

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
90 DHC 2

THE NORTH CAROLINA STATE BAR, :

Plaintiff, :

vs. :

JEFFERSON DEEMS JOHNSON, III :

Defendant. :

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This cause was heard by a Hearing Committee of the Disciplinary Hearing Commission consisting of Maureen Demarest Murray, Chairman; Samuel Jerome Crow and Frank L. Boushee beginning on May 3, 1990 and continuing on May 4 and 17, 1990. The plaintiff was represented by Carolin Bakewell and the defendant was represented by Pretlow Winborne. Based upon the pleadings, the prehearing stipulations and the evidence, the Committee makes the following Findings of Fact:

1. Plaintiff, the North Carolina State Bar, is a body duly organized under the laws of the State 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, Jefferson D. Johnson, III, was admitted to the North Carolina State Bar in 1967 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, 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, Johnson was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the Town of Clinton, Sampson County, North Carolina.

4. Following the death of Virginia Pigford Johnson (hereafter, Virginia Johnson) in June 1978, Johnson became attorney for Sandra F. Cornell, the administrator of the Virginia Johnson estate.

5. Cornell and her sisters, Jackie Monaghan and Patricia Denise, became involved in a dispute concerning division of a farm formerly owned by Virginia Johnson (hereafter, farmland).

6. Beginning in 1979, Johnson received income derived from the farmland. Johnson agreed to act as fiduciary for all three heirs and hold in trust the income derived from the farmland, until the dispute was concluded.

7. Johnson improperly distributed funds derived from the farmland to Sandra Cornell without the knowledge and permission of Ms. Denise.

8. In December, 1983, a court ordered Johnson to transfer \$37,107 in funds derived from the farmland no later than February, 1984 to a joint account in the names of Johnson and John C. Hine, the attorney for Ms. Denise.

9. Johnson failed and refused to transfer the funds as ordered by the court.

10. In October, 1984, Johnson's secretary-bookkeeper, Gloria Maynard, wrote six checks to Johnson totalling \$5,100 drawn on the Virginia P. Johnson farmland account. Ms. Maynard acted with Johnson's knowledge and upon his directions. Four of the checks were deposited into Johnson's trust account, at a time when Johnson was commingling personal and client funds in his trust account. The fifth check, for \$1,200, was deposited into one of Johnson's personal bank accounts.

11. Johnson did not have permission of the court or all of the Virginia Johnson heirs to remove the \$5,100 from the Virginia Johnson farmland account.

12. Prior to May 1983, Johnson failed and refused to render an accounting respecting funds derived from the farmland, despite Hine's demands for an accounting.

13. In May 1983, Johnson filed a document in the court entitled First Accounting, which purported to list financial transactions respecting the Virginia Johnson farmland funds from February 2, 1979 to May 15, 1983. In February, 1985, Johnson filed in the North Carolina Supreme Court a document entitled Second Accounting, which purported to list all financial transactions involving funds derived from the disputed farmland between May 16, 1983 and January 24, 1985. Both the First and Second Accountings contained numerous false statements. The accountings also failed to reveal the following transactions:

- a. That \$5,100 from the farmland account had been removed and placed in Johnson's personal and/or trust accounts in October, 1984.
- b. That \$10,000 belonging to Elizabeth Jefferson, another client of Johnson's, had been placed in the farmland account in January, 1985 to replace funds previously removed by Johnson.

- c. That \$3,427.98 of the 1984 farm rent was advanced to Ms. Cornell.
- d. That \$25,954.98 was transferred from the farmland account in January, 1983 to Johnson's trust account and that only \$22,954.98 was replaced into the farmland account thereafter.

14. Johnson was aware of the omissions and false statements in the first and second accountings.

15. In December, 1983, Johnson was retained by Elizabeth Diane Jefferson to invest \$30,000 on behalf of Ms. Jefferson's three minor children.

16. Between November 23, 1984 and January 23, 1985, Ms. Maynard misappropriated \$26,205.74 belonging to Ms. Jefferson at Johnson's directions. A total of nine checks were written on the dates and in the amounts as follows:

	<u>Amount</u>	<u>Date</u>	<u>Payee</u>
a.	\$ 500.00	November 23, 1984	Jeff Johnson
b.	2,438.00	November 28, 1984	Jeff Johnson
c.	5,000.00	November 28, 1984	Jeff Johnson
d.	2,000.00	December 4, 1984	Jeff Johnson
e.	253.13	December 31, 1984	Jeff Johnson
f.	452.11	January 4, 1985	Jeff Johnson
g.	562.50	January 7, 1985	Jeff Johnson
h.	5,000.00	January 18, 1985	Jeff Johnson
i.	10,000.00	Jan. 22, 1985	Virginia Johnson Estate

17. The proceeds of the checks listed in paragraph 16 (a) through (h) were used for Johnson's benefit. The proceeds of the check listed in paragraph 16 (i) was deposited into the Virginia Johnson farmland account at Johnson's specific instructions, to replace funds previously removed from the estate. Ms. Jefferson did not know of or consent to any of the use of her funds by Johnson.

18. In addition to the checks listed in paragraph 16, a total of \$3,247.19 belonging to Ms. Jefferson was removed from Johnson's trust account for the benefit of persons other than Ms. Jefferson after December 29, 1983. Ms. Jefferson did not know of or consent to this misuse of her funds.

19. In October, 1986, Ms. Maynard, pursuant to Johnson's instructions, gave Ms. Jefferson a false accounting respecting her funds. The accounting falsely indicated that \$40,000 was invested in treasury bills and that \$1,438.81 was being held in a money market account on Ms. Jefferson's behalf.

20. As of the date of the disciplinary hearing, Ms. Jefferson had not received any portion of the funds owed her.

21. In 1987, Johnson undertook to represent Lillie Joyce McKoy regarding injuries Ms. McKoy received in an automobile accident in February, 1987.

22. Johnson settled Ms. McKoy's property damage claim in August, 1987, after speaking with Brenda Matthews, the adjuster for State Farm Insurance Company. Johnson settled Ms. McKoy's personal injury claim on December 2, 1987, during another telephone conversation with Ms. Matthews. Ms. McKoy did not know of or consent to the settlement of her property damage and personal injury claims.

23. At Johnson's request, Ms. Matthews held the \$20,000 personal injury settlement check at her office until the late afternoon of December 2, 1987, to permit Johnson's wife to drive to the State Farm offices in Fayetteville and pick up the check.

24. Shortly thereafter, Johnson endorsed the \$20,000 check, which was then deposited into one of Johnson's personal bank accounts. Part of the proceeds of the \$20,000 check were used to cover a \$16,672 check written in late November, 1987 to purchase stocks for Johnson. At the time the \$16,672 check was written, Johnson did not have enough money in his personal bank account to pay for the stock purchase. As of the date of the hearing, Ms. McKoy had only received \$5,740.97 of the funds due her, after deducting a fee to Johnson of \$1,133.33.

25. In 1986, Johnson undertook to represent Crystal Emmanuel and Ricky Wilkes, respecting injuries they received in an automobile accident in 1985. Johnson received a total of \$28,000 in October, 1986 in settlement of part of Wilkes' and Emmanuel's claims.

26. Johnson deducted approximately \$9,600 from the settlement as his fee. Most of the remaining money should have been sent to the Department of Human Resources ("DHR") to repay funds expended for medical care on behalf of Wilkes and Emmanuel. The money remained in Johnson's trust account, however, and was ultimately used for Johnson's benefit and the benefit of third parties other than DHR.

27. Johnson did not knowingly misappropriate funds of Wilkes, Emmanuel or DHR.

28. Throughout the 1980's, Johnson was in serious financial difficulty and borrowed large amounts of money.

29. At Johnson's request, Ms. Maynard handled many of Johnson's personal financial transactions, as well as his law office accounts. Johnson frequently demanded that Ms. Maynard

pay personal and other debts, at a time during which he knew or should have known that he did not have sufficient personal funds to pay his debts.

30. Beginning no later than 1986, Johnson frequently refused to take calls from or meet with clients and absented himself from his law office for substantial periods of time.

31. During this same period of time, Johnson delegated much of the operation of the law office to Ms. Maynard and other non-lawyer employees and failed to supervise his staff's activities.

32. In February, 1986, Anne Lofton Mobley hired Johnson to help her purchase a one-half interest in a house. Ms. Mobley issued a \$780.80 check to Johnson as a retainer on or about February 27, 1986.

33. In June, 1987, Mobley sent Johnson a \$10,000 check to pay for the house purchase.

34. Johnson failed to complete the negotiation and purchase of the property on Mobley's behalf.

35. The \$10,780.80 received from Ms. Mobley was placed in two of Johnson's personal bank accounts and the proceeds were disbursed for Johnson's benefit by Ms. Maynard without the knowledge or consent of Ms. Mobley. As of the hearing date, none of the funds had been repaid to Ms. Mobley nor had she received title to the property.

36. In approximately August or September 1987, Ms. Maynard settled the personal injury claim of a client named Patricia Sullivan for \$17,000 without Ms. Sullivan's knowledge or consent.

37. The \$17,000 settlement check was deposited into Johnson's trust account on September 28, 1987.

38. On September 30, 1987, \$16,337 of Ms. Sullivan's funds were transferred to one of Johnson's personal bank accounts. These funds were later used for the benefit of Johnson and third parties other than Ms. Sullivan without her knowledge or consent.

39. Between December 14, 1988 and January 6, 1989 Ms. Sullivan received a total of \$3,500 from Johnson's office. As of the date of hearing, Ms. Sullivan had not received the remaining funds due her.

40. In October or November, 1988, Ms. Maynard settled the personal injury claim of a client named Doris Clifton for \$5,000 without Ms. Clifton's knowledge or consent.

41. The \$5,000 settlement check was deposited into Johnson's attorney trust account on or about November 15, 1988.

42. On or about November 15, 1988, Johnson signed a check transferring \$2,127.30 of Ms. Clifton's funds to one of his personal bank accounts as a fee. Ms. Clifton did not authorize Johnson to pay himself a fee in this amount, nor did Johnson provide services to Ms. Clifton justifying a \$2,127.30 fee.

43. The remaining funds belonging to Ms. Clifton were disbursed by Ms. Maynard for Johnson's benefit without Ms. Clifton's knowledge or consent. As of the date of the hearing, Ms. Clifton had not received the funds due her.

44. In approximately July, 1988, Ms. Maynard settled Johnny Melvin's personal injury claim for \$3,700, without Melvin's knowledge or consent.

45. The \$3,700 settlement check was deposited into Johnson's attorney trust account on or about September 2, 1988.

46. The proceeds of the \$3,700 check were disbursed by Ms. Maynard for the benefit of Johnson and third parties other than Melvin without Melvin's knowledge or consent. As of the time of the hearing, Mr. Melvin had not received the funds due to him.

47. In early 1988, Ms. Maynard settled Patsy Watts' personal injury claim for \$4,000 and settled her property damage claim for \$759.50 without Ms. Watts' consent or knowledge.

48. The \$4,000 personal injury check was deposited into Johnson's attorney trust account on or about April 7, 1988. The \$759.50 property damage check was deposited into one of Johnson's personal bank accounts on or about February 25, 1988.

49. Ms. Watts did not receive any proceeds of the \$4,000 check or the \$795.50 check prior to the disciplinary hearing. The funds were disbursed by Ms. Maynard for the benefit of Johnson or third parties other than Ms. Watts without Ms. Watts' knowledge or consent.

50. Johnson was on notice that the Mobley, Clifton, Watts, Melvin and Sullivan matters were being handled through his office. Despite this fact, Johnson failed to prevent Ms. Maynard from settling client matters and converting the funds for Johnson's benefit and the benefit of others.

51. Between January 1, 1980 and December 31, 1988, Johnson commingled personal funds and client funds in his attorney trust account.

52. Between July 28, 1987 and December 23, 1988, 13 checks payable to cash were drawn on Johnson's attorney trust account.

53. As noted in the above findings of fact, Johnson's clients were hurt financially as a result of the improper transactions in Johnson's attorney trust account.

Based upon the foregoing Findings of Fact, the Committee makes the following Conclusions of Law:

(a) By misappropriating funds of the Virginia Johnson heirs, Elizabeth Jefferson and Lillie Joyce McKoy, Johnson engaged in illegal conduct involving moral turpitude in violation of DR 1-102(A)(3), engaged in professional conduct which adversely reflects on his fitness to practice law in violation of DR 1-102(A)(6) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of DR 1-102(a)(4).

(b) By failing to promptly disburse funds he received in a fiduciary capacity to or for the benefit of Ms. Jefferson, Crystal Emmanuel, Ricky Wilkes, Ms. McKoy, Ms. Mobley, Ms. Sullivan, Ms. Watts, and Melvin, Johnson violated Rule 10.2(e) and/or DR 9-102(B)(4).

(c) By failing to accurately and promptly account for the Virginia P. Johnson funds, which he held in a fiduciary capacity, Johnson engaged in conduct prejudicial to the administration of justice in violation of DR 1-102(A)(5), engaged in professional conduct which adversely reflects on his fitness to practice law in violation of DR 1-102(A)(6) and failed to promptly notify a client of receipt of funds of the client in violation of DR 9-102(B)(1).

(d) By failing to pay over into a joint account the \$37,101 he held on behalf of all the Virginia Johnson heirs, in violation of the December 1983 court order, Johnson engaged in conduct prejudicial to the administration of justice in violation of DR 1-102(A)(5), engaged in professional conduct which adversely reflects on his fitness to practice law in violation of DR 1-102(A)(6) and ignored the ruling of a tribunal in violation of DR 7-106(A).

(e) By filing a false and misleading accounting with the North Carolina Supreme Court, Johnson engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of DR 1-102(A)(4), engaged in conduct prejudicial to the administration of justice in violation of DR 1-102(A)(5) and engaged in conduct which adversely reflects on his fitness to practice law in violation of DR 1-102(A)(6).

(f) By distributing some of the funds he held in a fiduciary capacity for the Virginia Johnson heirs to Ms. Cornell without the knowledge and consent of Ms. Denise, Johnson engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of DR 1-102(A)(4), engaged in

professional conduct which adversely reflects on his fitness to practice law in violation of DR 1-102(A)(6), and engaged in a conflict of interest in violation of DR 5-105(B).

(g) By knowingly providing Ms. Jefferson with a false and misleading accounting, Johnson engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C), engaged in conduct prejudicial to the administration of justice in violation of Rule 1.2(D) and knowingly made a false statement of fact in violation of Rule 7.2(A)(4).

(h) By settling Ms. McKoy's personal injury and property damage claims without her knowledge, Johnson failed to explain a matter to a client sufficiently to permit the client to make an informed decision, in violation of Rule 6(B)(2), failed to consult with a client regarding settlement of a case in violation of Rule 7.1(C) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 1.2(C).

(i) By failing to complete the legal matter entrusted to him by Ms. Mobley, Johnson neglected a legal matter entrusted to him in violation of Rule 6(B)(3).

(j) By failing to preserve funds of Ms. McKoy, Ms. Watts and Ms. Mobley separate and apart from his or his law firm's funds in a trust account, Johnson violated Rule 10.1(A) and (C).

(k) By failing to take adequate steps to prevent his non-lawyer staff members from engaging in the unauthorized practice of law and misappropriating client funds for his benefit, Johnson violated Rules 3.1 and 3.3.

(l) By retaining approximately 42 percent of Ms. Clifton's settlement proceeds as a fee without Ms. Clifton's authorization, Johnson charged or collected an illegal or clearly excessive fee, in violation of Rule 2.6.

(m) By commingling funds of clients with personal funds in his attorney trust account, Johnson violated Rule 10.1(A) and (C).

(n) By drawing checks payable to cash from his attorney trust account, Johnson violated Rule 10.2(C)(2).

The findings of fact and conclusions of law are signed by the Chairman with the express consent of all Committee members.

This the 10th day of July, 1990.

Maureen Demarest Murray
Maureen Demarest Murray, Chairman

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
90 DHC 2

THE NORTH CAROLINA STATE BAR, :

Plaintiff, :

vs. :

ORDER OF DISCIPLINE

JEFFERSON DEEMS JOHNSON, III :

Defendant. :

This cause was heard by a Hearing Committee of the Disciplinary Hearing Commission consisting of Maureen Demarest Murray, Chairman; Samuel Jerome Crow and Frank L. Boushee beginning on May 3, 1990 and continuing on May 4 and 17, 1990. Based upon the findings of fact and conclusions of law, the Hearing Committee enters the following:

ORDER OF DISCIPLINE

1. The Defendant is hereby disbarred.
2. The Defendant shall pay the costs of this proceeding.
3. The Defendant shall comply with the provisions of Section 24 of Article IX of the Discipline & Disbarment Rules and Regulations of the North Carolina State Bar.
4. The Defendant shall surrender his license and permanent membership card to the Secretary of the North Carolina State Bar.
5. The Defendant shall make full and fair restitution to those clients who have suffered financial loss, as noted in the Findings of Fact and Conclusions of Law, before petitioning for reinstatement.

This the 10th day of July, 1990.

Maureen Demarest Murray
Maureen Demarest Murray, Chairman