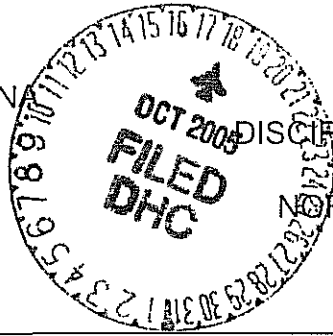


NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
05 DHC 32

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
v.)
ERIC J. PARHAM, Attorney,)
Defendant)

ORDER OF
DISCIPLINE

This matter was considered by a Hearing Committee of the Disciplinary Hearing Commission composed of Stephen E. Culbreth, Chair, Charles M. Davis, and H. Dale Almond. Margaret Cloutier represented plaintiff. Defendant was not present at the hearing and was not represented by counsel. Defendant was properly served with a copy of the complaint and the summons on August 30, 2005. Defendant's default was entered by the Secretary of the North Carolina State Bar on September 21, 2005.

Based on the pleadings and the evidence presented, the Hearing Committee hereby 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, Eric J. Parham (hereinafter "Parham" or "Defendant"), was admitted to the North Carolina State Bar on September 13, 1991 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 Durham, Durham County, North Carolina.

4. In November 2003 the Council of the North Carolina State Bar entered an order suspending Defendant's license to practice law for failing to pay mandatory membership dues to the State Bar for the year 2003 and for failing to complete the minimum mandatory continuing legal education requirements.

5. In August 2002 Defendant began to represent Tammi Yancey for a personal injury claim.

6. After Defendant's license to practice law was suspended as set forth in paragraph 4 above, Defendant did not withdraw from representation in Yancey's case.

7. In April 2004 Defendant settled Yancey's claim for \$12,000.00 after consulting Yancey.

8. On or about May 18, 2004 Defendant signed, or caused to be signed, Yancey's name in endorsement on the settlement check and deposited the check into Defendant's trust account. Yancey did not know Defendant received the check and did not authorize Defendant or anyone else to endorse the check on her behalf.

9. Defendant's conduct in signing, or causing to be signed, Yancey's name in endorsement on the settlement check and negotiating the check constitute the crimes of forging an endorsement and uttering a forged instrument.

10. On May 19, 2004 Defendant issued trust account check number 3410 made payable to himself in the amount of \$4,000.00 for his fees in Yancey's case. Defendant did not immediately write a check to Yancey for the balance of the funds due Yancey and did not notify Yancey that he had received a fee in her case or that he was holding funds on her behalf.

11. On or about July 28, 2004 Yancey tried to telephone Defendant to determine the status of her case. Yancey reached a recording indicating Defendant's office phone was disconnected. Yancey then went to Defendant's office and found the door locked and the office closed.

12. Yancey consulted another attorney who discovered that Yancey's settlement check had already been issued by the insurance company. Yancey's attorney contacted Defendant, and on August 3, 2004 Defendant issued trust account check number 3431 made payable to Yancey in the amount of \$7,958.61.

13. On August 23, 2004 Yancey filed a petition for resolution of disputed fee with the North Carolina State Bar pursuant to 27 N.C.A.C. 1D §.0700. Yancey's fee dispute petition was designated file number 04FD0567.

14. By letter dated October 15, 2004, after two unsuccessful attempts to notify Defendant, Luella C. Crane of the North Carolina State Bar Client Assistance Program notified Defendant of Yancey's petition by sending Defendant a copy of the petition. Defendant received Crane's October 15, 2004 letter by certified mail on October 18, 2004. Defendant failed to respond to Crane's October 15, 2004 letter.

15. By letter dated November 5, 2004 Crane reminded Defendant that his response to Yancey's petition had not been received and directed him to respond within ten days of receipt of Crane's letter. Crane's November 5, 2004 letter, sent to Defendant by certified mail, was returned to the State Bar by the U.S. Postal Service, having been unclaimed by Defendant.

16. Defendant failed to respond to Yancey's fee dispute petition. On November 29, 2004, after receiving no response to Yancey's fee petition, Crane closed the fee dispute file and referred Defendant's file to the disciplinary department of the State Bar where a grievance file was opened and assigned file number 04G1442.

17. On December 9, 2004 Henry Babb, Chair of the Grievance Committee of the North Carolina State Bar, sent a Letter of Notice to Defendant relating to Defendant's failure to participate in the State Bar's Fee Dispute Program in Yancey's case. Defendant received the December 9, 2004 Letter of Notice by certified mail on December 10, 2004. Defendant failed to respond to the December 9, 2004 Letter of Notice.

18. In or about April 2001 Steven Hill engaged Defendant to represent him in connection with a personal injury claim arising from an automobile accident in which Hill was involved in March 2001. After Defendant's license to practice law was suspended in November 2003, Defendant did not withdraw from representation in Hill's case and did not tell Hill that Defendant's license to practice law was suspended by the North Carolina State Bar.

19. On March 19, 2004, after Defendant's license to practice law was suspended, Defendant filed a lawsuit on Hill's behalf in Durham County Superior Court.

20. After filing the lawsuit on Hill's behalf, Defendant did not return calls placed by Hill to Defendant's office or cell phone numbers and did not otherwise communicate with Hill, forcing Hill to engage the services of another attorney to maintain the lawsuit on his behalf.

21. On July 2, 2004 John B. McMillan, then Chair of the Grievance Committee of the North Carolina State Bar, sent a Letter of Notice to Defendant relating to Defendant's conduct in Hill's case. Defendant received the July 2,

2004 Letter of Notice by certified mail on July 9, 2004. On July 30, 2004 counsel sent a follow-up letter to Defendant reminding Defendant of his obligation to respond to the Letter of Notice he received on July 9, 2004.

22. Defendant failed to respond to the July 2, 2004 Letter of Notice.

23. In or about February 2000 Elaine Deloatch was involved in an automobile accident. Shortly thereafter, Deloatch hired Defendant to represent her in a personal injury claim. Defendant kept in contact with Deloatch about her case until June 2002 when he sent her a copy of the settlement package to be submitted to the insurance company. Thereafter, Defendant failed to return many of Deloatch's phone calls or otherwise communicate with Deloatch about the progress of her case.

24. Defendant did not settle Deloatch's case with the insurance company and did not file a lawsuit before Deloatch's claim was barred by the statute of limitations.

25. On August 11, 2004 John B. McMillan, then Chair of the Grievance Committee of the North Carolina State Bar, sent a Letter of Notice to Defendant relating to Defendant's conduct in Deloatch's case. That letter was returned by the U.S. Postal Service to the State Bar marked as unclaimed by Defendant. Defendant was personally served with the August 11, 2004 Letter of Notice on September 28, 2004.

26. Defendant failed to respond to the August 11, 2004 Letter of Notice.

27. On or about July 19, 1999 Hilder Graves was involved in an automobile accident. Shortly thereafter, Graves hired Defendant to represent her in a claim for personal injury. Defendant did not communicate with Graves about the progress of her case and failed to return Graves' phone calls.

28. Defendant filed a lawsuit on Graves' behalf on July 18, 2002. Defendant did not obtain service of process on the defendant in the action before the expiration of the original summons and failed to properly extend the summons or cause a proper alias and pluries summons to be issued before the expiration of the statute of limitations. As a result, the lawsuit filed on Graves' behalf was dismissed with prejudice by the court. Defendant did not inform Graves that her lawsuit had been dismissed.

29. On July 2, 2004 John B. McMillan, then Chair of the Grievance Committee of the North Carolina State Bar, sent a Letter of Notice to Defendant relating to Defendant's conduct in Graves' case. Defendant received the July 2, 2004 Letter of Notice by certified mail on July 9, 2004. On July 30, 2004 counsel sent a follow-up letter to Defendant reminding Defendant of his obligation to respond to the Letter of Notice he received on July 9, 2004.

30. Defendant failed to respond to the July 2, 2004 Letter of Notice.

31. In or about December 1999 Brenda Ochoa engaged Defendant to represent her in a medical malpractice claim. Defendant initially kept in contact with Ochoa about her case, but by 2001 Defendant failed to return Ochoa's many phone calls and did not otherwise communicate with Ochoa about the progress of her case.

32. Defendant failed to provide services of any substantive value to Ochoa relating to her case.

33. On December 7, 2004 Henry Babb, Chair of the Grievance Committee of the North Carolina State Bar, sent a Letter of Notice to Defendant relating to Defendant's conduct in Ochoa's case. Defendant received the December 7, 2004 Letter of Notice by certified mail on December 8, 2004. On January 7, 2005 Counsel sent a follow-up letter to Defendant reminding Defendant of his obligation to respond to the Letter of Notice he received on December 8, 2004.

34. Defendant failed to respond to the December 7, 2004 Letter of Notice.

35. On February 2, 2005 a subpoena was properly issued instructing Defendant to appear at the State Bar Building on March 2, 2005 at 11:00 a.m. Defendant received the subpoena by certified mail on February 9, 2005. Defendant failed to appear on March 2, 2005 as instructed by the subpoena.

36. On or about July 30, 1997 Jacqueline Harris was involved in an automobile accident. Shortly thereafter, Harris hired Defendant to represent her in a claim for personal injury.

37. Defendant filed a lawsuit on Harris' behalf on July 27, 2000. Defendant did not obtain service of process on the defendant in the action before the expiration of the original summons and failed to properly extend the summons or cause a proper alias and pluries summons to be issued before the expiration of the statute of limitations. As a result, Harris' claim was barred by the statute of limitations.

38. In March 2003 Defendant attempted to personally pay Harris for the value of her personal injury claim by offering to pay her \$8,000.00 over a period of months. Defendant presented Harris with a release for her signature purporting to release Defendant from any and all claims Harris might have against Defendant. Defendant did not advise Harris in writing to seek the advice of another attorney regarding the release.

39. On August 11, 2004 John B. McMillan, then Chair of the Grievance Committee of the North Carolina State Bar, sent a Letter of Notice to Defendant relating to Defendant's conduct in Harris' case. The Letter of Notice, sent certified mail, was returned to the State Bar marked "Unclaimed" by the U.S. Postal Service.

40. It appears that 20 checks were written from Defendant's trust account between May 19, 2004 when he wrote a check to himself for an improper fee in Ms Yancey's case and August 3, 2004 when he wrote a check to Ms Yancey for the proceeds of her claim.

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. Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. §84-28(b)(2) in that Defendant violated one or more of the Revised Rules of Professional Conduct in effect at the time of the actions as follows:

a. by continuing to represent Yancey and Hill after his license to practice law was suspended, Defendant represented clients when such representation would result in violation of North Carolina General Statutes §84-4 or the Rules of Professional Conduct in violation of Rule 1.16(a)(1);

b. by failing to inform Yancey and Hill that Defendant's license to practice law was suspended Defendant failed to explain matters to the extent reasonably necessary to permit his client to make informed decisions regarding the representation in violation of Rule 1.4(b);

c. by settling Yancey's personal injury claim and by filing a lawsuit on Hill's behalf after his license to practice law was suspended, Defendant engaged in the unauthorized practice of law in violation of Rule 5.5(a) and held himself out as an attorney licensed to practice of law in North Carolina when he knew or should have known that his license had been suspended in violation of Rule 5.5(b)(2);

d. by failing to notify Yancey of the funds received on her behalf, Defendant failed to keep his client reasonably informed about the status of her case in violation of Rule 1.4(a)(3) and failed to promptly notify his client of the

receipt of entrusted property belonging in whole or in part to the client in violation of Rule 1.15-2(l);

e. by signing or causing Yancey's name to be signed in endorsement of the settlement check without Yancey's authorization and then negotiating the check, Defendant committed criminal acts that reflect adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);

f. by failing to immediately write a check to Yancey for the balance of the funds due Yancey or to a third party on her behalf, Defendant failed to promptly pay or deliver to his client or to third persons at the direction of his client entrusted property belonging to the client to which the client is currently entitled in violation of Rule 1.15-2(m);

g. by writing himself a check in the amount of \$4,000 as a fee from Ms Yancey's settlement proceeds, Defendant paid himself a fee he was not entitled to because his license to practice law was suspended in violation of Rule 1.5;

h. by failing to timely respond to the State Bar's notice of petition for fee dispute resolution in Yancey's case, Defendant failed to participate in good faith with the fee dispute resolution process of the North Carolina State Bar in violation of Rule 1.5(f);

i. by failing to return calls placed by Hill, Deloatch, Graves, and Ochoa or otherwise communicate with them, and by failing to inform Graves of the dismissal of her lawsuit, Defendant failed to keep his clients reasonably informed about the status of their cases in violation of Rule 1.4(a)(3);

j. by failing to settle Deloatch's claim with the insurance company or file suit before the expiration of the statute of limitations and by failing to provide services of any substantive value to Ochoa relating to her case, Defendant did not act with reasonable diligence and promptness in representing clients in violation of Rule 1.3;

k. by failing to properly issue an alias and pluries summons to prevent the expiration of the statute of limitations in the cases of Graves and Ochoa, Defendant did not act with the required knowledge, skill, thoroughness and preparation reasonably necessary for the representation in violation of Rule 1.1;

l. by failing to appear pursuant to a properly issued subpoena relating to the Ochoa grievance, Defendant knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b) and engaged in contempt in violation of North Carolina General Statutes §84-28(b);

m. by attempting to obtain a release of all claims Harris might have against Defendant in connection with his representation of her without advising her in writing to seek the advice of an independent attorney, Defendant entered into a business transaction with a client in violation of Rule 1.8(a);

n. by failing to timely respond to the State Bar's Letters of Notice regarding Yancey, Hill, Deloatch, Graves and Harris, Defendant knowingly failed to respond to lawful demands for information from a disciplinary authority in violation of Rule 8.1(b); and

o. by ignoring the November 2003 order of suspension, continuing to write checks from his trust account after his suspension, and failing to cooperate with the State Bar in these proceedings, Defendant has demonstrated that the public would be put at risk if this order were to become effective 30 days from the date of service upon him.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Committee also enters the following

FINDINGS REGARDING DISCIPLINE

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

- (a) a pattern of misconduct;
- (b) multiple offenses involving multiple clients;
- (c) vulnerability of the victims who were uninformed of the legal process and relied on Defendant to protect their interests;
- (d) substantial experience in the practice of law;
- (e) bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with the rules of the disciplinary agency;
- (f) refusal to acknowledge wrongful nature of his conduct;
- (g) dishonest or selfish motive; and
- (h) prior disciplinary offenses in that Defendant received an Admonition in April 2002.

2. The Hearing Committee found no mitigating factors.

3. The aggravating factors outweigh the mitigating factors.

4. Defendant's conduct has caused, and had the potential to cause, significant harm to his clients identified in this order. If not for Ms Yancey's persistence, it is doubtful Defendant would have provided Ms Yancey's funds to her. Ms Deloatch, Ms Graves and Ms Harris lost their rights to pursue recovery for their damages as provided by law. Defendant's conduct or misconduct has harmed the standing of the legal professional by undermining his clients' trust and confidence in lawyers and the legal system.

5. Defendant's failure to participate in the mandatory fee dispute resolution process and his failure to respond to the letters of notice from the Chair of the Grievance Committee substantially interfered with the Bar's ability to regulate attorneys and undermined the privilege of attorneys in this state to remain self-regulating.

6. The Hearing Committee has carefully considered all of the different forms of discipline available to it and finds and concludes that under the circumstances of this case discipline short of disbarment would not be appropriate. Defendant's misconduct occurred while he was suspended from the practice of law demonstrating that suspension by this Committee will be inadequate to protect the public. Further, Defendant's dishonesty in handling Ms Yancey's case and endorsing the check without her authorization were deliberate acts, not the result of mistake, and therefore appear to be the product of a personality flaw that is not readily changeable. Defendant's conduct in failing to protect his clients' claims from being barred by the statute of limitations in such numerous instances indicates Defendant lacks the required knowledge and skill to practice law. Defendant offered no plausible evidence or assurances that such misconduct would not be repeated if he were permitted to retain his law license. The protection of the public requires that Defendant be disbarred and that he not resume the practice of law until he demonstrates that he understands the Rules of Professional Conduct, will abide by them, and that he has reformed. Finally, entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses which Defendant committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar of this state.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Findings Regarding Discipline, all found by clear, cogent and convincing evidence, and upon consent of the parties, the Hearing Committee enters the following

ORDER OF DISCIPLINE

1. Eric J. Parham is hereby DISBARRED from the practice of law in the State of North Carolina effective immediately.


2. Defendant shall surrender his law license and bar membership card within 30 days after service of this order upon him.

3. Defendant shall pay the costs of this proceeding as assessed by the Secretary of the State Bar, including the costs associated with the deposition scheduled for September 26, 2005, within 90 days of service of the statement of costs upon him.

4. Defendant shall comply with all provisions of 27 N.C.A.C. 1B §.0124 of the North Carolina State Bar Discipline and Disability Rules

5. Prior to filing a petition for reinstatement of his law license, Defendant shall demonstrate that he has a) reimbursed Ms Yancey the sum of \$4,000 in improper fees he received in her case, and b) reimbursed any of the clients cited in this order for unreimbursed medical or other out-of-pocket expenses associated with the cases for which Defendant undertook to represent them and for which each client has provided appropriate documentation to the North Carolina State Bar.

Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Committee, this 10th day of October, 2005.


STEPHEN E. CULBRETH, CHAIR
HEARING COMMITTEE