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NORTH CAROLINA

WAKE COUNTY

FILED
1984 DEC -7 AM 5:48
CLERK OF COURT
NORTH CAROLINA STATE BAR
84 DHC 6

THE NORTH CAROLINA STATE BAR,)	
Plaintiff)	
)	FINDINGS OF FACT
vs.)	AND
)	CONCLUSIONS OF LAW
JAMES M. LUDLOW, JR., Attorney,)	
Defendant)	

This matter coming on to be heard and being heard on November 9, 1984 before the Hearing Committee composed of James E. Ferguson, II, Chairman, Frank B. Wyatt, and Harry Sherwood; with James M. Ludlow, Jr. appearing pro se and A. Root Edmonson appearing for the North Carolina State Bar; and based upon the Default of Defendant for his failure to file an Answer in this action and the evidence offered at the hearing, the 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, James M. Ludlow, Jr., was admitted to the North Carolina State Bar on September 19, 1974, and is and was at all times referred to herein, an Attorney at Law, licensed to practice law in the State of North Carolina, subject to the Rules, Regulations, Canons of Ethics and Code of Professional Responsibility of the North Carolina State Bar and of the laws of the State of North Carolina.
3. At and during all of the times hereinafter referred to, 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 Durham, Durham County, North Carolina.
4. The Complaint in this action was filed on August 27, 1984.

5. The Summons and Notice was issued at 11:00 a.m. on August 27, 1984 by B. E. James, Secretary of the North Carolina State Bar.

6. Deputy Sheriff Regina Jones served the Summons and Complaint upon the Defendant personally on August 31, 1984. The Defendant further accepted service of the Summons and Complaint on August 31, 1984.

7. The Defendant did not file an Answer or other pleading in this action.

8. The Secretary entered the Default of the Defendant on October 15, 1984.

As pertains to the First Claim for Relief set out in the Complaint, the Hearing Committee makes the following FINDINGS OF FACT:

9. At some time prior to October, 1983, Defendant was associated by M. Lynette Hartsell as co-counsel for Richard and Pamela Jaskot in a personal injury action arising out of an accident which occurred on or about April 7, 1982. With the assistance of Defendant, the case was settled to the satisfaction of the Jaskots in October, 1983.

10. In furtherance of the settlement of the Jaskots' claim, United States Fidelity and Guaranty Company (hereinafter USF&G) made payment to the Jaskots and their attorneys on October 17, 1983 in the amount of \$15,000.00.

11. On October 20, 1983, Defendant deposited USF&G's draft in an office account in which Defendant had personal funds at Central Carolina Bank (hereinafter CCB), account number 00 335 409 1, such account not being designated as a trust account.

12. On October 20, 1983, Defendant wrote check number 134 on his CCB account number 00 335 409 1 to Pamela and Richard Jaskot in the amount of Eleven Thousand, Four Hundred Fifty Dollars (\$11,450.00) representing the net proceeds the Jaskots were to receive on the personal injury claim.

13. Defendant asked the Jaskots not to cash check number 134 for a week. As a result, the Jaskots did not place check number 134 into their account at Wachovia in Durham until October 28, 1983. Check number 134 was returned to the Jaskots because there were insufficient funds in account number 00 335 409 1 at the time check 134 reached CCB on October 31, 1983.

14. Funds were not available in Defendant's account number 00 335 409 1 to cover the Jaskots' check because Defendant had used the proceeds of the USF&G draft for purposes the Jaskots had not authorized. Defendant had converted the Jaskots portion of

the proceeds of the USF&G draft to his own use, knowing he was using their money.

15. On October 24, 1983, Defendant used part of the Jaskots' funds to purchase a treasurer's check from CCB in the amount of eight thousand one hundred dollars (\$8,100.00) to pay to Dale E. Files the funds due Files from the sale of some real property which Defendant had handled for Files in the Spring of 1983. Dale E. Files had made demands for his funds from Defendant since the time of the sale.

16. On November 2, 1983, Lynette Hartsell advised Defendant that the Jaskots' check had been returned for insufficient funds and demanded that the matter be cleared up. Defendant instructed Ms. Hartsell to tell the Jaskots to send check 134 back through.

17. On November 3, 1983, Defendant wrote himself check number 101 in the amount of \$4500 on a First Union National Bank (hereinafter FUNB) account, account number 7058016221, such account being designated as a trust account.

18. On November 3, 1983, Defendant deposited FUNB check number 101 into his CCB number 00 355 409 1 to cover the Jaskots' check.

19. At the time Defendant wrote check number 101 on FUNB account number 7058016221, said account was closed, having been closed since July, 1982. Defendant knew the account was closed and that no funds would be available to cover FUNB check number 101 when he wrote the check.

Based upon the foregoing Findings of Fact pertaining to the First Claim for Relief set out in the Complaint, the Hearing Committee makes the following CONCLUSIONS OF LAW:

Defendant's conduct as set out in paragraphs 9 through 19 constitutes grounds for discipline under N. C. General Statutes §84-28(a) and (b)(2) in that Defendant violated the Disciplinary Rules of the Code of Professional Responsibility as follows:

(a) By commingling the Jaskots' funds in his general operating account, Defendant failed to preserve the identity of client funds by depositing the funds in an identifiable account which contained no funds which belonged to the lawyer in violation of Disciplinary Rule 9-102(A).

(b) By using the Jaskots' funds for unauthorized purposes which caused the Jaskots' check to be returned for insufficient funds, Defendant failed to promptly pay or deliver to the client as requested the funds in possession of the lawyer which the client is entitled to receive in violation of DR 9-102(B)(4).

(c) By converting the Jaskots' funds for his own use, knowing he was doing so, he engaged in illegal conduct involving moral turpitude and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of DR 1-102(A)(3) and (4).

(d) By writing himself a check on a closed account at FUNB and depositing it into his CCB account to cover the Jaskots' check, knowing that the FUNB account was closed, Defendant engaged in illegal conduct involving moral turpitude, engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, engaged in other professional conduct adversely reflecting on his fitness to practice law in violation of DR 1-102(A)(3), (4), and (6).

As pertains to the Second Claim for Relief as set out in the Complaint, the Hearing Committee makes the following FINDINGS OF FACT:

20. A Letter of Notice was sent to Defendant requesting a response to the allegations in the First Claim for Relief by the Chairman of the Grievance Committee on December 6, 1983 by certified mail.

21. The Letter of Notice was returned to the North Carolina State Bar on December 23, 1983 unclaimed.

22. By letter dated March 5, 1984, the unopened Letter of Notice was delivered to Defendant by certified mail.

23. Defendant failed to respond to the Letter of Notice.

24. On April 3, 1984, Defendant was served with a subpoena to produce documents or objects which required that he appear before the Grievance Committee on April 11, 1984 and bring all records, papers, and documents pertaining to money received on behalf of Richard and Pamela Jaskot and the disbursement thereof.

25. Defendant appeared but brought no records, papers, or other documents pertaining to the money received on behalf of the Jaskots and the disbursement thereof. Defendant brought only a handwritten explanation of the matter in which he asserted that the Jaskots' check did not clear for reason of insufficient funds because, unbeknownst to him, the IRS had levied on his account for past due taxes.

26. The IRS did not levy on Defendant's CCB account until November 7, 1983, a week after the Jaskots check was returned by CCB for insufficient funds.

27. At the time Defendant made the representation to the Grievance Committee contained in paragraph 25 above, Defendant knew that the IRS levy was not the cause of the Jaskots' check

being returned for insufficient funds since Defendant had removed the Jaskots' funds from the account for his own purposes prior to the Jaskots having presented check number 134 for payment.

Based upon the foregoing Findings of Fact pertaining to the Second Claim for Relief set out in the Complaint, the Hearing Committee makes the following CONCLUSIONS OF LAW:

Defendant's conduct as set out in paragraphs 20 through 27 constitutes grounds for discipline under N. C. General Statutes §84-28(a), (b)(2), and (b)(3) as follows:

(a). By not responding to the Letter of Notice issued by the Chairman of the Grievance Committee, Defendant failed to answer a formal inquiry issued in the name of the North Carolina State Bar in a disciplinary matter in violation of N.C.G.S. §84-28(b)(3).

(b) By misrepresenting to the Grievance Committee that the Jaskots' check was returned for insufficient funds because the IRS had, unbeknownst to him, levied on his account when in fact the Jaskots' funds had been removed by Defendant prior to the IRS levy, Defendant misrepresented facts or circumstances surrounding an allegation or charge of misconduct in violation of N.C.G.S. §84-28(b)(3) and engaged in conduct involving dishonesty, fraud, deceit and misrepresentation and knowingly made a false statement of law or fact in violation of N.C.G.S. §84-28(a) and (b)(2) and DR 1-102(A)(4) and DR 7-102(A)(5).

As pertains to the Third Claim for Relief set out in the Complaint, the Hearing Committee makes the following FINDINGS OF FACT:

28. Defendant represented Bobby Ray Harris on criminal charges for which Bobby Ray Harris was convicted on March 11, 1980. Harris was given a sentence of five years and was incarcerated at a prison unit on Guess Road in Durham.

29. In or about April of 1981, Defendant approached the parents of Bobby Ray Harris, Lonnie Lee Harris, and wife Edna Harris and told them he could get their son out of prison due to overcrowded conditions at the Guess Road unit for a fee of \$1,000.00.

30. Defendant had already been overpaid \$300.00 by Bobby Ray Harris out of his work release funds for his representation on the criminal charges. On April 6, 1981, Lonnie Lee and Edna Harris delivered \$250.00 to Defendant. On May 1, 1981, Lonnie Lee and Edna Harris delivered an additional \$600.00 to Defendant.

31. Defendant did nothing on Bobby Ray Harris's behalf to earn his fee. Defendant did not return any of the amount overpaid on his fee to Bobby Ray Harris. Defendant did not repay

any
unearned fee to Bobby Ray Harris or to Lonnie Lee and Edna Harris, even after demand.

Based upon the foregoing Findings of Fact pertaining to the Third Claim for Relief as set out in the Complaint, the Hearing Committee makes the following CONCLUSIONS OF LAW:

Defendant's conduct as set out in paragraphs 28 through 31 constitutes grounds for discipline under N. C. General Statutes §84-28(a) and (b)(2) in that Defendant violated the Disciplinary Rules of the Code of Professional Responsibility as follows:

By agreeing to seek the release of Bobby Ray Harris on parole, accepting a fee therefore, and failing to take steps to get Bobby Ray Harris released on parole, Defendant neglected a legal matter entrusted to him in violation of DR 6-101(A)(3); failed to seek the lawful objectives of his client in violation of DR 7-101(A)(1); and failed to carry out a contract of employment entered into with a client for professional services in violation of DR 7-101(A)(2).

As pertains to the Fourth Claim for Relief set out in the Complaint, the Hearing Committee makes the following FINDINGS OF FACT:

32. A Letter of Notice was sent to Defendant requesting a response to the allegations contained in the Third Claim for Relief by the Chairman of the Grievance Committee on June 9, 1983 by Registered Mail.

33. The Letter of Notice was returned to the North Carolina State Bar on July 12, 1983 unclaimed.

34. By letter dated March 5, 1984, the Letter of Notice was delivered to Defendant by certified mail.

35. Defendant failed to respond to the Letter of Notice.

Based upon the foregoing Findings of Fact pertaining to the Fourth Claim for Relief as set out in the Complaint, the Hearing Committee makes the following CONCLUSION OF LAW:

Defendant's conduct as set out in paragraphs 32 through 35 constitutes grounds for discipline under N.C.G.S. §84-28(a) and (b)(3) in that Defendant failed to answer a formal inquiry issued in the name of the North Carolina State Bar in a disciplinary matter by failing to respond to the Letter of Notice issued by the Chairman of the Grievance Committee.

As pertains to the Fifth Claim for Relief as set out in the Complaint, the Hearing Committee makes the following FINDINGS OF FACT:

36. Defendant was paid a sum, believed to be at least \$5,000.00, to hold in trust to be applied to the expenses of a case Defendant was handling for a client, Dianne D. Holley.

37. Defendant failed to render an accounting of these funds to his client, Dianne D. Holley, even after demand was made for an accounting.

Based upon the foregoing Findings of Fact pertaining to the Fifth Claim for Relief as set out in the Complaint, the Hearing Committee makes the following Conclusion of Law:

Defendant's conduct as set out in paragraphs 36 and 37 constitutes grounds for discipline under N.C.G.S. §84-28(a) and (b)(2) in that Defendant violated a Disciplinary Rule of the Code of Professional Responsibility when he failed to render appropriate accounts to his client regarding her funds in possession of the Defendant in violation of Disciplinary Rule 9-102(B)(3).

As pertains to the Sixth Claim for Relief as set out in this Complaint, the Hearing Committee makes the following Findings of Fact:

38. A Letter of Notice was sent to Defendant requesting a response to the allegations contained in the Fifth Claim for Relief by the Chairman of the Grievance Committee on January 7, 1983 by registered mail.

39. The Letter of Notice was returned unclaimed.

40. On February 7, 1983, Defendant accepted service of the January 7, 1983 Letter of Notice.

41. Defendant failed to respond to the Letter of Notice.

Based upon the foregoing Findings of Fact pertaining to the Sixth Claim for Relief as set out in the Complaint, the Hearing Committee makes the following Conclusion of Law:

Defendant's conduct as set out in paragraphs 38 through 41 constitutes grounds for discipline under N.C.G.S. §84-28(a) and (b)(3) in that Defendant failed to answer a formal inquiry issued in the name of the North Carolina State Bar in a disciplinary matter by failing to respond to the Letter of Notice issued by the Chairman of the Grievance Committee.

As pertains to the Seventh Claim for Relief as set out in the Complaint, the Hearing Committee makes the following FINDINGS OF FACT:

42. By letter dated March 24, 1980, Defendant agreed to represent Roy G. Valentine, then confined at Central Prison in Raleigh, North Carolina, in an attempt to seek a new trial for

Valentine in state court or to petition the federal court for a Writ of Habeas Corpus.

43. By check number 67780, dated March 25, 1980, Defendant was paid \$1,500.00 from the Prisoners Trust Fund on behalf of Roy Valentine.

44. By check number 54808, dated April 8, 1980, Defendant was paid an additional \$3,000.00 by official check of the Wood County Bank on behalf of Roy Valentine.

45. Defendant never filed a motion for appropriate relief in state court, a Writ of Habeas Corpus in federal court, or took any other action on behalf of Roy Valentine.

46. Defendant has not responded to Roy Valentines' inquiries concerning his case and has not returned any of the unearned fee as requested by Roy Valentine.

Based upon the foregoing Findings of Fact pertaining to the Seventh Claim for Relief as set out in the Complaint, the Hearing Committee makes the following CONCLUSIONS OF LAW:

Defendant's conduct as set out in paragraphs 42 through 46 constitutes grounds for discipline under N.C.G.S. §84-28(a) and (b)(2) in that Defendant violated the Disciplinary Rules of the Code of Professional Responsibility as follows:

(a) By failing to file any motion, writ, or other action on Roy Valentine's behalf, Defendant has neglected a legal matter entrusted to him in violation of DR 6-101(A)(3); failed to seek the lawful objectives of his client through reasonably available means in violation of DR 7-101(A)(1); failed to carry out a contract of employment entered into with a client for professional services in violation of DR 7-101(A)(2); and prejudiced or damaged his client during the course of the professional relationship in violation of DR 7-101(A)(3).

(b) By failing to return any of Roy Valentine's unearned fee, Defendant failed to promptly refund the part of a fee paid in advance that had not been earned in violatin of DR 2-110(A)(3).

As pertains to the Eighth Claim for Relief as set out in the Complaint, the Hearing Committee makes the following FINDINGS OF FACT:

47. A Letter of Notice was sent to Defendant requesting a response to the allegations contained in the Seventh Claim for Relief by the Chairman of the Grievance Committee on May 20, 1982 by registered mail.

48. Defendant received the Letter of Notice on June 7, 1982.

49. Defendant responded to the Letter of Notice by undated letter received in the offices of the North Carolina State Bar on June 28, 1982 stating that he would go to see Roy Valentine, review with him the work done on his behalf, determine whether or not Valentine wanted Defendant to continue with the case, and advise the State Bar of the results of that meeting.

50. Defendant failed to go see his client and failed to direct any further communication to Roy Valentine.

51. By certified letter dated March 5, 1984, Defendant was asked to give a complete and up-to-date response to the Letter of Notice previously issued in this matter.

52. Defendant failed to make any further response to the Grievance Committee in this matter.

Based upon the foregoing Findings of Fact pertaining to the Eighth Claim for Relief as set out in the Complaint, the Hearing Committee makes the following CONCLUSION OF LAW:

Defendant's conduct as set forth in paragraphs 47 through 52 constitutes grounds for discipline under N.C.G.S. §84-28(a) and (b)(3) in that Defendant failed to answer a formal inquiry issued in the name of the North Carolina State Bar in a disciplinary matter by failing to further respond to the Grievance Committee after stating that he would advise the Grievance Committee of the results of his meeting with his client, Roy Valentine, even after being requested to provide a further response by letter dated March 5, 1984.

This the 5th day of December, 1984.

James E. Ferguson II
James E. Ferguson, II

Frank B. Wyatt
Frank B. Wyatt

Harry Sherwood
Harry Sherwood

NORTH CAROLINA
WAKE COUNTY

FILED
1984 DEC -7 AM 9:48
BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
84 DHC 6
S.E. JAMES, JR.
THE N.C. STATE BAR

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

ORDER OF DISCIPLINE

JAMES M. LUDLOW, JR., Attorney,
Defendant

This matter coming on to be heard and being heard on November 9, 1984 before the Hearing Committee composed of James E. Ferguson, II, Chairman, Frank B. Wyatt, and Harry Sherwood; and based upon the FINDINGS OF FACT and CONCLUSIONS OF LAW entered by this Hearing Committee; and further based upon the evidence of prior discipline and evidence in mitigation of the offenses introduced at the hearing, the undersigned majority members of the Hearing Committee enter the following ORDER OF DISCIPLINE:

- 1). The Defendant, James M. Ludlow, Jr. is hereby DISBARRED from the practice of law in North Carolina.
- 2). The Defendant, James M. Ludlow, Jr., shall surrender his license and permanent membership card to the Secretary of the North Carolina State Bar.
- 3.) The Defendant, James M. Ludlow, Jr. is hereby taxed with the costs of this action.

This the 5th day of December, 1984.

Frank B. Wyatt
Frank B. Wyatt

Harry Sherwood
Harry Sherwood

NORTH CAROLINA

FILED

WAKE COUNTY 1984 DEC -7 AM 9 43

B.E. JAMES, SEC.
THE N.C. STATE BAR

BEFORE THE
DISCIPLINARY HEARING COMMISSION
FOR THE
NORTH CAROLINA STATE BAR
84 DHC 6

THE NORTH CAROLINA STATE BAR,)
)
Plaintiff,)
)
v.)
)
JAMES M. LUDLOW, JR.,)
Attorney,)
)
Defendant.)

MINORITY OPINION RE
ORDER OF DISCIPLINE

My colleagues have voted to impose the severest possible discipline upon the defendant in this case. I am of the opinion that such severity amounts to overkill and fails to foster the true purposes of discipline. A less severe, but more exacting, discipline would serve to express our utter distaste for his conduct and also provide restitution for his victims, unlike the majority's order.

The defendant, James M. Ludlow, Jr., appeared before the Hearing Committee unrepresented by counsel. He candidly admitted the truth of the allegations of the Complaint and, with unusual candor and sincerity, told the Committee about his personal problems which had led to his downfall as a lawyer. Before the hearing, he had already virtually ceased the practice of law, having only four cases in his office to wind up. He was taking no more cases. Only recently had he admitted that he had a problem and, upon doing so, he sought, and currently was undergoing psychotherapy and counselling.

Ludlow's wife, though estranged from him, appeared with him at the hearing and, upon request from a Committee member, verified Ludlow's efforts to face and overcome his personal problems.

The deep feelings of lack of self-worth, depression and genuine remorse all suggest that he needs some motivation to rise from the depths to which he has fallen. This Hearing Committee is in a position to provide some of that needed motivation and, at the same time, to provide financial help to those who fell victim to Ludlow's shortcoming. Virtually all of the offenses against him involved financial loss to his

clients. Most of these clients have not been compensated. The majority's order of discipline assures that they will remain unrecompensed.

In my view, the shortcoming of the majority's order of discipline disbarring the defendant without more, passes up an opportunity to deal severely with Ludlow and, at the same time, to provide motivation for him to overcome his problems and to provide for restitution to his victims.

I feel that the appropriate discipline in this case should be a suspension for the maximum period of three years upon the condition that the defendant's reinstatement be conditioned upon:

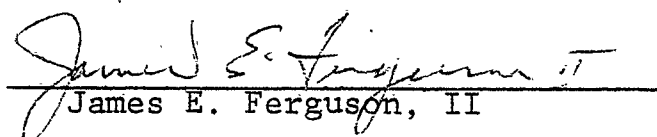
- 1) His demonstrating that he has overcome any alcohol or alcohol related problems;
- 2) His demonstrating that he has overcome any psychiatric, mental or emotional problems;
- 3) He making restitution to each of his uncompensated clients related to these offenses and/or an accounting to any such client who requests it; and
4. His demonstrating to the satisfaction of the Bar that he understands the operation and management of trust accounts for lawyers.

The majority's order of discipline provides simply for disbarment. Ludlow can apply for reinstatement after five years. Previous to the recent 1984 amendments, he would have been able to apply for reinstatement upon disbarment after three years, the same period of time that I would impose for his suspension.

I feel that the majority's understandable desire to show the public and the defendant that we will deal severely with these kinds of offenses blinded them to the other ends of discipline which could have been served by requiring something positive of the defendant.

For the foregoing reasons, I am compelled to file this minority opinion regarding the discipline imposed.

This 5th day of December, 1984.


James E. Ferguson, II