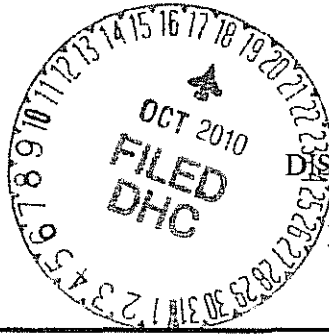


NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
09 DHC 23

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
v.)
JOHN S. AUSTIN., Attorney,)
Defendant)

CONSENT
ORDER OF DISCIPLINE

This matter was scheduled to be heard by a hearing panel of the Disciplinary Hearing Commission composed of J. Michael Booe, Chair; Harriett Smalls and David L. Williams. A. Root Edmonson represents the North Carolina State Bar. The defendant, John S. Austin, is represented by Alan M. Schneider. Based upon the admissions contained in the defendant's answer and the consent of the parties, the panel finds the following facts were established by clear, cogent and convincing evidence:

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, John S. Austin ("Austin"), was admitted to the North Carolina State Bar on August 26, 1994 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 the time relevant to this complaint, Austin actively engaged in the private practice of law in the State of North Carolina and maintained a law office in the city of Raleigh, Wake County, North Carolina.
4. In September 2008, Austin owed the Internal Revenue Service ("IRS") approximately \$68,000 in back taxes. As a result, the IRS obtained a lien that attached to Austin's personal bank account.
5. Austin contacted the IRS and a representative informed Austin that if he paid \$500 immediately and \$43,000 by October 10, 2008, Austin could make payments on the approximately \$25,000 balance.

6. Austin contacted Ray Cullen (“Cullen”) at United Leasing Corporation (“United”), a commercial lender that Austin did litigation work for. Cullen assured Austin that United would loan Austin \$60,000, enough to pay the IRS \$43,000, pay the balance of a loan Austin owed to CitiFinancial of approximately \$8,400 and leave a balance for Austin to use to apply to his upcoming payments.

7. On October 17, 2008, United notified Austin that his application for a loan of \$60,000 had been approved. Under the terms of the loan, Austin and his wife needed to sign a deed of trust on their residence.

8. On October 18, 2008, Austin received the loan documents from United, including a note and a deed of trust that both required his wife’s signature.

9. Austin did not want to tell his wife the extent of their obligation to the IRS or that he was obtaining a loan to satisfy the demands of the IRS.

10. Austin signed his wife’s name on the note and the deed of trust without her knowledge or authorization.

11. Because his wife’s name on the deed of trust had to be signed before a notary public who could authenticate the signature, Austin also signed notary Elizabeth Cox’s (“Cox”) name to the jurat on the deed of trust witnessing his wife’s signature and placed Cox’s seal on the deed of trust. Austin had access to Cox’s seal as she was an employee in Austin’s law firm. Austin signed Cox’s name and affixed Cox’s notary seal on the deed of trust without Cox’s knowledge or consent.

12. On November 4, 2008, Austin forwarded the note and deed of trust with the forged signatures and the fraudulent notarization to United for the purpose of securing the \$60,000 loan.

13. On November 14, 2008, Austin received the loan proceeds check, payable to Austin, from United.

14. Austin returned the loan proceeds check with a request that United reissue the funds with checks payable to the IRS, CitiFinancial and Austin in specific amounts.

15. On November 17, 2008, prior to United reissuing the loan proceeds checks, the completed loan documents were received in Austin’s office. Austin’s administrative assistant opened the documents and noticed that Cox’s signature was fraudulent. She reported it to Cox and Austin’s senior partner.

16. After being confronted by his senior partner, Austin asked United not to reissue the loan funds.

BASED UPON the foregoing Findings of Fact, the panel makes the following:

CONCLUSIONS OF LAW

1. All parties are properly before this panel of the Disciplinary Hearing Commission and the Disciplinary Hearing Commission and this panel have jurisdiction over Austin and the subject matter.

2. Austin's conduct, as set out above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(a) & (b)(2) in that Austin violated the Rules of Professional Conduct in effect at the time as follows:

- (a) By signing his wife's name to the United note and deed of trust without her knowledge or consent, which constituted forgery in violation of N.C.G.S. § 14-119, Austin committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);
- (b) by signing Cox's name to the jurat on the United deed of trust without Cox's knowledge or consent which constituted forgery in violation of N.C.G.S. § 14-119 and by using the seal of a notary without authority in violation of N.C.G.S. § 10B-60(f), Austin committed criminal acts that reflect adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);

Based upon the foregoing Findings of Fact and Conclusions of Law and the consent of the parties, the panel hereby finds the following additional:

FINDINGS OF FACT REGARDING DISCIPLINE

- 1. Austin was not attempting to defraud United when he signed his wife's name to the United note and deed of trust and affixed the false jurat. Austin had already established an automatic debit from his personal bank account to pay the monthly note payment to United.
- 2. Austin admitted what he had done to Ray Cullen at United prior to United sending the second set of loan proceeds checks. Austin never received the United loan proceeds. Even after Austin's revelation, Ray Cullen continued to have confidence in Austin and continued to employ Austin to represent United in collecting delinquent loans.
- 3. Austin signed his wife's name to the United note in fear of having to tell her of their financial situation.

4. On October 18, 2010, Austin pled guilty to, and was convicted of, misdemeanor common law forgery.
5. Although Austin was not intending to defraud United, the deed of trust given to United potentially would have caused United significant harm because the deed of trust securing the loan from United was unenforceable.
6. By choosing to engage in illegal conduct to avoid conflict with his wife, Austin caused significant potential harm to the legal profession and the administration of justice.

Based upon the Findings of Fact, Conclusions of Law, and Additional Findings Regarding Discipline, the hearing panel also enters the following:

CONCLUSIONS REGARDING DISCIPLINE

1. The hearing panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w) (1), (2) and (3) of the Rules and Regulations of the North Carolina State Bar and finds the following factors are applicable in this matter:

General Factors from 27 N.C.A.C. 1B §.0114(w) (3):

- a. Austin has no prior disciplinary offense in this state;
- b. Austin made a timely and good faith effort to rectify the consequences of his misconduct when he told Ray Cullen what he had done prior to receiving the second set of loan proceeds checks from United;
- c. After being confronted, Austin made a full and free disclosure to his senior partner, United's Ray Cullen, the North Carolina State Bar and the hearing panel and has shown a cooperative attitude toward the proceedings;
- d. Austin has exhibited remorse for his misconduct;
- e. Austin has exhibited good character and reputation;

Suspension and Disbarment Factors from 27 N.C.A.C. 1B §.0114(w) (1):

- a. Austin intended to commit acts where the resulting harm or potential harm to United, the legal profession and the administration of justice was foreseeable;
- b. Austin elevated his own interest in avoiding conflict with his wife over the interests of United;
- c. Austin's conduct had a negative impact on the public's perception of the legal profession;

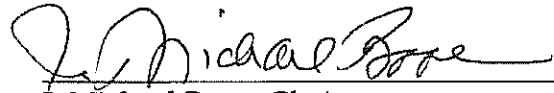
- d. Austin engaged in acts of fabrication and deceit.
2. The hearing panel has carefully considered all of the different forms of discipline available to it. An admonition, reprimand or censure would not be sufficient discipline because of the gravity of the potentially significant harm Austin's conduct caused to United.
 3. The hearing panel finds that discipline short of suspension of Austin's license would not adequately protect the public, the legal profession or the administration of justice for the following reasons:
 - a. Austin chose to avoid conflict with his wife by engaging in conduct he knew was illegal;
 - b. By engaging in illegal conduct, Austin caused significant harm to the public's perception of the legal profession and to the administration of justice;
 - c. Although Austin did not intend to defraud United because United provided Austin with significant legal work, he left United unprotected by an enforceable deed of trust that could have significantly harmed United; and
 - d. Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses Austin committed and would send the wrong message to attorneys and to the public regarding the conduct expected of members of the Bar of this state.

Based upon the foregoing Findings of Fact, Conclusions of Law, and the Findings and Conclusions Regarding Discipline, the hearing panel enters the following

ORDER OF DISCIPLINE

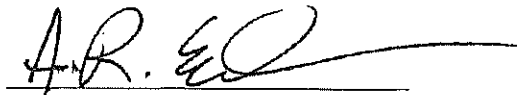
1. John S. Austin is hereby suspended from the practice of law in North Carolina for six months, effective 30 days from the date of service of this order upon him.
2. Austin shall surrender his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon him.
3. Austin shall comply with all provisions of 27 NCAC 1B § .0124 of the North Carolina State Bar Discipline & Disability Rules.
4. Austin shall pay the costs of this proceeding as assessed by the Secretary, including the costs of his deposition and transcription of that deposition, within 90 days of service of this order upon him.

Signed by the undersigned Chair of the panel with the consent of the other members of the panel this the 18th day of October 2010.



J. Michael Booe, Chair
Hearing Panel

We Consent:



A. Root Edmonson
Deputy Counsel
North Carolina State Bar



Alan M. Schneider
Counsel for Defendant



John S. Austin
Defendant