

NORTH CAROLINA
WAKE COUNTY

1530
BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
81 DHC 4

THE NORTH CAROLINA STATE BAR,)
Plaintiff,)
-VS-)
REGINALD L. FRAZIER, Attorney,)
Defendant.)

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

THIS CAUSE was heard before a Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar composed of W. Osborne Lee, Jr., Chairman; Angela Bryant and Mary Cecile Bridges, on Friday, August 28 and Saturday, August 29, 1981, in the Council Chambers of the North Carolina State Bar Building, 208 Fayetteville Street Mall, Raleigh, North Carolina.

Defendant was present and represented himself, and had additional counsel in Calvin R. King, of the Craven County Bar.

And the Plaintiff was represented by David R. Johnson, Staff Attorney for the North Carolina State Bar.

Upon the presentation of evidence and the arguments of respective Counsel, the Hearing Committee makes the following FINDINGS OF FACT by clear, cogent and convincing evidence:

FINDINGS OF FACT

1. The North Carolina State Bar is a body duly organized under the laws of North Carolina as 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, Reginald L. Frazier, was admitted to the North Carolina State Bar on September 26, 1960, and was at all times as referred to herein, an attorney at law licensed to practice law in the State of North Carolina subject to the rules, regulations, Canons of Ethics and Code of Professional Responsibility of the North Carolina State Bar.

3. At and during all the times hereinafter referred to, the Defendant was actively engaged in the practice of law in the State of North Carolina and maintained law offices in the City of New Bern, Craven County, North Carolina.

4. On or about May 3, 1979, or thereafter, Robert Vierheller, a member of the Marine Corps, employed the Defendant as his attorney in a contested divorce action with his wife.

5. At the time of employment, Robert Vierheller gave to the Defendant both separation agreements previously entered into between the said Robert Vierheller and his wife, Mieko Vierheller, one of the said separation agreements being executed on June the 21, 1978, and the latter on October the 31, 1978.

6. At the time of employment, Robert Vierheller informed the Defendant that he no longer agreed to the terms of the separation agreement dated October 31, 1978, and his wife, Mieko Vierheller, would contest the divorce.

7. On June 29, 1979, Robert Vierheller executed a verification to a divorce complaint prepared by the Defendant for Robert Vierheller; and that such divorce complaint alleged that separation occurred on June 21, 1978, and that the parties had lived continuously separate and apart since said date.

8. Robert Vierheller had previously informed the Defendant of his reconciliation and resumption of the marital relationship after June 21, 1978, and before the second separation agreement executed on October 31, 1978.

9. The Defendant was advised by Robert Vierheller that he no longer agreed to the terms of the October 31, 1978 agreement, and that Mieko Vierheller would contest the divorce.

10. On July 19, 1979, the Defendant filed, on behalf of Robert Vierheller, the verified complaint in Craven County District Court Division, File Number 79-CvD-921, Plaintiff's Exhibit Number 1, Complaint.

11. On October 10, 1979, Mieko Vierheller, through her attorney, Charles William Kafer of New Bern, filed an Answer to the Complaint, said Answer containing a Counterclaim seeking enforcement of the second, October 31, 1978, separation agreement, Plaintiff's Exhibit Number 1, Answer and Counterclaim.

12. Also, on October 10, 1979, Mieko Vierheller, through her attorney, Charles William Kafer, filed Notice of hearing of the cause, setting the hearing date of November 5, 1979, and served the Notice upon the Defendant, Plaintiff's Exhibit Number 1, Notice of Hearing, October 10, 1979.

13. On October 10, 1979, Mieko Vierheller, through her attorney, further issued a subpoena to produce a document or object on Robert Vierheller

in care of the Defendant, which subpoena was served on the Defendant on October 16, 1979, Plaintiff's Exhibit Number 1, Subpoena, October 10, 1979.

14. The Defendant failed to advise Robert Vierheller of either the hearing set for November 5, 1979, or the subpoena issued to Robert Vierheller; but that Robert Vierheller was informed of the scheduled hearing by his wife, Mieko Vierheller, on or about November 2, 1979, at a supermarket in Havelock, North Carolina.

15. After being informed of the hearing set for November 5, 1979, by his wife, Robert Vierheller telephoned the Defendant who advised Robert Vierheller that he, the Defendant, would seek a postponement of the hearing, and that Robert Vierheller did not have to go to Court on November 5, 1979, and that the Defendant would contact Robert Vierheller at a later time when he was needed.

16. On November 5, 1979, the Defendant filed on behalf of Robert Vierheller a voluntary dismissal, without prejudice, pursuant to Rule 41(a) of the Rules of Civil Procedure, Plaintiff's Exhibit Number 1, Notice [of Voluntary Dismissal], November 5, 1979.

17. The hearing on Mieko Vierheller's counterclaim proceeded on November 5, 1979, and both the Defendant and Robert Vierheller, upon the advice of the Defendant, failed to attend the hearing.

18. The Judge Presiding entered judgment in favor of Mieko Vierheller, which judgment was reduced to writing by order dated and executed on March 12, 1980, Plaintiff's Exhibit Number 1, Order, March 12, 1980.

19. On November 21, 1979, the Defendant filed on behalf of Robert Vierheller a second complaint seeking absolute divorce based on one-year's separation from October 31, 1978, in Craven County, District Court Division, File Number 79-CvD-1438, Plaintiff's Exhibit Number 2, Complaint.

20. Mieko Vierheller was served with the second Complaint, file number 79-CvD-1438, Plaintiff's Exhibit Number 2, Alias and Pluries Summons, on January 18, 1980.

21. Mieko Vierheller was granted an extension of time to file answer until March 19, 1980, Plaintiff's Exhibit Number 2, Order for Extension of Time.

22. On or about March 18, 1980, Charles William Kafer, served on the Defendant a certified copy of the order based on the November 5, 1979, hearing which said order was executed on March 12, 1980.

23. On March 19, 1980, Mieko Vierheller filed answer to the second complaint, file number 79-CvD-1438, Plaintiff's Exhibit Number 2, Answer.

24. On March 21, 1980, the Clerk issued an execution on the order entered in the file number 79-CvD-921, executed on March 12, 1980, Plaintiff's Exhibit Number 1, Execution, which was served on Robert Vierheller shortly thereafter.

25. Robert Vierheller contacted the Defendant concerning the execution shortly after being served, the Defendant advised Robert Vierheller not to worry, that he would file an appeal and that Robert Vierheller would not have to pay the amount being executed on.

26. The Defendant failed to file any appeal in 79-CvD-921 at that time.

27. On April 14, 1980, the Defendant filed a motion to grant Robert Vierheller relief pursuant to Rule 60 (b) (5) of the Rules of Civil Procedure, Plaintiff's Exhibit Number 1, Motion, April 14, 1980; but the Defendant did not calendar the matter at the time.

28. In late May, 1980, the Sheriff's Department contacted Robert Vierheller concerning the execution; Robert Vierheller, in turn, contacted the Defendant who drafted a letter dated May 27, 1980, Plaintiff's Exhibit Number 12, addressed to the Sheriff's Department of Craven County and directed Robert Vierheller to deliver the letter to the Sheriff's Department, and further to the Havelock Police Department.

29. Also, on May 27, 1980, the defendant made a calendar request for a hearing on June 9, 1980, on the motion heretofore filed on April 14, 1980, Plaintiff's Exhibit Number 1, Calendar Request, May 27, 1980.

30. On June 4, 1980, two show cause orders were issued to Robert Vierheller; directing him to appear on June 30, 1980, to show cause why he should not be held in contempt for failure to comply with the orders of Court; the Order of Court being dated March 12, 1980, and being based on the hearing of November 5, 1979.

31. On June 9, 1980, Robert Vierheller went to the courthouse for the hearing of the motion dated April 14, 1980, Plaintiff's Exhibit Number 1, Motion, motion dated April 14, 1980, prepared by the Defendant. The Defendant failed to appear, but did ask the Judge Presiding to continue the hearing of the matter by letter to the Court dated June 9, 1980, Plaintiff's Exhibit Number 15, which arrived after Court had begun, which request was granted.

32. On June 30, 1980, Robert Vierheller appeared in Court pursuant to the show cause orders. The Defendant again failed to appear but did ask for a continuance by a letter to the Court dated June 30, 1980, Plaintiff's Exhibit Number 16, which arrived after Court began, and the Judge Presiding continued the cause until July 2, 1980.

33. On July 2, 1980, the hearing was held in the cause, and the Judge Presiding entered an order finding Robert Vierheller in willful contempt; giving Robert Vierheller thirty (30) days to comply, and denied the motion filed on April 14, 1980, by the Defendant, Plaintiff's Exhibit Number 3, Minutes of June 30, 1980 session; Plaintiff's Exhibit Number 1, Order of August 27, 1980.

34. The Defendant again advised Robert Vierheller that he would not have to pay the amount of the order, and that an appeal would be taken.

35. On July 11, 1980, the Defendant signed a Notice of Appeal from the July 2, 1980 hearing; but the Defendant did not file the Notice of Appeal until July 15, 1980, Plaintiff's Exhibit Number 1, Notice of Appeal, which constituted more than ten days from the entry of the order being appealed, did not serve the opposing counsel with such Notice of Appeal and did nothing further to perfect said appeal.

36. On August 27, 1980, the Defendant was served with a copy of the written order entered pursuant to the hearing of July 2, 1980. This order provided for a hearing on September 8, 1980, Plaintiff's Exhibit Number 1, Order of August 27, 1980. The Defendant failed to advise Robert Vierheller, his client, of the provisions of the order scheduling a hearing for September 8, and the Defendant failed to appear in Court at the scheduled hearing on September 8, 1980.

37. On September 18, 1980, Robert Vierheller learned that there had been a hearing set for September 8.

38. On September 19, 1980, Robert Vierheller contacted the Defendant in person in Defendant's office in New Bern, North Carolina, and discharged him from further representation.

39. When Robert Vierheller discharged the Defendant, the Defendant required Robert Vierheller to sign a release before turning over the file to Robert Vierheller, Plaintiff's Exhibit Number 1, Release; Plaintiff's Exhibit Number 2, Release; Plaintiff's Exhibit Number 21, Release.

40. Robert Vierheller thereafter began representing himself and complied with the order of March 12, 1980, by paying one thousand nine hundred ninety dollars (\$1,990.00), of which one thousand three hundred forty dollars (\$1,340.00) was paid to his wife, and six hundred fifty dollars (\$650.00) to Charles William Kafer, all pursuant to the orders of the Court which were executed on March 12, 1980, Plaintiff's Exhibit Number 1, Order of March 12, 1980.

41. By the payment of such sum, Robert Vierheller was purged of the contempt finding which was theretofore existing against him.

42. The Defendant failed to file a motion in Court to withdraw until November 3, 1980, and filed it then only after the Court delayed proceeding and requested the Defendant to prepare and file a motion to withdraw, Plaintiff's Exhibit Number 1, Motion to Withdraw; Plaintiff's Exhibit Number 2, Motion to Withdraw.

43. The failure to file the Motion to Withdraw with the Court did not result in any prejudice to Robert Vierheller.

Based upon the totality of the evidence and the foregoing FINDINGS OF FACT, the Hearing Committee CONCLUDES AS A MATTER OF LAW:

CONCLUSIONS OF LAW

The conduct of the Defendant, Reginald L. Frazier, was in violation of North Carolina General Statute 84-28(b)(2), in that the Defendant violated the Code of Professional Responsibility of the North Carolina State Bar as follows:

1. By failing to notify his client of the hearing set for November 5, 1979, and of the subpoena issued for the production of documents or object, the Defendant neglected a legal matter entrusted to him, in violation of Disciplinary Rule 6-101(A)(3) of the Code of Professional Responsibility of the North Carolina State Bar.

2. By advising his client not to attend the November 5, 1979, hearing; by filing the voluntary dismissal of his client's claim; and by failing to attend the November 5, 1979, hearing, or give due or adequate notice to the Court of his reasons for not attending, when a counterclaim by the opposing party was pending and the matter being calendared for hearing, the Defendant neglected a legal matter entrusted to him and handled a legal matter without adequate preparation under the circumstances then and there existing in violation of Disciplinary

Rule 6-101(A) (3), and 6-101(A) (2), of the Code of Professional Responsibility of the North Carolina State Bar.

3. By failing to take appropriate steps or timely file appropriate process in March, 1980, upon receipt of the March 12, 1980 order, the Defendant neglected a legal matter, handled a legal matter without adequate preparation under the circumstances in violation of Disciplinary Rule 6-101 (A) (3) and 6-101(A) (2) of the Code of Professional Responsibility of the North Carolina State Bar.

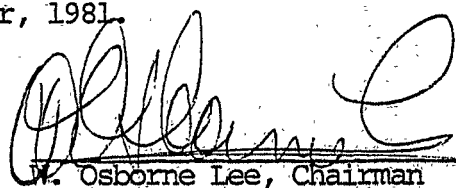
4. By failing to timely and properly file the notice of appeal in July, 1980, the Defendant neglected a legal matter entrusted to him, handled a legal matter without adequate preparation under the circumstances then and there existing, in violation of Disciplinary Rule 6-101(A) (3), and 6-101 (A) (2), of the Code of Professional Responsibility of the North Carolina State Bar.

5. By failing to advise his client of the hearing scheduled for September 8, 1979, and by failing to attend that hearing or take other appropriate measures concerning that hearing, the Defendant neglected a legal matter entrusted to him and handled a legal matter without adequate preparation under the circumstances in violation of Disciplinary Rule 6-101(A) (3) and 6-101(A) (2) of the Code of Professional Responsibility of the North Carolina State Bar.

6. By having his client sign the release dated September 19, 1980, with the wording of the same as it appears in Plaintiff's Exhibit Number 1, Release, Plaintiff's Exhibit Number 2, Release, and Plaintiff's Exhibit Number 21, the Defendant attempted to exonerate himself from or limit his liability to his client for his personal malpractice in violation of Disciplinary Rule 6-102(A) of the Code of Professional Responsibility of the North Carolina State Bar.

These FINDINGS OF FACT AND CONCLUSIONS OF LAW, are unanimously agreed to by all members of the Hearing Committee present.

This the 8th day of September, 1981.



W. Osborne Lee, Chairman
Disciplinary Hearing Committee
The North Carolina State Bar

(Signatures continued on following page.)

Mary Cecile Bridges
Mary Cecile Bridges

Angela Bryant
Angela Bryant

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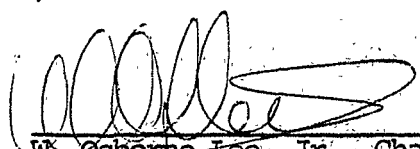
ORDER

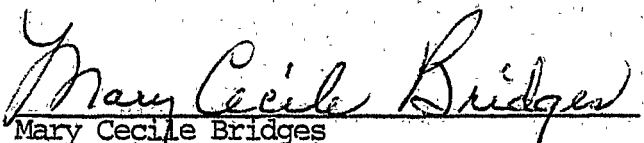
THIS CAUSE was heard by the undersigned Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar on Friday, August 28, 1981, and on Saturday, August 29, 1981.

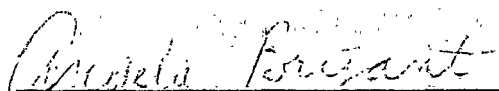
Based upon the Findings of Fact and Conclusions of Law entered in this cause, the Committee enters the following ORDER:

1. That the Defendant be, and is hereby, suspended from the practice of law for a period of twelve (12) months commencing thirty (30) days after service of this Order upon the Defendant or affirmation of this Order on appeal.
2. Defendant shall surrender his license and his membership card to the Secretary of the North Carolina State Bar, who will maintain it in his possession for the duration of the suspension.
3. That the costs of this proceeding shall be taxed to the Defendant.

This the 8th day of September, 1981.


W. Osborne Lee, Jr., Chairman
Disciplinary Hearing Committee
The North Carolina State Bar


Mary Cecile Bridges


Angela Bryant