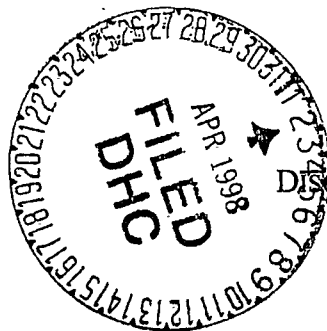


WAKE COUNTY
NORTH CAROLINA



12815

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
97 DHC 6

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

BARBARA MORENO, Attorney,
Defendant

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER OF DISCIPLINE

This matter was calendared for trial and heard on the 26th day of September, 1997 before a duly appointed committee of the Disciplinary Hearing Commission consisting of Joseph G. Madrey, Chair, Vernon A. Russell, and B. Stephen Huntley. The Plaintiff was represented by Clayton W. Davidson III, Deputy Counsel. The Defendant was represented by James B. Maxwell.

BASED on the evidence presented at the trial of this matter, and the pleadings and pre-trial stipulations of record, the committee makes the following:

FINDINGS OF FACT

1. All parties are properly before the Hearing Committee and the Hearing Committee has jurisdiction over the defendant and the subject matter.
2. The Plaintiff, the North Carolina State Bar (the "State Bar") is a body duly organized under the laws of the State of North Carolina and is the proper body to bring this proceeding under the authority granted to it in Chapter 84 of the General Statutes of North Carolina and the rules and regulations of the State Bar promulgated pursuant thereto (the "State Bar Rules and Regulations").
3. Barbara Moreno was admitted to practice law in the state of North Carolina in 1985 and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the State Bar Rules and Regulations and the Rules of Professional Conduct of North Carolina.
4. For more than two years and through approximately December 1988, Barbara Moreno practiced law in High Point, North Carolina, with the law firm of Hayworth, Riggs, Kuhn & Hayworth.

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5. In January 1989, Barbara Moreno opened an office for the practice of law under the style of The Legal Alternative, but did not begin an active practice until August 1989.
6. A trust account was opened on behalf of The Legal Alternative at First Citizens Bank on August 14, 1989, and was designated as Account #4012299835.
7. On October 20, 1993, all banking operations of The Legal Alternative were transferred to Branch Banking & Trust Company in High Point, North Carolina, with the following accounts:
 - A. The Legal Alternative Operating Account (the "Operating Account")
Acct. #5113164494
 - B. The Legal Alternative Trust Account (the "Trust Account")
Acct. #5113164486
 - C. The Legal Alternative business regular savings account
Acct. #5412170727
8. Shortly after Barbara Moreno began practicing law under the name and style of The Legal Alternative, The Legal Alternative began direct mail advertising and solicitations for individuals who were charged with traffic offenses or infractions in the various counties in which The Legal Alternative was practicing.
9. From the period beginning 1989 up to and through 1995, The Legal Alternative's attorney staff grew to as many as nine attorneys and The Legal Alternative was representing citizens in the District Courts in more than 35 counties for traffic offenses and infractions.
10. Initially (1989 and for several years subsequent thereto) The Legal Alternative and its attorneys were practicing in counties wherein the practice was to allow a plea to be entered and then a period of time, up to 30 days, in which the defendant could pay any fine or cost imposed as a result of a traffic citation or infraction. In those circumstances and during that period of time, when a prospective client would contact The Legal Alternative pursuant to one of its letter solicitations, a fee (generally \$150) would be quoted and upon receipt of that fee, The Legal Alternative would make an appearance on behalf of the client, ultimately negotiate or enter a plea to dispose of the case, and the client would then be notified that the case had been closed and that he/she had until a date certain to pay the respective Clerk of the Superior Court any cost and fine that might be imposed.
11. As The Legal Alternative's service area expanded and certainly by 1994, many of the counties in which it was representing clients had a different practice in place and required that any fine or court cost be paid at the time the case was disposed of, or within a relatively short period of time thereafter (normally, less than one week). Alamance

County, North Carolina was one of those counties requiring payment of the fine and cost to be made contemporaneously with the date of disposition or shortly thereafter.

12. In those circumstances in which a prospective client would contact the office of The Legal Alternative for representation in a traffic matter in a county in which the cost and fine were required to be paid contemporaneously with the disposition of the case or shortly thereafter, the client would be quoted a "flat fee" which would include the \$150 fee to The Legal Alternative, the \$60 of anticipated cost, and any fine that might be anticipated.
13. When the prospective client retained The Legal Alternative to represent him/her by sending in his/her check for that full amount, that check was then deposited into The Legal Alternative's Operating Account (BB&T Acct. #5113164494), rather than the Trust Account.
 - A. The Operating Account contained earned fees and other funds of the Defendant or The Legal Alternative, and was not designated as an account which held funds in a fiduciary capacity.
 - B. In the period between at least 1993 - 1995, the funds of more than 3,000 clients, which included fines and court costs to be paid on behalf of the clients in addition to fees to The Legal Alternative, were deposited into the Operating Account and were not deposited into the Trust Account. Exhibit 11 is a list produced by the Defendant of all clients of The Legal Alternative who had traffic matters in the time frame referred to herein. The highlighted names are those of clients who paid anticipated fines and court costs to The Legal Alternative at the same time they paid their fee, but prior to the time that the amounts were due to any Clerk of Superior Court. These funds were deposited into the Operating Account.
14. In March 1994, Bruno DeMolli of the North Carolina State Bar conducted a random audit of Defendant's trust account practices. The audit revealed that Defendant received funds with a mix of trust and non-trust funds which were not always deposited into the trust account of the Defendant. The report further indicated that the respondent did not always indicate the client balance. On March 22, 1994, Defendant wrote a letter to Mr. DeMolli which stated that they had implemented procedures to alleviate the deficiencies alleged. Included in that letter is a statement that Defendant wanted to make sure that all funds which needed to be deposited into the trust account were so deposited. She also indicated an intention to have current client ledger cards.
15. On June 18, 1994, Dr. Amin N. Bascharon, of West Chicago, Illinois, received a citation in Alamance County, North Carolina, for speeding 70 mph in a 55 mph zone. He was ordered to appear in Alamance County District Court on July 18, 1994. Thereafter, Dr. Bascharon received an advertisement for legal services from The Legal Alternative.

16. Dr. Bascharon contacted the offices of The Legal Alternative prior to July 18, 1994, to request that the office represent him in connection with his traffic matter pending in Alamance County District Court. He was told that a flat fee of \$210 would be required (which sum included an attorney's fee of \$150 and the anticipated court cost of \$60). Dr. Bascharon indicated that he would retain The Legal Alternative to represent him, and on June 24, 1994, he faxed a copy of his citation to the office of The Legal Alternative and on that date a file was opened in his name. No check accompanied that fax.
17. No payment was received from Dr. Bascharon by The Legal Alternative prior to July 18, 1994, and the matter was continued by one of the attorneys from that office in Alamance District Court on that date until August 25, 1994. When no payment had been received by that date, one of the attorneys from The Legal Alternative again appeared on Dr. Bascharon's behalf and continued the matter until September 8, 1994.
18. When no funds had been received on behalf of Dr. Bascharon by September 8, 1994, or deposited into the operating account of The Legal Alternative, no one appeared on his behalf and he was "called and failed" in the District Court of Alamance County on September 8, 1994.
19. Thereafter, and on either September 12 or 13, 1994, The Legal Alternative did receive a check from Dr. Bascharon which was dated August 26, 1994, in the amount of \$210. That check was deposited into the Operating Account of The Legal Alternative, as was its practice at that time.
 - A. The Bascharon funds were client funds received by the Defendant in a fiduciary capacity.
 - B. In September 1994, the Defendant did not maintain a separate Trust Account ledger card for the Bascharon funds. A ledger card was maintained which showed the date of payment(s) made, but this was not a trust account ledger card and there was no card which reflected any amount held in trust on behalf of Dr. Bascharon. The records maintained by the Defendant to identify the Bascharon funds were: the ledger card, a deposit ticket, an adding machine tape and a receipt book.
20. On October 19, 1994, Karen Fisher, then an attorney with The Legal Alternative, appeared in Alamance County District Court, petitioned the court to reopen Dr. Bascharon's matter, was allowed to do so, and at that time was allowed to enter a negotiated plea of speeding 64/55 mph. Dr. Bascharon was ordered to pay the court cost of \$60.
21. At that time, The Legal Alternative had enough cases in Alamance County that the office practice was to issue one check for a series of cases, with the amount to be filled in by the attorney appearing that day, or to issue several checks on one day, made payable to the Clerk of Superior Court, on behalf of a number of individual clients.

22. On October 25, 1994, the records of The Legal Alternative (its operating account at BB&T) reflect that seven checks, Nos. 3144 through 3150, were made payable in various amounts to the Clerk of Superior Court of Alamance County.
23. Check #3150 is designated in the check registry of The Legal Alternative as being in the amount of \$60 for the court case of Dr. Bascharon.
24. Karen Fisher (or one of the other attorneys from The Legal Alternative) went to Alamance County on October 25, 1994, and thereafter a notation was written on the file of Dr. Bascharon indicating: "Pd 10/25 #3150". This notation indicated that on October 25, 1994, the court cost in the amount of \$60 had been paid to the Clerk of the Superior Court of Alamance County with The Legal Alternative's operating account check #3150.
25. On that date, or shortly thereafter, Dr. Bascharon was notified by The Legal Alternative that his case had been disposed of and that the court cost had been paid.
26. Check #3150 has never cleared the BB&T operating account of The Legal Alternative.
27. The Legal Alternative subsequently altered its practices and ceased depositing court costs and fines paid to the Legal Alternative into its trust account.
28. On or about May 16, 1995, the North Carolina Department of Motor Vehicles notified Dr. Bascharon that his driving privileges in North Carolina would be suspended indefinitely, effective July 15, 1995, for his failure to have paid court costs which had been ordered to be paid on October 19, 1994.
29. Dr. Bascharon thereafter contacted the office of the Clerk of Superior Court in Alamance County in order to determine the cause for this notification and to further determine what steps he needed to take to correct the situation. Ultimately, Dr. Bascharon paid a total of \$160 in addition to what he had paid The Legal Alternative in September 1994 in order to have the matter closed in the office of the Clerk of Superior Court of Alamance County and the appropriate cost, restoration fees and other charges paid.
30. On June 22, 1995, Louise Wilson, Clerk of Superior Court of Alamance County, notified the North Carolina State Bar of this situation by letter, with a copy of that letter to The Legal Alternative.
31. On June 27, 1995, Barbara Moreno contacted Dr. Bascharon by phone, discussed with him the circumstances that had occurred in this particular situation, and ultimately issued to him a check from The Legal Alternative to Dr. Bascharon in the amount of \$380. This check included the full \$210 Dr. Bascharon had sent to The Legal Alternative by his check dated August 26, 1994; the \$160 that he had been required to pay to the Alamance County Clerk of Superior Court and/or the North Carolina Department of Motor Vehicles to clear his record; and an additional \$10 to cover the cost of any long distance calls made by Dr. Bascharon as result of this situation.

32. At the present time, The Legal Alternative has two attorneys: Barbara Moreno, whose practice is limited to Guilford County (the High Point and Greensboro divisions), Davidson County, and Randolph County, and Elizabeth Krabil, who joined the office Monday, September 22, 1997.
33. The Defendant was reprimanded by a Hearing Committee of the DHC on March 3, 1995, in 95 DHC 4.
34. The Defendant was censured by the DHC on July 9, 1996, in 95 DHC 14.
35. The Defendant was issued a Letter of Warning within three years immediately preceding the filing of the Complaint in this matter, having received a Letter of Warning from the Grievance Committee dated January 12, 1995 in 94G0471(III)R.
36. The Defendant was issued a Letter of Warning within three years immediately preceding the filing of the Complaint in this matter, having received a Letter of Warning from the Grievance Committee on January 11, 1996, in 94G0400(III)R.
37. The following aggravating factors exist:
 - A. Prior disciplinary offenses;
 - B. Multiple offenses;
 - C. Substantial experience in the practice of law;
 - D. Issuance of a letter of warning to the defendant within the three years immediately preceding the filing of the complaint.
38. The following mitigating factors exist:
 - A. Timely good faith efforts to rectify consequences of misconduct;
 - B. Full and free disclosure to the hearing committee and a cooperative attitude toward the proceedings;
 - C. Delay in disciplinary proceedings through no fault of the defendant attorney.
39. The Plaintiff has abandoned the claims in the Complaint for violations of Rules 6 and 7.1 of the North Carolina Rules of Professional Conduct.

Based on the foregoing findings of fact, the Committee makes the following:

CONCLUSIONS OF LAW

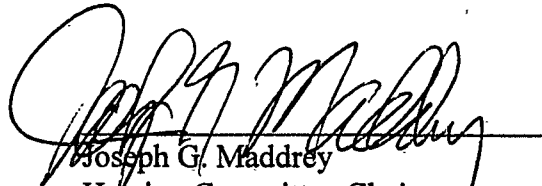
1. The parties have stipulated and the Committee finds that the forgoing actions constitute grounds for discipline pursuant to NC GEN STAT § 84-28(b)(2) in that the Defendant violated Rule 10.1 and Rule 10.2 of the North Carolina Rules of Professional Conduct.

2. The panel finds that the mitigating factors do not outweigh the aggravating factors.

ORDER OF DISCIPLINE

1. That the Defendant is suspended from the practice of law for six months, which suspension shall be stayed for eighteen months on the following conditions:
- A. The Defendant, at Defendant's expense have a licensed North Carolina Certified Public Accountant approved by the Office of Counsel of the North Carolina State Bar certify that her current practices for handling client trust funds, including but not limited to funds received for anticipated fines and court costs for handling traffic matters, complies with Rules 1.15-1 to 1.15-3 of the North Carolina Revised Rules of Professional Conduct. Such certification shall be provided to the North Carolina State Bar within ninety days of the entry of the court's order in this matter, provided that the Office of Counsel shall have the authority to grant reasonable extensions of this time period.
 - B. During the period of the suspension, the Defendant shall submit to the North Carolina State Bar copies of her monthly trust account bank statements within fifteen days from the time that she receives such statements.
 - C. The Defendant shall submit to random audits by the North Carolina State Bar of any trust account that she maintains as part of her practice, and any operating account that she maintains in connection with her practice of law in North Carolina, if the North Carolina State Bar deems it necessary to conduct such an audit.
 - D. The Defendant not violate the Rules of Professional Conduct after the date of the entry of the order in this matter. Any violation of the Rules shall be grounds to activate the stay.
 - E. The Defendant not violate the laws of the State of North Carolina or of the United States.
2. The Defendant is taxed with the costs of this matter as assessed by the Secretary.

Signed by the Chair with the consent of the other hearing committee members this 25th
day of March, 1998.


Joseph G. Maddrey
Hearing Committee Chair