

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
88 DHC 17

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

LARRY F. HABEGGER, ATTORNEY
Defendant

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This matter came on to be heard and was heard on February 9, 1989 before a hearing committee of Maureen D. Murray, Chairman, Emily W. Turner and G. Ward Hendon. The Plaintiff was represented by A. Root Edmonson and the Defendant was represented by Gray Robinson.

Based upon the evidence presented at the hearing, the hearing committee finds the following by clear, cogent, and convincing evidence.

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, Larry F. Habegger, was admitted to the North Carolina State Bar on September 14, 1973 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, Code of Professional Responsibility, 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, the Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Winston-Salem, Forsyth County, North Carolina.

As pertains to the First Claim for Relief as set out in the Complaint, the hearing committee makes the following FINDINGS OF FACT:

4. Defendant represented William F. Bright and wife, Cathy B. Bright, in matters relating to the settlement of the estate of and a claim for wrongful death of the Brights' son, Jason. Defendant settled the wrongful death claim in October, 1985 for \$42,500.

5. Defendant deposited the \$42,500 settlement check into his trust account at NCNB, account number 191089309, on October 16, 1985.

6. Defendant wrote himself check number 1131 from the trust account in the sum of \$7,500 as attorney fee.

7. On October 16, 1985, Defendant wrote check number 1132 on the trust account in the sum of \$35,000 to NCNB to establish a money market account in the name of Larry F. Habegger attorney for Jason Bright Estate.

8. On December 17, 1985, Defendant prepared final disbursements and a Final Account in the Jason Bright estate.

9. On December 17, 1985, Defendant recorded the interest earned on the money market account onto the money market account checkbook stub in the sum of \$382.18.

10. On December 18, 1985, Defendant wrote check number 1 on the money market account to Cathy B. Bright and Larry F. Habegger in the sum of \$17,691.09.

11. Also on December 18, 1985, Defendant wrote check number 2 on the money market account to William F. Bright and Larry F. Habegger in the sum of \$17,691.09.

12. On December 18, 1985, Defendant had the Brights' endorse these checks and leave them with him. Defendant wrote a check on his trust account at NCNB to Cathy B. and William F. Bright in the sum of \$10,382.19.

13. The remaining \$25,000 was left with Defendant to be invested by Defendant on the Brights' behalf. The Brights understood that Defendant was going to invest this sum in certificates of deposit or a money market account.

14. On December 19, 1985, Defendant deposited the aforementioned checks numbered 1 and 2 on the money market account made out to each of the Brights into his trust account at NCNB.

15. On December 19, 1985, Defendant wrote a check on his trust account to Wm. Bright and Cathy Bright & Carolina Farm Bonds in the sum of \$25,000. Defendant placed all of the endorsements on the back of this check which was attached to the Complaint as Exhibit 7.

16. Defendant did not seek, nor did he obtain, the Brights' approval to endorse their names to this check or any other document.

17. On December 19, 1985, Defendant deposited the \$25,000 check mentioned above into an account Defendant maintained in his own name at First Home Federal Savings and Loan, account no. 002702311-8, which was designated as a "Farm Account." That account had a balance of \$136.40 at the time of this deposit.

18. On December 19, 1985, Defendant wrote check number 709 on his Farm Account at First Home Federal in the sum of \$17,718.49 to Royster Carolina Co. to pay a personal obligation for fertilizer and seeds purchased over a period of time by Defendant.

19. No deposit was made into that account out of which check number 709 could have been paid other than the deposit of the Brights' funds.

20. Defendant was not authorized by the Brights to use any of their funds for his own purposes and they had no knowledge that he was using their funds to pay his obligation to Royster Carolina Co.

21. Defendant appropriated the Brights' funds to his own use.
22. During 1986, the Brights tried unsuccessfully to get Defendant to present them with some evidence of how and where their money was invested.
23. Defendant gave the Brights check number 1157 in the sum of \$3,000 on January 6, 1987 drawn on an account in the name of H & S Farms, Inc. at Triad Bank as "interest on notes."
24. William Bright sent Defendant a certified letter dated April 9, 1987 requesting documentation of how the Brights' funds were invested.
25. Defendant subsequently met with the Brights and advised them that their funds were invested in three loans. Defendant presented the Brights with copies of notes signed by Deborah Grubbs Leonard in the sum of \$5,000, Edward A. Abbott in the sum of \$15,000, and Robert M. Allen, Jr. in the sum of \$5,000.
26. Defendant also provided the Brights with the accounting attached to the Complaint as Exhibits 14 and 15.
27. There was no transfer of funds from Defendant to Robert M. Allen, Jr. in February, 1986.
28. No checks were written by Defendant to Deborah Leonard or Edward Abbott except a check in the sum of \$1,800 written to Deborah Leonard on December 31, 1985 out of Defendant's Farm Account at First Home Federal.
29. The \$3,000 paid to the Brights by check number 1157 on the H & S Farms, Inc. account did not come from interest paid to Defendant by any of the persons who purportedly signed the notes.
30. Defendant concealed from the Brights what their money was actually used for and presented them with fictitious evidence that their funds had been invested in loans.

Based upon the Findings of Fact pertaining to the First Claim for Relief as set out in the Complaint, the hearing committee makes the following CONCLUSIONS OF LAW:

Defendant's conduct, as set forth above, constitutes grounds for misconduct pursuant to N. C. Gen. Stat. Sec. 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

- a. By appropriating the funds the Brights had entrusted to him in a fiduciary capacity to his own use, Defendant committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 1.2(B) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C).
- b. By failing to preserve the identity of the Brights' funds received in a fiduciary capacity separate and apart from his property in a trust account, Defendant violated Rules 10.1(A) and (C).
- c. By signing, or directing someone else to sign, William and Cathy Brights' endorsements to the check identified as Exhibit 7 without their knowledge or consent,

Defendant committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 1.2(B) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C).

- d. By presenting the notes to the Brights to account for the use of their funds, while knowing that their funds had been used to pay his personal obligation out of his "farm account", Defendant knowingly made a false statement of law or fact in violation of Rule 7.2(A)(4).
- e. The North Carolina State Bar did not present clear and convincing evidence of facts which support any of the other violations alleged in the First Claim for Relief in the Complaint.

As pertains to the Second Claim for Relief as set out in the Complaint, the hearing committee makes the following FINDINGS OF FACT:

31. In January 1986, Defendant received a check in the sum of \$51,285.44 from Keystone Provident Life Insurance Company made payable to his client, John H. Wadsworth, III (hereinafter Wadsworth), representing life insurance proceeds owed due to the death of Wadsworth's father.

32. After having his client endorse the check, Defendant deposited it into his trust account at NCNB, account number 191089309, said deposit being credited on January 28, 1986.

33. Defendant persuaded Wadsworth to allow him to invest the life insurance proceeds in "farm bonds." Defendant made no disclosures to Wadsworth that Defendant would personally benefit from the purported "investment" he was recommending.

34. On or about January 30, 1986, Defendant wrote an unnumbered trust account check in the sum of \$50,000 to John Wadsworth, III attached to the Complaint as Exhibit 18.

35. Defendant placed, or directed someone to place, the endorsement of John Wadsworth, III on the back of the check without Wadsworth's knowledge or consent.

36. Defendant deposited the check made out to Wadsworth into an account Defendant maintained in his own name at First Home Federal entitled "Farm Account", account number 002702311-8.

37. Defendant appropriated the \$50,000 entrusted to him by his client, Wadsworth, to his own use.

Based upon the Findings of Fact pertaining to the Second Claim for Relief as set out in the Complaint, the hearing committee makes the following CONCLUSIONS OF LAW:

Defendant's conduct, as set forth above, constitutes grounds for misconduct pursuant to N. C. Gen. Stat. Sec. 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

- a. By appropriating the funds entrusted to him by Wadsworth in a fiduciary capacity to his own use, Defendant

committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 1.2(B) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C).

b. By failing to preserve the identity of Wadsworth's funds received in a fiduciary capacity separate and apart from his own property in a trust account, Defendant violated Rules 10.1(A) and (C).

c. By signing, or directing someone to sign, Wadsworth's endorsement to the check identified as Exhibit 18 without Wadsworth's knowledge or consent, Defendant committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 1.2(B) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C).

As pertains to the Third Claim for Relief, as set out in the Complaint, the hearing committee makes the following FINDINGS OF FACT:

38. By Trust Agreement dated December 26, 1973, G. G. Young established a trust for his grandchildren that named Defendant as a co-trustee.

39. In his capacity as co-trustee, Defendant opened a money market account at NCNB, account number 193598992 (hereinafter G. G. Young Trust account), on April 5, 1985 in the name of Larry F. Habegger, Mgt. Trustee for G. G. Young Trust. Defendant was the sole signatory on that account.

40. On April 10, 1985, Defendant wrote an unnumbered check on the G. G. Young Trust account in the sum of \$24,500 made payable to Mike Smith for Carolina Farm Bonds.

41. On April 10, 1985, Defendant endorsed the name of Michael Smith on the back of the \$24,500 check without the knowledge or consent of Michael Smith.

42. On April 10, 1985, Defendant deposited the \$24,500 check into an account he maintained in his own name at First Home Federal entitled "Farm Account," account number 02702311-8.

43. Defendant appropriated \$24,500 of the funds entrusted to him as a fiduciary in the G. G. Young Trust to his own use.

44. On or about May 22, 1985, Defendant wrote an unnumbered check on the G. G. Young Trust account to Mike Smith for Carolina Farm Bond in the sum of \$7,500.

45. On May 22, 1985, Defendant endorsed the name of Michael Smith on the reverse side of the \$7,500 check without the knowledge or consent of Michael Smith.

46. On May 22, 1985 Defendant deposited the \$7,500 check into an account he maintained in his own name at First Home Federal entitled "Farm Account", account number 002702311-8.

47. Defendant appropriated \$7,500 of the funds entrusted to him as a fiduciary as of the G. G. Young Trust to his own use.

48. On December 12, 1985 Defendant wrote a check on the G. G. Young Trust account to NCNB in the sum of \$8,900 as a loan to Michael Grace. Grace signed a 90-day note as evidence of the loan.

49. On January 10, 1986, Michael A. Grace wrote his check number 513 (erroneously dated January 10, 1985) to Defendant in the sum of \$4,096.88 as a partial repayment of the trust loan. This check shows on its face that it was stamped by the bank when presented for payment on January 14, 1986.

50. Defendant failed to deposit Grace's check into the G. G. Young Trust account. Instead, Defendant deposited this check into the account he maintained in his own name at First Home Federal entitled "Farm Account," account number 02702311-8.

51. Defendant appropriated the \$4,096.88 entrusted to him in a fiduciary capacity for the G. G. Young Trust to his own use.

52. Michael A. Grace paid Defendant the balance of the note and all interest due on March 28, 1986 by check number 531 in the sum of \$5,048.04.

53. Defendant failed to deposit Grace's March payment into the G. G. Young Trust account.

54. Defendant appropriated the \$5,048.04 entrusted to him by Grace in a fiduciary capacity for the G. G. Young Trust to his own use.

55. On April 23, 1986, Defendant wrote an unnumbered check on the G. G. Young Trust account to Ross Strickland in the sum of \$50,000.

56. On April 23, 1986 Defendant, Ross Strickland, and his wife, Barbara Strickland, purchased a farm in Davie County from Mr. & Mrs. Bobby G. Bodford in the name of their corporation, H & S Farms, Inc. The proceeds of the \$50,000 check to Ross Strickland from the G. G. Young Trust was used as a partial down payment for the farm purchase.

57. In June, 1986, John H. Wadsworth, III requested that his \$50,000 purportedly invested by Defendant, as stated in the Second Claim for Relief in the Complaint, be returned to him.

58. On June 27, 1986, Defendant wrote check number 1020 on the H & S Farms, Inc. account at Triad Bank in the sum of \$25,000 and deposited that check into the G. G. Young Trust account.

59. Defendant gave Ross and Barbara Strickland credit for a \$25,000 payment on their note to the G. G. Young Trust for this transfer of funds.

60. On June 27, 1986, Defendant wrote an unnumbered check on the G. G. Young Trust account to John H. Wadsworth, III in the sum of \$25,000 which was paid by the trust's bank on June 30, 1986.

61. Defendant appropriated \$25,000 of the funds entrusted to him as a fiduciary of the G. G. Young Trust to his own use by paying his personal obligations to John Wadsworth out of the trust's funds.

62. On July 7, 1986, the balance in the G. G. Young Trust account at NCNB was \$12,679.80.

63. On July 7, 1986, Defendant wrote check number 1024 on the H & S Farms, Inc. account at Triad Bank in the sum of \$15,000 and deposited that check into the G. G. Young Trust account on July 10, 1986.

64. Defendant gave Ross and Barbara Strickland credit for a \$15,000 payment on their note to the G. G. Young Trust for this transfer of funds.

65. On or about July 7, 1986, Defendant wrote an unnumbered check on the G. G. Young Trust account to John H. Wadsworth, III in the sum of \$25,000 which was exchanged for an official check payable to Wadsworth in the same sum on July 14, 1986.

66. Defendant appropriated \$25,000 of the funds entrusted to him as a fiduciary of the G. G. Young Trust to his own use by paying his personal obligations to John Wadsworth out of the trust's funds.

67. On February 28, 1987, the co-trustee and the beneficiaries of the G. G. Young Trust filed an action before the Clerk of Superior Court of Forsyth County seeking Defendant's removal as trustee and an accounting of the assets and receipts as well as the disbursements and distributions of the trust from Defendant. The action before the clerk of superior court was subsequently dismissed for lack of jurisdiction.

68. Subsequent to the filing of the action before the Clerk of Superior Court of Forsyth County, Defendant allowed a Certified Public Accountant, Charles Taylor (hereinafter Taylor), to examine the records of the G. G. Young Trust to account for the assets, receipts and disbursements of the trust.

69. Defendant represented to Taylor that the following loans were or had been assets of the trust:

- a. a note from Michael Grace originally in the principal amount of \$8,900.
- b. a note from Robert M. Allen, Jr. originally in the principal amount of \$6,500.
- c. a note from Ross and Barbara Strickland originally in the principal amount of \$50,000.
- d. a June 30, 1986 note from Robert M. Allen, Jr. in the principal amount of \$25,000.
- e. a July 14, 1986 note from Ross and Barbara Strickland in the principal amount of \$25,000.
- f. a December 2, 1986 note from Robert and Carolyn Bright in the principal amount of \$7,500.
- g. a January, 1987 note from Robert & Carolyn Bright in the principal amount of \$3,000.

70. Defendant originally represented to Taylor that as of December 31, 1986, the principal outstanding balance on the Michael Grace note was still \$8,900 although he knew that Grace had repaid the note in full in early 1986.

71. Defendant subsequently produced a note dated December 15, 1986 in the principal sum of \$9,986.53 purportedly signed by Michael Grace. The note was a fabrication that had not been signed by Grace. Grace did not authorize anyone else to sign such a note. Grace had not borrowed any funds from the G. G. Young Trust since paying back his December, 1985 note in full.

72. Defendant prepared and signed, or directed another to prepare and

sign, the December 15, 1986 note in the sum of \$9,986.53 without any authority from Michael Grace to do so.

73. When Defendant represented to Taylor that the July 14, 1986 note mentioned in paragraph 69(e) above was an asset of the trust, he knew that no loan was made to Ross and Barbara Strickland on that date and that in fact the \$25,000 of the trust's funds disbursed on that date were in payment of Defendant's personal obligation to Wadsworth. On July 17, 1987, Barbara Strickland signed a statement before Taylor stating that she had no knowledge of, and did not owe such a note.

74. On May 6, 1987, Defendant supplemented his oral representations made to Taylor with the letter attached to the complaint as Exhibit 52.

75. On August 3, 1987, the co-trustee and the beneficiaries of the G. G. Young Trust filed an action in Forsyth County Superior Court against Defendant seeking Defendant's removal as trustee and an accounting for all the assets and receipts Defendant had received and all the disbursements and distributions Defendant had made as trustee.

76. On or about October 19, 1987, Defendant represented to Taylor that the \$25,000 note purportedly signed by the Stricklands on July 14, 1986 was a valid outstanding note. At the time that Defendant made this representation, he knew that the note was not a valid note.

Based upon the Findings of Fact pertaining to the Third Claim for Relief as set out in the Complaint, the hearing committee makes the following CONCLUSIONS OF LAW:

- a. By appropriating funds entrusted to him as a fiduciary of the G. G. Young Trust to his own use, Defendant committed criminal acts that reflect adversely on his honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 1.2(B) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C) in each of the following instances:
 1. by appropriating the \$24,500 made payable to Mike Smith for Carolina Farm Bonds on April 10, 1985;
 2. by appropriating the \$7,500 made payable to Mike Smith for Carolina Farm Bonds on May 22, 1985;
 3. by appropriating the \$4,096.88 entrusted to him by Michael Grace as a partial repayment of the trust loan on or about January 10, 1986;
 4. by appropriating the \$5,048.04 entrusted to him by Michael Grace as final payment of the trust loan on March 28, 1986;
 5. by appropriating the \$25,000 made payable to John H. Wadsworth, III by check dated June 27, 1986;
 6. by appropriating the \$25,000 made payable to John H. Wadsworth, III by check dated July 7, 1986;
- b. By failing to preserve the identity of the G. G. Young Trust's funds separate and apart from his property in a

trust account, Defendant violated Rules 10.1(A) and (C) in each of the instances cited in the numbered subparagraphs of paragraph (a) above.

- c. By endorsing the name of Michael Smith to the checks dated April 10, 1985 and May 22, 1985 without the knowledge or consent of Michael Smith, or directing someone else to do so, Defendant committed criminal acts that reflect adversely on his honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 1.2(B) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C).
- d. By preparing and signing, or directing another to prepare and sign, the December 15, 1986 note in the sum of \$9,986.53 without any authority from Michael Grace to do so, Defendant committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 1.2(B) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C).
- e. By representing to Taylor that Grace still had an outstanding balance on a note due the trust as of December 31, 1986 and by presenting Taylor with the December 15, 1986 note in the sum of \$9,986.53 purportedly signed by Grace while knowing that Grace did not owe any sum to the trust since he repaid his original loan in early 1986, and knowing that Grace had not signed the note, Defendant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 1.2(C); knowingly made a false statement of law or fact in violation of Rule 7.2(A) (4); and participated in the creation or preservation of evidence when he knew or it was obvious that the evidence was false in violation of Rule 7.2(A) (6).
- f. By representing to Taylor that the Stricklands owed the trust a note with an outstanding principal balance of \$25,000 as of December 31, 1986 and subsequently representing to Taylor on October 19, 1987 that the Strickland's note was a valid note, Defendant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 1.2(C); knowingly made a false statement of law or fact in violation of Rule 7.2(A) (4); and participated in the creation or preservation of evidence when he knew or it was obvious that the evidence was false in violation of Rule 7.2(A) (6).
- g. The North Carolina State Bar did not present clear and convincing evidence of facts which would support any of the other violations as alleged in the Third Claim for Relief as set out in the Complaint.

Signed by the undersigned Chairman with the full knowledge and consent of the remaining members of the hearing committee this the 27th day of February, 1989.

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
88 DHC 17

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

LARRY F. HABEGGER, ATTORNEY
Defendant

ORDER OF DISCIPLINE

BASED UPON THE FINDINGS OF FACT AND CONCLUSIONS OF LAW of even date herewith, and further based upon the evidence presented in the second phase of the hearing and the arguments of counsel, the hearing committee makes the following additional FINDINGS:

1. The Defendant has no prior disciplinary record.
2. The Defendant's character and reputation in his community was good prior to these offenses.
3. The Defendant had substantial experience in the practice of law at the time of his offenses.
4. The victims of Defendant's misconduct were vulnerable to Defendant due to the trust they placed in him.
5. Defendant engaged in multiple offenses which evidenced a pattern of misconduct.
6. Some of the alleged victims of Defendant's misconduct did not complain to the North Carolina State Bar or did not participate in the hearing.

The hearing committee, after considering its additional findings, makes the following CONCLUSIONS as to aggravation and mitigation:

- (a) the hearing committee finds the following aggravating circumstances:
 1. Defendant's pattern of misconduct;
 2. the fact that Defendant engaged in multiple offenses;
 3. the vulnerability of Defendant's victims; and
 4. Defendant's substantial experience in the practice of law.
- (b) the hearing committee finds the following mitigating

circumstances:

1. the absence of any prior disciplinary record; and
 2. the character and reputation of the Defendant.
- (c) the hearing committee finds the failure of persons to complain or participate in the hearing to be neither an aggravating or a mitigating circumstance.

The hearing committee, considering all of the above, enters the following ORDER OF DISCIPLINE:

1. The Defendant, Larry F. Habegger, is DISBARRED from the practice of law in North Carolina;
2. The Defendant shall forthwith surrender his license certificate and membership card to the Secretary of the North Carolina State Bar;
3. Defendant shall comply with the requirements of Section 24 of Article IX of the Rules and Regulations of the North Carolina State Bar concerning the winding down of his law practice.
4. Defendant is taxed with the costs of this action as assessed by the Secretary.

Signed with the full knowledge and consent of the other members of the hearing committee this the 27th day of February, 1989.

Maureen D. Murray
Maureen D. Murray, Chairman
Hearing Committee

Maureen D. Murray
Maureen D. Murray, Chairman
Hearing Committee

#285

