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NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
86 DHC 8

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
vs.)
LARRY THOMAS BLACK,)
Defendant)

ORDER OF DISCIPLINE

This cause was heard by the undersigned, duly appointed Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar on Friday, November 21, 1986. Following the first phase of the hearing, the Committee received evidence relating to the appropriate measure of discipline and found the following:

1. The Defendant has not previously been the subject of professional discipline.
2. The Defendant is a reputable attorney in his community whose character is good.
3. The Defendant's neglect of his client's appeal was in part attributable to an emotional disturbance in the nature of depression which inhibited his taking effective and prompt action to protect his client's rights.

Based upon the Findings of Fact and Conclusions of Law entered in this cause and the foregoing considerations bearing upon the appropriate measure of discipline, the Hearing Committee enters this Order of Discipline:

1. The defendant shall be and is hereby suspended from the practice of law for a period of twelve (12) months commencing thirty (30) days after the service of this Order upon the defendant or affirmation of this Order on appeal.
2. The defendant shall surrender his license and membership card to the Secretary of the North Carolina State Bar by the effective date of this ORDER.

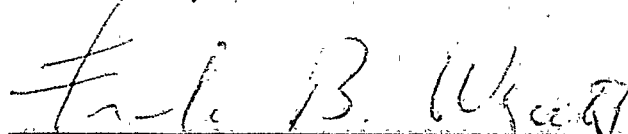
3. The defendant shall fully comply with the applicable provisions of Rules 24 and 25 of Article 9 of the Rules and Regulations of the North Carolina State Bar concerning practice windup and reinstatement.

4. The defendant shall pay the costs of this action.

5. As a condition precedent to reinstatement, the defendant shall pay to Clifford and Barbara Shamp the sum of \$250.00 as a refund of prepaid legal fees which were unearned.

As by law provided, the Committee has authorized the Chairman to sign on behalf of all members.

This the 11 day of December, 1986.



The Honorable Frank B. Wyatt
Chairman, Hearing Committee

NORTH CAROLINA
WAKE COUNTY

139610 MIC 16
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86 DHC 8

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

LARRY THOMAS BLACK,
Defendant

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This cause was heard by a Hearing Committee of the Disciplinary Hearing Commission consisting of Frank B. Wyatt, Chairman, L. P. Hornthal, Jr., and John Beach on Friday, November 21, 1986. The Plaintiff was represented by L. Thomas Lunsford, II and the Defendant was represented by George Daly. Based upon the pleadings, the pretrial stipulations and the evidence at hearing the Committee finds that the following facts were established by clear, cogent and convincing evidence relative to the Plaintiff's First Claim for Relief:

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, Larry Thomas Black, was admitted to the North Carolina State Bar on September 9, 1963 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 Code of Professional Responsibility of the North Carolina State Bar and the laws of the State of North Carolina.

3. During all of the periods referred to hereinafter, 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 Charlotte, Mecklenburg County, North Carolina.

4. On or about October 11, 1984, the Defendant was appointed by Superior Court Judge Robert Burroughs to represent Willie J. Neely (Neely) incident to his appeal of a conviction for assault with a deadly weapon with intent to kill inflicting serious bodily injury. The Defendant had previously represented

Neely at trial where Neely was found guilty by a jury and sentenced to a term of 20 years imprisonment.

5. In Judge Burroughs' order appointing him, the Defendant was allowed 75 days in which to serve his proposed record on appeal on the State. The Defendant did not file the proposed record on appeal within the allotted time nor did he ever file the proposed record on appeal in his client's case. Although a delay in the production and delivery of the trial transcript from the court reporter to the Defendant would arguably have justified an extension of time to serve the case on appeal, the Defendant never moved for such an extension in either the Superior Court or the Court of Appeals.

6. On or about the 13th day of March, 1986, Superior Court Judge Chase Saunders dismissed Neely's appeal upon the State's motion to dismiss for failure to perfect. Prior to the Court's order dismissing the appeal, Neely had tried without success to contact the Defendant by mail to ascertain the status of the appeal. The Defendant failed to respond to two of Neely's letters concerning the status of the appeal.

7. The Defendant did not appear before Judge Saunders to oppose the State's motion to dismiss or to offer any explanation for his neglect.

8. The Defendant petitioned the North Carolina Court of Appeals for certiorari incident to Neely's case during the week of November 17, 1986.

Based upon the foregoing FINDINGS OF FACT, the Hearing Committee makes the following CONCLUSIONS OF LAW:

The Defendant, by failing to perfect the appeal of his client, neglected a legal matter entrusted to him, intentionally failed to seek the lawful objectives of his client, and intentionally prejudiced his client during the course of the professional relationship in violation of Disciplinary Rules 6-101(A)(3) and 7-101(A)(1) and (3), respectively, of the North Carolina Code of Professional Responsibility.

Relative to the Plaintiff's Second Claim for Relief, the Hearing Committee finds that the following facts were established by clear, cogent and convincing evidence:

1. On January 4, 1985, Clifford S. and Barbara J. Shamp employed the Defendant to represent them in connection with their application to adopt their infant grandson, Robert Lynn Shamp, which application had been recently denied by the local Department of Social Services. At the time the Shamps employed

the Defendant, they had physical custody of their grandson who had been placed with them by the court. The Department of Social Services had legal custody of the child. Following their initial consultation with the Defendant, the Shamps paid the Defendant the sum of \$400 toward his fee in advance.

2. On January 15, 1985, the Shamps discharged the Defendant as their attorney. At the time of discharge, the Defendant had spent approximately 2.5 hours working on the Shamps' case. Although he had not earned the entire \$400.00 fee he had been paid in advance, he did not refund the unearned portion prior to the trial of this action.

3. The Defendant tendered a check for \$250.00 to the Shamps through his attorney and Counsel for the Plaintiff during the trial of this action.

Based upon the foregoing FINDINGS OF FACT, the Hearing Committee makes the following CONCLUSION OF LAW:

The Defendant, by failing to return any of his unearned fee after discharge and prior to this trial, failed to refund the unearned portion of a fee paid in advance upon discharge in violation of Disciplinary Rule 2-109(A)(3) of the North Carolina Code of Professional Responsibility.

This the 8 day of December, 1986.

Frank B. Wyatt

Frank B. Wyatt, Hearing Committee Chairman
(For the Committee)