

WAKE COUNTY
NORTH CAROLINA



14081

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

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

GREGORY S. CURKA, Attorney,
Defendant

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER OF DISCIPLINE

This matter was heard on the 26th day of March, 1999, before a hearing committee of the Disciplinary Hearing Commission composed of James R. Fox, Chair, Michael L. Bonfoey, and Robert B. Frantz. The Plaintiff was represented by Clayton W. Davidson, III. The Defendant, Gregory S. Curka, appeared *pro se*. Based upon the pleadings and the evidence introduced at the hearing, the hearing committee hereby enters the following:

FINDINGS OF FACT

1. The Plaintiff, the North Carolina State Bar (the "State Bar") is a body duly organized under the laws of the State of North Carolina and is the proper body to bring this proceeding under the authority granted to it in Chapter 84 of the General Statutes of North Carolina and the rules and regulations of the State Bar promulgated pursuant thereto (the "State Bar Rules and Regulations").
2. The Defendant, Gregory S. Curka, (the "Defendant") was admitted to the State Bar in or about 1987 and is, and was at all times referred to herein, an attorney at law licensed to

practice in North Carolina subject to the State Bar Rules and Regulations and the Rules of Professional Conduct of North Carolina.

3. During all or a part of the relevant periods referred to herein, Defendant was engaged in the practice of law in the State of North Carolina and maintained a law office in Charlotte, North Carolina.

4. On or about March 8, 1995, Laurie D. Driggers ("Driggers") retained Defendant to represent her in a matter involving divorce and modification of a South Carolina Custody/Child Support/Visitation Order (the "South Carolina Order").

5. On or about March 8, 1995, Driggers, at the request of the Defendant, signed a verification which was not attached to any document (the "Verification") before the time that any complaint in the matter had been drafted.

6. Defendant personally filed the complaint for Modification of Child Support on August 8, 1995 (the "Complaint"). At the time the Complaint was filed, the verification which had been signed in blank was attached to the Complaint, and was notarized as of the 3rd day of April, 1995. The Defendant testified that at the time he filed the complaint he had not reviewed the Complaint to determine if it contained a current verification, but stated that he had relied on his staff to ensure that the Complaint was properly verified.

7. The Complaint contained numerous inaccurate statements of fact which Driggers identified to the Defendant when she read the Complaint.

8. The Defendant prepared an amended modification of Child Support and Visitation to correct the factual errors in or about August, 1995. The Defendant never filed the Amended Complaint.

10. According to the Invoice, the Defendant did not request copies of the South Carolina Order until August 9, 1995. On August 9, 1995, the Defendant mailed a letter to the Family Clerk of Court at the Greenville County Courthouse requesting certified copies of the South Carolina Order. The Defendant took no action to obtain the copies of the South Carolina Order from April, 1995 until August 9, 1995, the day after the Complaint was filed.

10. According to the Invoice, the Defendant did not request copies of the South Carolina Order until August 9, 1995. On August 9, 1995, the Defendant mailed a letter to the Family Clerk of Court at the Greenville County Courthouse requesting certified copies of the South Carolina Order. The Defendant took no action to obtain the copies of the South Carolina Order from April, 1995 until August 9, 1995, the day after the Complaint was filed.

11. The Defendant received the certified copy of the South Carolina Order that he had requested within seven (7) days from the date of the written request. On August 16, 1995, the Defendant wrote an additional letter requesting two more certified copies of the order and received them shortly thereafter.

12. On August 12, 1996, the Defendant wrote a letter to Calvin E. Murphy, Esq. of the 26th Judicial District Grievance Committee which constituted his response to the grievance filed with the North Carolina State Bar (the "Response"). In the Response, the Defendant stated as follows:

13. The above statements are knowingly and intentionally false and misleading in that the Defendant's filing of the action was the "discovery" that the Defendant did not have any action to obtain the return of the stolen property.

to disclose facts necessary to correct a misapprehension in the matter known by the Defendant to have been created by his letter when he failed to disclose that he had not sent any correspondence requesting certified copies of the South Carolina Order until after the filing of the Complaint.

14. At the hearing of this matter, the Defendant testified that the reason that he did not handle the Driggers matter more promptly was because Driggers had paid a lower fee than other clients and could not afford to pay as much in attorney's fees as other clients.

15. At some point following the filing of the Complaint, Driggers informed the Defendant that she wanted to discharge the Defendant as her attorney and requested a refund of all fees. The Defendant testified that he was discharged in August, 1995. Driggers testified that the Defendant was not discharged until February 21, 1996. The committee finds it unnecessary to resolve the factual dispute, because it is uncontested that Driggers terminated the representation at some point on or prior to February 21, 1996.

16. The matter was calendared for trial during the week of February 19, 1996.

17. On February 3, 1996, Driggers hand delivered to the Defendant's office a letter asking him for information about the case and stating, "If you are still my attorney, please call me."

18. The Defendant never notified Driggers that the matter was scheduled for trial during the week of February 19, and did not contact Driggers prior to February 19.

19. Prior to February, 1996, Driggers had filed for arbitration with the Mecklenburg County Fee Arbitration Program.

20. J. Mitchell Aberman ("Aberman") was the Arbitrator assigned to the fee arbitration matter, and mediated the dispute so that the parties reached an agreement to resolve the fee arbitration matter.

21. On February 16, 1996, the Defendant hand delivered to Aberman a check to settle the fee arbitration matter. With the check was a letter dated February 12, 1996 from the Defendant to Aberman, which stated in part:

I have taken the liberty to enclose Ms. Drigger's file. Ms. Drigger's case was placed on the trial calendar by the Clerk of Court. Calendar call is on Wednesday February 13, 1996. Driggers' original file was enclosed with the letter.

22. On February 16, 1996, Aberman called the Defendant and expressed concern over the fact that he had been delivered the original file when the matter was on the calendar for hearing the next week. The Defendant told Aberman that neither the Defendant, nor anyone from the Defendant's office attended calendar call on February 13, 1996.

23. During the February 16, 1996 conversation, Aberman asked the Defendant if the court was aware that he was no longer representing the Driggers, and the Defendant informed Aberman that he had told the judge that Driggers had fired him, and had told the clerk that they would need to "send things" to Driggers.

24. On February 16, 1996, Aberman notified the court that he was concerned that a case was on the calendar for the next week and that no one was going to be present to represent Driggers.

On February 16, 1996, the Defendant hand delivered to the Defendant which stated in part:

I am not a representative of the Fee Arbitration Committee, not Ms. Driggers' attorney. Accordingly, I am returning the file. You will need to comply with whatever procedures exist for withdrawal.

26. On February 21, 1996, the Defendant appeared in court without Driggers and attempted to file a voluntary dismissal of the action, but the judge would not accept the voluntary dismissal without Driggers' signature indicating Driggers' consent.

27. Driggers had never authorized the filing of a voluntary dismissal.

28. The Defendant never filed a motion to withdraw as counsel in the matter after he had been terminated by the Defendant.

29. In the Response, the Defendant states:

I believe it was clear that Driggers did not want me to pursue her motion. However, prior to the next court date Ms. Driggers sent me a letter asking if I was going to represent her. In this letter she finally sent me her new work number. Her home phone was still disconnected. I contacted her and asked her if she had hire [sic] another attorney. She said she could not afford one. I asked her what she wanted to do. *She told me she didn't want to pursue the action and asked me to take a voluntary dismissal.* I said let me make a call to the adverse party and see if we can settle the action quickly. She said I can't pay you for that and I told her there would be no charge. I contacted the adverse party but the [sic] were not willing to discuss the matter and were very angry to have received a call when his father was very sick in the hospital. I offered my sympathies and asked them to call me when they felt up to it. I received the call the next day and they said that Ms. Driggers had said she was going to dismiss the action and they would not pay another dime in child support. I informed Ms. Driggers of their response and filed a voluntary dismissal.

[Emphasis supplied]

30. The Defendant's statement in the Response that Driggers authorized him to file the voluntary dismissal is false and misleading in that Driggers never authorized the filing of the voluntary dismissal.

Based on the foregoing findings of fact, the hearing committee enters the following:

CONCLUSIONS OF LAW

1. By knowingly making false statements of material fact in connection with a disciplinary matter, the Defendant violated Rule 1.1(a).

2. By failing to disclose a fact necessary to correct a misapprehension known by the Defendant to have arisen in his response in this matter the Defendant violated Rule 1.1(b).

3. By making false statements of material fact to a disciplinary authority and by supplying false evidence to a disciplinary authority, the Defendant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 1.2(c).

4. By failing to seek withdrawal after his client, Driggers, had discharged him, the Defendant violated Rule 2.8(b)(4) of the North Carolina Rules of Professional Conduct.

5. By failing to inform Driggers of hearing dates, and otherwise failing to keep Driggers reasonably informed about the status of the matter, and by failing to promptly comply with reasonable requests for information, the Defendant violated Rule 6(b)(1).

6. By failing to act with reasonable diligence and promptness in representing the client, the Defendant violated Rule 6(b)(3). The committee expressly finds that the Defendant's obligation under the Rules of Professional Conduct to handle Driggers' matter reasonably diligently and promptly was not in any way diminished by the fact that she had not paid as high a fee as other clients, which was the excuse provided by the Defendant at the hearing.

7. By failing to seek the lawful objectives of the client, and by failing to carry out a contract of employment with the client, the Defendant violated Rule 7.1.

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

FINDINGS OF FACT REGARDING DISCIPLINE

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

- a. Prior disciplinary offenses;
- b. A dishonest or selfish motive;
- c. A pattern of misconduct;
- d. Multiple offenses;
- e. Submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- f. Refusal to acknowledge the wrongful nature of his misconduct;
- g. Substantial experience in the practice of law.

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

- a. Delay in the disciplinary proceeding not attributable to the Defendant.

3. The aggravating factors outweigh the mitigating factors.

4. The Defendant, during the disciplinary phase of the hearing, indicated that some individuals had been encouraging him to obtain a psychiatric evaluation and expressed his consent for the hearing committee to enter an order requiring him to obtain a psychiatric evaluation and treatment.

Based upon the foregoing Findings of Fact and Conclusions of Law and the Findings of Fact Regarding Discipline, the hearing committee hereby enters the following:

ORDER OF DISCIPLINE

1. The Defendant is suspended from the practice of law for three years which suspension shall be stayed for three years on the following conditions:

a. The Defendant shall truthfully respond to all letters of notice, subpoenas, and reasonable requests for information from any district bar grievance committee and/or the North Carolina State Bar by the deadline stated in the communication, or if none is so stated, by the deadline provided by any applicable law or rules.

b. The Defendant shall not violate the North Carolina Revised Rules of Professional Conduct. Any violation of the rules shall be sufficient to activate this suspension.

c. The Defendant shall not violate the laws of the United States, or any state.

d. The Defendant shall handle all client matters promptly, shall respond to requests for information from clients in a timely fashion, and shall ensure that the Defendant's case load remains of a manageable size.

e. During the period of any stay of the suspension, the Defendant shall not practice domestic relations law, or accept any new domestic relations clients. For the purpose of this order, the term "domestic relations" shall include matters involving Divorce, Alimony, Child Support, Child Custody, Equitable Distribution, Domestic Violence, Adoption, Premarital Agreements, Determinations of Paternity, or any other action, motion or claim for relief provided by Chapter 48, Chapter 49, Chapter 50, Chapter 50A, Chapter 50B, Chapter 52B, and Chapter 52C of the North Carolina General Statutes. The Defendant shall cease representing any domestic relations clients, or handling any domestic relations matters, within thirty (30) days of the date of service of this order upon him, and with respect to such matters, shall comply with the Obligations of Disbarred or Suspended Attorneys as provided in the Discipline and Disability Rules of the North Carolina State Bar, 27 NC ADMIN CODE CHAPTER 1 SUBCHAPTER B § .0124. Provided however, that the Supervising Attorney (as defined by subparagraph f below) and the Office of Counsel may grant the Defendant an extension of up to ninety days to complete any

domestic relations matter which the client has asked the Defendant to complete, and which is likely to be concluded within the additional ninety day period without detriment to the client.

f. The Defendant shall select a member of the Mecklenburg County Bar (the "Supervising Attorney"), to be approved by the Office of Counsel of the North Carolina State Bar, to supervise the Defendant's practice during the stay period. The Defendant shall designate a Supervising Attorney and obtain the Bar's approval within fifteen (15) days from the date of this order.

g. During the period of the Stay of Suspension, the Defendant shall meet with the Supervising Attorney at least once a month, and shall report to the Supervising Attorney as to the status of all current pending client matters, and shall further cooperate with the Supervising Attorney and shall provide any additional information requested by the Supervising Attorney which the Supervising Attorney feels is reasonably necessary to ensure that the Defendant's case load remains of a manageable size, that the Defendant handles matters promptly, that the Defendant responds to requests for information from clients and the North Carolina State Bar in a timely fashion, that the Defendant winds down his domestic relations practice, and that the Defendant refrains from handling any domestic relations matter during the period of the stay of suspension. The cost, if any, of retaining the Supervising Attorney shall be borne by the Defendant.

h. The Defendant shall provide quarterly reports to the North Carolina State Bar in a form approved by the Office of Counsel of the North Carolina State Bar signed by the Supervising Attorney and the Defendant which certify that the Defendant is in compliance with the terms and conditions of this order. The reports must be received by the Bar on or before the

first day of January, April, July, and October of each year that the stay of the suspension remains in effect.

i. Within thirty (30) days of the date of this order, the Defendant, at the Defendant's expense, shall become a patient of a psychiatrist (the "Doctor"), approved by the Office of Counsel of the North Carolina State Bar, shall remain a patient during the period of the suspension except as otherwise provided in subparagraph 1.j below, and shall comply with the course of treatment prescribed, including but not limited to being present for any appointments scheduled by the Doctor and taking any medication prescribed by the Doctor. The Doctor shall evaluate the Defendant to determine if the Defendant has any physical, psychiatric or psychological condition or substance abuse problem that would impair the Defendant's ability to practice law.

j. At any point during the period of stay of suspension, the Defendant shall immediately inform the North Carolina State Bar in writing if he ever ceases to be a patient, or otherwise fails to comply with the course of treatment prescribed by the Doctor. The Defendant shall further instruct his Doctor to immediately inform the North Carolina State Bar if he ever ceases to be a patient, or otherwise fails to comply with the course of treatment prescribed, shall authorize the Doctor to release to the North Carolina State Bar information about his status as a patient upon the request of the North Carolina State Bar, and shall further authorize the Doctor to release to the North Carolina State Bar any and all medical records, including but not limited to records detailing the course of treatment, any diagnosis, and the Defendant's prognosis. The Defendant shall provide to the Office of Counsel of the North Carolina State Bar a copy of such release within thirty (30) days of the date of this order. The Defendant shall submit written reports signed by his Doctor providing full details about his course of treatment, diagnosis, and

prognosis, and certifying that he remains a patient and is complying with the Doctor's prescribed treatment plan. The reports shall be filed at the same time that Defendant's quarterly certifications are due under subparagraph 1.h above. If the Defendant is discharged by the Doctor prior to the end of the suspension period, then the Defendant shall file a report signed by the Doctor indicating that no further treatment is required, and that, in the opinion of the Doctor, the Defendant should be allowed to continue in the practice of law.

2. The Defendant has an interest in keeping confidential those records that are subject to the physician-patient privilege, which interest overrides any interest of the public in obtaining disclosure of those records. That interest cannot be protected by any measure short of sealing the records so produced. The North Carolina State Bar shall keep confidential all Doctor's reports, or other medical records obtained by the Bar pursuant to subparagraph 1.j above, and shall not disclose those records to any person other than employees of the North Carolina State Bar, except pursuant to an order of the Disciplinary Hearing Commission, or other court of competent jurisdiction.

3. Any violation of the conditions of this order shall be grounds for lifting the stay and activating the suspension as provided in this order.

4. The Defendant shall, within thirty (30) days of the date of this order take any action necessary to withdraw from the matter of Driggers v. Driggers, 95 CVD 9760 (Mecklenburg County) which actions shall include, but not be limited to, writing a letter to the judge assigned to the matter, or if none is so assigned, writing a letter to the Senior Resident District Court Judge of Mecklenburg County, enclosing a copy of this order, requesting that the judge inform him of any actions necessary to withdraw, and taking any actions directed by the judge. The Defendant shall copy the North Carolina State Bar on all correspondence with the judge and shall

provide evidence to the North Carolina State Bar of compliance with this paragraph within thirty (30) days from the date of this order.

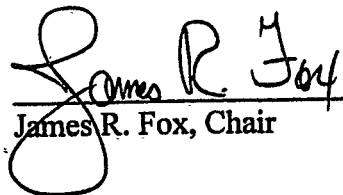
5. Within fifteen (15) days of the date of this order, the Defendant shall mail a copy of this order to each District Court Judge in Mecklenburg County, North Carolina, and each District Court Judge in any other County before whom he has pending any matter involving domestic relations law, and shall provide evidence to the Office of Counsel of the North Carolina State Bar that he has complied with the terms and conditions of this order within fifteen (15) days from the date of service of this order upon him.

6. The Defendant shall pay the costs of this action within thirty (30) days from the date of receiving a notice of assessment of costs from the secretary, which costs shall include the costs of taking the Defendant's deposition in this matter.

7. In the event that any stay of the suspension is lifted, and the suspension is activated, as a condition of reinstatement, during the period of suspension the Defendant must meet the requirements of subparagraphs a, b, c, of paragraph 1 above, and shall further provide an evaluation by a psychiatrist approved by the Office of Counsel of the North Carolina State Bar to determine if the Defendant has any physical, psychiatric, or psychological condition or substance abuse problem that would impair the Defendant's ability to practice law at the time he applies for reinstatement. Any psychological evaluation shall be subject to the confidentiality provisions of paragraph 2 above. The Disciplinary Hearing Commission retains jurisdiction to impose any additional conditions on the practice of law by the Defendant which a duly impaneled hearing committee of the Disciplinary Hearing Commission in its sole discretion believes is necessary for the protection of the public at the time that the Defendant applies for reinstatement. The

provisions of this paragraph are in addition to, and shall not be deemed to limit the provisions of
27 N.C. Admin. Code Chapter 1 Subchapter B § .0125.

Signed by the undersigned chair with the full knowledge and consent of all other
members of the hearing committee this 15th day of May, 1999.


James R. Fox, Chair