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 DHC

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THE NORTH CAROLINA STATE BAR)
Plaintiff)
v.) FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER OF DISCIPLINE
J. MICHAEL EDNEY, ATTORNEY)
Defendant)

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, J. Michael Edney, (hereafter, Edney), was admitted to the North Carolina State Bar in 1985, 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, Edney was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Hendersonville, Henderson County, North Carolina.

4. In 1994, Edney undertook to file an appeal for Michael A. Parker (hereafter, Parker), respecting Parker's conviction of criminal offenses.

5. Edney failed to perfect an appeal on Parker's behalf and Parker ultimately filed a grievance against Edney with the N.C. State Bar.

6. In April 1997, the Grievance Committee of the N.C. State Bar reprimanded Edney for failing to perfect the appeal on Parker's behalf and for failing to respond promptly to the N.C. State Bar's inquiries about the matter.

7. Thereafter, Parker again contacted the N.C. State Bar, complaining that Edney would not turn over Parker's file to him.

8. On Feb. 16, 1998, counsel for the State Bar wrote to Edney and asked him to respond to Parker.

9. Edney did not respond to counsel's letter of Feb. 16, 1998, nor did he turn over the file or respond to Parker.

10. Thereafter, the N.C. State Bar established a grievance file against Edney, based upon his failure to respond to the Bar and Parker. The grievance was assigned file number 98G 372 (hereafter, Parker's second grievance).

11. On April 6, 1998, Edney was served with a letter of notice from the State Bar respecting Parker's second grievance.

12. Edney did not respond to the letter of notice respecting Parker's second grievance.

13. On April 28, 1998, the State Bar sent Edney a follow up letter, reminding him that he had not responded to Parker's second grievance.

14. Edney did not respond to the April 28, 1998 follow up letter.

15. On May 19, 1998, Edney was served with a subpoena commanding him to appear in Raleigh and respond to Parker's second grievance.

16. On June 25, 1998, shortly before Edney was required to appear in Raleigh pursuant to the subpoena, he responded to Parker's second grievance. Owing to the incomplete nature of this response, however, an additional exchange of letters was required before Edney provided a full account of his conduct.

17. Prior to March 26, 1997, the N.C. State Bar received a communication from C. F. Wrenn (hereafter, Wrenn), requesting arbitration of a fee dispute which had arisen between Wrenn and Edney.

18. On March 26, 1997, the N.C. State Bar notified Edney of Wrenn's request and directed him to respond within 15 days of receipt of the notice.

19. The notice of mandatory fee arbitration was served upon Edney by certified mail on March 31, 1997.

20. On April 28, 1997, the N.C. State Bar Fee Arbitration Committee wrote to Edney, reminding him that he had not responded to the notice of mandatory fee arbitration. The April 28, 1997 follow up letter was served upon Edney by certified mail on May 7, 1997.

21. On May 30, 1997, Edney responded to the notice of mandatory fee arbitration. In his response, Edney indicated that he was willing to refund the \$1,044.58 fee paid by Wrenn.

22. Despite the assurances set out in his May 30, 1997 letter, Edney did not refund the fee nor did he communicate further with the N.C. State Bar respecting the matter.

23. On Aug. 4, Aug. 21, Sept. 10, and Oct. 20, 1997, the State Bar sent additional communications to Edney, requesting information and/or inquiring about the status of the Wrenn arbitration matter.

24. Edney did not reply to the follow up letters of Aug. 4, Aug. 21, Sept. 10 or Oct. 20, 1997.

25. Edney did not participate in good faith in mediation or mandatory fee arbitration respecting Wrenn's case.

26. Prior to March 23, 1998, the N.C. State Bar established a grievance file concerning Edney's failure to participate in good faith in mandatory fee arbitration respecting Wrenn's case (hereafter, the Wrenn grievance).

27. On March 23, 1998, the N.C. State Bar issued a letter of notice and substance of grievance to Edney concerning the Wrenn grievance and directed him to respond to the letter of notice within 15 days.

28. Edney was served with the Wrenn letter of notice on March 25, 1998.

29. Edney did not respond to the Wrenn letter of notice and substance of grievance.

30. On April 28, 1998, the N.C. State Bar issued a follow up letter to Edney, reminding him that he had failed to respond to the Wrenn letter of notice and substance of grievance.

31. Edney did not respond to the April 28, 1998 follow up letter.

32. On May 18, 1998, the N.C. State Bar issued a subpoena to Edney, commanding him to appear before the Grievance Committee of the N.C. State Bar on July 15, 1998 to respond to the Wrenn letter of notice and substance of grievance.

33. The subpoena was served upon Edney in person by the Henderson County Sheriff's Office.

34. On June 25, 1998, Edney responded to the Wrenn letter of notice and substance of grievance.

35. Edney's response was incomplete.

36. On July 2, 1998, deputy counsel wrote to Edney and indicated that he would not be released from the subpoena until he filed a substantive response to the matters set out in the letter of notice and substance of grievance.

38. On July 10, 1998, Edney responded more fully to the letter of notice and substance of grievance. The State Bar thereafter released him from appearing in person in response to the subpoena.

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

CONCLUSIONS OF LAW

1. By failing to respond in a timely fashion to the N.C. State Bar's letter of notice and follow up letter concerning Parker's second grievance, Edney failed to respond to an inquiry of a disciplinary authority in violation of Rule 8.1 of the Revised Rules of Professional Conduct.

2. By failing to participate in good faith in mandatory fee arbitration respecting the fee arbitration request filed by C. F. Wrenn, and by failing to respond to the State Bar's communications and requests for information in the Wrenn fee arbitration case, Edney violated Rule 2.6(e) of the Rules of Professional Conduct and/or Rule 1.5(f) of the Revised Rules of Professional Conduct.

3. By failing to respond in a timely fashion to the State Bar's Letter of Notice and Substance of Grievance respecting the Wrenn grievance and the State Bar's follow up

letter of April 28, 1998, Edney failed to respond to an inquiry of a disciplinary authority in violation of Rule 8.1 of the Revised Rules of Professional Conduct.

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. The defendant's misconduct is aggravated by the following factors:
 - a) Prior discipline
 - b) Substantial experience in the practice of law
 - c) Multiple offenses
 - d) Pattern of misconduct
2. There are no mitigating factors.
3. The aggravating factors outweigh the mitigating factors.

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

ORDER OF DISCIPLINE

1. The defendant, J. Michael Edney, is hereby suspended from the practice of law for two years, beginning 30 days from the service of this order upon him. The suspension will continue for a period of not less than six consecutive months. Thereafter, the defendant may seek reinstatement of his license to practice law upon filing a written petition and demonstrating compliance with the following conditions:

- a) The defendant shall cure all deficits in his mandatory continuing legal education requirements prior to seeking reinstatement of his license and shall comply with all mandatory continuing legal education requirements throughout the term of the stayed suspension.
- b) The defendant shall pay all mandatory State Bar dues, district bar dues and Client Security Fund assessments on a timely basis throughout the term of the stayed suspension.
- c) The defendant shall respond in a timely fashion to all letters of notice, notices of mandatory fee arbitration and inquiries of the Office of Counsel throughout the term of the stayed suspension.

- d) Prior to seeking reinstatement of his license, the defendant shall submit himself for examination by a physician approved by the N.C. State Bar. The physician shall examine the defendant to determine if he suffers from any addiction or mental or physical condition or impairment which requires treatment. The defendant shall provide the N.C. State Bar with a copy of all reports and records generated by the evaluating physician within 14 days of completion of the evaluation. Prior to seeking reinstatement, the defendant shall provide the N.C. State Bar with a written release authorizing the Bar to contact the evaluating physician and shall not revoke the written authorization.
- e) The defendant shall comply with any treatment plan or recommendation of the evaluating physician throughout the term of the stayed suspension. If the physician recommends a course of continuing treatment or therapy, the defendant shall provide the N.C. State Bar with written reports from the treating physician each quarter, stating whether or not the defendant is complying with the treatment plan and/or therapy. The reports shall be due in the Office of the Counsel on Oct. 1, Jan. 1, April 1, and July 1 of each year of the stay of the suspension of defendant's law license.
- f) Defendant shall violate no state or federal laws.
- g) The defendant shall violate no provisions of the Revised Rules of Professional Conduct.

2. Any violation of the conditions set out in paragraph 1 (a)-(g) shall be grounds to activate the stayed suspension of the Defendant's law license.

3. Defendant shall pay the costs of this proceeding within 30 days of service of the statement of costs upon him.

4. If the stay of the suspension of defendant's license is activated for any reason, the defendant shall not be readmitted to the practice of law until such time that he demonstrates by clear, cogent and convincing evidence that he is not suffering from a physical or mental condition which substantially impairs his professional judgment or his competence as an attorney.

Signed by the undersigned chair of the hearing committee with the consent of the other hearing committee members.

This the 11 day of June, 1999.

Robert B. Smith Jr
Chair, Disciplinary Hearing Committee