

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
89 DHC 17

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

ANDREW L. WATERS, ATTORNEY
Defendant

STIPULATED
FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

Pursuant to Section 14(8) of the Rules of Discipline and Disbarment, the parties to this action have agreed to a settlement upon the following stipulated Findings of Fact and Conclusions of Law. In consequence of this settlement and these stipulations, the hearing committee has entered an order of discipline to which the parties have consented. The North Carolina State Bar was represented by Fern E. Gunn and the Defendant, Andrew L. Waters, appeared pro se. Based upon the representations of the Plaintiff and the Defendant, the hearing committee hereby accepts and adopts these stipulations and based upon the stipulations, the hearing committee makes the following Findings of Fact:

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, 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.
4. The Defendant was appointed to represent Winston M. Flynt in New Hanover County Superior Court on the charge of manslaughter.
5. Flynt was tried before a jury and was found guilty of voluntary manslaughter on October 7, 1986.
6. Flynt was given an active prison sentence. He gave notice of appeal through the Defendant in open court on October 8, 1986.

7. On October 8, 1986, Judge Herbert O. Phillips III appointed the Defendant to represent Flynt on his appeal.
8. The Defendant did not receive a copy of the trial transcript until January 6, 1987.
9. The Defendant failed to file a record on appeal in the appropriate appellate court within the 150 days allowed by the Rules of Appellate Procedure, although Defendant sought an extension of time to file the record on appeal on March 13, 1987, nine days after the right to appeal expired.
10. The Defendant's motion for extension of time to file a record on appeal was denied by the North Carolina Court of Appeals on March 16, 1987.
11. The Defendant filed a petition for writ of certiorari on February 17, 1988 in Flynt's case. On March 3, 1988, the North Carolina Court of Appeals denied the petition for writ of certiorari.
12. The Defendant's conduct in the instant case occurred during the same period in which the Defendant's misconduct occurred as cited in 88 DHC 11 and 19.
13. The Defendant received a Private Reprimand dated November 10, 1983 in 88G 0177(I) for his failure to perfect an appeal in a criminal case. In addition, Defendant received a Public Censure dated May 24, 1985 in a Consent Order of Discipline in a case before the Disciplinary Hearing Commission, 85 DHC 9. In that case, Defendant failed to perfect an appeal in a criminal case. Both of these prior disciplines were considered in the 18 months suspension Defendant received in 88 DHC 11 and 19.
14. The Defendant received an 18-month suspension in two cases before the Disciplinary Hearing Commission, 88 DHC 11 and 19 for his failure to perfect an appeal in two criminal cases, failure to respond to a client's request for information concerning the status of his appeal, and failure to respond to a formal inquiry of the North Carolina State Bar.
15. In 88 DHC 11 and 19, the hearing committee found the absence of a dishonest or selfish motive on Defendant's part and his full and free disclosure to the hearing committee to be mitigating factors in the discipline imposed.
16. In the instant case, the Defendant took steps to rectify his neglect, although such efforts were unsuccessful. Furthermore, the Defendant has at all times made a full and fair disclosure of the circumstances in this matter and he has freely admitted his misconduct to both the Grievance Committee and the Disciplinary Hearing Commission of the North Carolina State Bar.

Based upon the foregoing Findings of Fact, the parties stipulate to the following Conclusions of Law and the hearing committee adopts them as its own:

1. The Disciplinary Hearing Commission has subject matter jurisdiction of the cause and personal jurisdiction over the Defendant.

2. The Defendant has engaged in conduct constituting grounds for discipline under N.C. Gen. Stat. Sec. 84-28(a) and (b) as violations of the Rules of Professional Conduct by failing to file a record on appeal on Flynt's behalf within the time allowed or to act promptly to preserve Flynt's right to appeal, Defendant engaged in conduct that is prejudicial to the administration of justice in violation of Rule 1.2(D); 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);

Stipulated to, this the 7 day of November, 1989.

Fern E. Gunn
Fern E. Gunn
Counsel for Plaintiff

Andrew L. Waters
Andrew L. Waters
Defendant
Appearing pro se

The foregoing stipulated Findings of Fact and Conclusions of Law are adopted and the hearing committee finds the facts and conclusions of law as stated. Furthermore, the committee finds misconduct.

Pursuant to Section 14(20) of the Discipline and Disbarment Procedures of the North Carolina State Bar, the hearing committee has authorized the Chairman to sign on behalf of all members.

This the 24 day of NOVEMBER, 1989.

L. P. Hornthal Jr.
L. P. Hornthal Jr., Chairman
Hearing Committee

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CONSENT ORDER OF
DISCIPLINE

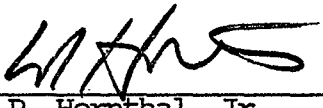
Based upon the stipulated Findings of Fact and Conclusions of Law agreed to by the parties and adopted by the Hearing Committee, the parties have consented to the following Order of Discipline which the hearing committee approves and adopts as its own:

1. The Defendant shall be suspended from the practice of law for a period of six months, such suspension to be stayed for two years.
2. Upon the Defendant's reinstatement to the practice of law from the 18-month suspension ordered in 88 DHC 11 and 88 DHC 19, the Defendant shall for a two-year period notify the North Carolina State Bar of his court appointment or employment to represent a party in the appeal of a criminal case to the appellate court. Furthermore, the Defendant shall report and show evidence to the North Carolina State Bar of each step taken to perfect the appeal of his client.
3. The Defendant shall pay all costs of this proceeding.

This order of discipline shall run consecutively with the discipline imposed in 88 DHC 11 and 88 DHC 19.

Pursuant to Section 14(20) of the Discipline and Disbarment Procedures of the North Carolina State Bar, the Committee has authorized the Chairman to sign on behalf of all members.

This the 24 day of November, 1989.



L. P. Hornthal, Jr.
Chairman, Hearing Committee