

2401

WAKE COUNTY
NORTH CAROLINA

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
04 DHC 48

THE NORTH CAROLINA STATE BAR)	
Plaintiff)	FINDINGS OF FACT
v.)	CONCLUSIONS OF LAW
)	AND ORDER OF DISCIPLINE
WALTER T. JOHNSON, JR., ATTORNEY)	
Defendant)	

THIS MATTER came on to be heard and was heard on the 14th day of January, 2005 before a duly assigned hearing committee composed of Karen Eady-Williams, Chair; John M. May and Marguerite Watts. The Defendant, Walter T. Johnson, Jr., represented himself. Carolin Bakewell appeared for the N.C. State Bar. Based upon the pleadings, stipulations and the evidence presented at trial the hearing committee hereby enters 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, Walter T. Johnson, Jr. ("Johnson,"), was admitted to the North Carolina State Bar in 1964, 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 periods relevant hereto, Johnson was engaged in the practice of law in Greensboro, North Carolina.

4. Johnson was properly served with the summons and complaint in this matter and the Disciplinary Hearing Commission has jurisdiction over his person and the subject matter of the State Bar's complaint filed herein.

5. In 1996, Douglas Dick ("Dick,"), was convicted of second degree sexual offense in Dare County Superior Court and sentenced to 37 years in prison. Dick was represented at trial by counsel other than Johnson.

6. In November 1998, Johnson undertook to pursue post-conviction relief on Dick's behalf. Dick's mother, Nancy Dulaney ("Dulaney,"), paid Johnson a \$3,800 fee to represent Dick.

7. On or shortly after the date on which Johnson undertook to represent Dick he was aware that the state court had denied one or more motions for appropriate relief filed by Dick on his own behalf prior to November 1998.

8. Between November 1998 and mid-2000, Johnson filed no pleadings for Dick. Although Johnson, Dick and Dulaney discussed the possibility of retaining an expert witness to challenge medical evidence presented at Dick's 1996 trial, Johnson did not attempt to locate an expert witness. The only action taken to locate an expert was done by Dulaney, who is a school teacher with no medical or legal background.

9. On Aug. 2, 2000, Johnson filed a petition for writ of certiorari with the N.C. Court of Appeals in Dick's case. The petition was denied on Sept. 27, 2000 because Johnson's petition did not include a copy of the order respecting which he sought review, in violation of the North Carolina Rules of Appellate Procedure.

10. On March 12, 2001, Johnson filed an amended petition for writ of certiorari with the N.C. Court of Appeals for Dick. The petition was denied on March 21, 2001.

11. In late 2001, Johnson filed a petition for habeas corpus pursuant to 28 U.S.C. Section 2254 with the Eastern District of North Carolina on Dick's behalf.

12. On March 1, 2002, the petition was denied by the federal court on the ground that it was untimely.

13. Johnson agreed to appeal from the federal court order, but failed to do so. He failed to file any other pleadings or take other effective action on Dick's behalf.

14. On a number of occasions between 2001 and 2004, Dick asked Johnson to provide him with copies of documents from his file, including medical

reports relating to his step-daughter, the state's chief witness against Dick at his 1996 trial. Johnson promised to search for the reports on several occasions but never produced them to Dick.

15. Dick's father attempted to call Johnson several times to discuss the case. Johnson was unavailable and did not return his calls. Johnson also rarely returned calls placed to him by Dulaney concerning the status of the case.

16. Although Johnson wrote some letters to Dick, most were form letters that were unresponsive to Dick's questions about the facts and status of his case.

17. In mid-2003, Dick discharged Johnson and demanded that he refund at least half of the \$3,800 fee. Johnson failed to refund any portion of the fee.

18. Johnson failed to produce time records, work product or other convincing evidence establishing that he in fact was entitled to keep the entire \$3,800 fee paid to him on Dick's behalf.

19. On January 30, 2004, Dulaney filed a grievance against Johnson with the North Carolina State Bar.

20. On March 25, 2004 the Forsyth County Sheriff's Department personally served Johnson with the letter of notice and substance of grievance concerning Dulaney's grievance. The letter of notice directed Johnson to respond in writing to Dulaney's grievance within 15 days.

21. Johnson never responded to the State Bar's letter of notice concerning Dulaney's grievance.

22. On Oct. 22, 1979, James W. Brown ("Brown") was convicted in Sampson County Superior Court of second degree murder and sentenced to life in prison. He was represented at trial by counsel other than Johnson.

23. In early 1999, Johnson undertook to pursue parole and post conviction relief on Brown's behalf. Johnson was paid a \$3,800 fee to represent Brown.

24. Although Johnson knew or should have known that Brown was in medium custody and that he had incurred more than 40 infractions while in prison, Johnson failed to timely warn Brown that it would be difficult, if not impossible, to achieve Brown's direct release on parole, under the circumstances of his case.

25. Johnson failed to take timely, effective action to pursue parole or post conviction relief for Brown. There is no evidence that he ever filed any

pleadings or petitions on Brown's behalf or that he even obtained the transcript of the trial in Brown's case.

26. Johnson failed to keep Brown advised of the status of his case or respond to Brown's inquiries about the matter.

27. Johnson failed to return the unearned portion of the \$3,800 fee that he had been paid on Brown's behalf, despite Brown's demands for a refund.

28. On Nov. 19, 2003, Brown filed a fee dispute petition with the North Carolina State Bar concerning Johnson.

29. On Dec. 5, 2003, Johnson was served with the State Bar's notice of Brown's fee dispute petition by certified mail and was directed to respond in writing within 15 days.

30. Johnson failed to respond to the notice of Brown's fee dispute petition.

31. Thereafter, the N.C. State Bar sent Johnson a letter reminding him that his answer to Brown's fee dispute petition had not been filed. Johnson was served with the letter by certified mail on Jan. 8, 2004.

32. Johnson did not respond to the follow up letter or otherwise participate in the fee dispute process.

33. Thereafter, the State Bar opened a grievance file against Johnson, based upon his failure to participate in the fee dispute process in Brown's case. On April 12, 2004, Johnson responded to the grievance. In his response, he indicated that had not intentionally ignored the State Bar's notices regarding Brown and had mistakenly believed that the case was being mediated by the local district bar. Johnson offered to participate in mediation to resolve the dispute.

34. On April 19, 2004, Luella Crane, Assistant Director of the State Bar's fee dispute mediation program, wrote to Johnson and asked him to provide information she needed to conduct the mediation process.

35. Johnson did not respond to Ms. Crane's April 19, 2004 letter, nor to a follow up letter that she sent to him by certified mail in mid-May 2004. Johnson never participated in the State Bar mediation process respecting Brown nor did he return any part of the fee paid for Brown.

36. On Aug. 23, 2003, following a hearing at which Johnson was present and represented by counsel, the Disciplinary Hearing Commission (hereafter, DHC), of the North Carolina State Bar entered an order suspending Johnson's law license for three years. The order provided that the suspension could be stayed

after a period of one year if Johnson complied with certain conditions set out in the order.

37. As of Aug. 23, 2003, therefore, Johnson was on notice that his law license was about to be suspended for at least a year and that, pursuant to the State Bar's Discipline & Disability Rules, he was required to wind down his law practice.

38. The DHC's disciplinary order was never amended, stayed or vacated. The order was served on Johnson on Jan. 12, 2004 and became effective on Feb. 11, 2004.

39. On Oct. 27, 2003, during the period in which Johnson should have been winding down his law practice pursuant to the DHC's disciplinary order, Johnson undertook to represent Herbert E. Caviness ("Caviness") respecting charges of first degree rape and indecent liberties with a child then pending against Caviness in Guilford and Durham Counties.

40. Johnson was paid a fee of \$14,500 by Caviness and others on his behalf.

41. The criminal cases were in the very early stages at the time Johnson agreed to represent Caviness and Johnson knew or should have known that it was virtually impossible to finish the cases before the suspension of his law license went into effect.

42. As of October 2003, Johnson had tax liens exceeding \$500,000 pending against him and had been late on a number of occasions paying rent due to his landlord. Despite this fact, there was no evidence that Johnson held any portion of the \$14,500 fee paid to him by or for Caviness in trust, to ensure that he could refund the unearned portion of the fee if the cases were not concluded before the suspension of his law license became effective.

43. Johnson did not warn Caviness that he had been disciplined by the DHC or that his law license was about to be suspended and that there was a substantial risk that Johnson would be unable to conclude Caviness' cases before the suspension took effect. Johnson withheld this information for the purpose of inducing Caviness to pay him the fee at a time when Johnson was in bad financial circumstances and when he knew or should have known that the State Bar disciplinary rules did not permit him to take on new cases.

44. Caviness would not have employed Johnson had he known that Johnson had been disciplined by the DHC and that his law license was about to be suspended.

45. Johnson was served with the DHC order of discipline on or about Jan. 12, 2004 and the suspension of Johnson's law license became effective on Feb. 11, 2004.

46. In January 2004, Caviness learned that Johnson's law license had been suspended when he saw an article about the case in the Greensboro newspaper.

47. Johnson was unable to conclude the cases against Caviness before Feb. 11, 2004 and indeed, as of that date, substantive hearings had been held and no trial date had been scheduled for Caviness.

48. Johnson failed to refund the unearned portion of the \$14,500 fee to Caviness, despite Caviness' demands for a refund.

49. Caviness was forced to borrow money to retain new counsel to handle the criminal cases against him. He testified that this circumstance added to the stress necessarily associated with the criminal charges.

50. On Feb. 20, 2004, Caviness filed a grievance against Johnson with the North Carolina State Bar.

51. Johnson was served with the State Bar's letter of notice and substance of grievance concerning Caviness' grievance by certified mail on March 6, 2004. Although Johnson was directed to respond in writing to the grievance within 15 days, he failed to do so.

52. On March 22, 2004, the State Bar sent Johnson a follow up letter, reminding him that he had not responded to Caviness' grievance.

53. On April 14, 2004, Johnson filed an untimely response with the State Bar to Caviness' complaint.

54. In June 1998, Sherrall Parker ("Parker") was convicted of breaking and entering, larceny and other felony charges in Guilford County Superior Court.

55. On Oct. 21, 1998, Johnson agreed to file a motion for appropriate relief on Parker's behalf. Parker paid Johnson a \$3,800 fee for his services.

56. Johnson did not file the motion for appropriate relief for Parker until April 28, 2000. The motion was based on trial counsel's failure to file a motion to join charges against Parker on a timely basis, an issue of which Johnson had been aware since early in his representation of Parker.

57. The motion for appropriate relief was denied by Judge Catherine Eagles on July 19, 2000.

58. Johnson did not seek appellate review of Judge Eagles' order until Feb. 13, 2001, when he filed a petition for discretionary review on Parker's behalf with the N.C. Court of Appeals.

59. The petition for discretionary review was denied on March 8, 2001.

60. Johnson did not take other timely, effective steps to obtain review or relief from the criminal conviction for Parker.

61. On Jan. 22, 2004, Parker filed a grievance against Johnson with the North Carolina State Bar.

62. On Feb. 18, 2004, Johnson was served with the letter of notice and substance of grievance regarding Parker's grievance by certified mail. He was directed to file a written response to the letter of notice within 15 days.

63. On March 17, 2004, the State Bar sent a follow up letter to Johnson, reminding him that his answer to Parker's grievance was overdue.

64. On April 10, 2004, Johnson filed an untimely response to Parker's grievance.

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

CONCLUSIONS OF LAW

1. By failing to take timely, effective action to pursue post-conviction relief for Dick and Parker, Johnson neglected client matters in violation of former Rule 6(b)(3) and/or current Rule 1.3.

2. By failing to respond to requests for information from Dick, Dulaney, Brown and Parker, and by failing to keep them informed of the status of their cases, Johnson failed to communicate with clients in violation of former Rule 6(b)(1) and/or current Rule 1.4.

3. By failing to return the unearned portion of the fees paid to him for Dick, Parker, Caviness and Brown, Johnson retained excessive fees in violation of Rule 1.5 and failed to refund the unearned portion of fees in violation of Revised Rule 1.16.

4. By failing to respond to the State Bar's letter of notice concerning Dulaney's grievance and by filing late responses to the letters of notice concerning grievances filed by Parker and Caviness, Johnson failed to respond to

a lawful demand for information from a disciplinary authority in violation of Revised Rule 8.1.

5. By failing to warn Brown in a timely fashion that that it would be very difficult, if not impossible, to achieve Brown's direct release on parole under the circumstances of the case, Johnson engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of former Rule 1.2(c) and/or current Rule 8.4(c) and failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in violation of former Rule 6(b)(2) and/or current Rule 1.4(b).

6. By failing to respond to the State Bar's notice of Brown's fee petition, Johnson failed to participate in good faith in mandatory fee dispute resolution, in violation of Rule 1.5(f).

7. By accepting \$14,500 from Caviness when he knew or should have known that the State Bar disciplinary rules required him to wind down his law practice and by failing to warn Caviness that Johnson was about to lose his law license and that there was a substantial risk that Johnson would be unable to complete the representation before the suspension of his law license went into effect for the purpose of inducing Caviness to pay the fee, Johnson engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Revised Rule 8.4(c) and engaged in a conflict of interest in violation of Revised Rule 1.7.

FINDINGS OF FACT REGARDING DISCIPLINE

1. Johnson's conduct is aggravated by the following facts:
 - a) He was motivated in part by a dishonest or selfish motive.
 - b) He engaged in a pattern of misconduct.
 - c) He engaged in multiple violations of the Rules of Professional Conduct.
 - d) He has failed to make restitution.
 - e) He has substantial experience in the practice of law. He has had substantial prior discipline.
2. The Hearing Committee found no evidence of any mitigating factor.
3. Johnson's dishonest conduct has caused significant harm to his clients.
4. Johnson's misconduct has also harmed the standing of the legal profession by undermining trust and confidence in lawyers and the legal system.
5. Disbarment is the only sanction that can adequately protect the public for the following reasons:

(a) An order of discipline less than disbarment would not sufficiently protect the public because Johnson committed misdeeds involving moral turpitude and violations of the public trust. He effectively obtained property by false pretenses from Mr. Caviness, a person whom he had a fiduciary obligation to protect.

(b) Johnson has been the subject of four previous orders of discipline involving lesser sanctions. Although he has been given several chances to demonstrate that he will abide by the Rules of Professional Conduct, he has continued to violate the Rules of Professional Conduct and has failed to demonstrate that he has taken any steps to reform.

(c) Entry of an order imposing lesser discipline would fail to acknowledge the seriousness of the offenses that Johnson committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar in North Carolina.

(d) The protection of the public requires that Johnson not be permitted to resume the practice of law unless and until he demonstrates that he has reformed, that he understands his obligations to his clients, the public, the courts and the legal profession, and that reinstatement would not injure the standing of the legal profession. Disbarred attorneys must show reformation among other things, before they may resume the practice of law, whereas no such showing of reformation is required of attorneys whose licenses are suspended for a term certain.

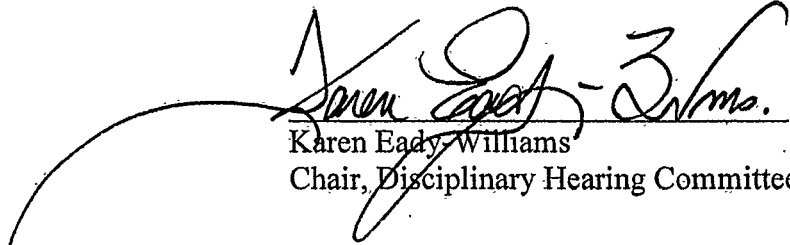
Based upon the foregoing Findings of Fact, Conclusions of Law and Findings of Fact Regarding Discipline, and any mixed findings of fact and conclusions of law howsoever designated, the Hearing Committee hereby enters the following:

ORDER OF DISCIPLINE

1. Walter T. Johnson, Jr. is hereby DISBARRED from the practice of law.
2. Johnson shall surrender his law license and membership card to the Secretary of the State Bar no later than 30 days from service of this order upon him if he has not already done so in connection with his prior orders of discipline.
3. Johnson shall pay the costs of this proceeding as assessed by the Secretary of the N.C. State Bar no later than 30 days from service of this order upon Johnson.
4. Johnson shall comply with all provisions of 27 NCAC 1B § .0124 of the North Carolina State Bar Discipline & Disability Rules ("Discipline Rules").
5. Prior to seeking reinstatement of his law license, Johnson must present evidence to the Office of Counsel that he has made restitution in the following amounts:

- a) \$14,500 to Herbert Caviness.
- b) \$1,900 to Dougas Dick
- c) \$3,800 to James Brown
- d) \$1,900 to Sherrall Parker

Signed by the undersigned chairman with the full knowledge and consent of the other Hearing Committee members, this the 18th day of February 2005.



Karen Eady-Williams

Karen Eady-Williams
Chair, Disciplinary Hearing Committee