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NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
04 DHC 25

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

ROBERT N. WECKWORTH, JR., Attorney,
Defendant

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) ORDER
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This matter was heard on August 25, 2004 by a Hearing Committee of the Disciplinary Hearing Commission composed of W. Steven Allen, Sr., Chair, Elizabeth Bunting, and R. Mitchel Tyler. Margaret Cloutier represented the plaintiff and the defendant appeared pro se.

Based on the pleadings and by clear, cogent and convincing evidence presented the Hearing Committee makes the following

FINDINGS OF FACT

1. The complaint was filed on May 14, 2004 and defendant executed an acceptance of service on June 9, 2004.

2. Defendant failed to answer or otherwise plead within the time designated by 27 N.C.A.C. 1B §.0114(e) and his default was entered by the Secretary of the North Carolina State Bar on July 21, 2004.

3. Plaintiff, the North Carolina State Bar (hereinafter "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.

4. Defendant, Robert N. Weckworth, Jr. (hereinafter "Weckworth" or "defendant"), was admitted to the North Carolina State Bar on February 28, 1989 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 Revised Rules of

Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

5. During the times relevant to this proceeding, Robert N. Weckworth, Jr. actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Greensboro, Guilford County, North Carolina.

6. On April 11, 2003 Teresa Hernandez (hereinafter "Hernandez") filed a petition for resolution of disputed fee with the North Carolina State Bar pursuant to 27 N.C.A.C. 1D §.0700. Hernandez's fee dispute petition was designated file number 03FD0174.

7. By letter dated April 11, 2003 Luella C. Crane (hereinafter "Crane") of the North Carolina State Bar Client Assistance Program notified Weckworth of Hernandez's petition by sending Weckworth a copy of the petition and directed Weckworth to respond to the petition within 15 days of receipt of Crane's letter. Weckworth received Crane's April 11, 2003 letter by certified mail on April 14, 2003 but Weckworth failed to respond to Crane's April 11, 2003 letter.

8. By letter dated May 13, 2003 Crane reminded Weckworth that his response to Hernandez's petition had not been received and directed that he respond within ten days of receipt of Crane's letter. Weckworth received Crane's May 13, 2003 letter by certified mail on May 16, 2003 but Weckworth failed to respond to Crane's May 13, 2003 letter.

9. By letter dated June 5, 2003 Crane again reminded Weckworth that his response to Hernandez's petition had not been received and again directed that he respond within ten days of receipt of Crane's letter. Weckworth received Crane's June 5, 2003 letter by certified mail on June 7, 2003.

10. On June 25, 2003, after receiving no response to her June 5, 2003 letter, Crane closed the fee dispute file and referred the Weckworth file to the disciplinary department of the State Bar where a grievance file was opened and assigned file number 03G1000.

11. On July 17, 2003 Weckworth faxed a letter dated July 16, 2003 to the State Bar responding to the fee dispute petition filed by Hernandez on April 11, 2003.

12. On February 7, 2003 Timothy Warren Carrothers (hereinafter "Carrothers") filed a petition for resolution of disputed fee with the North Carolina State Bar pursuant to 27 N.C.A.C. 1D §.0700. Carrothers' fee dispute petition was designated file number 03FD0069.

13. By letter dated February 7, 2003 Debra Holland (hereinafter "Holland") of the North Carolina State Bar Client Assistance Program notified Weckworth of Carrothers' petition by sending Weckworth a copy of the petition and directed Weckworth to respond to the petition within 15 days of receipt of Holland's letter. Weckworth received Holland's February 7, 2003 letter by certified mail on February 12, 2003.

14. Weckworth failed to respond to Holland's February 7, 2003 letter within 15 days as required. However, Weckworth contacted Holland by telephone sometime after February 12, 2003 and requested that the time for responding be extended to March 31, 2003. Holland agreed to such extension of time to respond. Weckworth again failed to respond to Holland's February 7, 2003 letter by March 31, 2003. However, by a faxed letter to Holland dated and received April 4, 2003, Weckworth requested an extension of time to respond to Carrothers' petition until April 25, 2003. Holland agreed to a second extension of time to respond. Weckworth failed to make further response to Holland's February 7, 2003 letter.

15. By letter dated May 21, 2003 Holland reminded Weckworth that his response to Carrothers' petition had not been received and directed that he respond within ten days of receipt of Holland's letter. Weckworth received Holland's May 21, 2003 letter by certified mail on June 23, 2003 but Weckworth failed to respond to Holland's May 21, 2003 letter.

16. By letter dated June 12, 2003 Luella C. Crane (hereinafter "Crane") of the North Carolina State Bar Client Assistance Program reminded Weckworth again that his response to Carrothers' petition had not been received and directed that he respond within ten days of receipt of Crane's letter. Weckworth received Crane's June 12, 2003 letter by certified mail on June 16, 2003.

17. On July 3, 2003, after receiving no response to her June 12, 2003 letter, Crane closed the fee dispute file and referred the Weckworth file to the disciplinary department of the State Bar where a grievance file was opened and assigned file number 03G1054.

18. On July 17, 2003 Weckworth faxed a letter dated July 16, 2003 to the State Bar responding to the fee dispute petition filed by Carrothers on February 7, 2003.

19. On July 22, 2003 Tommy McArthur (hereinafter "McArthur") filed a petition for resolution of disputed fee with the North Carolina State Bar pursuant to 27 N.C.A.C. 1D §.0700. McArthur's fee dispute petition was designated file number 03FD0379.

20. By letter dated July 22, 2003 Debra Holland (hereinafter "Holland") of the North Carolina State Bar Client Assistance Program notified Weckworth of

McArthur's petition by sending Weckworth a copy of the petition and directed Weckworth to respond to the petition within 15 days of receipt of Holland's letter. Weckworth received Holland's July 22, 2003 letter by certified mail on July 23, 2003 but Weckworth failed to respond to Holland's July 22, 2003 letter.

21. By letter dated August 27, 2003 Luella C. Crane (hereinafter "Crane") of the North Carolina State Bar Client Assistance Program reminded Weckworth again that his response to McArthur's petition had not been received and directed that he respond within ten days of receipt of Crane's letter. Weckworth received Crane's August 27, 2003 letter by certified mail on August 28, 2003.

22. On September 17, 2003, after receiving no response to her August 27, 2003 letter, Crane closed the fee dispute file and referred the Weckworth file to the disciplinary department of the State Bar where a grievance file was opened and assigned file number 03G1481.

23. On September 30, 2003, pursuant to 27 N.C.A.C. 1B §.0112(b), the Chair of the Grievance Committee sent Weckworth a letter of notice accompanied by a substance of the grievance. Weckworth received the letter of notice and its attachment by certified mail on October 6, 2003.

24. Pursuant to 27 N.C.A.C. 1B §.0112(c) Weckworth was required to respond to the letter of notice within 15 days of receipt, but Weckworth failed to respond to the letter of notice within that time. On October 31, 2003 a follow-up letter was sent to Weckworth by regular mail reminding him of his duty to respond to the letter of notice and directing him to respond by November 7, 2003. Weckworth failed to respond to that letter.

25. On November 13, 2003, pursuant to 27 N.C.A.C. 1B §.0112(f), a Subpoena to Appear and Produce Documents or Objects was sent to Weckworth by certified mail. It commanded Weckworth to appear at the offices of the North Carolina State Bar at 10:00 a.m. on December 2, 2003 to testify about the grievance and to produce any and all files and documents pertaining to McArthur. Weckworth received the Subpoena by certified mail on November 15, 2003.

26. On December 1, 2003 Weckworth faxed a letter dated November 28, 2003 to the State Bar responding to the fee dispute petition filed by McArthur on July 22, 2003.

Based upon the forgoing Findings of Fact, the Committee enters the following

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Committee, and the Committee has jurisdiction over the defendant and the subject matter of this proceeding.

2. The allegations contained in plaintiff's complaint are deemed admitted by virtue of defendant's failure to file responsive pleadings pursuant to Rule 8(d) of the North Carolina Rules of Civil Procedure and 27 N.C.A.C. 1B §.0114(f).

3. Weckworth's foregoing actions violated the Revised Rules of Professional Conduct as follows:

a) by failing to participate in good faith with the fee dispute resolution process of the North Carolina State Bar in the cases of Teresa Hernandez, Timothy Warren Carrothers and Tommy McArthur defendant violated Rule 1.5(f);

b) by engaging in conduct prejudicial to the administration of justice in that Teresa Hernandez, Timothy Warren Carrothers and Tommy McArthur were unable to resolve their fee disputes with defendant through the State Bar's program, defendant violated Rule 8.4(d); and

c) by failing to respond to a lawful demand for information from a disciplinary authority defendant violated Rule 8.1(b).

Based upon the information presented at the hearing, the Hearing Committee also makes the following

FINDINGS REGARDING DISCIPLINE

1. There are no aggravating factors.

2. Defendant's conduct was mitigated by the following factors:

a) Defendant has no prior disciplinary record.

b) Defendant has made full and free disclosure to the hearing committee and had a cooperative attitude toward the proceedings.

c) Defendant expressed to the committee remorse for his actions and apologized to the committee and deputy counsel for the necessity of the hearing.

d) No clients of defendant nor other members of the public were harmed by defendant's actions.

e) Defendant ultimately submitted responses to the fee disputes and the grievance and therefore has made efforts to rectify the consequences of his misconduct.

f) During the period relevant to his misconduct, Defendant provided significant aid to the practice of another attorney who was temporarily disabled.

g) The misconduct of defendant consisted of minor or technical breaches of the rules and should not be the basis for discipline in this instance.

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

ORDER

Defendant is hereby issued a warning for his minor or technical breaches of the Rules of Professional Conduct and defendant is warned that such conduct may be the basis for discipline if continued or repeated in the future.

Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Committee, this 23 day of September, 2004.



W. STEVEN ALLEN, SR., CHAIR