

This the 21st day of ~~May~~ ^{AUG.}, 1985.

Naomi E. Morris

Naomi E. Morris, Chairman

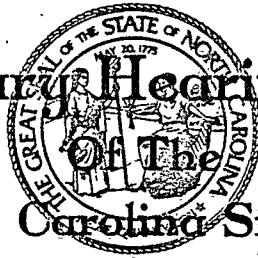
James E. Ferguson II

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Alton J. Ingalls

Alton Ingalls

The Disciplinary Hearing Commission



North Carolina State Bar

4. In accordance with instruction from Usher, defendant endorsed the check, and obtained cash therefor, Usher having instructed him to hold the money until he called for it and not to tell his wife that the case had been settled

5. Plaintiff did not deposit the proceeds of the check into a trust account.

6. Plaintiff did not advise Usher that he had received the cash, did not deliver the money to Usher, did not maintain any record of his handling of the money nor did Joe Gray, to whom he entrusted the money for safekeeping, maintain any records of having received it or any record indication for whom he held the money.

7. There is no evidence that any of the funds were used by Plaintiff for his own purposes. In February, 1984, he obtained the funds from Joe Gray and delivered the money in its entirety to Usher.

8. The note in the amount of \$40,000 executed to Terry Usher, referred to in (2) D of stipulation on pre-hearing conference, was obtained at the instance of Michael Birzon, attorney of Usher.

9. The consent judgment referred to in (2)E of stipulation on pre-hearing conference, was obtained at the instance of Michael Birzon, attorney for Usher.

10. Michael Birzon had represented other passengers in the car with Usher and no one of those cases had been settled for an amount in excess of \$6,000.

11. The insurance company retained counsel who notified Birzon that it would reopen the claim upon payment to it of the \$5500.

12. Birzon repeatedly informed plaintiff that if he didn't pay the note and then the consent judgment, action would be taken by the State Bar.

13. That plaintiff has, by cashing the check of the insurer, American Mutual Fire Insurance Company, without notifying Usher, his client, of its receipt and by failing to account to his client for its handling committed acts which constitute grounds for discipline pursuant to N.C.G.S. 84-28(a) and (b) (2) in that he engaged in professional conduct that adversely reflects on his fitness to practice law; failed to deposit his client's funds in a trust account; failed to notify his client of the receipt of the funds belonging to his client; failed to maintain complete records and account to his client concerning


his client's funds; and failed to pay to his client funds in his possession or under his control which his client was entitled to receive in violation of Disciplinary Rules 1-102 (A) (1), and (6), and 9-102(A) and (B), (1), (3) and (4) respectively of the North Carolina Code of Professional Conduct.

14. The Hearing Committee finds that, although Michael Birzon is not a defendant in this case, his actions in insisting upon payment of \$40,000 by plaintiff to Terry Usher and in threatening plaintiff by State Bar cross action upon failure to pay were unconscionable and deserving of close scrutiny by the State Bar.

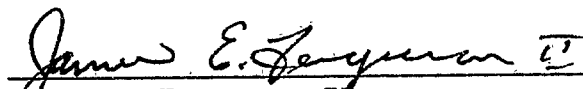
BASED UPON THE FOREGOING FINDINGS OF FACT, THE COMMITTEE UNANIMOUSLY MAKES THE FOLLOWING CONCLUSIONS OF LAW:

- (1) That the defendant engaged in conduct constituting grounds for discipline under N.C.G.S. 84-28(a) and (b), 2 and B (3) in that
 - (a) The defendant received funds belonging to his client and failed to notify the client that he had received them.
 - (b) Defendant did not deposit the funds in a trust account.
 - (c) Defendant did not maintain any records of the receipt of the money.

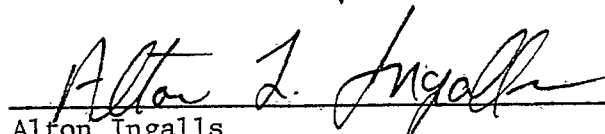
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