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NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
88 DHC 11
88 DHC 19

THE NORTH CAROLINA STATE BAR,)
Plaintiff)

vs.)

ANDREW L. WATERS,)
Defendant)

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This matter being heard on November 4, 1988 before a hearing committee of the Disciplinary Hearing Commission composed of John B. McMillan, Chairman, Maureen D. Murray, and H. Harry Sherwood; with A. Root Edmonson representing the North Carolina State Bar and Andrew L. Waters appearing pro se; and based upon the admissions of Defendant contained in his Answer and the evidence presented at the hearing, the hearing committee makes the following findings and conclusions:

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, Andrew L. Waters, was admitted to the North Carolina State Bar on September 27, 1976 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 Wilmington, New Hanover County, North Carolina.

As pertains to the First Claim for Relief as set out in the Complaint in 88 DHC 11, the hearing committee makes the following FINDINGS OF FACT:

4. Defendant was appointed to represent Johnny L. Robbins, Jr. in New Hanover County Superior Court on felony charges.

5. Johnny L. Robbins, Jr. was tried before a jury during the January 19, 1987 term of New Hanover County Superior Court.

6. Johnny L. Robbins, Jr. was convicted and given an active prison sentence.

7. On January 23, 1987, Defendant was appointed by Judge William C. Griffin, Jr. to perfect an appeal entered in Robbins's case.

8. Defendant received several letters from Johnny L. Robbins, Jr. requesting the status of his appeal, including letters dated March 25, 1987; June 20, 1987; and October 16, 1987. Defendant failed to respond to any of his client's letters.

9. Defendant failed to file a record on appeal in the appropriate appellate court within the 150 days allowed by the Rules of Appellate Procedure even though Defendant received the transcript of Robbins's trial on or about April 6, 1987.

10. Defendant failed to seek an extension of time to file Robbins's record on appeal and failed to take any other action to preserve Robbins's right to appeal.

Based upon the Findings of Fact pertaining to the First Claim for Relief as set out in the Complaint in 88 DHC 11, the hearing committee makes the following CONCLUSIONS OF LAW:

The conduct of Defendant, as set forth in paragraphs 4 through 10 above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. §84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

- (a) By failing to file a record on appeal on Robbins's behalf within the time allowed or otherwise act to preserve Robbins's right to appeal, Defendant 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 in violation of Rule 7.1(A)(1); and prejudiced or damaged his client during the course of the professional relationship in violation of Rule 7.1(A)(3).
- (b) By failing to respond to Robbins's requests for information concerning the status of his appeal, Defendant violated Rule 6(B)(1).

As pertains to the Second Claim for Relief as set out in the Complaint in 88 DHC 11, the hearing committee makes the following FINDINGS OF FACT:

11. After Johnny L. Robbins, Jr. filed a grievance against Defendant setting forth the substance of the First Claim for Relief as set out in the Complaint in 88 DHC 11, the Chairman of the Grievance Committee sent a Letter of Notice to Defendant dated December 20, 1987 by certified mail, return receipt requested.

12. Defendant received the Letter of Notice on January 4, 1988.

13. Defendant failed to respond to the Letter of Notice.

Based upon the Findings of Fact pertaining to the Second Claim for Relief in the Complaint in 88 DHC 11, the hearing committee makes the following CONCLUSIONS OF LAW:

The conduct of Defendant, as set forth in paragraphs 11-13 above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. §84-28(b)(3) in that Defendant failed to answer a formal inquiry issued by or in the name of the North Carolina State Bar in a disciplinary matter.

As pertains to the Complaint in 88 DHC 19, the hearing committee makes the following FINDINGS OF FACT:

14. Defendant was appointed to represent Teresa Renee Bullock in New Hanover County Superior Court on charges of first degree murder and conspiracy to commit murder.

15. Bullock was tried before a jury in New Hanover County Superior Court.

16. Bullock was convicted and given a sentence of life plus ten years.

17. On January 19, 1987, Defendant was appointed to perfect an appeal in Bullock's case.

18. Defendant failed to file a record on appeal in the appropriate appellate court within the 150 days allowed by the Rules of Appellate Procedure.

19. Even though Defendant did not receive the transcript of Bullock's trial until April 18, 1988, Defendant had failed to seek an extension of time to file Bullock's record on appeal and failed to take any other action to preserve Bullock's right to appeal.

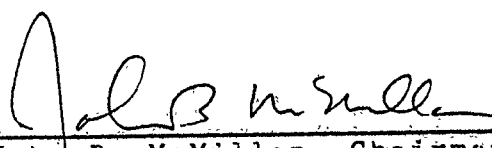
Based upon the Findings of Fact pertaining to the First Claim for Relief as set out in the Complaint in 88 DHC 19, the hearing committee makes the following CONCLUSIONS OF LAW:

The conduct of Defendant, as set forth in paragraphs 14 - through 19 above, constitutes grounds for discipline pursuant to

N.C. Gen. Stat. §84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

- (a) By failing to file a record on appeal on Bullock's behalf within the time allowed or otherwise act to preserve Bullocks' right to appeal, Defendant 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 in violation of Rule 7.1(A)(1); and prejudiced or damaged his client during the course of the professional relationship in violation of Rule 7.1(A)(3).

Signed by the undersigned Chairman with the full accord and consent of the other members of the hearing committee, this the 18th day of November, 1988.



John B. McMillan, Chairman
Hearing Committee

NORTH CAROLINA
WAKE COUNTY

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BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
88 DHC 11
88 DHC 19

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

ANDREW L. WATERS,
Defendant

ORDER OF DISCIPLINE

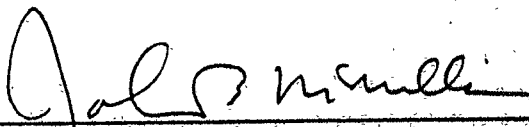
This matter being heard on November 4, 1988 before a hearing committee composed of John B. McMillan, Chairman, Maureen D. Murray, and H. Harry Sherwood; and based upon the FINDINGS OF FACT AND CONCLUSIONS OF LAW entered by the hearing committee of even date herewith; and further based upon the evidence and arguments presented in the second phase of the hearing, the hearing committee makes the the following additional findings:

1. Defendant was given a Private Reprimand dated November 10, 1983 in 88G 0177(I) for his failure to perfect an appeal in a criminal case.
2. Defendant was given a Public Censure dated May 24, 1985 in a Consent Order of Discipline in a case before the Disciplinary Hearing Commission, being file number 85 DHC 9. In that case, Defendant had failed to perfect an appeal in a criminal case.
3. The hearing committee finds Defendant's prior disciplinary offenses and his pattern of misconduct to be aggravating factors in their consideration of what discipline to impose.
4. The hearing committee finds that the absence of a dishonesty or selfish motive on Defendant's part and his full and free disclosures to the hearing committee to be mitigating factors in their consideration of what discipline to impose.

BASED UPON all of the findings and conclusions entered by this hearing committee, the hearing committee enters the following ORDER OF DISCIPLINE:

1. The Defendant, Andrew L. Waters, is suspended from the practice of law in North Carolina for a period of eighteen (18) months.
2. The Defendant, Andrew L. Waters, shall forthwith surrender his license and permanent membership card to the Secretary of the North Carolina State Bar.
3. The Defendant, Andrew L. Waters, shall comply with the provisions of §24 of Article IX of the Rules and Regulations of the North Carolina State Bar.
4. The Defendant, Andrew L. Waters, is hereby taxed with the costs of this proceeding.

Signed by the undersigned Chairman with the full accord and consent of the other members of the hearing committee this the 10th day of November, 1988.



John B. McMillan, Chairman
Hearing Committee