

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
89 DHC 2

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

DAVID M. LOMAS, ATTORNEY
Defendant

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This matter was scheduled for hearing on June 23, 1989 before a hearing committee of the Disciplinary Hearing Commission composed of James E. Ferguson, Chairman, W. Harold Mitchell and Emily W. Turner. The material allegations of the complaint in this matter were not contested by the Defendant. The parties proposed a settlement of the matter which was accepted by the hearing committee without a hearing. Based upon the admissions and the consent of the parties, the hearing committee 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, David M. Lomas, was admitted to the North Carolina State Bar on September 8, 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.
4. In February, 1987, Defendant became formally associated with the law firm of Purser, Cheshire, Parker, Hughes and Dodd in Raleigh, North Carolina with the sole responsibility of attending to legal matters delegated to Defendant by Joseph B. Cheshire, V (hereinafter Cheshire).
5. Shortly after Labor Day in 1987, Defendant was delegated the responsibility of preparing and attending to the filing of the record on appeal in the case of State of North Carolina v. Peter Greenspan.
6. Defendant neglected to properly attend to the filing of the

record on appeal prior to the time for filing the record expiring.

7. During the period of time prior to the deadline for filing the record on appeal, inquiry was made of Defendant by Cheshire at least twice a month concerning the status of the preparation of the record. Defendant always assured Cheshire that the matter was being attended to even though he knew it wasn't.
8. Defendant subsequently assured both Cheshire and the client that extensions of time to file the proposed record on appeal had been obtained when in fact no extension had been sought by Defendant and none had been granted.
9. Defendant finally admitted his neglect and deceit to Cheshire on March 9, 1988 after the 150 day deadline for filing the record on appeal in the appellate court had expired.

BASED UPON the foregoing Findings of Fact, the hearing committee enters the following CONCLUSIONS OF LAW. The Defendant's conduct constitutes grounds for discipline pursuant to N.C. Gen. Stat. Section 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

- a. By failing to attend to the filing of the record on appeal in the case of State of North Carolina v. Peter Greenspan, 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 reasonable available means in violation of Rule 7.1(A)(1) and, by allowing the 150 day deadline to expire without filing the record on appeal with the appellate court, prejudiced or damaged his client during the course of professional relationship in violation of Rule 7.1(A)(3).
- b. By assuring both Cheshire and the client during their inquiries about the status of the preparation of the record on appeal that the matter was being attended to or that extensions of time had been granted when Defendant knew that he had not attended to the preparation of the record and no extensions had been sought or granted for filing the record on appeal, Defendant knowingly made false statements of fact in violation of Rule 7.2(A)(4) and engaged in conduct involving dishonesty, fraud, deceit and misrepresentation in violation of Rule 1.2(C).

Signed by the Chairman of the hearing committee with the full knowledge and consent of the other members of the hearing committee, this the 31st day of August, 1989.

James E. Ferguson II
James E. Ferguson

#976

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Defendant

CONSENT ORDER
OF
DISCIPLINE

Based upon the Findings of Fact and Conclusions of Law entered in this matter of even date herewith, and further based upon the stipulations of aggravation and mitigation contained herein and the consent of the parties to the discipline imposed, the hearing committee approves and enters the following:

FINDINGS IN AGGRAVATION

1. Defendant was previously suspended from the practice of law in North Carolina in 85 DHC 17 for a period of two years with the possibility of having eighteen months of the suspension stayed on condition that Defendant obtain psychiatric or psychological treatment and that the psychiatrist or psychologist report satisfactory progress on Defendant's present ability to ethically cope with the responsibilities of practicing law.
2. On June 6, 1987 Defendant petitioned for reinstatement of his license with a report from a clinical psychologist that he had attended therapy and was presently able to ethically cope with the responsibilities of a practicing attorney.
3. On February 19, 1987, Defendant was reinstated to the practice of law.

FINDINGS IN MITIGATION

1. Defendant has not engaged in the practice of law since March 9, 1988, the date that he admitted his neglect and deceit in this matter to Cheshire as previously found.
2. Defendant has been under the care and treatment of Dr. Selwyn Rose, a psychiatrist, since April 1988, seeing him at least once a week.
3. Dr. Rose has diagnosed Defendant's psychological conflict and has indicated that it is not curable but is easily controllable with treatment. When Defendant is allowed to

continue to practice law, his continued treatment will necessarily include monitoring Defendant's attention to his responsibilities so that Defendant does not neglect any client's work. This treatment plan should prevent a reoccurrence.

BASED UPON the findings in mitigation and aggravation, and further based upon the consent of the parties, the hearing committee enters the following ORDER OF DISCIPLINE:

1. Defendant's active suspension from the practice of law in North Carolina shall be limited to the period of time already served since March 9, 1988.
2. Defendant shall have an additional eighteen (18) months active suspension stayed for three years on the following conditions:
 - (a) That Defendant continue treatment with Dr. Selwyn Rose or other competent licensed psychiatrist as often as recommended by the psychiatrist, but not less than once a month. Said treating psychiatrist shall certify to the State Bar quarterly that the defendant is receiving treatment.
 - (b) That Defendant not violate the Rules of Professional Conduct.

Signed by the undersigned Chairman with the full knowledge and consent of the other members of the hearing committee, this the 31st day of August, 1989.

James E. Ferguson II
James E. Ferguson II

Consented to:

A. R. Edmonson
A. Root Edmonson

David M. Lomas
David M. Lomas

#977