcohol or drug use. Dr. Hilkey did not evaluate Ford for possible gambling problems.

27. Ford testified that he had miscalculated the statute of limitations regarding his claims against United Carolina Bank, which had honored forged checks presented against his trust account in 1991 and 1992. Ford did recover approximately \$15,000 from UCB which he paid to partially reimburse sums paid by the Client Security Fund to Ford's former clients. Ford also testified that he had miscalculated the deadline by which he could seek reinstatement of his law license without taking the bar examination.

28. The N.C. State Bar presented no evidence indicating that Ford had engaged in the unauthorized practice of law during the term of his disbarment, or that indicated that he engaged in conduct, which, if licensed, would have subjected him to professional discipline pursuant to N.C. Gen. Stat. § 84-28.

BASED UPON THE FOREGOING Findings of Fact, the Hearing Committee hereby makes the following

CONCLUSIONS OF LAW

1. Ford's failure to take adequate steps to determine what costs and fees were owed before filing his petition, which alleged that he had complied with the disciplinary order and his failure to pay the CLE late fee, causes the Hearing Committee to conclude that Ford has not sufficiently established that he will pay attention to detail and accuracy in representing clients in the future.

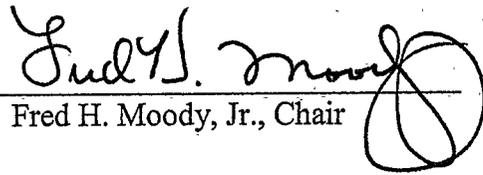
2. It would be detrimental to the standing of the legal profession and to the public interest to reinstate a disbarred attorney who had not made restitution to all clients who lost funds as a result of his misconduct.

3. Ford has failed to demonstrate by clear, cogent and convincing evidence that he has complied with 27 N.C. Admin. Code Chapter 1, Subchapter B, Sections .0125(a)(3)(D),(G), (M) and (N).

WHEREFORE, the Hearing Committee of the Disciplinary Hearing Commission recommends that the petition for reinstatement filed in this matter by David P. Ford be DENIED.

Signed by the undersigned Chair with the full knowledge and consent of all hearing committee members.

This the 19 day of July, 2002.


Fred H. Moody, Jr., Chair