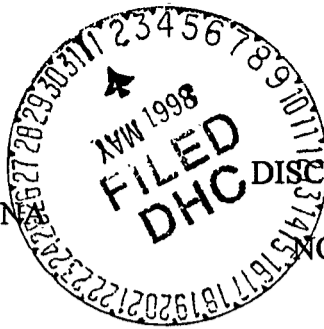


4205

WAKE COUNTY
NORTH CAROLINA



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
97 DHC 17

THE NORTH CAROLINA STATE BAR)	
PLAINTIFF)	
)	FINDINGS OF FACT,
v.)	CONCLUSIONS OF LAW
)	AND ORDER OF DISCIPLINE
MARQUIS STREET, ATTORNEY)	
DEFENDANT)	

THIS MATTER came on to be heard and was heard on March 12 - 13, 1998 before a hearing committee of the Disciplinary Hearing Commission composed of Richard T. Gammon, Chair; Vernon Russell and Robert Franz. The Defendant, Marquis Street, was represented by Richard Gabriel and Robert Wells. The N.C. State Bar was represented by Carolin Bakewell. Based upon the evidence introduced at the hearing, the pretrial stipulations and the pleadings herein, the Committee makes the following:

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, Marquis D. Street, (hereafter, Street) was admitted to the North Carolina State Bar in 1972, 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 all of the relevant periods referred to herein, Street was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Greensboro, Guilford County, North Carolina.

4. Street was properly served with process and the hearing herein was held with due notice to all parties.

5. Andrew L. Yarborough IV (hereafter, Yarborough) died unexpectedly on May 28, 1990. Prior to his death, Yarborough was engaged in the practice of law in the City of High Point.

6. Yarborough devoted his practice exclusively to personal injury matters. At the time of his death, he had at least 119 active client files pending. These files (hereafter, Yarborough files), were in different stages of completion. For instance, in approximately six cases, settlements had been reached prior to Yarborough's death, but the settlement checks had not yet arrived. In other cases, Yarborough had done substantial work prior to his death and in others, little work had been done.

7. Yarborough was survived, inter alia, by his mother, Pency Yarborough (hereafter, Ms. Yarborough) and his estranged wife, Joan Yarborough.

8. Yarborough had an "of counsel" relationship with Johnny Landon (hereafter, Landon), a boyhood friend and neighbor who, at the time relevant to these proceedings, taught at Howard University in Washington, D.C., and was licensed only in the state of North Dakota.

9. Prior to Yarborough's death, Landon and Yarborough occasionally worked on cases in federal court together. Shortly before Yarborough's death, Landon and Street worked with Yarborough on a proceeding in Randolph County. Landon was admitted pro hac vice in this proceeding and Street knew that Landon was not licensed to practice law in North Carolina.

10. Although they occasionally worked together on cases, Landon and Yarborough were not law partners and did not routinely share fees. Landon did not pay any portion of the costs of running Yarborough's law office in High Point.

11. Immediately after Yarborough's death, Landon offered to assist Ms. Yarborough in winding up her son's law practice and with the legal work associated with probating his estate. Very shortly after Yarborough's death, Landon contacted Street, who had also known Yarborough for some time prior to his death.

12. By early June 1990, Street had undertaken to provide legal advice and services to Yarborough's estate and to Ms. Yarborough in her representative capacity as administratrix of the estate. He had also undertaken to wind down Yarborough's law practice by completing the legal work on a number of personal injury files which were pending in Yarborough's office at the time of his death.

13. Ms. Yarborough knew of and consented to Street's involvement as attorney for her son's estate and the attorney handling the wind up of her son's law practice. She trusted both Street and Landon as her son's friends.

14. The parties did not enter into any written fee agreement respecting how Street and Landon were to be paid for their services. Early in the relationship, however, Landon told Ms. Yarborough that he and Street would provide legal services and advice to her in her capacity as administratrix of the Yarborough estate and would wind down Yarborough's law practice at no charge. Street, who was present during the entire conversation, did not contradict Landon, nor did he indicate that he intended to bill Ms. Yarborough or the estate for his services. Despite this conversation, however, Ms. Yarborough expected to pay some reasonable amount to Street and Landon for their work.

15. On June 6, 1990, Street filed a petition to have Ms. Yarborough named collector of Yarborough's estate. She was later named administratrix of the estate and served in that capacity until February 1991 when she was removed and Kenneth Babb (hereafter Babb), was appointed administrator dbn of Yarborough's estate.

16. Street did not provide significant legal services to the Yarborough estate after June 1990.

17. Between early June and approximately Oct. 8, 1990, Yarborough's law office in High Point (hereafter, High Point office), remained open and at least some of Yarborough's former employees continued to work on the pending Yarborough files.

18. Between early June and Oct. 8, 1990, approximately 10 new personal injury files were opened through the High Point office and some work was also done on these matters by Yarborough's former employees.

19. At various times between early June and Oct. 8, 1990, Street visited the High Point office and assisted in the resolution of the Yarborough files.

20. As the Yarborough files were settled, it was necessary to disburse the settlement funds and attorneys fees generated by the settlements. It was also necessary to pay the various expenses associated with the continued operation of Yarborough's law office.

21. In late June 1990, Street opened four bank accounts. One of these was an operating account at Southern National Bank which Street opened in the name of Andrew L. Yarborough IV. This account, which was assigned account number 351-573608, was used as an operating or business account during the wind down of Yarborough's practice (hereafter, SNB 3608 operating account).

22. Shortly after opening the SNB 3608 operating account, Street closed Yarborough's old operating account at Central Carolina Bank and transferred all of the funds remaining in that account, \$3,820.52, into the SNB 3608 operating account.

23. The \$3,820.52 which was transferred from Yarborough's old operating account into the new SNB 3608 operating account represented funds which were the property of Yarborough. These funds were later commingled with other funds in the 3608 operating account and were disbursed for various purposes. No portion of the \$3,820.52 was disbursed directly to the Yarborough estate, however.

24. Ms. Yarborough did not know of or consent to the transfer of the \$3,820.52 from Yarborough's CCB operating account into the SNB 3608 operating account.

25. Also in late June 1990, Street opened another operating account in the name of Street & Landon law offices at First Union National Bank (hereafter Street & Landon operating account). A total of \$1,250, which represented a fee generated by the settlement of one of Yarborough's client's files, was deposited into the Street & Landon operating account on June 29, 1990. There was virtually no other activity in this account, however, and the balance in the account was later transferred into the SNB 3608 operating account.

26. On June 26, 1990, Street opened a trust account at Southern National Bank in the name of Andrew L. Yarborough IV and clients. This account, which was assigned account number 351-54147, was used as a depository for client and fiduciary funds during the wind down of Yarborough's law practice (hereafter SNB 4147 trust account).

27. Shortly after the SNB 4147 trust account was opened, Street closed Yarborough's old trust account at Central Carolina Bank (hereafter, CCB trust account) and transferred the balance in that account, totaling \$25,578.02, into the SNB 4147 trust account.

28. A total of \$16,080.82 of the \$25,578.02 transferred from the CCB trust account into the SNB 4147 trust account represented funds belonging to clients of Yarborough. The remaining \$9,497.20 represented fees which had been earned by Yarborough before his death.

29. A total of \$8,598.03 of the \$9,497.20 in earned fees which had originated from Yarborough's CCB trust account were ultimately transferred from the SNB 4147 account to the Yarborough estate. The remaining \$899.17 in fees were transferred to the SNB 3608 operating account and were disbursed for various purposes associated with operating the High Point office.

30. Street did not advise Ms. Yarborough that a total of \$9,497.20 in earned fees which were the property of the Yarborough estate had been transferred into the SNB 4147

account, nor did she consent to the use of \$899.17 of these funds by Street and Landon for the operation of the High Point office.

31. On June 27, 1990, Street opened a trust account at First Union National Bank. The account, which was assigned number 7208792854 (hereafter FU 2854 trust account), was primarily used as a depository for funds generated by settlement of the pending Yarborough cases after Yarborough's death.

32. Between approximately June 26, 1990 and Oct. 8, 1990, Street settled at least 39 cases for former clients of Yarborough. Gross settlement proceeds from these 39 cases were deposited into the SNB 4147 trust account and the FU 2854 trust account.

33. Between July 12, 1990 and Oct. 8, 1990, funds totaling \$56,666.45 were transferred from the FU 2854 trust account to the SNB 3608 operating account.

34. The \$56,666.45 constituted approximately one-third of the gross settlement funds received relative to Yarborough files after his death. A total of \$30,191.06 of these funds were disbursed by Street to pay expenses of operating Yarborough's High Point office after his death, including payroll and utilities.

35. Between July 30, 1990 and Oct. 4, 1990, Street paid Landon a total of \$16,838.02 by issuing six checks to Landon which were drawn on the SNB 3608 operating account.

36. On the same dates, Street also paid himself a total of \$16,838.02 by issuing himself six checks drawn on the SNB 3608 operating account.

37. The funds which Street paid to himself and Landon represented a portion of the fees generated by settlement of Yarborough cases after Yarborough's death.

38. Ms. Yarborough did not know of or consent to the payment of the \$16,838.02 to Street nor did she know of or consent to the payment of the \$16,838.02 to Landon.

39. At the time during which Street disbursed \$16,838.02 to himself and the identical amount to Landon, no sums had been disbursed to Yarborough's estate.

40. Yarborough and his staff had performed at least some services for each of the 39 clients whose cases were settled through the High Point office prior to Oct. 8, 1990. Moreover, each of the files had been generated through Yarborough's office and the estate was, in effect, paying all of the costs of operating the office after Yarborough's death. Consequently, Yarborough's estate was entitled to at least some portion of the legal fees generated by the settlement of the cases.

41. Street maintained exclusive control of the checkbook and records relating to the SNB 3608 operating account, Street & Landon operating account, SNB 4147 trust account and FUNB 2854 trust account.

42. Street did not account to Ms. Yarborough respecting the Yarborough files which he settled through the High Point office, nor did he summarize for her which files had been settled, the amount of the settlements obtained, amount of attorneys fees generated by each case or the way in which the settlement funds were disbursed.

43. By Oct. 8, 1990, Street and Landon terminated their relationship. In a letter dated Oct. 8, 1990, Street notified Ms. Yarborough that he was resigning as attorney for the estate of Andrew L. Yarborough IV and that he was also resigning as attorney responsible for winding up Yarborough's law practice.

44. With his resignation letter of Oct. 8, 1990, Street submitted a bill to Ms. Yarborough, claiming that he was owed \$14,835 for legal services which he had provided to the Yarborough estate and claiming that he was owed another \$19,704.23 for work he had done in winding up Yarborough's law practice.

45. Street did not disclose in the Oct. 8, 1990 letter that he had already paid himself and Landon \$16,838.02 each in fees generated by Yarborough's files. Street also did not disclose how he had computed the amounts which he claimed he was owed, nor did he submit any time records which he contended supported his claims.

46. Ms. Yarborough did not pay any fees to Street as a result of his letter of Oct. 8, 1990 and, at the time the demand was made, the estate lacked assets with which to make such a payment.

47. Although Street told Ms. Yarborough that he was no longer responsible for winding down Yarborough's practice, Street took possession of 51 Yarborough files without Ms. Yarborough's knowledge and consent.

48. After Oct. 8, 1990, Street continued to work on these remaining 51 Yarborough files through his own office in Greensboro.

49. As the 51 Yarborough cases were settled, Street deposited the settlement proceeds into his attorney trust account at First Union National Bank, account number 7208780600 (hereafter Street FU 600 trust account) without the knowledge and consent of Ms. Yarborough.

50. Between Nov. 16, 1990 and July 1992, Street disbursed to himself a total of \$94,131.13 which represented legal fees generated from the 51 Yarborough files which he took to Greensboro. The 21 files which were specifically identified in the State Bar's complaint in this matter generated \$34,938.28 in attorneys fees. Ms. Yarborough did not

know of or consent to the disbursements of these fees to Street. Street did not hold any portion of these attorneys fees in trust or in escrow.

51. Meanwhile, in late October 1990, Street had an employee deliver to Landon a box which contained at least some of the bank records relating to the SNB 4147 trust account, the FUNB 2854 trust account and the FUNB 3608 operating account. The box did not contain an accounting of the Yarborough files which Street had settled. The box was first delivered to Ms. Yarborough's house where it remained for a day or two before Landon picked it up. Ms. Yarborough did not look in the box and did not know what it contained.

52. Street failed to render accountings at least annually to Ms. Yarborough and/or the estate of Andrew Yarborough IV respecting funds which he had collected from Yarborough's former clients, nor did he notify Ms. Yarborough or the estate of Andrew Yarborough of the receipt of funds generated by settlement of files of Yarborough's former clients.

53. In the fall of 1990, after Street had announced that he had resigned as attorney for the Yarborough estate and as the attorney responsible for winding down Yarborough's practice, another attorney, Bonnie Crawford, undertook to settle the pending Yarborough cases which remained in the High Point office.

54. Ms. Yarborough and Ms. Crawford signed a written agreement, whereby Ms. Crawford was to remit to the Yarborough estate a total of 1/3 of the attorneys' fees generated by the Yarborough cases which she settled. The remaining 2/3 of the attorneys fees were to be retained by Ms. Crawford as her fee and to pay for office expenses associated with settling the Yarborough cases.

55. Ms. Crawford ultimately was able to settle six Yarborough cases. She relayed one-third of the attorneys' fees generated by these cases to Babb for the benefit of the Yarborough estate, along with an accounting, upon his request.

56. In late 1990, Ms. Yarborough contacted another attorney, Billy Friende, to seek his assistance in obtaining some information concerning what had happened to the Yarborough files and the settlement funds received by Street.

57. In mid-December 1990, Ms. Yarborough and Friende visited Street at Street's office in Greensboro. As a result of this meeting, Street gave Ms. Yarborough three checks which totaled \$7,348.36. One of the checks, in the amount of \$4,245.03, represented the remaining earned attorney fees which had been left in the FUNB 2854 account. The remaining two checks constituted about 40% of the attorneys fees generated when Street settled three Yarborough cases after Oct. 8, 1990.

58. During the meeting in mid-December 1990, Street told Ms. Yarborough that he had an agreement with Landon whereby he was to be paid \$250 an hour for his work

in winding down Yarborough's law office and in serving as attorney for the estate. He indicated that he was also to be paid 25 cents per mile for travel incurred in serving in these two capacities.

59. Ms. Yarborough never agreed to pay Street \$250 an hour for work as the attorney for her son's estate or the attorney handling the wind down of her son's law practice. The first time she had heard of any such arrangement was at the meeting in Street's office in mid-December 1990.

60. Street did not turn over any records or documents supporting his claim that he was entitled to be paid \$250 an hour for his services. He did produce, during his deposition by the State Bar in August 1997, notes which he indicated were his time records for services performed for the estate and in his capacity as attorney handling the wind down of Yarborough's law practice. These notes were not produced in Street's response to the Grievance Committee in this matter, nor were they produced in his response to the State Bar's initial discovery requests.

61. The notes which Street identified as time records indicated that he spent approximately 34 hours working on Yarborough's estate. Even if Street was to be paid \$250 an hour for such work, which the Committee does not find was the case, Street's own time records did not justify his demand for payment of \$14,835 for legal services to the estate.

62. Other than the \$7,348.36 which Street turned over to Ms. Yarborough as a result of the meeting in mid-December, 1990, Street never turned over any other sums generated by settlement of Yarborough files to Ms. Yarborough or to Babb as the personal representative of the Yarborough estate or to any other person for the benefit of the Yarborough estate.

63. In June 1991, Babb sent Street a letter requesting him to account for the Yarborough files which he had settled and the funds derived from those settlements.

64. Street did not respond directly to this letter or to a follow up letter which Babb sent to him in September 1991.

65. In May 1992, Babb sought and obtained an order from the Clerk of Forsyth County Superior Court, directing Street to appear before the Clerk and account for the Yarborough files and the funds derived from those settlements.

66. Street appeared at the hearing before the Forsyth County Clerk on June 2, 1992 with his attorney, Richard Gabriel. Street did not produce any accountings or client files or settlement funds at the hearing.

67. On July 9, 1992, Street, through his attorney, provided to Babb a list of 42 Yarborough files which he had taken to Greensboro. The list omitted the names of 9

other Yarborough files which Street had taken to Greensboro. Attached to the partial list were settlement sheets setting out how the settlement funds in 25 of the cases on the list had been disbursed. No settlement sheets were provided for the remaining cases. Street offered to assist Babb in obtaining copies of the records relating to the High Point trust accounts and operating accounts which Street had opened but did not provide copies of any bank records.

68. Street did not produce the actual client files relating to the Yarborough cases which he had taken to Greensboro and did not produce any records relating to the Street 60 trust account.

69. The Yarborough cases pending at Yarborough's death generated a total of \$158,585 in attorneys fees. The Yarborough cases settled by Street generated a total of \$143,833.06 in attorneys fees. If one-third of those fees had been paid to the Yarborough estate, the estate's share of the fees would be \$47,896.41.

Based upon the foregoing Findings of Fact, the hearing committee enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee and the committee has jurisdiction over the subject of this hearing and over the person of the defendant, Marquis Street.

2. The defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:

(a) By dividing with Johnny Landon a portion of the fees paid by former clients of Andrew Yarborough IV, Street divided legal fees with a non-lawyer in violation of Rule 3.2 of the Rules of Professional Conduct.

(b) By delivering to Landon \$16,838.02 in fees paid by former clients of Andrew Yarborough IV without Ms. Yarborough's knowledge and consent, at a time when he was serving as attorney for the administratrix of Yarborough's estate and as attorney handling the wind down of Yarborough's practice, Street engaged in a conflict of interest in violation of Rule 5.1(b), prejudiced a client in violation of Rule 7.1(a)(3) and failed to explain a matter to a client to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in violation of Rule 6(b)(2).

(c) By paying to himself \$16,838.02 in fees paid by former clients of Andrew Yarborough IV between June and October 1990 without the knowledge and consent of Ms. Yarborough, Street engaged in a conflict of interest in violation of Rule 5.1(b), prejudiced a client in violation of Rule 7.1(a)(3), failed to explain a matter to a client to

the extent reasonably necessary to permit the client to make informed decisions regarding the representation in violation of Rule 6(b)(2).

(d) By retaining the entire \$16,838.02 for himself and by failing to pay over any portion of that sum to the estate of Andrew Yarborough IV, Street collected an excessive and/or illegal fee in violation of Rule 2.6 and failed to promptly pay or deliver to a client funds belonging to the client, in violation of Rule 10.2(e).

(e) By failing to notify Ms. Yarborough and/or the estate of Andrew Yarborough IV of the receipt of funds belonging to Ms. Yarborough and/or the estate, and by failing to account to the estate of Andrew Yarborough IV and/or to Ms. Yarborough for all sums collected from clients of Yarborough, Street failed to promptly notify a client of receipt of funds belonging in whole or in part to the client in violation of Rule 10.2(a), failed to rendered accountings at least annually to a client in violation of Rule 10.2(d), failed to hold property received in a fiduciary capacity separate from his personal property in violation of Rule 10.1(a), failed to retain client funds in a trust account in violation of Rule 10.1(c) and failed to keep a client reasonably informed about the status of a matter in violation of Rule 6(b)(1).

(f) By failing to notify Ms. Yarborough and/or the estate of Andrew Yarborough IV/and/or Babb of the receipt of funds belonging to Ms. Yarborough and/or the estate, and by failing to account to the estate of Andrew Yarborough IV and/or to Ms. Yarborough and/or Babb for all sums collected from clients of Yarborough, Street failed to promptly notify a client of receipt of funds belonging in whole or in part to the client in violation of Rule 10.2(a), failed to rendered accountings at least annually to a client in violation of Rule 10.2(d), failed to hold property received in a fiduciary capacity separate from his personal property in violation of Rule 10.1(a), and failed to keep a client reasonably informed about the status of a matter in violation of Rule 6(b)(1).

(g) By paying to himself \$94,131.13 in fees generated by the settlement of 51 of Yarborough's client's files between Oct. 8, 1990 and July 1992, of which total \$34,938.28 in fees was generated by the 21 client files specified in the State Bar's complaint all of which was done without the knowledge and consent of Ms. Yarborough and by failing to pay to Ms. Yarborough or Yarborough's estate the sums owed to the estate, Street engaged in a conflict of interest in violation of Rule 5.1(b), prejudiced a client in violation of Rule 7.1(a)(3), failed to explain a matter to a client to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in violation of Rule 6(b)(2) and collected an excessive and/or illegal fee in violation of Rule 2.6, and failed to promptly pay or deliver to a client funds belonging to the client, in violation of Rule 10.2(e).

Based upon the foregoing Findings of Fact and Conclusions of Law, and upon the evidence and arguments of the parties concerning the appropriate discipline, the hearing committee hereby makes the additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. It is reasonable to require Street to pay restitution to the Yarborough estate in the amount of \$40,000, which represents 1/3 of the attorneys' fees generated by the Yarborough cases which he settled, minus the \$7348 which he paid to the estate in December 1990.

2. The defendant's misconduct is aggravated by the following factors:

- a) substantial prior experience in the practice of law;
- b) multiple violations of the Rules of Professional Conduct;
- c) prior disciplinary offenses.

3. The defendant's misconduct is mitigated by the following factors:

- a) cooperative attitude and full disclosure to the hearing committee in this matter;
- b) remoteness of the offenses;
- c) the defendant successfully represented the former clients of Andrew Yarborough and properly handled the settlement funds deposited into his trust account, except as set out herein.

4. The mitigating factors outweigh the aggravating factors.

Based upon the foregoing aggravating and mitigating factors and the arguments of the parties, the hearing committee hereby enters the following:

ORDER OF DISCIPLINE

1. The defendant, Marquis Street, is hereby suspended from the practice of law for a period of one year beginning 30 days from service of this order upon the defendant. The suspension of the defendant's law license is stayed for a period of three years, upon the following conditions:

a) that defendant not violate any provisions of the Revised Rules of Professional Conduct during the three year stayed suspension period;

b) that defendant not violate any state or federal law during the three year stayed suspension period;

c) that defendant promptly comply with all requests for information, accountings, records or documents from the Forsyth County Clerk of Court or the public administrator of the estate of Andrew L. Yarborough IV;

d) that defendant either

i) pay \$40,000 to the personal representative of the estate of Andrew L. Yarborough IV within 60 days of the effective date of this order

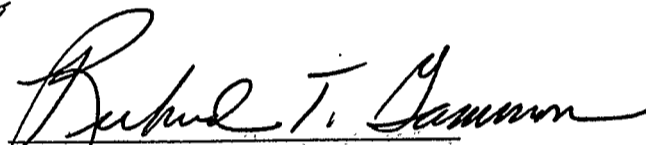
OR

ii) within 6 months of the effective date of this order, submit to binding fee arbitration through the N.C. State Bar's fee arbitration program and pay whatever sum is awarded as a result of the arbitration process by the deadline specified in the arbitration order, plus interest from Jan. 1, 1992 to the date of payment.

2. The defendant shall pay the costs of this proceeding as assessed by the Secretary within 30 days from service of this order upon the defendant.

Signed by the chair with the consent of the other hearing committee members, this the 14 day of ~~March~~, 1998.

April 6 per RTG



Richard T. Gammon, Chair
Disciplinary Hearing Committee