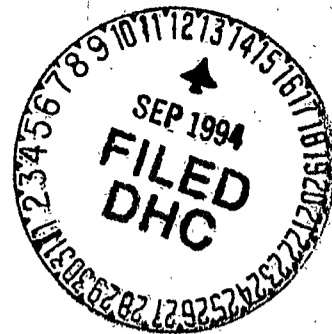


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BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR



94 DHC 8

THE NORTH CAROLINA STATE BAR,	)	
Plaintiff	)	FINDINGS OF FACT
vs.	)	AND
RICHARD A. PENISTON, ATTORNEY,	)	CONCLUSIONS OF LAW
Defendant	)	

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This matter coming before a duly appointed hearing committee of the Disciplinary Hearing Commission pursuant to Article IX, Section 14(H) of the Rules and Regulations of the North Carolina State Bar; and it appearing that the parties have agreed to waive a formal hearing in this matter; and it further appearing that the parties stipulate and agree to the following Findings of Fact and Conclusions of Law, the hearing committee therefore enters the following:

FINDINGS OF FACT

1. The North Carolina State Bar (hereafter "plaintiff") 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. Richard A. Peniston (hereafter "defendant") was admitted to the North Carolina State Bar on September 8, 1977, and is, and was at all times referred to herein, an Attorney at Law licensed to practice in North Carolina, subject to the rules, regulations, and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.
3. During all of the periods referred to herein, defendant was actively engaged in the

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practice of law in the State of North Carolina and maintained a law office in the City of Charlotte, Mecklenburg County, North Carolina.

4. Beginning in the latter part of October 1991 and continuing through April, 1992, defendant engaged the Charlotte Referral Service (hereafter "CRS") to refer personal injury clients to defendant in exchange for the payment of \$1,500.00 per month.
5. At least 93 prospective clients, including Ms. Bessie Lee, Ms. Marie Spencer, and Mr. Guy Robinson, were referred to defendant by CRS. Defendant earned at least \$85,821.19 in fees from these clients. Defendant did not have a prior attorney-client relationship with any of these persons.
6. During the time defendant participated in CRS, employees and/or agents of CRS engaged in in-person solicitation of prospective clients. Defendant was not aware that CRS was engaged in improper solicitation of prospective clients until March 1992. Even after he was aware of the improper solicitation by CRS employees, defendant continued to accept referrals from CRS.
7. During the time defendant participated in CRS, advertisements disseminated by CRS failed to state that it was privately operated, failed to state that a list of participating lawyers would be provided free of charge upon request, and failed to make it clear that CRS was not operated or endorsed by any public agency.
8. Defendant paid CRS \$1,500 per month in exchange for the referrals described in paragraph five.
9. The \$1,500 payment was not based upon the reasonable monthly costs incurred by CRS in administering its referral service or the actual monthly costs of advertisements disseminated by CRS.

Based upon the foregoing FINDINGS OF FACT, the hearing committee makes the following:

#### CONCLUSIONS OF LAW

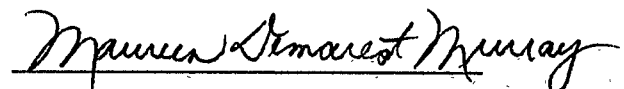
1. By participating in CRS whose employees and/or agents engaged in in-person

solicitation of prospective clients, defendant violated Rule 2.2(C)(4).

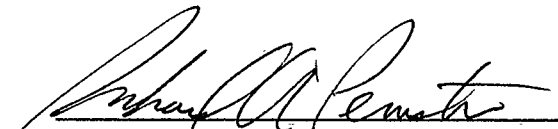
2. By participating in CRS which disseminated advertisements which failed to state that it was privately operated, failed to state that a list of participating lawyers would be provided free of charge upon request, and failed to make it clear that CRS was not operated or endorsed by any public agency, defendant violated Rule 2.2(C)(5).
3. By failing to base the amount paid to CRS each month on the reasonable costs incurred by CRS in administering its referral service or the actual costs of advertisements disseminated by CRS, defendant gave value to a person for recommending defendant's services in violation of Rule 2.2(C).


This the 12<sup>th</sup> day of September, 1994.

Signed by the Chair of the committee with the consent of all the committee members.

  
Maureen Demarest Murray, Chair

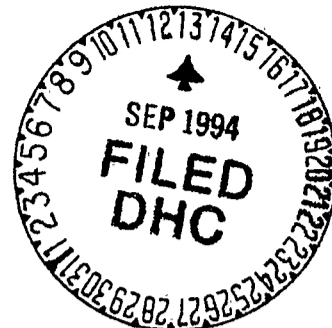
WE CONSENT:

  
Richard A. Peniston, Defendant

  
George V. Laughrun, II, Attorney  
for Defendant

  
R. David Henderson, Attorney for  
Plaintiff

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR



94 DHC 8

THE NORTH CAROLINA STATE BAR,        )  
    Plaintiff                                )  
    vs.                                        )    **CONSENT ORDER OF DISCIPLINE**  
RICHARD A. PENISTON, ATTORNEY,        )  
    Defendant                                )

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Based upon the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW, and with the consent of the parties hereto, the hearing committee enters the following:

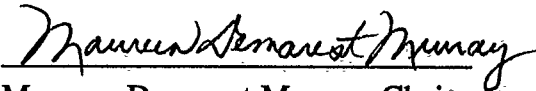
**ORDER**

1. Peniston is hereby suspended from the practice of law for a period of one year.
  
2. The suspension is stayed for a period of three years upon the following conditions:
  - a. Peniston shall not participate in any lawyer referral service during the stay period.
  
  - b. Peniston shall take twice the amount of ethics and professional responsibility courses required by the Board of Continuing Legal Education during the stay period. Peniston shall submit written verification that he has complied with this condition no later than the end of the stay period.
  
  - c. Peniston shall obtain a passing grade on the Multistate Professional Responsibility Exam (MPRE) during the stay period. Peniston shall submit proof that he has complied with this condition to the State Bar no later than the end of the stay period.

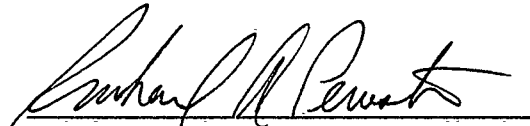
- d. Peniston shall not violate any Rules of Professional Conduct or any state or federal laws during the stay period.
3. Peniston shall pay the costs of this proceeding as assessed by the Clerk within thirty days of notice thereof.

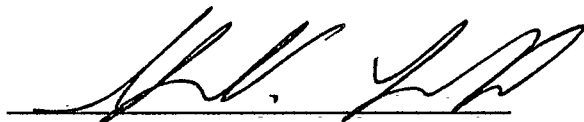
This the 12th day of September, 1994.

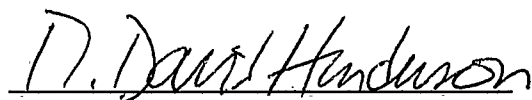
Signed by the Chair of the committee with the consent of all the committee members.

  
Maureen Demarest Murray, Chair

WE CONSENT:

  
Richard A. Peniston, Defendant

  
George V. Laughrun, II, Attorney  
for Defendant

  
R. David Henderson, Attorney for  
Plaintiff

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