

22505

WAKE COUNTY
NORTH CAROLINA



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
03 DHC 14

THE NORTH CAROLINA STATE BAR
Plaintiff

v.

TRACY L. GASTON, ATTORNEY
Defendant

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER OF DISCIPLINE

THIS MATTER came on to be heard and was heard before a hearing committee of the Disciplinary Hearing Commission composed of T. Paul Messick, Jr., M. Ann Reed and H. Dale Almond on Oct. 24, 2003. The Defendant, Tracy L. Gaston, appeared on his own behalf. Carolin Bakewell represented the State Bar.

Based upon the evidence presented at trial and the pleadings herein, the Hearing Committee hereby 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, Tracy L. Gaston (Gaston) was admitted to the North Carolina State Bar in 1995, 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 relevant hereto, Gaston was engaged in the practice of law in the City of Charlotte, North Carolina.

4. The State Bar filed its summons and complaint in this matter on Aug. 5, 2003.

5. Gaston was personally served with the summons and complaint on Aug. 15, 2003 and his answer was therefore due no later than Sept. 4, 2003.

6. Gaston failed to file an answer or other responsive pleading.

7. On Sept. 10, 2003, the Secretary of the N.C. State Bar entered Gaston's default.

8. On or shortly after Sept. 10, 2003 Gaston was served with notice of the default and with notice of the time, date and place of this hearing.

9. On the morning of trial, Gaston filed a motion to continue the hearing. Following argument regarding the motion, the hearing committee denied Gaston's request.

The Nall Grievance -- Count 3

10. On or about October 15, 2000, Darwin K. Nall (Nall), retained Gaston to represent him regarding a traffic citation he had received earlier that month.

11. Although Gaston assured Nall that he would "handle everything," Gaston failed to appear at a hearing in Nall's case on Dec. 15, 2000.

12. In January 2001, Nall received a letter from the N.C. Department of Motor Vehicles advising him that his driver's license was about to be suspended because neither he nor Gaston had appeared in court on Dec. 15, 2000.

13. Nall contacted Gaston and told him about the DMV letter. Gaston assured Nall that he would "take care of" the situation.

14. Despite these assurances, Gaston did not take effective steps to correct the situation, and Nall's driver's license was suspended.

15. Meanwhile, Gaston did not communicate adequately with Nall nor did he keep him advised regarding the status of his case.

16. In February 2001, Nall was charged with driving while his license was suspended (DWLS).

17. Gaston undertook to represent Nall regarding the DWLS charge.

18. Gaston failed to take effective steps to resolve the DWLS charge for Nall.

19. Prior to February 2001, Gaston also undertook to handle a workers' compensation case for Nall.

20. In February 2001, Nall asked Gaston file a form 33 with the N.C. Industrial Commission to request a hearing in the workers' compensation case.

21. Gaston failed to file the form 33 or take other effective steps to resolve Nall's workers' compensation claim.

22. Gaston failed to communicate adequately with Nall about the status of the workers' compensation case.

23. On Jan. 28, 2002, Nall filed a grievance against Gaston with the 26th Judicial District Grievance Committee.

24. On Feb. 18, 2002, the Chair of the 26th Judicial District Grievance Committee notified Gaston that Nall had filed a complaint and directed him to respond within 15 days.

25. On May 21, 2002, Rick Poe (Poe), the member of the 26th Judicial District Grievance assigned to investigate Nall's complaint, contacted Gaston and reminded him that his response to Nall's complaint was overdue.

26. On June 3, 2002, Gaston sent a letter to Poe and requested more time to respond. Poe agreed to permit Gaston until June 15, 2002 to respond.

27. Gaston did not respond to the letter of notice regarding Nall's grievance.

The Middleton Grievance – Count 4

28. Prior to Sept. 26, 2001, Gaston agreed to draft a will for John Middleton (Middleton).

29. Middleton paid Gaston a \$400 fee for this service on Oct. 5, 2001.

30. Gaston did not draft the will and refused to return the \$400 fee he received, despite Middleton's requests for a refund.

31. On Nov. 6, 2001, Middleton filed a fee dispute petition with the 26th Judicial District Grievance Committee (Middleton fee dispute).

32. On Feb. 27, 2002, Gaston appeared at the scheduled mediation in the Middleton fee dispute case. He agreed to complete the will for Middleton and refund the \$400 fee by March 8, 2002.

33. Despite these assurances, Gaston did not complete Middleton's will nor did he refund the fee.

34. Gaston did not respond to several inquiries from Mark Michael (Michael), the mediator assigned to the Middleton fee dispute, nor did he participate in the fee dispute process in good faith.

35. On or about April 10, 2002, the 26th Judicial District Grievance Committee established a grievance file against Gaston (Middleton grievance) based upon his failure to participate in the Middleton fee dispute process in good faith.

36. On April 10, 2002, Gaston was notified of the Middleton grievance and was directed to respond within 15 days

37. On July 15, 2002, Elizabeth Edwards, the member of the 26th Judicial District Grievance Committee assigned to investigate the Middleton grievance, wrote to Gaston and reminded him that he had not responded to Middleton's grievance.

38. Gaston did not reply to the letter of notice or to the July 15, 2002 follow up letter concerning the Middleton grievance.

The Douglas Grievance – Count 5

39. On Nov. 10, 2001, Ora M. Douglas (Ms. Douglas) paid Gaston \$350 to handle a traffic ticket for her brother, Henry Douglas (Douglas).

40. Gaston failed to take effective action to resolve Douglas' ticket.

41. Gaston failed to communicate adequately with Douglas or Ms. Douglas about the case.

42. Prior to March 10, 2002, Ms. Douglas demanded a refund of the fee.

43. Gaston failed and refused to return any portion of the \$350 fee.

44. On March 21, 2002, Ms. Douglas filed a grievance against Gaston with the North Carolina State Bar.

45. On May 8, 2002, Gaston was notified of Ms. Douglas' grievance and was directed to respond to the letter of notice within 15 days.

46. Gaston was served with additional notices concerning Ms. Douglas' complaint on Oct. 8, 2002 and Nov. 1, 2002.

47. Gaston failed to respond to any of the notices regarding Ms. Douglas' complaint.

48. On Nov. 22, 2002, the Secretary of the North Carolina State Bar issued a subpoena to Gaston, directing him to produce his entire client file regarding Douglas' case to the State Bar.

49. On Nov. 22, 2002 Gaston was personally served with the subpoena.

50. Gaston willfully failed and refused to comply with the terms of the Nov. 22, 2002 subpoena.

51. Meanwhile, on or about April 12, 2002, Ms. Douglas filed a fee dispute petition regarding Gaston with the North Carolina State Bar.

52. Gaston did not respond to the notice of the Douglas fee dispute nor did he participate in the fee dispute resolution process in good faith.

53. On July 25, 2002, the North Carolina State Bar established a grievance file against Gaston, based upon his failure to respond to the notice of fee dispute petition filed by Ms. Douglas. The grievance file was assigned file number 02G 1136.

54. On Oct. 31, 2002, Gaston was personally served with the State Bar's letter of notice regarding grievance file number 02G 1136 and was directed to respond to the letter of notice no later than Nov. 15, 2002.

55. On Feb. 6, 2003, the State Bar sent a follow up letter to Gaston, reminding him that he had not responded to the letter of notice in file 02G 1136.

56. Gaston did not respond to the letter of notice or the Feb. 6, 2003 reminder letter regarding file number 02G 1136.

The Daye Grievance—Count 6

57. In September 1999, Lucious Daye (Daye), retained Gaston to represent him respecting issues of visitation, child custody and equitable distribution (the domestic case). On Sept. 20, 1999, Daye or a relative paid Gaston a \$1,000 retainer in the domestic case.

58. At the same time, Gaston agreed to represent Daye regarding a civil action then pending in Durham County Superior Court, concerning alleged illegal sale of personal property by Daye's ex wife (the property case).

59. Gaston failed to take effective steps to resolve the domestic case and failed to keep Daye adequately informed of the status of the case.

60. Gaston failed to appear at hearings in Orange County District Court in the domestic case on Feb. 4, 2002, Feb. 11, 2002 and March 4, 2002, despite having received notice of the court dates.

61. Following Gaston's failures to appear in court, the trial judge directed Gaston to appear and show cause why he should not be held in contempt.

62. The show cause hearing was held March 28, 2002 before Hon. Pat Devine. Gaston testified that he had had hearings in other courts on the days of the Daye hearings but acknowledged that he had failed to let the Orange County court know of these scheduling conflicts.

63. Judge Devine declined to hold Gaston in contempt, but advised him that he had lost all credibility with her. She urged him to refund Daye's fee and gave Daye the telephone number of the North Carolina State Bar.

64. Meanwhile, opposing counsel in the property case moved for summary judgment. Gaston failed to respond to the motion and failed to appear at the hearing on the motion for summary judgment.

65. Gaston did not tell Daye that summary judgment had been entered against him in the property case and instead falsely advised Daye that he was negotiating a settlement of the case.

66. On May 17, 2002, Daye filed a grievance against Gaston with the North Carolina State Bar (Daye grievance).

67. On Aug. 22, 2002, the State Bar issued a letter of notice to Gaston, directing him to file a written response to the Daye grievance within 15 days. The letter of notice was served on Gaston on Oct. 4, 2002.

68. On Nov. 1, 2002, the North Carolina State Bar sent a follow up letter to Gaston, reminding him that no response had been received.

69. Gaston did not respond to the letter of notice or to the Nov. 1, 2002 follow up letter concerning the Daye grievance.

70. On Nov. 22, 2002, the State Bar issued a subpoena to Gaston, directing him to produce Daye's client file to the State Bar on Jan. 15, 2003.

71. Gaston was served with the State Bar's subpoena on Nov. 22, 2002.

72. Gaston failed to produce the records as commanded by the Nov. 22, 2002 State Bar subpoena.

73. On or about Aug. 14, 2002, Daye filed a fee dispute petition with the North Carolina State Bar against Gaston.

74. On Oct. 31, 2002 Gaston was served with notice of the fee dispute petition and was directed to file a written response no later than Nov. 15, 2002.

75. Gaston did not respond to the notice concerning the Daye fee dispute petition nor did he participate in the mandatory fee dispute resolution process in good faith.

76. On Dec. 18, 2002, the North Carolina State Bar established a grievance file against Gaston based upon his failure to respond to the notice of Daye's fee dispute petition. The grievance file was assigned file number 02G 1744.

77. On Jan. 31, 2003, Gaston was personally served with the State Bar's letter of notice regarding grievance file number 02G 1744. Gaston was required to respond to the letter of notice no later than Feb. 15, 2003.

78. Gaston did not respond to the letter of notice regarding file number 02G 1744.

The McKay Grievance – Count 7

79. On May 15, 2002, Annette McKay (Ms. McKay) filed a grievance against Gaston with the 26th Judicial District Grievance Committee.

80. On May 24, 2002, Gaston was notified of Ms. McKay's complaint and was directed to respond within 15 days.

81. Gaston failed to respond to Ms. McKay's complaint.

The Mungo Grievance – Count 8

82. On Feb. 21, 2003 Anthony Mungo (Mungo), filed a complaint against Gaston with the N.C. State Bar.

83. On March 29, 2003 Gaston was personally served with the letter of notice regarding Mungo's grievance and was directed to file a response within 15 days.

84. Gaston failed to respond to Mungo's grievance.

The CSI Grievance – Count 2

85. In June or early July 2002, Gaston was approached by a disbarred attorney, Jeffrey A. Hopkins (Hopkins) and an accountant named Mark Wilkerson (Wilkerson).

86. Gaston knew that Hopkins had been disbarred for embezzling client funds.

87. Hopkins, Gaston and Wilkerson planned to create a corporation through which Hopkins could continue to close residential real estate loans and perform legal work, while creating the false appearance that Gaston was supervising the work and disbursement of the closing funds.

88. On July 16, 2002, pursuant to his agreement with Hopkins and Wilkerson, Gaston formed a corporation called Closing Services Inc. (hereafter, CSI) for the purpose of conducting residential real estate closings in the Mecklenburg County.

89. Hopkins conducted at least 40 real estate closings through CSI between July and October 2002.

90. All or most of the CSI closings were conducted in Hopkins' former law office on Austin Avenue in Charlotte. The sign in front of the office identified Hopkins as a "juris doctor/master of laws in taxation."

91. Gaston did not have an office in the Austin Avenue location and continued to practice law out of his apartment at another location in Charlotte.

92. Hopkins and his secretary, Margaret Stogner (Stogner) performed the actual legal work associated with the CSI closings, including drafting deeds, deeds of trust and title opinions.

93. Gaston did not adequately supervise the legal work performed by Hopkins and Stogner and in fact, was not familiar with real estate law.

94. Gaston knowingly assisted Hopkins and Stogner to engage in the unauthorized practice of law.

95. Some or all of the funds relating to the CSI real estate closings passed through a bank account maintained by CSI at First Citizens Bank (CSI bank account).

96. Hopkins and Stogner regularly handled client and fiduciary funds relating to the CSI closings, CSI, despite the fact that the Wake County Superior Court had ordered Hopkins not to handle client or fiduciary funds or permit his agents and employees to do so in January 2001.

97. Gaston was not a signatory authority on the CSI bank account, did not have regular access to account records, did not maintain ledgers for individuals whose funds were handled by CSI and failed to reconcile the account at least quarterly to ensure that closing funds were handled properly.

98. In most of the closings handled through CSI, Hopkins and/or Stogner received a \$450 "attorney fee" and paid another \$100 as a fee to Gaston.

99. On Oct. 31, 2002, the N.C. State Bar served Gaston with a subpoena for cause audit directing him to produce records relating to CSI's bank accounts.

100. Gaston failed to produce all of the records as required by the State Bar's subpoena.

101. On Nov. 22, 2002, the Wake County Superior Court issued a preliminary injunction which forbade Gaston from handling client funds and directed him to produce copies of the CSI records to the State Bar.

102. Gaston was present in court when the Nov. 22, 2002 order was entered and consented to it.

103. The Nov. 22, 2002 injunction has never been dissolved or amended.

104. Gaston failed to provide all documents required by the Nov. 22, 2002 order and the State Bar thereafter instituted contempt proceedings against Gaston.

105. On April 8, 2003 the Wake County Superior Court found Gaston guilty of criminal contempt for failing to produce all of the records described in the Nov. 22, 2002 court order.

The Alexander Grievance -- Count 1

106. After entry of the Nov. 22, 2002 court order, Gaston began using his existing operating account at Mechanics & Farmers Bank, number 3101180513 (trust account) as a trust account. Gaston began channeling client and fiduciary funds into the account for the express purpose of circumventing the Nov. 22, 2002 court order.

107. On numerous occasions between Dec. 11, 2002 and Sept. 8, 2003 when Mechanics & Farmers "froze" the trust account pursuant to the Nov. 22,

2002 injunction, Gaston received and disbursed client funds, although he was on notice that to do so was in violation of the court's order.

108. On April 17, 2003, Gaston served as settlement agent for the sale of real property at 9804 Bradstreet Commons Way, Charlotte, N.C. from Craft Homes, Inc. to Kimberly Alexander (Alexander).

109. On April 17, 2003, Gaston received \$174,785 from First Franklin Financial on behalf of Ms. Alexander. Gaston was directed to disburse these funds only as set out in the closing instructions from First Franklin Financial.

110. On April 22, 2003, Gaston disbursed \$1,400 of the Alexander closing funds to Clayton Cousart (Cousart). This expenditure was not listed on or authorized by the HUD-1 closing statement for the transaction.

111. Between April 17, 2003 and May 21, 2003, Gaston disbursed a total of \$38,129 of the Alexander closing funds to Craft Homes, Aggressive Mortgage and other third parties. No other disbursements were made from the trust account to or for Alexander after May 21, 2003.

112. At all times on and after May 21, 2003 Gaston should have held a balance of at least \$136,656 in trust for Alexander.

113. The balance in Gaston's trust account fell below \$136,656 on May 30, 2003 and remained below that figure until June 13, 2003, when Gaston deposited another client's funds into the trust account. The balance in the trust account also fell below \$136,656 between July 11 - July 22, 2003.

114. Although the balance in the trust account remained above \$136,656 after July 22, 2003, Gaston did not replace Alexander's funds and the bulk of the money in the account belongs to clients other than Alexander.

115. Gaston misappropriated a portion of Alexander's closing proceeds for his personal benefit without Alexander's knowledge or consent.

116. On various occasions between Dec. 11, 2002 and Sept. 8, 2003 Gaston issued checks drawn on the trust account to pay personal expenses, including his malpractice insurance premium, donations to two churches, auto mechanics' bills, and utilities and cable TV bills.

117. The total amount of the checks which Gaston issued to himself and to third parties for his own behalf exceeded the amount of earned fees and personal funds that Gaston had on deposit in the trust account. Consequently, client and fiduciary monies were used to fund some or all of these checks.

ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE

118. Gaston's law license was suspended by the N.C. State Bar Council for failure to pay his mandatory State Bar dues on May 21, 2003.

119. Gaston was personally served with notice of the suspension of his law license by the Mecklenburg County Sheriff's Department and therefore was aware that he was not properly licensed to practice law after May 21, 2003.

120. Gaston continued to conduct residential real estate closings on and after May 21, 2003 although he knew that he was no longer licensed to practice law.

121. In addition to the misconduct set out in the State Bar's complaint in this matter, the Committee finds that Gaston also violated the Rules of Professional Conduct in the following respects:

a) Gaston neglected a domestic action which he undertook for a client named Emma Moffett. He also refused to refund any portion of the fee to Ms. Moffett.

b) Gaston neglected a criminal case he undertook in December 2002 for a client named Muhammad S. Jaaber. Gaston failed to refund any portion of the \$600 retainer paid by Jaaber and failed to communicate with his client.

c) Gaston failed to file a custody action on behalf of a client named Mae Patterson and refused to refund any portion of the \$800 fee paid to him by Ms. Patterson.

d) Gaston failed to return the unearned portion of a \$300 fee paid to him by a client named Constance Haines in August 2001 and failed to participate in the fee dispute process in good faith after Haines filed a fee dispute petition with the Mecklenburg County Bar.

e) Gaston failed to respond to a letter of notice served on him by the Mecklenburg County Sheriff's Department on March 27, 2003 regarding Ms. Haines' fee dispute.

f) Gaston undertook to represent a client named Betty Walker regarding her claims of wrongful discharge, medical malpractice and disability insurance but failed to keep her informed about the status of those cases. When Ms. Walker filed a grievance with the State Bar, Gaston failed to respond to the letter of notice, which was served on him by the Mecklenburg County Sheriff's Department on March 27, 2003.

g) Gaston undertook to represent a client named Arlena Hoyle regarding a contract dispute in September 2002. He failed to communicate with Ms. Hoyle, neglected her case and failed to return the unearned portion of the \$250 fee paid to him.

Based upon the foregoing Findings of Fact, the Hearing Committee hereby enters the following:

CONCLUSIONS OF LAW

1. The Disciplinary Hearing Commission has jurisdiction over the person of the Defendant, Tracy Gaston, and over the subject of this proceeding.

2. Gaston was properly served with notice of the time, date and place of this hearing.

3. The allegations in the State Bar's complaint are deemed admitted by virtue of Gaston's default.

4. Gaston's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. Section 84-28(b)(1) and (2) as follows:

a) By misappropriating all or a portion of the Alexander closing funds without his client's knowledge and consent, Gaston engaged in a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer, in violation of Rule 8.4(b); engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and intentionally prejudiced his client in violation of Rule 8.4(g).

b) By failing to disburse \$115,922 to BB&T to pay off the prior mortgage on Alexander's property as required by the closing instructions, Gaston neglected a client matter in violation of Rule 1.3 and failed to disburse funds as directed by his client in violation of Rule 1.15-2(m).

c) By continuing to handle client or fiduciary funds in violation of Judge Abraham P. Jones' order of Nov. 22, 2002, Gaston engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d), and knowingly violated an order of a tribunal in violation of Rule 3.4(c).

d) By assisting Hopkins and Stogner to engage in the unauthorized practice of law and by failing to adequately supervise their activities, Gaston violated Rule 5.3(b) and (c) and Rule 5.5.

e) By dividing legal fees with Hopkins and Stogner for closings conducted through CSI, Gaston shared fees with non-lawyers, in violation of Rule 5.4.

f) By failing to maintain client ledgers, canceled checks, deposit slips and monthly bank statements relating to the CSI account, Gaston violated Rule 1.15-3.

g) By willfully ignoring the State Bar's subpoena and the Wake County Superior Court's order of Nov. 22, 2002 which required him to turn over CSI records to the State Bar, Gaston failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

h) By failing to take adequate steps to resolve Nall's traffic and workers' compensation cases, Gaston neglected client matters in violation of Rule 1.3.

i) By failing to respond to letters of notice served upon him concerning the Nall, Middleton, Douglas, Daye and McKay matters Gaston failed to respond to lawful demands for information from a disciplinary authority in violation of Rule 8.1(b).

j) By failing to participate in good faith in the fee dispute resolution process in the Middleton, Douglas, Daye, Gaston violated Rule 1.5(f)(2).

k) By failing to draft the will for Middleton as promised, Gaston neglected a client matter in violation of Rule 1.3.

l) By failing to refund the \$400 fee paid to him by Middleton, Gaston retained an excessive fee in violation of Rule 1.5.

m) By failing to take effective steps to resolve Douglas' traffic matter, Gaston neglected a client case in violation of Rule 1.3.

n) By failing to keep Darwin Nall, Henry and Ora Douglas, Lucious Daye advised about the status of their cases and by failing to respond to their inquiries for information, Gaston failed to communicate with a client in violation of Rule 1.4.

o) By failing to take effective action to resolve Daye's domestic and property cases, by failing to appear in court on three occasions regarding the domestic case and by failing to respond to opposing counsel's motion for summary judgment in the property case, Gaston neglected a client matter in violation of Rule 1.3.

p) By falsely advising Daye that he was negotiating a settlement in the property case when in fact summary judgment had been entered in that matter, Gaston engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

5. Gaston's misconduct is aggravated by the following factors:

- a) Multiple violations of the Revised Rules of Professional Conduct.
- b) Lack of cooperation with and obstruction of the investigation of the allegations in the State Bar's complaint.
- c) Lack of restitution.
- d) Gaston's misconduct was motivated in part by greed and dishonesty.
- e) Prior discipline: an admonition in April 2002 for failing to respond to a former client's grievance, and an admonition in July 2002 for failing to communicate with a client and filing a late response to another client's complaint.
- f) A pattern of misconduct.

6. The hearing committee does not find that any mitigating factors are present.

7. The aggravating factors substantially outweigh the mitigating factors.

8. Gaston's misconduct has caused significant harm to his clients and other members of the public and to the administration of justice.

9. Gaston's misconduct has also harmed the standing of the legal profession by undermining his clients' trust and confidence in lawyers and the legal system.

10. Gaston's repeated failures to respond to letters of notice from the State Bar and the 26th Judicial District Grievance Committee and his failures to participate in fee dispute mediation process undermine the State Bar's ability to regulate attorneys and undermines the privilege of lawyers in this state to remain self regulating.

11. An order calling for discipline short of disbarment would not sufficiently protect the public for the following reasons:

a. Gaston continued to practice law and continued to violate the Revised Rules of Professional Conduct after his law license was suspended for nonpayment of dues in May 2003 and it is thus apparent that a suspension order is insufficient to protect the public from further instances of misconduct.

b. Gaston engaged in multiple violations of the Revised Rules of Professional Conduct over a lengthy period of time. His misconduct thus did not arise from the heat of the moment or a single mistake or act of bad judgment. Some of his misconduct involved serious dishonesty and is thus the result of a character flaw that is not readily changeable.

c. Gaston has failed to provide any assurances that he has addressed whatever problem or character flaw caused his misconduct and therefore there is a substantial risk that he would engage in further misconduct if allowed to continue the practice of law.

d. Gaston has shown a persistent disregard for and unwillingness to be bound by the Rules of Professional Conduct, orders of the State Bar and orders of the Superior Courts of this State. The Commission therefore concludes that there is substantial risk that Gaston would continue to engage in misconduct if allowed to continue the practice of law.

e. Entry of an order imposing lesser discipline would fail to acknowledge the seriousness of the offenses which Gaston committed, would be inconsistent with orders of discipline entered by the Commission in similar cases and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar in this State.

f. The protection of the public requires that Gaston not be permitted to resume the practice of law until he demonstrates that he has reformed, that he understands his obligations to his clients and that reinstatement would not injure the standing of the legal profession. Disbarred attorneys must show reformation among other things, before they may resume the practice law, whereas no such showing of reformation is required of attorneys whose licenses are merely suspended for a term certain.

WHEREFORE, it is hereby ORDERED:

1. The Defendant, Tracy Gaston, is hereby DISBARRED.

2. Gaston shall comply with all of the provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, Section .0124 of the Discipline & Disability Rules of the N.C. State Bar.

3. Gaston shall pay the costs of this hearing within 30 days of service of notice of the costs by the Secretary of the State Bar.

4. Gaston shall provide to the Office of Counsel copies of the following documents within 30 days of service of the order herein:

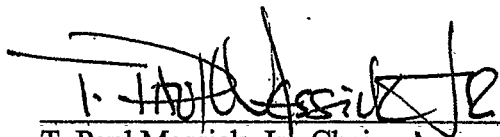
a. HUD-1s, disbursement summaries and settlement statements for all real estate closings which he handled from the period Dec. 1, 2002 – Oct. 24, 2003.

b. All client ledger sheets for all real estate closings which he handled between Dec. 1, 2002 – Oct. 24, 2003.

c. Copies of all monthly bank statements, canceled checks, deposited items, deposit slips and other records relating to any account into which client or fiduciary funds were deposited between Dec. 1, 2002 – Oct. 24, 2003.

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

This the 6th day of NOVEMBER 2003.



T. Paul Messick, Jr., Chair
Disciplinary Hearing Committee