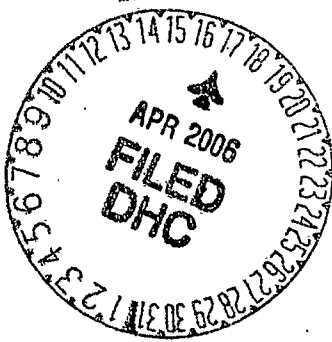


NORTH CAROLINA
WAKE COUNTY



27601

BEFORE THE DISCIPLINARY
HEARING COMMISSION OF
THE NORTH CAROLINA
STATE BAR

05 DHC 42

THE NORTH CAROLINA STATE BAR,

Plaintiff,

V.

FREDRICK R. PIERCE, ATTORNEY,

Defendant.

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND CONSENT ORDER OF
DISCIPLINE

THIS MATTER came on to be heard and was heard before a Hearing Committee of the Disciplinary Hearing Commission composed of T. Richard Kane, Chair, Charles M. Davis and Marguerite P. Watts. The Defendant, Fredrick R. Pierce was represented by Ernest (Jay) Reeves, Jr. William N. Farrell, Jr., represented the Plaintiff. Both parties stipulate and agree to the findings of fact and conclusions of law recited herein and to the order of discipline imposed. 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, Fredrick R. Pierce, ("Defendant"), was admitted to the North Carolina State Bar in 2001, 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 or a portion of the period relevant hereto, Defendant was engaged in the practice of law in Wake County, North Carolina.

4. In or about February 2003, Defendant established an attorney-client relationship with Felana Milbourne. Milbourne paid defendant a \$400.00 attorney fee and defendant undertook to represent Milbourne to obtain a divorce for her.

5. Defendant did not file a complaint for divorce on behalf of Felana Milbourne.
6. Defendant has not returned the \$400.00 attorney fee paid to him by Felana Milbourne.
7. On or about September 21, 2004 Milbourne filed a petition for resolution of a fee dispute with the North Carolina State Bar. (No. FDR – 04FD0658)
8. Thereafter, Defendant received notification of mandatory fee dispute resolution, informing defendant that Milbourne had filed a petition for resolution of a disputed fee with the North Carolina State Bar and informed defendant of his duty to respond to the petition within 15 days.
9. Defendant filed a response to the petition for resolution of a fee dispute wherein he agreed to refund the entire fee to Milbourne on or about November 2, 2004.
10. Defendant failed to refund the fee to Felana Milbourne after agreeing to do so during the fee mediation process and failed to return calls to the mediator or to acknowledge letters to finalize the agreement to refund the fee.
11. On or about February 12, 2004 Defendant received a Letter of Notice from the Chair of the Grievance Committee regarding Defendant's failure to participate in the fee dispute process in good faith. By Bar rule, Defendant was required to respond to the Letter of Notice within 15 days of receipt. Defendant did not respond to the Letter of Notice within the 15-day period as required.
12. Defendant responded to the Letter of Notice on March 17, 2005, following a letter from the Bar dated March 7, 2005, reminding him he was required to respond to the Letter of Notice.
13. Defendant's response, dated March 16, 2005, to the Letter of Notice admitted he did not participate in the fee dispute process in good faith.
14. Defendant's response further admitted that Milbourne's file fell into the "inactive" file.
15. Defendant established an attorney-client relationship with Amy Armstrong. Armstrong paid a \$500.00 attorney fee to Defendant and Defendant undertook to represent Armstrong in a domestic case.
16. On or about March 2, 2004, Armstrong filed a petition for resolution of a fee dispute (file number FDR – 04FD0157) regarding the fee she paid to defendant.
17. On or about March 5, 2004, defendant received notification of mandatory fee dispute resolution, informing defendant that Armstrong had filed a petition for resolution of a fee dispute with the North Carolina State Bar.

18. On or about July 8, 2004, during the fee dispute mediation process, defendant agreed with the mediator to give Armstrong a refund of \$350.00.

19. After so agreeing, defendant failed to refund the \$350.00 as agreed and failed to respond to repeated written communications from the mediator. On August 23, 2004, the mediator sent defendant a final letter informing him that he was required to participate in good faith in the fee dispute resolution process. This letter also advised Defendant, if he did not respond, the matter would be referred to the State Bar as a grievance. Defendant did not respond to the mediator and the matter was referred to the Grievance Committee.

20. On or about November 16, 2004, defendant received a Letter of Notice from the Chair of the Grievance Committee regarding the defendant's failure to participate in the fee dispute process in good faith. By Bar rule, defendant was required to respond to the Letter of Notice within a 15-day period.

21. Defendant responded to the Letter of Notice on or about December 23, 2004, following a letter from the Bar reminding him he was required to respond to the Letter of Notice.

22. In his December 23, 2004 letter of response, defendant admitted agreeing to refund \$300.00 to Armstrong with the fee dispute mediator to resolve the dispute and not making the refund.

23. On or about October 6, 2003, Zeferino Garcia (Garcia) retained defendant on behalf of Enrique and Hublester Gomez-Garcia to represent them regarding criminal charges in Forsyth County. Garcia initially paid defendant \$2,000.00 to cover bond hearings. Garcia later paid defendant an additional \$4,000.00. This fee was represented by defendant as a flat fee for his representation of Enrique and Hublester through disposition of the case.

24. On or about mid November 2003, Garcia informed defendant he had hired another lawyer for Enrique and Hublester and no longer wanted defendant's services. Garcia refused to accept a refund of \$1,500.00 from defendant for attorney fees. On or about February 12, 2004 Garcia filed a petition for resolution of disputed fee (file number 04FD0112). Defendant filed a response admitting that he offered a \$1,500.00 refund.

25. On or about April 12, 2004, Defendant was advised in writing that Garcia's petition for resolution of a fee dispute was assigned to Terence Friedman to mediate. After the mediator was assigned, Defendant failed to return calls from the mediator.

26. On or about February 12, 2005, Defendant received a Letter of Notice from the Chair of the Grievance Committee regarding Defendant's failure to participate in the fee dispute process in good faith. By Bar rule, Defendant was required to respond to the Letter of Notice within 15 days.

27. Defendant responded to the Letter of Notice on or about March 16, 2005, following a letter from the Bar reminding him he was required to respond to the Letter of Notice.

28. On or about February 2002, Glenda Cooper retained Defendant to represent her in a personal injury claim for injuries suffered in a traffic accident.

29. Defendant neither settled Cooper's claim nor filed suit before the statute of limitations ran on Cooper's claim.

30. In or about March 2005, Defendant falsely told Cooper that her case had been settled and that he was sending her a check and release form.

31. When Defendant transmitted funds to Cooper in May 2005, he did not tell her that the money he was paying her was to avoid or settle a claim that Cooper had against him for malpractice for his failure to settle Cooper's claim or to file suit on her behalf within the time allowed.

32. Defendant did not advise Cooper, in writing or otherwise, of the desirability of seeking independent legal counsel on the value of her potential malpractice claim against him.

Based upon the foregoing findings of fact, the Hearing Committee enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Committee and the Committee has jurisdiction over the Defendant, Fredrick R. Pierce, and the subject matter of this proceeding. By agreeing and consenting to this order of discipline, Defendant has waived any and all defects in the service of the summons and complaint and in the notice of hearing.

2. Defendant's conduct, as set out in the findings of fact above, constitutes grounds for discipline pursuant to N. C. Gen. Stat. Section 84-28(b) in that the conduct violated the Revised Rules of Professional Conduct in effect at the time of the conduct as follows:

- a. By failing to provide the necessary services to represent Milbourne in her divorce case and by failing to provide the legal services defendant undertook to provide on Milbourne's behalf, including but not limited to, failing to file a divorce complaint, Defendant failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 of the Revised Rules of Professional Conduct.
- b. By failing to communicate with Milbourne on a timely basis concerning her divorce matter, Defendant failed to reasonably consult with a client about the means by which the client's objectives were to be accomplished, failed to keep the client reasonably informed about the status of a legal matter, failed to promptly comply with reasonable requests for information, and failed to explain a matter to the extent

reasonably necessary to permit the client to make an informed decision regarding the representation, in violation of Rules 1.4(a) and (b) of the Revised Rules of Professional Conduct.

- c. By failing to promptly refund the unearned fee or the unearned portion of the \$400.00 attorney fee paid by Milbourne after not providing the agreed upon legal services, Defendant collected a clearly excessive fee in violation of Rule 1.5(a) of the Revised Rules of Professional Conduct and failed to refund the unearned fee in violation of 1.16(d).
- d. By failing to refund the unearned fee, after responding to the Petition for Resolution of a Fee Dispute and stating that he stood ready to give Milbourne a total refund, and by failing to return calls and letters to the mediator, Defendant failed to participate in good faith in the fee dispute resolution process of the North Carolina State Bar in violation of Rule 1.5(f) of the Revised Rules of Professional Conduct.
- e. By failing to refund the fee, after responding to the petition for resolution of a fee dispute and stating that he agreed to give Armstrong a refund of \$300.00, and by failing to respond to the mediator Defendant failed to participate in good faith in the fee dispute resolution process of the North Carolina State Bar in violation of Rule 1.5(f) of the Revised Rules of Professional Conduct.
- f. By failing to return calls to the mediator, Defendant failed to participate in good faith in the fee dispute resolution process of the North Carolina State Bar in violation of Rule 1.5(f) of the Revised Rules of Professional Conduct.
- g. By failing to settle Cooper's claim for injuries she suffered in the accident or file suit on her behalf prior to the statute of limitations running on her claim, Defendant failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 and prejudiced or damaged his client during the course of the professional relationship in violation of Rule 8.4(g) of the Revised Rules of Professional Conduct.
- h. By falsely representing to Cooper that the money he paid to her was from a settlement rather than from defendant, Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and made a false or misleading statement about the lawyer's services in violation of Rule 7.1(a) of the Revised Rules of Professional Conduct.
- i. By failing to advise Cooper in writing of the desirability of seeking independent legal counsel on the value of her claim at a time when he was attempting to avoid or settle Cooper's potential malpractice claim against him, Defendant settled a potential malpractice claim with an unrepresented client without advising the client in writing of the desirability seeking advice from independent legal counsel in connection therewith in violation of Rule 1.8(h) of the Revised Rules of Professional Conduct.

Based upon the Foregoing Findings of fact and Conclusions of Law, the Hearing Committee enters the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Defendant's misconduct is aggravated by the following factors:
 - (a) Defendant engaged in multiple offenses;
 - (b) Defendant engaged in a pattern of misconduct;
 - (c) Defendant has shown indifference to returning the fees to Milbourne and Armstrong as he agreed to do;
 - (d) Defendant has prior discipline. Defendant received an Admonition from the Grievance Committee in file number 04G0987 in January 2005 for a violation of Rule 1.3 of the Revised Rules of Professional Conduct. In grievance file number: 04G0505 Defendant received a Letter of Warning, dated December 2, 2004, for minor or technical violations of Rules 1.4 and Rules 1.16(d) of the Rules of Professional Conduct.
2. Defendant's misconduct is mitigated by the following factors:
 - (a) Cooperative attitude toward the Bar proceedings.
 - (b) Acknowledgement of the wrongful nature of his conduct;
 - (c) Absence of a dishonest or selfish motive;
3. The aggravating factors outweigh the mitigating factors.
4. Defendant's conduct has caused significant harm to his client Ms. Cooper in that Ms. Cooper was denied the opportunity to have her case heard in accordance with the law.
5. Defendant's conduct caused actual harm to the standing of the legal profession, undermining his client's trust and confidence in lawyers and the legal system.
6. Defendant's failure to participate in the mandatory fee dispute resolution process interfered with the State Bar's ability to regulate attorneys and undermined the privileges of lawyers in this state to remain self regulating.
7. The Hearing Committee has considered lesser alternatives and finds that a public censure or reprimand would not sufficiently protect the public and that a

stayed suspension is necessary to allow implementation of conditions to ensure the protection of the public and Defendant's future clients.

8. The Hearing Committee finds Defendant's conduct caused significant harm and significant potential harm to clients and to the administration of justice, to the profession, and to members of the public, and that a stayed suspension is necessary to protect the public.

Based upon the Foregoing Findings of Fact, Conclusions of Law and the Findings of Fact Regarding Discipline, the Hearing Committee enters the following:

ORDER OF DISCIPLINE

1. The Defendant's license to practice law in the State of North Carolina is hereby suspended for two years, effective upon service of this Order of Discipline on the Defendant. The suspension is stayed for a period of three years as long as Defendant complies with the following conditions:
 - a) Defendant will provide the Office of Counsel with a current working street address, not a P.O. Box, and will advise the Bar in writing of any changes in his address within 10 days of all changes.
 - b) Defendant will respond to all letters of notice and requests for information from the N.C. State Bar by the deadlines stated in the communication.
 - c) Defendant will timely pay all State Bar membership dues and Client Security Fund assessments.
 - d) Defendant will timely comply with his State Bar continuing legal education requirements and will pay all fees and costs assessed by the applicable deadline.
 - e) Defendant will not violate any law of the United States or the laws of any state.
 - f) Defendant will not violate any provision of the Rules of Professional Conduct.
 - g) No later than 30 days from the entry of the Order of Discipline Defendant shall contract with a licensed North Carolina attorney who maintains a private law practice in the judicial district in which Defendant maintains his practice to serve as a practice monitor. Defendant will first secure the approval of his proposed practice monitor from the Office of Counsel of the North Carolina State Bar, which approval will not be unreasonably withheld. Defendant will personally meet with his practice monitor at least once each quarter beginning in April

2006 during the period of stayed suspension. Defendant will keep the monitor apprised of all open and pending client matters and the status of all such matters. Within 15 days after the end of each calendar quarter of each year of the stayed suspension, Defendant will deliver to the Office of Counsel a written report signed by the practice monitor confirming that the meetings are occurring and that the Defendant is reporting on the status of Defendant's client matters to the practice monitor and that the practice monitor is satisfied with the status of such client matters. Defendant will be solely responsible for all costs associated with the monitoring of his law practice.

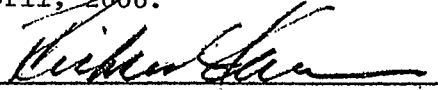
- h) Defendant shall complete within the first twelve months of the stay, at his own expense, a course of training of at least eight hours, in law office management approved by the North Carolina State Bar, and expressly waive any right he might otherwise have as to confidential communication with persons associated with the management training program in regard to the prescribed course of training. Within ten days of completion of the management training program Defendant will be responsible for seeing that the provider of the training course has certified to the Bar that he has satisfactorily completed the course and paid the costs of the course.
- i) Within 180 days of the entry of this Order of Discipline, Defendant will have refunded unearned fees to clients identified in the Order of Discipline in the amount shown below and provided the Office of Counsel with a satisfactory evidence of payment such as a signed receipt or cancelled check:

Client	Amount
Felana Milbourne	\$400.00
Amy Armstrong	\$350.00
Zeferino Gomez Garcia	\$2,000.00

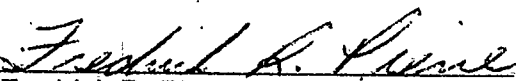
- 2. Defendant shall pay the costs of this proceeding within 30 days of service of the statement of costs upon him by the Secretary of the State Bar.
- 3. If the stay of the suspension is lifted at any time and the suspension of Defendant's law license is activated for any reason, before seeking reinstatement of his license to practice law, Defendant must show by clear, cogent and convincing evidence that he has complied with each of the following conditions:
 - a) Submitted his license and membership card to the Secretary of the N.C. State Bar within 30 days after the effective date of the order suspending his law license.
 - b) Complied with all provisions of 27 N.C.A.C. Chapter 1, Subchapter B, Section .0124 of the State Bar Discipline & Disability Rules on a timely basis.

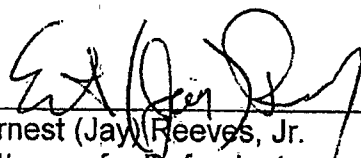
- c) Demonstrated that he is not suffering from any addiction, disability or condition that would impair his ability to competently engage in the practice of law.
- d) Paid all due and owing membership fees, Client Security Fund assessments and costs assessed by the DHC or the State Bar.
- e) Complied with all continuing legal education requirements imposed by the North Carolina State Bar.


Signed by the Chair of the Hearing Committee with the knowledge and consent of the other Committee members: This the 13th day of April, 2006.^{pm}


T. Richard Kane, Chair
Hearing Committee

Consented To:


Fredrick R. Pierce
Defendant


Ernest (Jay) Reeves, Jr.
Attorney for Defendant


William N. Farrell, Counsel
Attorney for Plaintiff