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WAKE COUNTY
NORTH CAROLINA



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
03 DHC 21

THE NORTH CAROLINA STATE BAR
Plaintiff

v.

BENITA W. GIBBS, ATTORNEY
Defendant

CONSENT ORDER

THIS MATTER came before a Hearing Committee of the Disciplinary Hearing Commission composed of F. Lane Williamson, T. Richard Kane and Lorraine Stephens pursuant to 27 N.C. Admin. Code Chapter 1 subchapter B, § .0114(h) of the Rules and Regulations of the North Carolina State Bar. The defendant, Benita W. Gibbs, was represented by Jay Reeves. Carolin Bakewell represented the State Bar. Defendant has agreed to waive a formal hearing in this matter. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Further, the Defendant hereby waives her right to appeal this consent order or challenge the sufficiency of the findings in any respect. Based upon the consent of the parties, 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, Benita W. Gibbs (Gibbs) was admitted to the North Carolina State Bar in 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 all of the periods relevant hereto, Gibbs was engaged in the practice of law in the City of Cary, North Carolina.

4. Prior to May 22, 2000, Shelly D. Reaves (Reaves) retained Gibbs to represent her regarding a personal injury claim arising out of an automobile accident in which Reaves was involved on May 22, 1997.

5. On or about May 22, 2000, Gibbs filed a formal complaint in Durham County Superior Court on Reaves' behalf against Eugene Sowell (Sowell), the driver of the other car involved in the 1997 wreck

6. Shortly after the suit was filed, Sowell's insurance company offered to settle the case for \$1,000. Reaves rejected this offer as she had accumulated substantial medical bills.

7. Gibbs served Sowell with the summons and complaint by publication without first using due diligence to serve Sowell by personal delivery, registered mail or other means as required by N.C. Civ. Pro. Rule 4.

8. On Dec. 5, 2000, Sowell's attorney served Gibbs with interrogatories and requests for production of documents.

9. Gibbs failed to respond to Sowell's discovery requests and Sowell's attorney filed a motion to compel on March 16, 2001.

10. On April 11, 2001, the court ordered Gibbs to file discovery responses by no later than April 16, 2001.

11. On April 18, 2001, Gibbs filed incomplete discovery responses.

12. On July 10, 2001, the trial court dismissed Reaves' complaint based upon Gibbs' failure to use due diligence prior to serving Sowell with the summons and complaint by publication.

13. On Aug. 17, 2001, Gibbs filed a notice of appeal from the July 10 order but she failed to perfect the appeal.

14. On Oct. 19, 2001, defense counsel filed a motion to dismiss Reaves' appeal from the dismissal order.

15. On Oct. 19, 2001, Gibbs told Reaves for the first time that the personal injury action had been dismissed.

16. The court dismissed Reaves' appeal on or about Nov. 8, 2001.

17. Gibbs failed to return the client file to Reaves, despite Reaves' demands for the file.
18. Although Gibbs advised Reaves that she could file a claim against Gibbs' malpractice carrier, Lawyers Mutual Liability Insurance Co. denied coverage, based upon Gibbs' failure to cooperate with Lawyers Mutual after Reaves sought to file a malpractice claim against Gibbs.
20. Gibbs has not paid any amount to Reaves in restitution for mishandling Reaves' personal injury case.
21. On or about July 3, 1999, Gibbs undertook to handle a disability claim and a claim for supplemental security income (SSI) on Reaves' behalf.
22. Following a hearing, Gibbs obtained an award of \$11,163.50 in back disability benefits and \$6,000 in back SSI benefits on Reaves' behalf.
23. The Social Security Administration (SSA) authorized Gibbs to receive \$2,790.87 for her work on the disability case and authorized her to charge an additional \$164.30 fee for her work on the SSI case, for a total authorized fee of \$2,955.17.
24. The SSA paid \$2,790.87 to Gibbs from a portion of Reaves' back disability benefits. Gibbs also received another \$1,500 directly from Reaves, for a total fee of \$4,290.87.
25. The fees that Gibbs received in the disability and SSI cases exceeded the amount authorized by SSA by \$1,335.70.
26. Pursuant to the parties' fee contract, Gibbs was to receive the lesser of \$4,000 or 25% of the past due benefits she collected on Reaves' behalf as her fee for both the disability and SSI claims.
27. The fee that Gibbs actually received on the disability and SSI claims exceeded the maximum that the parties had agreed to in the fee contract by \$290.87.
28. Gibbs has not refunded any portion of the fee she received in the SSI and disability cases, despite demands from Reaves.
29. On or about Aug. 15, 2002, Reaves filed a grievance against Gibbs with the N.C. State Bar Office of Counsel.
30. The State Bar served Gibbs with a letter of notice and substance of grievance on April 16. The letter of notice directed Gibbs to file a written response to Reaves' complaint within 15 days.

31. Gibbs did not respond to Reaves' grievance although she received the letter of notice and substance of grievance.

32. On May 9, 2003, the State Bar Office of Counsel sent a follow up letter to Gibbs, reminding her that no response had been received regarding Reaves' complaint.

33. Gibbs did not respond to the letter of notice and substance of grievance concerning Reaves' grievance or to the May 9, 2003 follow up letter from the State Bar.

34. Beginning in at least 1999, Gibbs suffered from depression which, at times, was severe. Her depression contributed to her misconduct in mishandling Reaves' personal injury case and to her failure to respond to the State Bar.

35. Gibbs began taking medication for depression in approximately September 2003. She has continued receiving treatment for depression since that time.

36. Gibbs signed a contract with the State Bar FRIENDS program in October 2003. To date, she is in compliance with that contract.

Based upon the foregoing Findings of Fact, and the consent of the parties, the Committee enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Committee and the Committee has jurisdiction over the defendant, Benita Gibbs, and the subject matter of this proceeding.

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

(a) By failing to use due diligence to personally serve Sowell with the summons and complaint in the Reaves personal injury action before resorting to service by publication, Gibbs neglected a client matter in violation of Rule 1.3 and undertook a matter that she was not competent to handle in violation of Rule 1.1.

(b) By failing to file timely, complete responses to discovery and by failing to comply with the Court's April 11, 2001 order regarding discovery, Gibbs neglected a client matter in violation of Rule 1.3 and undertook a matter that she was not competent to handle in violation of Rule 1.1.

(c) By failing to file a timely notice of appeal from the Court's July 10 order dismissing the Reaves personal injury action and by failing to perfect the appeal, Gibbs neglected a client matter in violation of Rule 1.3 and undertook a matter that she was not competent to handle in violation of Rule 1.1.

(d) By failing to tell Reaves prior to Oct. 19, 2001 that her personal injury action had been dismissed, Gibbs failed to communicate with a client on a timely basis in violation of Rule 1.4.

(e) By failing to return the client file to Reaves promptly, Gibbs failed to turn over to her client all documents and materials belonging to the client at the end of the representation, in violation of Revised Rule 1.16.

(f) By retaining a fee in the disability/SSI case that was \$1,335.70. more than had been authorized by the Social Security Administration and which was \$290.87 more than was authorized by the parties' fee contract, Gibbs retained a clearly excessive and illegal fee in violation of Rule 1.5.

(g) By failing to respond to the letter of notice and substance of grievance regarding Reaves' complaint and by failing to respond to the Bar's May 9, 2003 follow up letter, Gibbs failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1.

Based upon the consent of the parties, the hearing committee also enters the following

FINDINGS REGARDING DISCIPLINE

1. Gibbs' conduct is aggravated by the fact that she engaged in multiple violations of the Rules of Professional Conduct.

2. Gibbs' conduct is mitigated by the following factors:

- a) absence of a prior disciplinary record
- b) remorse
- c) Gibbs suffered from depression during some or all of the time in which the misconduct occurred and her depression contributed to her neglect of Reaves' personal injury case and her failure to respond to the State Bar's letter of notice.
- d) cooperative attitude toward the proceedings.

3. The mitigating factors outweigh the aggravating factor.

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the consent of the parties, the Hearing Committee enters the following:

ORDER OF DISCIPLINE

1. The license of the Defendant, Benita W. Gibbs, is hereby suspended for two years, effective 30 days after the date that this Order is served upon her. The period of suspension is stayed for two years upon the following conditions:


- a. The Defendant shall, at her own expense, continue to participate in the N.C. State Bar FRIENDS program and shall comply with all terms and conditions of her FRIENDS contract;
- b. The Defendant shall execute a release within 30 days after service of this order upon her, authorizing the FRIENDS program and her psychologist to release information concerning her treatment, condition and compliance or non-compliance with her contract with representatives of the North Carolina State Bar Office of Counsel. The Defendant shall not revoke the release during the period of stayed suspension.
- c. The Defendant shall be responsible for ensuring that a written report is received in the Office of Counsel from her psychologist each quarter throughout the stayed suspension. The reports shall be received by the State Bar on each July 1, October 1, January 1 and April 1 throughout the period of stayed suspension. The written reports shall indicate whether Defendant is following her treatment plan and whether she is currently able to engage in the active practice of law. The expense of procuring such reports shall be borne entirely by the Defendant.
- d. The Defendant shall not violate any state or federal laws or any provision of the Revised Rules of Professional Conduct during the period of stayed suspension.
- e. The Defendant shall make restitution to Shelley Reaves in the amount of \$1,335.70 within 6 months of the date of this order and shall provide written proof of payment to the Office of Counsel within 1 week after having made such restitution.
- f. The Defendant shall answer all letters of notice and other communications from the State Bar on a timely basis or by the date set out in the notice, whichever is sooner.
- g. The Defendant shall pay all membership dues and all late fees owed to the North Carolina State Bar promptly and shall comply with all

mandatory continuing legal education requirements throughout the period of stayed suspension.


2. If a Hearing Committee determines that the Defendant has violated any of the provisions of paragraph 1, above, the suspension of the Defendant's law license shall be activated. If the suspension is activated, prior to seeking reinstatement of her license, the Defendant must comply with all of the provisions set out in paragraph 1 (a),(b) and (d)-(g) of this order and with the terms and conditions of 27 N.C. Admin. Code Chapter 1, Subchapter B, Section .0125(b) concerning the wind down of her law practice.


Signed by the undersigned Chair with the knowledge and consent of the other Committee members.

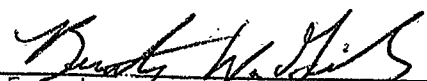
This the 19th day of March, 2004.


F. Lane Williamson, Chair

Seen and consented to:


Carolin Bakewell
Plaintiff's Attorney


Jay Reeves
Defendant's Attorney


Benita Gibbs, Defendant