

WAKE COUNTY

21 22 23 24 25 26 27 28 29 30 31 1 2 3 4 5 6 7 8 9 10 11 12

JUL 2005
FILED
DHC

V.

) CONSENT
) FINDINGS OF FACT,
) CONCLUSIONS OF LAW
) AND ORDER OF DISCIPLINE

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, Lennard D. Tucker ("Tucker"), was admitted to the North Carolina State Bar on August 18, 1990 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 the times relevant to this complaint, Tucker actively engaged in the private practice of law in the State of North Carolina and maintained a law office in the city of Winston-Salem, Forsyth County, North Carolina.
4. Prior to October 2001, Karen P. Hairston ("Hairston") paid the fee Tucker requested for Tucker to get Hairston a divorce.
5. On October 11, 2001, Tucker filed a Complaint for Absolute Divorce ("Complaint") on Hairston's behalf in Forsyth County District Court.

6. On January 10, 2002, Hairston's Complaint was served upon the defendant named in the Complaint.

7. Tucker failed to take any action to get Hairston's divorce case before the Court.

8. After Hairston's Complaint was served upon the defendant, Hairston made several requests for Tucker to get the divorce completed.

9. Tucker failed to complete Hairston's divorce.

10. Monesia Young ("Young") and three of her minor children were injured in an auto accident on August 20, 2002.

11. Young retained Tucker to represent her in pursuing personal injury claims on behalf of her and her children.

12. Prior to July 2, 2003, Young agreed to settle all of the personal injury claims.

13. On July 2, 2003, Young signed settlement statements for each of the four claims settled. Each of the settlement statements authorized Tucker to retain funds from the settlement to pay to medical providers, including Dr. Thomas A. Gentle ("Dr. Gentle"), the Chiropractor who treated all of the injured parties.

14. Tucker failed to pay Dr. Gentle until December 16, 2003.

15. Tucker failed to pay the other medical providers for Young and her children prior to December 2003.

16. Christine Thompson and her daughter, Dawn Thompson, ("the Thompsons") were injured in an auto accident on July 14, 2002.

17. The Thompsons retained Tucker to represent them in pursuing personal injury claims.

18. Prior to August 29, 2003, the Thompsons agreed to settle both personal injury claims.

19. On August 29, 2003, the Thompsons signed settlements that authorized Tucker to retain funds from the settlements to pay to their medical providers, including the Wright Chiropractic Center.

20. After being contacted by Dr. Wright about their outstanding bills with the Wright Chiropractic Center, the Thompsons contacted Tucker about paying Dr. Wright.

21. Tucker failed to pay the Wright Chiropractic Center and the other medical providers on the Thompsons' behalf until April 8, 2004.

22. Harrietta Royster ("Royster") was injured in an automobile accident on March 6, 2000.

23. On February 12, 2001, Royster retained Tucker to represent her in pursuing a personal injury claim.

24. On March 5, 2003, Tucker filed a Complaint in Forsyth County Superior Court on Royster's behalf, designated file number 03 CVS 1484 ("civil action.").

25. Tucker's first attempt to serve the defendant in the civil action was returned with the deputy who attempted service indicating that, according to the defendant's mother, the defendant was attending college at a university in South Carolina.

26. Tucker filed alias and pluries summonses on May 27, 2003 and July 30, 2003 in the civil action. Due to staff error, Tucker failed to file another alias and pluries summons or have the Clerk endorse the July 30, 2003 summons in the civil action.

27. Due to his staff's error, the defendant in Royster's civil action was never served with the Complaint or with a summons.

28. As a result of Tucker's failure to either have the Clerk endorse the July 30, 2003 summons or file another alias and pluries summons, Royster's civil action was discontinued and barred by the statute of limitations.

29. Royster made several attempts to get Tucker to communicate with her about the status of her civil action, but Tucker failed to communicate with Royster.

30. On December 5, 2003, a lawyer served Tucker with a motion to dismiss Royster's civil action for insufficiency of process and insufficiency of service of process. That motion was filed in the civil action on December 8, 2003.

31. Tucker failed to advise Royster of the motion to dismiss her civil action.

32. At least between the dates of July 2, 2003 and April 8, 2004, Tucker failed to reconcile the individual client balances shown on the ledgers of his trust account with the current bank balances for the trust account on at least a quarterly basis.

33. The State Bar dismissed the allegations of the First and Fifth Claims for Relief.

BASED UPON the foregoing Findings of Fact, the hearing committee makes the following:

CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee of the Disciplinary Hearing Commission and the hearing committee has jurisdiction over Tucker and the subject matter.
2. Tucker's conduct, as set out above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(a) & (b)(2) and §84-28(b)(3) as follows:
 - (a) by failing to promptly pay the medical providers for Young and her children, including Dr. Gentle, as directed by Young, Tucker violated Revised Rule 1.15-2(m);
 - (b) by failing to promptly pay the medical providers for the Thompsons, including the Wright Chiropractic Center, as directed by the Thompsons, Tucker violated Revised Rule 1.15-2(m);
 - (c) by failing to act with reasonable diligence and promptness in paying the medical providers, even after demand by the Thompsons, Tucker violated Revised Rule 1.3;
 - (d) by failing to communicate with Royster in response to her attempts to get a status update on her civil case, Tucker failed to promptly comply with reasonable requests for information in violation of Revised Rule 1.4(a)(4); and
 - (e) by failing to tell Royster of the motion to dismiss filed in her civil action, Tucker failed to keep Roster reasonably informed about her civil case in violation of Revised Rule 1.4(a)(3).

BASED UPON the foregoing Findings of Fact, the Conclusions of Law, and the evidence presented at the hearing, the hearing committee hereby makes the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Tucker's misconduct is aggravated by the following factors:
 - (a) Multiple offenses;
 - (b) Substantial experience in the practice of law.
2. Tucker's misconduct is mitigated by the following factor:
 - (a) Absence of a dishonest or selfish motive;
 - (b) Absence of a prior disciplinary record;

(c) Good character or reputation.

3. The mitigating factors outweigh the aggravating factors.

4. Although Royster's civil claim was discontinued due to Tucker's staff's error, this was not a result of intentional conduct on Tucker's part. Otherwise, Tucker's conduct caused only potential harm and not actual harm to Tucker's clients.

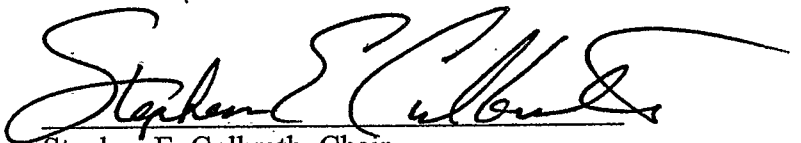
BASED UPON the foregoing Findings of Fact Regarding Discipline and the consent of the parties, the hearing committee hereby enters the following:

ORDER OF DISCIPLINE

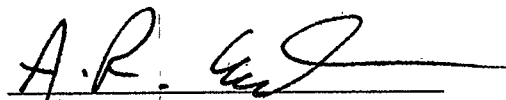
1. The discipline to be imposed in this matter is an Admonition. This order constitutes that Admonition.

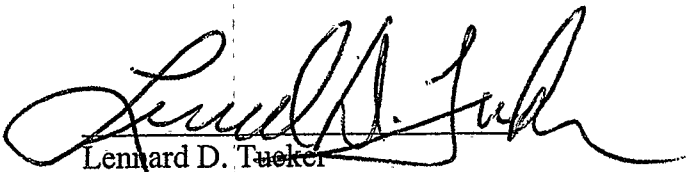
2. Tucker is taxed with the costs of this action as assessed by the Secretary.

Signed by the chair with the consent of the other hearing committee members, this
the 20th day of ~~June~~ July, 2005.


Stephen E. Culbreth, Chair
Hearing Committee

CONSENTED TO:


A. Root Edmonson
Deputy Counsel
North Carolina State Bar


Lemard D. Tucker
Defendant