

NORTH CAROLINA

WAKE COUNTY

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BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
92 DHC 5

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

TIMOTHY D. SMITH,
Defendant

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This matter being presented without a hearing to the Hearing Committee composed of Robert C. Bryan, Chairman, Karen P. Boyle and Emily W. Turner; with R. David Henderson representing the North Carolina State Bar, and Donald H. Beskind and Andrea A. Curcio representing Timothy D. Smith; and based upon the pleadings and stipulations of Counsel, the Hearing Committee finds the following:

1. Plaintiff 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. Defendant was admitted to the North Carolina State Bar on April 11, 1989 and is, and was at all times relevant 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 times relevant herein, Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Raleigh, Wake County, North Carolina.
4. On or about March 16, 1988 Rose Goode executed a Client Agreement and Retainer Letter, a copy of which is attached to the complaint herein as Plaintiff's Exhibit 1. Pursuant to the Client Agreement and Retainer Letter, Ms. Goode retained Defendant to represent her with her supplemental security income disability claim.
5. On or about March 17, 1988 Ms. Goode executed a Contingency Fees Payment Contract, a copy of which is attached to the complaint herein as Plaintiff's Exhibit 2. Pursuant to said agreement, Ms. Goode agreed to pay Defendant 25% of any back benefits awarded.

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6. A hearing was held concerning Ms. Goode's claim on April 6, 1988. At that time, the record was kept open pending the receipt of additional medical records from one of Ms. Goode's physicians.
7. In May of 1988, Ms. Goode received notice that her claim had been denied.
8. By letter dated July 8, 1988, a copy of which is attached to the complaint herein as Plaintiff's Exhibit 3, Defendant appealed this decision to the Appeals Council. Sometime thereafter, the Appeals Council remanded this case to Administrative Law Judge Clayton Adams for further proceedings.
9. Sometime prior to February 1989, Defendant became intimately involved with a registered nurse named Terry Dammann.
10. On or before March 13, 1989, Defendant, without the consent of Ms. Goode, hired Ms. Dammann to review Ms. Goode's file and research medical evidence supporting her claim. Ms. Dammann's letter to Defendant dated March 13, 1989, is attached to the complaint herein as Plaintiff's Exhibit 4.
11. By letter dated March 20, 1989, a copy of which is attached to the complaint herein as Plaintiff's Exhibit 5, Ms. Dammann reported her findings to Defendant.
12. By letter dated April 1, 1989, Ms. Dammann sent Defendant a bill for services and expenses rendered on behalf of Ms. Goode. A copy of the bill in the amount of \$2,000 is attached to the complaint herein as Plaintiff's Exhibit 6.
13. On or about May 31, 1989, Defendant paid Ms. Dammann \$2,000 for services rendered. A copy of the receipt is attached to the complaint herein as Plaintiff's Exhibit 7.
14. Ms. Dammann's rate for her services was \$100 per hour. This was an excessive charge for consultative work. As a registered nurse, Ms. Dammann could not render a medical opinion concerning Ms. Goode's claim. Furthermore, Ms. Dammann did not physically examine Ms. Goode and did not testify at Ms. Goode's hearing.
15. On June 14, 1989, a second hearing was held concerning Ms. Goode's claim.
16. On June 17, 1989 Defendant and Ms. Dammann were married. A copy of the marriage certificate is attached to the complaint herein as Plaintiff's Exhibit 8.

17. On or about November 1, 1989, Judge Adams allowed Ms. Goode's claim for supplemental security income disability. A copy of his order is attached to the complaint herein as Plaintiff's Exhibit 9.
18. On November 3, 1989, prior to a determination of back benefits, Defendant filed a Petition to Obtain Approval of a Fee Before the Social Security Administration, a copy of which is attached to the complaint herein as Plaintiff's Exhibit 10 ("the Petition"). This form, which was signed by Defendant or at his direction, requested approval to charge a fee of \$6,000 for his representation of Ms. Goode.
19. In Section 5 of the Petition, Defendant certified that he did not expect to receive reimbursement for expenses that he had incurred to date. In fact, Defendant expected Ms. Goode to reimburse him for the \$2,000 previously paid to Ms. Dammonn.
20. Pursuant to 20 CFR Ch. III Sec. 404.1720(b)(3), a copy of which is attached to the complaint herein as Plaintiff's Exhibit 12, Defendant was not allowed to charge or receive a fee from Ms. Goode prior to approval of his fee by the Administrative Law Judge.
21. Despite this requirement and the certification described above, Defendant collected two checks from Ms. Goode prior to fee approval totalling \$5,331 as payment for representing her with her claim. A copy of these checks is attached to the complaint herein as Plaintiff's Exhibit 13.
22. Judge Adams did not issue fee approval in this case until February 16, 1990 and then only in the amount of \$3,000. A copy of Judge Adams' Authorization to Charge and Receive a Fee is attached to the complaint herein as Plaintiff's Exhibit 14.
23. On or about April 11, 1990, Ms. Goode wrote Defendant demanding a refund of \$2,331, the difference between what she paid Defendant and what Defendant was allowed pursuant to the fee order. A copy of said letter is attached to the complaint herein as Plaintiff's Exhibit 15.
24. On or about April 23, 1990, Defendant replied to Ms. Goode's letter stating that he included Ms. Goode's alleged expenses as a part of the \$6,000 fee petition. A copy of said letter is attached to the complaint herein as Plaintiff's Exhibit 16.
25. On or about April 1, 1991, in response to an investigation by the Social Security Administration, Defendant agreed to reimburse Ms. Goode \$2,331. A copy of said letter is attached to the complaint herein as

Plaintiff's Exhibit 17. A copy of said check to Ms. Goode is attached to the complaint herein as Plaintiff's Exhibit 18.

26. On or about March 2, 1988, T. David Boone, Jr. executed a Client Agreement and Retainer Letter, a copy of which is attached to the complaint herein as Plaintiff's Exhibit 19. Pursuant to the Client Agreement and Retainer Letter, Mr. Boone retained Defendant to represent him with his supplemental security income disability and supplemental security income claims.
27. On or about March 17, 1988 Mr. Boone executed a Contingency Fees Payment Contract. Pursuant to said agreement, Mr. Boone agreed to pay Defendant 25% of any back benefits awarded.
28. A hearing was held concerning Mr. Boone's claims on June 21, 1988. On August 23, 1988, Mr. Boone received notice that his claims were denied.
29. In November of 1988, Mr. Boone was referred to Roanoke-Chowan Human Services for psychotherapy relating to depression. During the course of his treatment, Mr. Boone was administered IQ testing which disclosed a full scale IQ score of 68. Defendant and Mr. Boone met and discussed his visits to the mental health center and it was agreed that Mr. Boone's file would be reopened. Thereafter, Defendant requested the Appeals Council to review the August 23, 1988 decision.
30. Prior to February of 1989, Defendant knew that Mr. Boone was probably mildly mentally retarded based upon his many observations of Mr. Boone and upon the reports from the mental health center. Defendant also knew that if Mr. Boone was found to be mentally retarded that he would be automatically entitled to disability payments with any additional "severe" impairment. Finally, Defendant was aware of Mr. Boone's long standing diagnoses of degenerative disc disease and chronic obstructive pulmonary disease - either of which would constitute a "severe" impairment.
31. Sometime prior to February, 1989, Defendant became intimately involved with a registered nurse named Terry Dammann.
32. On or about February 19, 1989, Defendant, without the consent of Mr. Boone, hired Ms. Dammann to review Mr. Boone's file and research medical evidence supporting his claim. Defendant knew that Ms. Dammann's services were not necessary to establish Mr. Boone's disability. A copy of Ms. Dammann's letter to Defendant dated February 19, 1989 is attached to the complaint herein as Plaintiff's Exhibit 20.
33. By letter dated March 15, 1989, a copy of which is

attached to the complaint herein as Plaintiff's Exhibit 21, Ms. Dammann reported her findings to Defendant.

34. With the letter dated March 15, 1989, Ms. Dammann sent Defendant a bill for expenses and services rendered on behalf of Mr. Boone. A copy of said bill totalling \$1,300 is attached to the complaint herein as Plaintiff's Exhibit 22.
35. On or about April 4, 1989, Defendant paid Ms. Dammann \$1,300 for services rendered. A copy of the receipt is attached to the complaint herein as Plaintiff's Exhibit 23.
36. Ms. Dammann's rate for her services ranged from \$50 to \$100 per hour. This was an excessive charge for consultative work. As a registered nurse, Ms. Dammann could not render a medical opinion concerning Mr. Boone's claim. Furthermore, Ms. Dammann did not physically examine Mr. Boone and did not testify at Mr. Boone's hearing.
37. On or about March 27, 1989, the Appeals Council remanded Mr. Boone's case to Administrative Law Judge David Tennant for further consideration. A copy of the Notice of Order of Appeal Council Remanding Case to Administrative Law Judge is attached to the complaint herein as Plaintiff's Exhibit 24.
38. On June 17, 1989 Defendant and Ms. Dammann were married. A copy of the marriage certificate is attached to the complaint herein as Plaintiff's Exhibit 8.
39. Since Mr. Boone's disability was clear, Judge Tennant allowed Mr. Boone's claims for supplemental security income disability and supplemental security income without hearing on or about October 24, 1989. A copy of his order is attached to the complaint herein as Plaintiff's Exhibit 25.
40. On November 28, 1989, prior to a determination of back benefits, Defendant filed a Petition to Obtain Approval of a Fee Before the Social Security Administration, a copy of which is attached to the complaint herein as Plaintiff's Exhibit 26 ("the Petition"). This form, which was signed by Defendant or at his direction, requested approval to charge a \$3,500 fee for his representation of Mr. Boone.
41. In Section 5 of the Petition, Defendant certified that he did not expect to receive reimbursement for expenses that he had incurred to date. In fact, Defendant expected Mr. Boone to reimburse him for the \$1,300 previously paid to Ms. Dammann.
42. Pursuant to 20 CFR Ch. III Sec. 404.1720(b)(3), a copy of which is attached to the complaint herein as

Plaintiff's Exhibit 12, Defendant was not allowed to charge or receive a fee from Mr. Boone prior to approval of his fee by the Administrative Law Judge.

43. Despite this requirement and the certification described above, Defendant collected a \$2,600 check from Mr. Boone prior to fee approval as payment for representing him with his claim. A copy of this check is attached to the complaint herein as Plaintiff's Exhibit 27.
44. Judge Tennant did not issue fee approval in this case until March 1, 1990 and then only in the amount of \$1,500. A copy of Judge Tennant's Authorization to Charge and Receive a Fee is attached to the complaint herein as Plaintiff's Exhibit 28.
45. On or about June 13, 1990, Mr. Boone wrote Defendant demanding a refund of \$1,100, the difference between what he paid Defendant and what Defendant was allowed pursuant to the fee order. A copy of said letter is attached to the complaint herein as Plaintiff's Exhibit 29.
46. On or about June 22, 1990, Defendant replied to Mr. Boone's letter and alleged that he discussed hiring a consultant with Mr. Boone in December of 1988. A copy of said letter is attached as Plaintiff's Exhibit 30.
47. On or about April 1, 1991, in response to an investigation by the Social Security Administration, Defendant agreed to reimburse Mr. Boone \$1,100. A copy of said letter is attached to the complaint herein as Plaintiff's Exhibit 17. A copy of the check to Mr. Boone is attached to the complaint herein as Plaintiff's Exhibit 31.

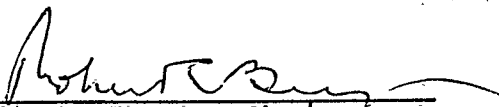
Based upon the foregoing Findings, the hearing committee enters the following Conclusions of Law:

- 1) By hiring Ms. Dammann as a consultant for Ms. Goode while intimately involved with Ms. Dammann and (i) without a reasonable belief that the representation would not be adversely affected and (ii) without Ms. Goode's informed consent, Defendant allowed his representation of Ms. Goode to be materially limited by his own interests in violation of Rule 5.1(B);
- 2) By hiring Ms. Dammann as a consultant without Ms. Goode's informed consent, Defendant failed to explain a matter to the extent reasonably necessary to permit Ms. Goode to make informed decisions regarding the representation in violation of Rule 6(B)(2);
- 3) By allowing Ms. Dammann to charge an excessive fee and collecting that fee from Ms. Goode, the Defendant damaged Ms. Goode during the course of the professional relationship in violation of Rule 7.1(A)(3);

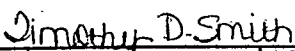
- 4) By falsely certifying on the petition to obtain approval of a fee that he did not expect to receive reimbursement from Ms. Goode for the \$2,000 previously paid Ms. Dammann, Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation; engaged in conduct that was prejudicial to the administration of justice; and knowingly made a false statement of fact in violation of Rules 1.2(C) and 1.2(D);
- 5) By charging and collecting a fee from Ms. Goode before receiving approval from the Social Security Administration in violation of 20 CFR Ch. III Section 404.1720(b)(3), Defendant charged and collected an illegal fee and engaged in conduct prejudicial to the administration of justice in violation Rules 2.6(A) and Rule 1.2(D);
- 6) By hiring Ms. Dammann as a consultant for Mr. Boone while intimately involved with Ms. Dammann and (i) without a reasonable belief that the representation would not be adversely affected and (ii) without Mr. Boone's informed consent, Defendant allowed his representation of Mr. Boone to be materially limited by his own interests in violation of Rule 5.1(B);
- 7) By hiring Ms. Dammann as a consultant without Mr. Boone's informed consent, Defendant failed to explain a matter to the extent reasonably necessary to permit Mr. Boone to make informed decisions regarding the representation in violation of Rule 6(B)(2);
- 8) By hiring Ms. Dammann when he knew that her services would not be necessary to establish Mr. Boone's disability and by allowing Ms. Dammann to charge an excessive fee and collecting that fee from Mr. Boone, Defendant damaged Mr. Boone during the course of the professional relationship in violation of Rule 7.1(A)(3);
- 9) By falsely certifying on the petition to obtain approval of a fee that he did not expect to receive reimbursement from Mr. Boone for the \$1,300 previously paid Ms. Dammann, Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation; engaged in conduct prejudicial to the administration of justice; and made a false statement of fact in violation of Rules 1.2(C) and 1.2(D); and
- 10) By charging and collecting a fee from Mr. Boone prior to fee approval from the Social Security Administration in violation of 20 CFR Ch. III Section 404.1720(b)(3), Defendant charged and collected an illegal fee and engaged in conduct prejudicial to the administration of justice in violation Rules 2.6(A) and 1.2(D).

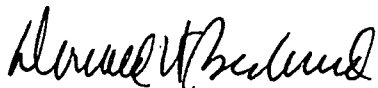
Signed by the Chairman with the express consent of all committee members.


This the 22 day of April, 1992


Robert C. Bryan, Chairman
Disciplinary Hearing Committee

WE CONSENT


Timothy D. Smith, Defendant


Donald H. Beskind
Andrea A. Curcio
Attorneys for the Defendant


R. David Henderson
Attorney for Plaintiff

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NORTH CAROLINA

WAKE COUNTY

5 MAY 92 9:45

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
92 DHC 5

THE NORTH CAROLINA STATE BAR,

Plaintiff

vs.

TIMOTHY D. SMITH,

Defendant.

CONSENT ORDER OF
DISCIPLINE

Based on the Findings and Fact and Conclusions of Law of even date herewith, and the consent of the parties, the hearing committee makes the following additional findings:

1. The following factors mitigate the defendant's violations of the Rules of Professional Conduct:
 - a) Defendant's absence of a prior disciplinary record;
 - b) Defendant's full and free disclosure to the disciplinary agencies of the North Carolina State Bar and cooperative attitude toward the disciplinary procedure;
 - c) Defendant's inexperience in the practice of law; and
 - d) Defendant's physical disability.
2. The defendant's misconduct is aggravated by the following factors:
 - a) Defendant's dishonest or selfish motives;
 - b) Defendant's multiple offenses; and
 - c) Vulnerability of the victims.
3. The aggregating factors outweigh the mitigating factors.

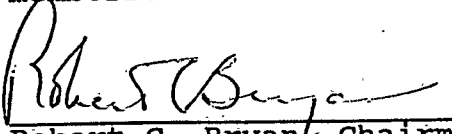
THEREFORE, based upon the foregoing considerations and the consent of the parties, the hearing committee hereby enters the following Order of Discipline:

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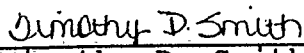
1. Timothy D. Smith is hereby suspended from the practice of law in North Carolina for a period of one year;
2. The foregoing suspension shall be stayed for a period of three years upon the following conditions:
 - a) That defendant take at least 36 hours of law office management courses approved by the North Carolina Continuing Legal Education Board during the 3-year stay;
 - b) That he not accept any Social Security cases during the three year stay without associating co-counsel who is approved to practice before the Social Security Administration;
 - c) That he not bill or collect any expenses from any Social Security claimants prior to approval by the Social Security Administration;
 - d) That he comply with all provisions of the Social Security Act, 42 U.S.C. Section 406(2), and the implementing regulations 20 CFR 404.1720, 404.1725, 404.1730, and 404.1740 in billing and/or collecting any fee from disability claimants.
 - e) That he not charge, as a separate expense, any services rendered by his wife on behalf of any of his clients;
 - f) That he not violate any rule of professional conduct, administrative code or law of North Carolina during the three year stay;
 - g) That he meet at least once a month during the three year stay with Barden W. Cooke, Esq. to review, to the extent possible without violating client confidences, defendant's case load, the status of his cases, his law office management procedures, his dealings with clients, lawyers, and judges, his client contact and any other issues relating to delivering services to and protecting the interests of defendant's clientele. Defendant and his mentor shall certify defendant's compliance with this condition on an annual basis. Said mentor or any successor may resign upon 30 days notice to plaintiff. Thereafter, plaintiff shall appoint a successor mentor. If defendant is employed by a law office or firm, a supervising attorney may, in plaintiff's discretion, be substituted as mentor; and
 - h) That defendant pay the costs of this action within 60 days of the date of this order.

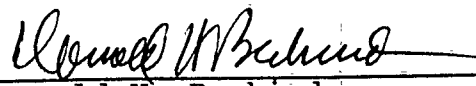
This the 22 day of April, 1992.

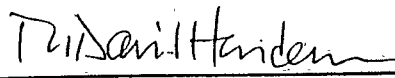
Signed by the Chairman with the express consent of all committee members.


Robert C. Bryan, Chairman

WE CONSENT


Timothy D. Smith, Defendant


Donald H. Beskind
Andrea A. Curcio
Attorneys for the Defendant


R. David Henderson
Attorney for the Plaintiff

#45