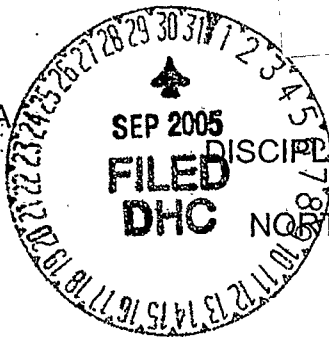


NORTH CAROLINA
WAKE COUNTY



6694

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
05 DHC 31

THE NORTH CAROLINA STATE BAR,)
Plaintiff)

v.)

JAMES J. JOHNSTON, Attorney,)
Defendant)

ORDER TRANSFERRING
DEFENDANT TO DISABILITY
INACTIVE STATUS

This matter was heard by a Hearing Committee of the Disciplinary Hearing Commission composed of M. Ann Reed, Chair, T. Richard Kane, and Marguerite P. Watts. Margaret Cloutier represented plaintiff. Defendant did appear at the hearing and was not represented by counsel.

Based on the pleadings and the evidence presented, the Hearing Committee finds by clear, cogent and convincing evidence the following

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar (hereinafter "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, James J. Johnston, was admitted to the North Carolina State Bar on August 24, 1975 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 Revised Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During the times relevant herein, Defendant 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 by the North Carolina State Bar on July 20, 2005. Defendant was properly served with process and thereafter

failed to file an answer or other responsive pleadings. Defendant's default was entered by the Secretary of the North Carolina State Bar on August 24, 2005.

5. Until approximately late 2003, Defendant maintained an active law practice in which he primarily handled residential real estate closings.

6. Since late 2003, Defendant has not been able to maintain a viable law practice as evidenced by the following:

- a. Defendant has not obtained policies of title insurance for multiple real estate transactions closed in 2002 and 2003;
- b. Defendant has not disbursed funds held in his trust account for such policies despite requests, encouragement, and directives from the title insurance companies and the North Carolina State Bar;
- c. Defendant has made several promises to work with the title insurance companies and disburse funds in his trust account but has not followed through;
- d. Defendant has not actively practiced law since approximately November 2003;
- e. Defendant lacks the energy and enthusiasm to maintain a law practice and/or finalize the transactions pending in late 2003 or to actively seek someone to rent his office space;
- f. Defendant has failed to respond to communications from the State Bar, including letters of notice, follow-up letters, and phone calls from his State Bar Councilor, and has only interacted with the Bar after being served with a subpoena; and
- g. Defendant has failed to participate in this action, has not filed a response to the complaint, has not responded to Plaintiff's Motion for Evaluation, and has refused service of the Order Requiring Defendant to Obtain Evaluation.

Based on the foregoing Findings of Fact, the Committee enters the following

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Committee, and the Committee has jurisdiction over defendant and the subject matter of this proceeding.

2. Because Defendant failed to file a responsive pleading to Plaintiff's complaint, the allegations in Plaintiff's complaint are deemed admitted pursuant to Rule .0114(f) of the Discipline and Disability Rules of the North Carolina State Bar.

3. Defendant is disabled within the meaning of 27 N.C.A.C. 1B §.0103(19), and Defendant should be transferred to disability inactive status pursuant to 27 N.C.A.C. 1B §.0118.

ORDER

1. Defendant is hereby transferred to disability inactive status.

2. James J. Johnston shall refrain from practicing law in North Carolina until reinstated to active status pursuant to 27 N.C.A.C. 1B §.0125(c).

3. Defendant shall be taxed with the costs of this action.

Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Committee, this 30th day of September 2005.


M. ANN REED, CHAIR
HEARING COMMITTEE