

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
92 DHC 6

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

WILLIAM J. TOWNSEND, ATTORNEY
Defendant

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This cause came on to be heard and was heard on May 15, 1992 before a hearing committee composed of Karen P. Boyle, Chairman, James Lee Burney, and Frank E. Emory, Jr. Fern E. Gunn represented the North Carolina State Bar and the Defendant, William J. Townsend, appeared pro se. Based upon the admissions of the Defendant in his answer to the complaint in this matter and the evidence presented in the hearing, the Hearing Committee finds the following to be supported by clear, cogent, and convincing evidence:

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, William J. Townsend, was admitted to the North Carolina State Bar on September 7, 1965, 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 referred to herein, the Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Fayetteville, Cumberland County, North Carolina.
4. In October, 1986, Rodney D. McLeod retained the Defendant to file a bankruptcy petition. McLeod provided all necessary information to the Defendant to file the petition prior to McLeod leaving Fort Bragg, North Carolina en route to Germany for military service. The information that McLeod provided

relative to his finances and debts was contained in McLeod's case file which was maintained by the Defendant.

5. While stationed in Germany, McLeod telephoned and wrote the Defendant to ascertain the status of his bankruptcy case. On one occasion, Captain Martin Mishler, Legal Assistance Officer with the Department of the Army, wrote the Defendant and asked that he handle McLeod's bankruptcy case in an expeditious manner.

6. From the time that Defendant was retained until August 28, 1989 (the date that McLeod filed a grievance with the North Carolina State Bar), the Defendant wrote two letters to McLeod regarding his case. In one letter, the Defendant requested that McLeod complete bankruptcy papers that McLeod had completed prior to leaving the United States. In another letter, the Defendant asked for information about a lien on McLeod's Nissan truck and McLeod had provided that information at an earlier date. Also, the Defendant indicated that he would write and seek additional information from McLeod. However, Defendant did not request additional information.

7. During the time the Defendant had McLeod's bankruptcy case, McLeod's creditors wrote him and threatened to take legal action. This information was forwarded to McLeod's commanding officer.

8. The Defendant did not file a bankruptcy petition on McLeod's behalf.

9. McLeod paid the Defendant a total of \$285.00 to handle the bankruptcy case.

10. The Defendant did not earn the fee paid by McLeod to handle the bankruptcy case.

11. The Defendant did not refund the fee or any portion of it to McLeod.

12. On April 16, 1986, Norman Graham retained the Defendant for representation in a personal injury claim. The Defendant agreed to receive a one-third contingent fee.

13. Graham's personal injury case was settled for \$3,000.00.

14. The Defendant deposited the \$3,000.00 personal injury proceeds into his trust account on January 11, 1989. On January 11, 1989, the Defendant wrote himself a check in the amount of \$1,000.00, such amount representing his one-third contingent fee.

15. The Defendant paid Graham's money from the personal injury settlement in installments, instead of one lump sum. Graham asked that the Defendant pay him (Graham) in one lump sum.

16. The Defendant never provided Graham with a written accounting of the receipt and disbursement of Graham's funds in the personal injury case.

17. At the time the Plaintiff's disciplinary complaint was filed against the Defendant, he could not account for \$183.00 of Graham's money from the personal injury case. While the disciplinary proceeding was pending, Defendant produced a copy of a check in the amount of \$160.00 made payable to Cape Fear Valley Medical Center for treatment that Graham received.

18. The Defendant remains unable to account for \$23.00 of Graham's money. The Defendant's trust account records show that Graham's money was assessed by Defendant's bank for payment of service charges to Defendant's trust account. The Defendant did not have records showing the deposit of proceeds from Graham's personal injury case into his trust account. Plaintiff was required to subpoena Defendant's trust account records from the bank in order to show that money had been received and deposited into Defendant's trust account on Graham's behalf.

19. Cumberland County court records indicated that Defendant was the retained counsel for Graham in credit card theft and fraud cases. The Defendant charged Graham \$300.00 to handle the cases. Without Graham's authorization, the Defendant paid himself \$200.00 from the proceeds of the personal injury case as payment of his fee in the criminal case.

20. On November 2, 1979, Arlene R. T. Harris and the Defendant entered into a contract whereby Defendant agreed to represent Harris in an action to obtain alimony and child support. The Defendant agreed to handle the case for twenty per cent (20%) of the total amount recovered.

21. Harris challenged the validity of the November 2, 1979 contract. Judge E. Lynn Johnson allowed Harris's Motion for Summary Judgment and entered an order dated April 2, 1990 declaring the contract void.

22. After Judge Johnson's order declaring the contract void, the Defendant sent Harris a bill dated May 1, 1990 regarding his fee. At the time Defendant sent the bill to Harris, she was represented by James R. Nance Jr. Nance did not give his consent to Defendant to communicate with Harris.

23. The Defendant appealed Judge Johnson's decision to the N.C. Court of Appeals. The N.C. Court of Appeals affirmed Judge Johnson's decision declaring the contingent fee contract void.

24. Rodney McLeod and Norman Graham filed grievances against the Defendant. These grievances were referred to the 12th Judicial District Grievance Committee for investigation. Attorney Ronald E. Winfrey, a member of the 12th Judicial District Grievance Committee, was assigned to investigate the grievances McLeod and Graham filed against the Defendant.

25. The Defendant was asked by the Chairman of the 12th Judicial District Grievance Committee to respond to the Graham grievance by July 10, 1989 and the McLeod grievance by October 4, 1989. The Defendant did not meet the two deadlines.

26. Winfrey talked with the Defendant by telephone and asked that he respond promptly to the grievances. Defendant did not comply with Winfrey's request.

27. By certified letter dated May 24, 1990, Winfrey requested that the Defendant respond by June 4, 1990 to the McLeod and Graham grievances.

28. In the investigation of the grievances, Winfrey met with the Defendant. Winfrey asked the Defendant if he (Defendant) had any letters from McLeod in his file. Defendant provided Winfrey with one handwritten note dated October 25, 1987. When Winfrey asked if the Defendant had any other correspondence from or regarding McLeod, the Defendant replied that he did not. Winfrey observed several other pieces of handwritten correspondence from McLeod to the Defendant, as well as Captain Mishler's letter to the Defendant, in McLeod's file.

29. On September 23, 1991, the Defendant was served by certified mail, return receipt requested, with a subpoena for cause audit regarding his trust account records in connection with the Graham personal injury case.

30. David J. Frederick, an investigator with the North Carolina State Bar, telephoned the Defendant and left messages for Defendant to return his call. Defendant called Frederick on September 30, 1991. Defendant said that he would get his records together and telephone Frederick to schedule a time for the audit.

31. The Defendant did not schedule a time for the audit of his trust account. Furthermore, Frederick made additional calls to the Defendant in an attempt to audit his trust account. The Defendant did not return those telephone calls.

Based upon the foregoing Findings of Fact, the Hearing Committee makes the following:

CONCLUSIONS OF LAW

The conduct of the Defendant, as set out above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. Section 84-28(b)(2)(3) as follows:

a) By not filing a bankruptcy petition for McLeod, the Defendant has failed to act with reasonable diligence and promptness in representing the client in violation of Rule 6(B)(3); failed to seek the lawful objectives of his client through reasonably available means permitted by law and the Rules of Professional Conduct in violation of Rule 7.1(A)(1); failed to carry out a contract of employment entered into with the client for professional services in violation of Rule 7.1(A)(2); and prejudiced or damaged his client during the course of the professional relationship in violation of Rule 7.1(A)(3).

b) By not adequately communicating with McLeod about the status of his bankruptcy case, the Defendant has failed to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information in violation of Rule 6(B)(1); 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 Rule 6(B)(2).

c) By keeping and not refunding any of the unearned attorney's fee that McLeod paid him, the Defendant has failed to promptly refund any part of a fee paid in advance that has not been earned in violation of Rule 2.8(A)(3).

d) By taking \$200.00 as his attorney's fee for a criminal case from Graham's personal injury proceeds without Graham's authorization, the Defendant has failed to hold and maintain separately from his property funds received in a fiduciary capacity in violation of Rule 10.1(A); failed to keep all money or funds received by him either from a client or from a third party to be delivered all or in part to a client in his trust account in violation of Rule 10.1(C); failed to promptly pay or deliver to the client as directed by the client funds, securities, or properties belonging to the client to which the client is entitled in the possession of the lawyer in violation of Rule 10.2(E).

e) By not paying Graham's portion in one lump sum as Graham requested, Defendant has failed to promptly pay or deliver to the client as directed by the client funds, securities, or properties belonging to the client of which the client is entitled in the possession of the lawyer in violation of Rule 10.2(E).

f) By not maintaining records to show the deposit of proceeds from Graham's personal injury case going into his trust account, Defendant has failed to maintain complete records of all funds, securities, or other property of a client received by him in violation of Rule 10.2(B); and failed to keep the minimum records of funds received and disbursed by the lawyer in violation of Rule 10.2(C).

g) By not providing Graham with a written accounting of the receipt and disbursement of funds, securities, or property belonging to the client in the possession of the lawyer, Defendant has violated Rule 10.2(D).

h) By not accounting for \$23.00 of Graham's money from the personal injury case, Defendant has failed to hold and maintain separately from his property Graham's money which was received in a fiduciary capacity in violation of Rule 10.1(A); failed to keep all money or funds received by him either from a client or from a third party to be delivered all or in part to a client in his trust account in violation of Rule 10.1(C); failed to promptly pay or deliver to the client as directed by the client, the funds, securities, or properties belonging to the client to which the client is entitled in the possession of the lawyer in

violation of Rule 10.2(E); failed to maintain complete records of all funds, securities, or other property of a client received by the lawyer in violation of Rule 10.2(B); and prejudiced a client in violation of Rule 7.1(A)(3).

i) By charging Harris a contingent fee in an action to obtain alimony and child support, the Defendant has entered into an agreement for, charged or collected an illegal fee in violation of DR2-105(A).

j) By sending Harris a bill and trying to collect the attorney's fee he claimed was due pursuant to the contingent fee contract after a superior court judge had declared the fee contract void, the Defendant tried to collect an illegal fee in violation of Rule 2.6(A); and communicated about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, without the consent of the lawyer or without being authorized by law to do so in violation of Rule 7.4(A).

k) By not cooperating with the 12th Judicial District Grievance Committee in that he did not provide prompt responses to the grievances filed by McLeod and Graham, the Defendant has knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 1.1(B); and engaged in conduct prejudicial to the administration of justice in violation of Rule 1.2(D).

l) By lying to Winfrey, an investigator for the 12th Judicial District Grievance Committee, about correspondence received from or regarding McLeod, Defendant has knowingly made a false statement of material fact in connection with a disciplinary matter in violation of Rule 1.1(A); engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C); and engaged in conduct that is prejudicial to the administration of justice in violation of Rule 1.2(D).

m) By failing to comply with the State Bar's subpoena for cause audit, the Defendant has knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 1.1(B); engaged in conduct that is prejudicial to the administration of justice in violation of Rule 1.2(D).

Signed by the undersigned chairman with the full knowledge and consent of the other members of the Hearing Committee.

This the 12th day of June, 1992.

Karen P. Boyle
Karen P. Boyle, Chairman
Hearing Committee of the
Disciplinary Hearing Commission

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Defendant

ORDER OF DISCIPLINE

Based upon the Findings of Fact and Conclusions of Law of even date herewith; and further based upon the evidence presented in this hearing, including evidence presented in the second phase of this hearing; and further based upon the arguments presented by Counsel and the Defendant, the Hearing Committee, composed of Karen P. Boyle, Chairman, James Lee Burney, and Frank E. Emory, Jr., finds the following:

FACTORS IN AGGRAVATION

1. Pattern of misconduct;
2. Multiple offenses;
3. Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;
4. Submission of false statements during the disciplinary process;
5. Refusal to acknowledge wrongful nature of conduct; and
6. Substantial experience in the practice of law.

FACTOR IN MITIGATION


The Hearing Committee finds that Defendant has no prior disciplinary offenses. Furthermore, the Hearing Committee concluded that the Defendant's conduct in handling Graham's case was not motivated by fraud or dishonesty. Instead, the Defendant fails to fully understand why his conduct violates the Rules of Professional Conduct. In addition, evidence was presented by the State Bar which questions Defendant's emotional and mental fitness to practice law.

Based upon all the factors listed above, the Hearing Committee enters the following ORDER OF DISCIPLINE:

1. The Defendant, William J. Townsend, is suspended for three years from the practice of law in North Carolina.
2. The Defendant shall turn in his law license and membership card to the Secretary of the North Carolina State Bar.
3. The Defendant shall comply with Section 24 of the Discipline and Disbarment Procedures of the North Carolina State Bar.
4. As conditions precedent to reinstatement, the Defendant shall:
 - a) Obtain a passing score on the Multistate Professional Responsibility Examination or other ethics examination as required by the North Carolina Board of Law Examiners for applicants sitting for the North Carolina Bar Exam;
 - b) Pay \$285.00 to Rodney McLeod;
 - c) Pay \$23.00 to Norman Graham; and
 - d) Demonstrate emotional, mental, and physical fitness to practice law.
5. The Defendant is taxed with the cost of this hearing as assessed by the Secretary of the North Carolina State Bar.

Signed by the undersigned Chairman with the full knowledge and consent of the other members of the Hearing Committee.

This the 12th day of June, 1992.


Karen P. Boyle, Chairman
Hearing Committee of the
Disciplinary Hearing Commission