

STATE OF NORTH CAROLINA
COUNTY OF WAKE



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE NORTH CAROLINA STATE BAR
95 DHC 3

THE NORTH CAROLINA STATE BAR,

Plaintiff,

vs.

RICHARD J. TUGGLE, JR.,

Defendant.

**FINDINGS OF FACTS AND
CONCLUSIONS OF LAW**

This cause was heard on a Motion for Summary Judgment on September 6, 1995 before a hearing committee composed of Stephen T. Smith, Chairman; Robert B. Smith, and Anthony E. Foriest. Harriet P. Tharrington represented the plaintiff and Douglas E. Kingsbery represented the defendant. Summary judgment having been granted in this matter in favor of the plaintiff on its claim of a violation of Rule 7.1(b) of the Rules of Professional Conduct, the parties filed briefs on the issue of appropriate discipline on November 1, 1995. Based upon the uncontroverted facts, the hearing committee finds the following by clear, cogent, and convincing evidence:

FINDINGS OF FACT

1. 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, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.
2. Richard J. Tuggle, Jr. (hereafter, defendant) was admitted to the North Carolina State Bar on September 14, 1979 and was at all times relevant hereto 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 times relevant hereto, defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in Greensboro, North Carolina.

4. James R. "Jim" Copland, III and Ronald G. Copland are brothers. Jim Copland is President and Treasurer, and Ronald Copland is the Executive Vice President and Secretary of Copland, Inc. and Copland Fabrics, Inc.
5. Defendant has represented Copland, Inc. and Copland Fabrics, Inc.
6. Bonnie S. Maness (Maness) is a first cousin of Jim and Ronald Copland. Ms. Ioline C. Roush (Roush), who died in June 1991, was the aunt of Jim Copland, Ronald Copland, and Bonnie Maness.
7. Sometime before September 1990 a dispute arose between Maness and the Copland's over Maness' power to demand cumulative voting.
8. At the March 6, 1990 shareholders' meeting of Copland, Inc., Maness produced a voting trust agreement between herself and Roush that by its terms gave Maness the power to vote Roush's stock.
9. The ability to vote Roush's stock would have given Maness the ability to demand cumulative voting.
10. John Vernon (Vernon), who had prepared Roush's will, was at the March shareholders' meeting representing Maness. Defendant was at the March shareholders' meeting representing Copland, Inc.
11. The corporation denied Maness' request for cumulative voting on the grounds that Roush had never physically transferred the shares of stock to Maness.
12. In August of 1990, Jim and Ronald Copland informed defendant that Roush had decided to transfer her voting rights in the Copland stock to the Coplands. They asked defendant to prepare the documents necessary to effectuate the transaction, and to take the documents to Roush for execution.
13. On September 10, 1990, defendant and three persons from his office met with Roush, an eighty-eight (88) year old widow, at her apartment. Defendant carried the following documents (hereafter, September 10 documents) for Roush's signature:
 - (a) Revocation of the Power of Attorney in favor of Maness;
 - (b) a Limited Power of Attorney in favor of Jim Copland and Ronald Copland relating to the stock of Copland, Inc. and Copland Fabrics, Inc.;
 - (c) a Limited Power of Attorney appointing Maness as attorney-in-fact regarding all matters other than those pertaining to Copland, Inc. and Copland Fabrics, Inc.;

- (d) a First Codicil to Roush's Will of July 5, 1988; and;
 - (e) an irrevocable Voting Trust Agreement.
14. Roush had not asked defendant to prepare any of the September 10 documents.
 15. On September 10, 1990, defendant met with Roush at her residence for the purpose of presenting the documents to her for execution. At this meeting, although defendant advised Roush that he represented the Coplands, and therefore could not represent her, defendant answered three (3) questions for Roush about the voting trust agreement.
 16. All of the September 10 documents were prepared by or under the direction of defendant or other members of defendant's firm.
 17. Roush signed the September 10 documents while defendant and other persons from his firm were at her residence on September 10, 1990.
 18. When previously executing most legal documents such as wills and power of attorneys, Roush had been represented by legal counsel.
 19. Within a few days after the September 10, 1990 meeting, defendant prepared a document at Roush's request giving Roush sole authority to control her assets at her bank.
 20. On September 13, 1990, defendant and an employee of defendant's firm, took the document described in paragraph 19 to Roush's residence where Roush executed it pursuant to defendant's direction. This document was unrelated to defendant's representation of Roush's nephews or the companies. Roush offered to pay defendant for preparing this document for her.
 21. In early 1991, Roush met with Vernon to discuss the documents which she had executed in September 1990.
 22. After discussing the September 10 documents with Vernon, Roush decided to "undo" them.
 23. In February 1991, Roush revoked all the September 10, 1990 documents, except for Voting Trust Agreement which she could not revoke because Jim and Ronald Copland would not agree to such a revocation.

CONCLUSIONS OF LAW

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

By preparing a codicil to Ms. Roush's will, two limited powers of attorney, and an irrevocable voting trust agreement and by answering Ms. Roush's questions regarding the voting trust agreement, defendant provided legal advice to a person unrepresented by counsel whose interests were reasonably likely to conflict with the interests of ~~your~~ ^{his} clients in violation of Rule 7.4(b).

Signed by the undersigned chairman with the full knowledge and consent of the other members of the hearing committee.

This the 15 day of December, 1995.



Stephen T. Smith, Chairman
Disciplinary Hearing Committee

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ORDER OF DISCIPLINE

Based upon the Findings of Fact and Conclusion of Law entered in this matter, and further based upon the arguments set forth in the briefs filed by counsel, the hearing committee composed of Stephen T. Smith, chairman; Robert B. Smith, and Anthony E. Foriest, hereby enters this

ORDER OF DISCIPLINE

1. The defendant, Richard J. Tuggle, Jr. is hereby admonished.
2. The defendant is taxed with the costs of this proceeding.

Signed by the Chair of the hearing committee with the full knowledge and consent of all parties and the other members of the hearing committee this the 15 day of December, 1995.


Stephen T. Smith, Chairman

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