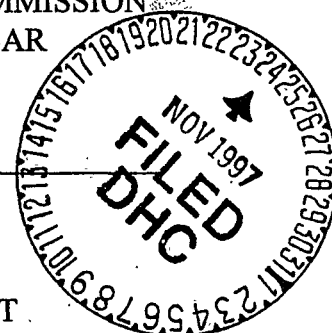


WAKE COUNTY

NORTH CAROLINA

BEFORE THE DISCIPLINARY HEARING COMMISSION
OF THE NORTH CAROLINA STATE BAR
97DHC 27



THE NORTH CAROLINA STATE BAR,)
Plaintiff)

v.)

ROBERT W. ADAMS, Attorney)
Defendant)

FINDINGS OF FACT
AND CONCLUSIONS OF LAW
AND ORDER OF DISCIPLINE

This matter was heard on November 6, 1997 before a hearing committee of the Disciplinary Hearing Commission composed of Michael L. Bonfoey, Chair; Joseph G. Maddrey, and B. Stephen Huntley. The North Carolina State Bar was represented by Fern Gunn Simeon. The defendant, Robert W. Adams, represented himself. Based upon the admissions of the defendant deemed from the default entered by the Secretary on October 10, 1997 due to defendant's failure to file an answer or other pleading in this matter and the evidence introduced at the hearing, the hearing committee hereby enters the following:

FINDINGS OF FACT

1. The North Carolina State Bar, the plaintiff, 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, Robert W. Adams, was admitted to the North Carolina State Bar in 1972 and is, and was at all times referred to herein, an attorney at law licensed to practice law 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 most of the periods referred to herein, defendant was engaged in the practice of law in North Carolina and maintained a law office in Hickory, North Carolina.

4. The defendant was properly served with process and the hearing was held with due notice to all parties.

5. In January 1996, Ned and Paula McLean (the McLeans) retained the defendant to represent them in a lawsuit filed against them by Asa and Eunice Groves (the Groves).

6. On June 11, 1996, the Groves' attorney, Michael P. Baumberger, served upon the defendant a notice to take the McLeans' depositions on July 9, 1996.

7. The defendant did not tell the McLeans that Baumberger wanted to take their depositions on July 9, 1996.

8. Neither the defendant nor the McLeans appeared at the scheduled deposition of the McLeans.

9. On July 9, 1996, Baumberger filed a motion for sanctions for the McLeans' failure to appear for their depositions.

10. The defendant was served with the motion for sanctions and the notice of hearing in the matter.

11. The defendant did not tell the McLeans that a motion for sanctions had been filed and he did not tell them about the hearing on the motion for sanctions scheduled for July 29, 1996.

12. On July 29, 1996, neither the defendant nor the McLeans appeared at the hearing on the motion for sanctions.

13. Judge Beverly T. Beal held that the McLeans willfully and wrongfully failed to appear for their depositions and he sanctioned the McLeans in the amount of \$300.00. Judge Beal ordered the McLeans to pay the \$300.00 into the Clerk of Court's office on or before August 28, 1996 or they would be subject to further sanctions, including striking their pleadings in the civil action.

14. The defendant did not tell the McLeans about the outcome of the hearing on the motion for sanctions.

15. On August 6, 1996, a mediation conference was held respecting the McLeans' case. The defendant agreed to settle the matter on behalf of the McLeans for \$1,500.00.

16. The mediator ordered the McLeans to pay the \$1,500.00 within 30 days from August 6, 1996.

17. The defendant did not tell the McLeans that the \$1,500.00 had to be paid by a specific date.

18. In letters dated February 20 and February 21, 1997, State Bar counsel directed questions concerning the McLeans' grievance to the defendant. The defendant was asked to respond to the questions within 10 days of the dates of the letters.

19. The defendant did not respond to the questions concerning the McLeans' grievance.

20. On July 25, 1996, the Grievance Committee issued a reprimand to the defendant for his failure to respond to a grievance filed by Denise R. Queen (Queen), file number 96G0320(IV).

21. On August 22, 1996, the defendant was served with the reprimand in the Queen grievance by certified mail return receipt requested.

22. Pursuant to section .0113(k) of the Discipline and Disability Rules of the North Carolina State Bar, the defendant did not serve upon the Secretary of the North Carolina State Bar written refusal of the reprimand and he did not request a hearing before the Disciplinary Hearing Commission within 15 days after the reprimand was served upon him. Thus, the defendant had accepted the reprimand in the Queen grievance.

23. The defendant was taxed with the administrative and investigative costs in the amount of \$50.00 respecting the Queen grievance.

24. The defendant failed to pay the \$50.00 costs, despite requests from State Bar counsel to pay the costs.

25. On November 1, 1996, a grievance, file number 96G1345, was established against the defendant for his failure to pay the costs in the reprimand in the Queen grievance.

26. The defendant finally paid the \$50.00 costs on February 6, 1997.

27. The defendant testified that he was divorced in 1989 and that he has had a difficult time coping in his personal life since that time.

28. The defendant testified that he has been depressed since his divorce. He has not been diagnosed as suffering from clinical depression.

29. The defendant testified that he did not have a substance abuse problem involving either drugs or alcohol. He did testify that he consumes three glasses of scotch every night.

30. The defendant testified that he had some organization and law office management problems when his secretary left in 1990. However, the defendant believes that his office situation is improving with the employment of new office personnel.

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 the defendant, Robert W. Adams, and the subject matter.

2. The defendant'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) and (3) as follows:

a. By failing to represent the McLeans diligently in their case, the defendant neglected a client matter in violation of Rule 6(b)(3) and failed to carry out a contract of employment entered into with a client for professional services in violation of Rule 7.1(a)(2) of the Rules of Professional Conduct.

b. By failing to communicate adequately with the McLeans about their case, the defendant has failed to communicate with clients in violation of Rule 6(b)(1) of the Rules of Professional conduct

c. By failing to respond to the State Bar counsel's inquiries concerning the McLeans' grievance, the defendant failed to respond to a lawful inquiry of a disciplinary authority in violation of Rule 1.1(b) of the Rules of Professional Conduct.

d. By failing to pay promptly the costs of \$50.00 in a reprimand imposed by the Grievance Committee, the defendant has engaged in conduct prejudicial to the administration of justice in violation of Rule 1.2(d).

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. The defendant's misconduct is aggravated by the following factors:

a. prior disciplinary offenses, including:

- i. a reprimand issued by the Grievance Committee in 1991;
- ii. an admonition issued by the Grievance Committee in 1994; and
- iii. a reprimand issued by the Grievance Committee in 1996.
- b. pattern of misconduct;
- c. multiple offenses;
- d. bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency; and
- e. substantial experience in the practice of law.

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

- a. absence of a dishonest or selfish motive; and
- b. remorse.

3. The aggravating factors do outweigh the mitigating 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 the defendant, Robert W. Adams, is hereby suspended for two years. This suspension is stayed for two years upon the following terms and conditions:

a. Within 30 days of the date of the hearing in this case, defendant shall make an appointment with a board certified psychiatrist who is a member of the North Carolina Chapter of Addictions Medicine and is acceptable to the North Carolina State Bar, for an evaluation of defendant's mental or emotional health. This evaluation shall include a substance abuse assessment of the defendant. Within five days of making the appointment with the psychiatrist, the defendant shall notify the North Carolina State Bar of the name, address, and telephone number of the psychiatrist that he wishes to use. The North Carolina State Bar shall advise the defendant as quickly as possible of its approval or disapproval of the psychiatrist that the defendant wishes to use.

b. If the psychiatrist recommends that the defendant receive treatment for any mental or emotional problems or receive treatment for any substance abuse

problem, the defendant shall follow the prescribed course of treatment for as long as the psychiatrist recommends.

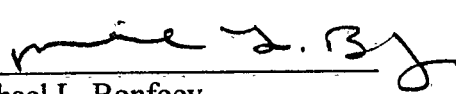
c. The defendant's psychiatrist shall notify the North Carolina State Bar of the date that the defendant begins his treatment for any mental, emotional, or substance abuse problems. At the conclusion of the defendant's treatment, the psychiatrist shall file a written report with the North Carolina State Bar about the defendant's treatment. The written report shall specifically include the psychiatrist's opinion about whether the defendant suffers from any mental, emotional, or substance abuse problem which will interfere with the defendant performing the obligations necessary to practice law.

d. The defendant shall not have violated any state or federal laws during the period of the two-year stayed suspension.

e. The defendant shall not have violated any provisions of the Rules of Professional Conduct during the period of the two-year stayed suspension.

f. The defendant shall pay all costs incurred and taxed against him in this proceeding within 90 days of the date that the order of discipline is signed by the hearing committee chairman.

Signed by the chair with the consent of the other hearing committee members, this
the 20 day of November, 1997.



Michael L. Bonfoey,
Hearing Committee Chair