

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
89 DHC 28

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

BILLY H. MASON, ATTORNEY
Defendant

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This matter coming on to be heard and being heard on December 15, 1989 by a hearing committee composed of John B. McMillan, chairman, Maureen D. Murray and Frank L. Boushee; with A. Root Edmonson representing the North Carolina State Bar and Billy H. Mason appearing pro se; and based upon the pleadings in this matter and the arguments of Counsel, the hearing committee finds the following by clear, cogent and convincing evidence:

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, Billy H. Mason, was admitted to the North Carolina State Bar on September 6, 1977, 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. Defendant was appointed in New Hanover Superior Court to represent Samuel L. Getward on charges of First Degree Kidnapping and First Degree Rape.
5. The matter was tried before a jury in March, 1986. Getward was convicted of second degree kidnapping and second degree rape and given an active prison sentence.
6. On March 28, 1986, Defendant was appointed by Judge James R. Strickland to perfect Getward's appeal to the North Carolina Court of Appeals.
7. Defendant failed to file the record on appeal in the North


Carolina Court of Appeals within the time prescribed by the Rules of Appellate Procedure, failed to file for an extension of time to file the record on appeal, and failed to take any other action on Getward's behalf to protect his right to appeal.

Based upon the foregoing Findings of Fact, the hearing committee enters the following Conclusions of Law:

Defendant's actions, as set out above, constitute grounds for discipline pursuant to N. C. Gen. Stat. Sec. 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

- (a) By failing to file the record on appeal in Getward's case with the North Carolina Court of Appeals within the time prescribed by the Rules of Appellate Procedure or take some other action to protect Getward's right to an 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 knowledge and consent of the other members of the hearing committee, this the 20th day of July, 1990
nunc pro tunc to December, 1989.


John B. McMillan, Chairman
Disciplinary Hearing Committee

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ORDER OF DISCIPLINE

BASED UPON the Findings of Fact and Conclusions of Law of even date herewith and further based upon the evidence presented and arguments of counsel, the hearing committee finds the following evidence in mitigation:

1. Defendant's client, Samuel Getward, had lost confidence in Defendant after being convicted at his trial, although Getward was convicted of lesser offenses than the offenses for which he was charged.
2. Getward filed several motions for appointment of new counsel.
3. Defendant was led to believe that the court was going to appoint new counsel for Getward. The court did not appoint new counsel for Getward until after the 150 day time for filing an appeal had run.
4. New counsel was eventually appointed and Getward had his conviction reviewed by the appellate courts.
5. Defendant's failure was a failure to follow-up to make sure that the court had appointed new counsel.

BASED UPON the foregoing, the hearing committee enters the following order:

1. The appropriate discipline to be imposed in this matter is a Private Reprimand.
2. Defendant is taxed with the costs of this matter.

Signed with the knowledge and consent of the other members of the hearing committee, this the 20th day of July, 1990 nunc pro tunc to December, 1989.


John B. McMillan, Chairman
Disciplinary Hearing Committee