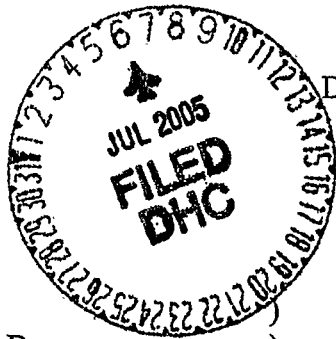


30711

NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF
THE NORTH CAROLINA STATE BAR
05 DHC 1

The North Carolina State Bar,
Plaintiff

v.

Annette Exum, Attorney,
Defendant

Consent Order of Discipline

This matter came before a Hearing Committee of the Disciplinary Hearing Commission composed of F. Lane Williams, Chair, John M. May and Marguerite P. Watts, pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B Section .0114 (H) of the Rules and Regulations of the North Carolina State Bar. The defendant, Annette H. Exum, was represented by Douglas J. Brocker. The plaintiff was represented by David R. Johnson. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Further, by entering into this consent order of discipline, defendant freely, voluntarily, and with the advice of counsel consents to the order of discipline, waives a formal hearing in the above referenced matter, and waives all right to appeal this consent order or challenge in any way the sufficiency of the findings, the conclusions, or the discipline imposed. Based upon the consent of the parties the hearing committee hereby enters the following:

FINDINGS OF FACT

1. 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. Defendant, Annette H. Exum (hereinafter Exum), was admitted to the North Carolina State Bar on April 4, 2003, 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 or a portion of the relevant periods referred to herein, Exum was actively engaged in the private practice of law in Wake County, North Carolina.

4. Linda Carter (hereafter "Ms. Carter") contacted Exum on or about September 22, 2003, concerning the prospective representation of her son, Shan Carter (hereafter "Carter"), on criminal post-conviction claims, at her son's request.

5. At the time, Carter was incarcerated after convictions for three murders following two separate trials. Carter had been convicted for first-degree murder in the death of Donald Brunson (hereafter "Brunson") on or about June 15, 2000. Carter was sentenced to life in prison on the Brunson conviction. Carter had also been convicted for first-degree murder in the deaths of Tyrone Baker and Demetrius Greene (hereafter "Baker" and "Greene") on about March 19, 2001. Carter was given the death penalty upon conviction in the Baker and Greene murders. One of the aggravating factors in the Baker and Greene sentencing was Carter's conviction for the Brunson murder.

6. Carter's conviction in the Brunson murder was affirmed by a unanimous opinion of the Court of Appeals on March 18, 2003. Attorney Edwin West III (hereafter "West") represented Carter on the appeal of Carter's conviction in the Brunson murder as appointed counsel.

7. Carter's conviction in the Baker and Greene murders was affirmed by the North Carolina Supreme Court on August 22, 2003. West also represented Carter on Carter's appeal of his conviction in the Baker and Greene murders as appointed counsel. After the affirmation of the Baker and Greene conviction on appeal, the Indigent Defense Services Commission was authorized to appoint post-conviction counsel for Carter on the Baker and Greene conviction.

8. Exum and Ms. Carter discussed an initial consultation with Carter. Exum told Ms. Carter that she would meet with Carter upon payment of a \$600 initial consultation fee and that part of the purpose of this visit was to decide if Exum would be able to represent Carter. Ms. Carter paid Exum the \$600 initial consultation fee on or about September 24, 2003.

9. Exum and Carter signed a written legal service agreement on or about September 30, 2003 during a visit to Central Prison.

10. Exum agreed to represent Carter on post-conviction proceedings, which might include a motion for appropriate relief (MAR), on the Brunson murder conviction for a fee of \$35,000. The written agreement contained language that stated that Exum had no obligation to refund the retainer fee paid at any time during the course of the agreement because the paid retainer was earned in full when paid as consideration for Exum's agreement to provide legal services to him.

11. At the time she agreed to represent Carter, Exum had been licensed to practice for approximately six months and had no experience in appellate or post-conviction proceedings with respect to first-degree murder convictions. Exum told Carter that she had no such experience during their initial meeting.

12. Both Exum and Carter were aware that Carter qualified and would receive appointed counsel for post-conviction matters with respect to the Baker and Greene convictions

at the time the representation by Exum began. No right to appointed counsel existed with respect to the Brunson conviction, and post-conviction counsel for the Baker and Greene convictions had not been approved when Carter retained Exum.

13. On or about October 14, 2003, Ms. Carter paid Exum the \$35,000 fee.
14. Exum believed that an MAR or other appropriate court filing had to be made on Carter's behalf by March 2004 to preserve the ability to have the matter reviewed in federal court.
15. At some point during December 2003, Exum was contacted by Margaret Ciardella, who stated that she was appointed counsel for Carter in the Baker and Greene matters.
16. Ciardella withdrew from representing Carter at some point during January 2004 and Kristin Parks and Sharon Smith were appointed to replace Ms. Ciardella in February 2004. Ms. Parks and Smith subsequently received approval from the Indigent Defense Service (IDS) to handle post-conviction work on the Brunson matter as part of the death penalty representation.
17. Around February 16, 2004, Carter discharged Exum. At the time of her discharge, Exum had not prepared or filed a MAR on Carter's behalf or any other motion or pleading, draft or otherwise, in support of Carter's post-conviction efforts. Exum, however, had obtained and reviewed the extensive trial transcript, appeals files, and other documents. She also had a series of visits and communications with Shan Carter and his family members to obtain an understanding and context for the evidence and the relationship between relevant witnesses and parties.
18. After discharge, Carter and Ms. Carter both made demands on Exum for refund of unearned fees. Exum has not refunded any portion of the \$35,000 fee to date. Exum has made efforts to resolve the fee dispute with Ms. Carter, which have been unsuccessful to date.

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

CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee, and the committee has jurisdiction over Exum and the subject matter.
2. Exum's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:
 - a) By claiming in the initial fee agreement signed by Carter that she had no obligation to refund any part of the \$35,000 fee at any time because it was earned on receipt, Exum violated Rule 1.5.
 - b) By failing to refund the unearned portion of the fee paid in advance promptly upon termination of her services, Exum violated Rule 1.16 (d).

c) By agreeing to handle Carter's post-conviction claims when she knew or should have known that she was not competent to handle it without associating a lawyer who was competent to handle the matter, Exum violated Rule 1.1.

d) By failing to prepare any court motions, pleadings, or other filings, whether draft or otherwise, during the period between September 30, 2003 and the date of her discharge, Exum violated Rule 1.3.

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the evidence and arguments of the parties concerning the appropriate discipline, the hearing committee hereby makes additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. After meeting with Carter, Exum attempted to associate other counsel with experience in post-conviction matters to assist her with his case. She ultimately was unsuccessful in securing such a person to act as co-counsel in the matter. She also made efforts during the representation to familiarize herself with post-conviction proceedings.

2. Exum's representation of Carter in his post-conviction matter in the Brunson case did not ultimately cause demonstrated prejudice to his case.

3. Exum and Ms. Carter have attempted unsuccessfully to agree on the amount of refund due Ms. Carter.

4. Exum communicated with Ethics Counsel for the North Carolina State Bar concerning the proper handling of the fee she received and attempted to follow the advice given.

5. Exum has attended CLE classes far in excess of the mandatory requirement since being licensed to practice law.

CONCLUSIONS WITH RESPECT TO DISCIPLINE

1. Exum's misconduct is aggravated by the following factors:

- (a) multiple offenses; and
- (b) failure to agree on and make restitution of a portion of the fee.

2. Exum's misconduct is mitigated by the following factors:

- (a) absence of prior disciplinary offenses;
- (b) full and free disclosure to the hearing committee and cooperative attitude toward the proceedings;
- (c) inexperience in the practice of law; and
- (d) good character and reputation.

3. The mitigating factors outweigh the aggravating factors.

Based upon the foregoing aggravating and mitigating factors and the arguments of the parties, the hearing committee hereby enters the following

ORDER OF DISCIPLINE

1. The license of defendant, Annette Exum, is hereby suspended for one year, effective upon entry of this order. The suspension shall be stayed for a period of two years so long as Exum complies with the following conditions:

- a. Exum shall not violate any state or federal laws during the period of the stay of the active suspension;

- b. Exum shall not violate any provisions of the Rules of Professional Conduct during the period of the stay;

- c. Exum shall pay all costs incurred in this proceeding and taxed against her, including the costs of deposing Shan Carter, within 90 days of receipt of the notice of costs assessed by the Secretary;

- d. No later than July 1, 2005, Exum will contract with a licensed North Carolina attorney who maintains a private law practice in the judicial district in which Exum maintains her primary office for her practice, other than her legal counsel in this proceeding, to serve as a practice monitor. Exum will first secure the approval of her proposed practice monitor by the Office of Counsel of the North Carolina State Bar, which approval will not be unreasonably withheld. Exum will personally meet with her practice monitor at least once a month throughout the stayed suspension of her law license. Exum will keep the monitor apprised of all open and pending client matters and the status of all such matters. Within 15 days after the end of each calendar quarter (i.e., by January 15, April 15, July 15, and October 15) of each year during the stayed suspension of her law license, Exum will deliver to the Office of the Counsel written reports signed by the practice monitor confirming that the meetings are occurring and reporting any problems or potential problems with any of Exum's client matters. Exum will be solely responsible for all costs associated with the monitoring of her law practice.

- e. By December 31, 2005, Exum will pay Ms. Carter \$5,000 as minimum restitution of the unearned portion of the fee paid to her. By July 15, 2005, Exum will communicate with Ms. Carter or her counsel that she is willing to submit to arbitration with regard to the total amount of the refund of the unearned fee due to the Ms. Carter to be conducted under the rules of the 10th Judicial District Bar fee arbitration rules or such other forum and rules as Ms. Carter or her counsel propose. If Ms. Carter accepts such arbitration, Exum agrees to be bound by the result and allow the arbitration award to be entered against her as a final judgment or otherwise fully comply with the award. Exum

agrees for the arbitration to be conducted before September 15, 2005, unless a later date is agreed to by Ms. Carter or her counsel or required by the arbitrators or the rules of the arbitration. If Ms. Carter declines such arbitration, Exum will participate in any negotiations, mediation, or litigation with respect to the amount of restitution in good faith. Exum will comply with the terms of any settlement agreement reached with Ms. Carter in accordance with its terms or comply with any civil judgment entered. Exum will provide the Office of Counsel with a statement of the final amount of restitution due within 15 days of its determination. Exum will use her best efforts to satisfy any final amount of restitution of the fee to Ms. Carter, whether determined by negotiation, mediation, arbitration, litigation or otherwise, by making prorated payments of the total amount due to Ms. Carter on at least a quarterly basis by the last day of each calendar quarter (i.e. March 31, June 30, October 31, and December 31). Exum will provide the Office of Counsel with satisfactory evidence of payment each quarter within 15 days of the end of the quarter. If any payment is less than the prorata amount due that quarter, Exum will provide the Office of Counsel with a sworn statement of the reasons the payment was less than the prorata amount due within 15 days of the end of the quarter when due. If it is determined by negotiation, mediation, arbitration, litigation, or otherwise, that the amount of restitution owed to Ms. Carter is less than \$5,000, then Exum will pay the entire amount of restitution to Ms. Carter by December 31, 2005, will provide the Office of Counsel with evidence of the amount owed and payment by January 15, 2006, and will be released from any further obligation under this provision of the Order upon payment in full.

f. During the period of the stay, Exum will permit the North Carolina State Bar to conduct random audits of her trust account, and any other business and personal bank accounts necessary to complete such audits. The North Carolina State Bar will not review any Exum bank account more than four times each year.

g. During the stay period, Exum will pay all mandatory Bar dues and assessments, including State Bar and District Bar dues and Client Security Fund assessments, and will fully comply with all requirements of the State Bar Continuing Legal Education Department, and any other mandatory State Bar program that may come into existence during her stayed suspension, on a timely basis throughout the stayed suspension of her law license.

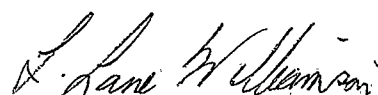
h. During the stay period, Exum will keep the North Carolina State Bar Membership Department apprised of her current address, will accept all certified mail from the North Carolina State Bar, and will respond in a timely fashion to all requests for information from the North Carolina State Bar, including Letters of Notice from the Grievance Committee, letters from the Office of Counsel, and notices of mandatory fee dispute resolution requests from clients.

i. During the stay period, Exum will submit for review and approval by Ethics Counsel for the State Bar all standard written fee agreements or contracts with clients and maintain a record of such approvals.

2. If, upon motion by the State Bar, a Hearing Committee of the DHC finds that Exum has violated any of the conditions in Section 1(a)-(i) of this Order, the suspension of Exum's license shall be activated. If the suspension is activated, prior to seeking reinstatement of his license, the Defendant must:

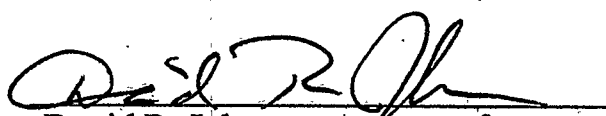
- a. comply with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, Sec. .0125(b) of the N.C. State Bar Discipline & Disability Rules; and
- b. satisfy all the conditions set forth in section 1. (a)-(i) above.

Signed by the chair with the consent of the other hearing committee members, this
the 27th day of June 2005.



F. Lane Williamson
Hearing Committee Chair

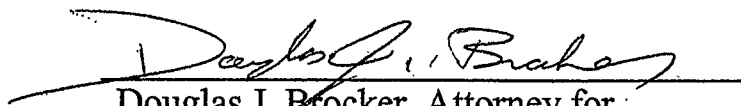
By signing below, the parties affirm their consent and agreement to the entry of the foregoing Consent Order of Discipline in 05 DHC 1:

For the Plaintiff


David R. Johnson, Attorney for
Plaintiff

For the Defendant


Annette Exum, Defendant


Douglas J. Brocker, Attorney for
Defendant