

8. Mr. Hunoval's dereliction occurred in a matter pending before this Court and the underlying facts constituting the dereliction are not in dispute and have, indeed, been admitted in writing by him.

NOW, THEREFORE, WE ORDER:

1. That the privilege of Mr. Hunoval to practice law in the Appellate Division of the North Carolina General Court of Justice be and it is hereby suspended for a period of twelve (12) months from the date of this order. Pursuant to this suspension neither the Court of Appeals nor this Court shall permit Mr. Hunoval to prosecute any appeal in which the notice of appeal is entered at a trial which begins after Mr. Hunoval has been duly notified of the terms of this order and before the expiration of twelve (12) months from the date hereof. Mr. Hunoval may, however, continue to prosecute and appear in any appeal in which notice of appeal to the Appellate Division was given at a trial which began before he was so duly notified.

2. That the privilege of Mr. Hunoval to represent by court appointment indigent criminal defendants in the Trial Divisions of the North Carolina General Court of Justice be and it is hereby suspended for a period of twelve (12) months from the date of this order. Pursuant to this suspension no judicial officer of the General Court of Justice shall appoint Mr. Hunoval to represent any indigent criminal defendant after being duly notified of the terms of this order and before the expiration of the period of suspension, nor shall Mr. Hunoval accept any such appointment after he has been duly notified of the terms of this order and before the expiration of the period of suspension. Mr. Hunoval may, however, continue to appear in any case in which the order of appointment was entered at a time when neither the judicial officer nor Mr. Hunoval had been so duly notified.

Done by the Court in Conference this the 26th day of July, 1977.

James G. Exum, Jr.
Associate Justice
For the Court

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THE NORTH CAROLINA STATE BAR,
Plaintiff;

CHARLES E. DAMERON, Attorney,
vs.
Defendant.

ORDER
OF
PUBLIC CENSURE

This cause coming on to be heard, and being heard, before the undersigned Trial Committee of the Disciplinary Hearing Commission of The North Carolina State Bar on July 1, 1977, in the office of The

North Carolina State Bar, 107 Fayetteville Street, Raleigh, North Carolina, at 10:00 a.m., and the Plaintiff being represented by its counsel, Mr. H. D. Coley, Jr., State Bar Counsel, and Mr. M. Bays Shoaf, Jr., Trial Attorney, and the Defendant being represented by his attorney, Mr. Robert Melott, and the Trial Committee having heard the evidence and the arguments of counsel and having afforded the parties full opportunity for hearing and having made its findings of fact and conclusions of law as shown in an order of even date herewith and all of which appears of record herein;

NOW, THEREFORE, BASED UPON such findings of fact and conclusions of law, the Trial Committee of the Disciplinary Hearing Commission hereby issues the following order of public censure of Charles E. Dameron, Attorney:

Pursuant to Section 23 of the Discipline and Disbarment Procedures of The North Carolina State Bar, this public censure is delivered to you, Charles E. Dameron, the Trial Committee having found that you violated the Code of Professional Responsibility of The North Carolina State Bar in the following manner: in that you violated Chapter 84, Section 28(b) (2) of the General Statutes of North Carolina in that you engaged in illegal conduct involving moral turpitude and violated the Disciplinary Rules of The North Carolina State Bar, Disciplinary Rule 1-102(A) (3) in that you made personal use of funds that had been entrusted to you as Trustee and which you had a duty to hold in a fiduciary capacity.

The fact that the Trial Committee did not see fit to impose more severe discipline should not be taken by you, other members of the Bar, or the public to indicate the Trial Committee in any way felt that your conduct in this manner was excusable.

The Trial Committee commends you on the forthright manner in which you have dealt with the Trial Committee in the determination of this matter; and commends you in your forthright manner in which you proceeded to rectify your error.

Pursuant to Section 23 of the Rules of Disciplinary Procedure, IT IS ORDERED that a certified copy of this public censure be entered upon the Judgment Docket of the Superior Court of Guilford County and also on the Minutes of the Supreme Court of North Carolina.

This 1st day of July, 1977.

Emery B. Denny, Jr., Chairman
Trial Committee
Cyrus F. Lee, Member
Trial Committee
Kenyon Benedict Zahner, Jr.,
Member, Trial Committee

The Court anticipates that this should and will be done irrespective of compensation, and it has observed that all other lawyers in similar cases have cheerfully complied.

"If you have not previously filed a petition for certiorari with the United States Supreme Court, you might want to contact Mr. Sidney Eagles in the Attorney General's office. He has worked with a number of other lawyers in similar circumstances and I am sure he will be happy to provide you with a form adequate for the occasion.

"You indicate concern about receiving reasonable compensation from the State of North Carolina for services to be rendered in perfecting the appeal to the United States Supreme Court. We are concerned at present with the petition only, and there is no assurance that you will be prosecuting an appeal. If the petition is granted and you actually perfect the appeal, you will be looking to the Federal court for compensation because the North Carolina General Assembly has not authorized the payment of counsel for representation in the Federal courts."

6. Although Mr. Hunnoval prepared a petition for certiorari and a supporting brief to be filed in the Supreme Court of the United States, he never, in fact, filed the petition. He was removed from the case as counsel by Judge Rouse on 19 May 1977 and other counsel was appointed to represent Bernard.

7. Mr. Hunnoval refused to file the petition for certiorari in the Supreme Court of the United States on behalf of his client because he understood he would not be compensated for this service.

THIS COURT IS OF THE OPINION THAT:

1. It is the duty of an attorney to represent his client "zealously within the bounds of the law." Canon 7, North Carolina State Bar Code of Professional Responsibility, 208, N.C. 785, 824. (Hereinafter State Bar Code.)

2. Mr. Hunnoval had a duty to both his client and this Court to file in the United States Supreme Court an application for writ of certiorari. This duty arises from the facts that: (a) Mr. Hunnoval's client was subject to being executed by virtue of a sentence of death imposed by the trial court and in the imposition of which this Court found no legal or constitutional error; (b) the United States Supreme Court at the time of this Court's ruling had before it for consideration the question of whether the North Carolina law by which Mr. Hunnoval's client was sentenced to death was constitutional; (c) Mr. Hunnoval obtained a stay of execution of the death sentence from the Chief Justice of this Court upon his representation that an application to the United States Supreme Court for a writ of certiorari to review our decision would be made; (d) Mr. Hunnoval then requested and was denied leave to withdraw as counsel

in the case; and (e) this Court suggested that Mr. Hunnoval proceed to file the application.

3. That there was no provision for Mr. Hunnoval to be compensated for filing the application for the writ in no way relieved him of the duty to file it, nor does it mitigate his failure to perform this duty. "[A]n attorney appointed by the court to defend cannot recover compensation from the public for his services in the absence of an enabling statute. The reason is that an attorney, being an Officer of the Court... takes his office *cum onere*, and one of the burdens of office which custom has recognized is the gratuitous service rendered to a poor person at the suggestion of the court." State v. Davis, 270 N.C. 1, 11, 153 S.E. 2d 749, 756 (1976), *cert. denied*, 389 U.S. 828 (1970), quoting 7 Am. Jur. 2d, Attorneys at Law, §207; *see generally*, Annot., "Right of Attorney Appointed by Court for Indigent Accused to, and Court's Power to Award, Compensation by Public, in Absence of Statute or Court Rule," 21 A.L.R. 3d 819 (1968). "The rendition of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer...." State Bar Code, *supra* at 793.

4. Mr. Hunnoval's refusal to file the application for writ of certiorari constitutes:

- a. Dereliction of a clear duty owed to his client and, under the circumstances, this Court;
- b. Unprofessional conduct;
- c. Misconduct; and
- d. Malpractice.

5. This Court has not only the inherent power but also the duty to discipline attorneys, who are officers of the court, for unprofessional conduct. Canon 3B(3), N.C. Code of Judicial Conduct, 283 N.C. 771, 773. "Professional conduct subject to this power and duty... includes malpractice, or deficiency in character," State ex rel. Attorney General v. Herman Woodward Winburn, Attorney, 206 N.C. 923, 925, 175 S.E. 498, 500 (1934), and "any dereliction of duty except mere negligence or mismanagement." In re Burton, 257 N.C. 534, 542, 126 S.E. 2d 581, 587 (1962).

6. Judicial disciplinary action may take the form of an order of disbarment or suspension for a time of the attorney's privilege to practice law. In re Burton, *supra*; State ex rel. Attorney General v. Winburn, *supra*.

7. Summary judicial disciplinary action is appropriate when the attorney's dereliction occurs in a matter then pending before the court and where the facts underlying the dereliction are not in dispute. In re Brittain, 214 N.C. 95, 197 S.E. 705 (1938); State v. Sivey, 213 N.C. 45, 195 S.E. 1 (1938); *see also*, In re Bonding Co., 16 N.C. App. 272, 192 S.E. 2d 33, *appeal dismissed*, 282 N.C. 426, 192 S.E. 2d 337 (1972).