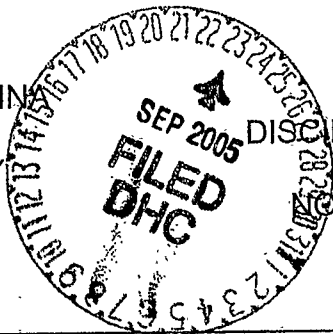


NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
05 DHC 11

THE NORTH CAROLINA STATE BAR, )  
Plaintiff )

v. )

MILTON E. MOORE, Attorney, )  
Defendant )

ORDER OF  
DISCIPLINE

This matter was heard on August 19, 2005 by a Hearing Committee of the Disciplinary Hearing Commission composed of Karen Eady-Williams, Chair, Tommy W. Jarrett and Lorraine Stephens. Margaret Cloutier represented plaintiff. Defendant appeared pro se. Based upon the record and the evidence introduced at the hearing the Hearing Committee, by clear, cogent and convincing evidence, hereby makes 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, Milton E. Moore (hereinafter "Defendant"), was admitted to the North Carolina State Bar on August 14, 1970 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 Williamston, Martin County, North Carolina.

4. On or before October 2, 1998, Defendant represented Frank Winstead (hereafter "Winstead") before the Social Security Administration (hereafter "SSA"), an administrative agency of the United States acting in an adjudicative

capacity, regarding Winstead's claim for disability benefits. Winstead received a favorable decision from the SSA entitling Winstead to disability benefits.

5. Defendant submitted to the SSA a petition dated August 4, 1999 to obtain approval of an attorney's fee based on the contingent fee agreement between Defendant and Winstead and on Defendant's report to SSA of seven hours of work on Winstead's claim.

6. The SSA initially authorized a fee of \$3,478.75 to be paid to Defendant for his representation of Winstead. Defendant received a check dated October 14, 1999 in the amount of \$3,478.75 from the United States Treasury in payment of the fee. Defendant negotiated the check he received from the United States Treasury.

7. Winstead filed an objection to the amount of the fee paid to Defendant with the SSA. The SSA reviewed the matter and on December 18, 2000 issued an Amended Authorization to Charge and Collect a Fee. In the Amended Authorization, Regional Chief Administrative Law Judge Henry G. Watkins reduced the amount of Defendant's authorized fee to \$2,000.00 and instructed Defendant to return \$1,478.75 of the funds received by Defendant on or about October 14, 1999 directly to Winstead.

8. Defendant did not return the sum of \$1,478.75 to Winstead as directed by Judge Watkins.

9. Despite telephone messages from and conversations with Louise Flood, Paralegal Specialist with the SSA and a letter from Judge Watkins dated February 16, 2001 all instructing Defendant to refund \$1,478.75 to Winstead, Defendant has not returned the sum of \$1,478.75 to Winstead.

10. On or before July 30, 1999, Defendant represented Walter S. Roberson (hereinafter "Roberson") before the SSA regarding Roberson's claim for disability benefits. Roberson received a favorable decision from the SSA entitling Roberson to disability benefits.

11. On July 30, 1999 the SSA initially approved an attorney's fee of \$1,631.00 based on the contingent fee agreement between Defendant and Roberson. Defendant received a check dated February 16, 2000 in the amount of \$1,631.00 from the United States Treasury in payment of the fee. Defendant negotiated the check he received from the United States Treasury.

12. The fee agreement between Defendant and Roberson provided for a fee of one-fourth of the recovery awarded to Roberson or the amount set aside by the Social Security Administration. The agreement violated 42 U.S.C.S. §406(a)(2)(A) because it did not limit the amount of fees Defendant could receive to the lesser of \$4,000.00 or 25% of the client's recovery.

13. On or about February 25, 2000 Regional Chief Administrative Law Judge Henry G. Watkins issued an Order disapproving the fee agreement between Defendant and Roberson because it violated 42 U.S.C.S. §406(a)(2)(A). By letter dated February 25, 2000 Judge Watkins notified Defendant of the Order and directed Defendant to file a fee petition if Defendant intended to charge or collect a fee in the Roberson matter.

14. Defendant did not file a fee petition as directed by Judge Watkins and did not return the sum of \$1,631.00 to Roberson or to the SSA.

15. Despite telephone conversations with and letters from Ralph Dodds, Hearing Office Director of the SSA in Raleigh, directing Defendant to return the sum of \$1,631.00 to Roberson or hold that sum in escrow and file a fee petition for his representation of Roberson, Defendant has not filed a fee petition and has not returned \$1,631.00 to Roberson.

16. As a result of Defendant's failure to return the \$1,478.75 in the Winstead matter and the \$1,631.00 in the Roberson matter, on May 2, 2002 the SSA initiated a complaint against Defendant in the Office of Hearings & Appeals of the SSA.

17. After a hearing in the Social Security Administration Office of Hearings & Appeals, U.S. Administrative Law Judge Steven D. Slahta issued a decision prohibiting Defendant from acting as a representative of claimants before the Social Security Administration because he collected, received and retained unapproved fees for representational services to Winstead and Roberson and refused to refund or return those unapproved fees.

18. On or about July 20, 2001 Wilsonia E. Gorham (hereafter "Gorham") filed on her own behalf in the United States District Court a lawsuit against her former employer, Catalytica Pharmaceuticals, alleging wrongful termination in violation of the Americans with Disabilities Act (hereafter referred to as the "lawsuit").

19. On or about August 1, 2002, Gorham engaged Defendant to represent her in the prosecution of that lawsuit, as well as in a State of North Carolina Workers' Compensation Act action then pending.

20. On or about March 3, 2003 the attorneys for Catalytica Pharmaceuticals filed a motion for summary judgment. Defendant filed a memorandum of law on Gorham's behalf opposing the motion for summary judgment. The memorandum of law filed by Defendant substantially failed to comply with the Federal Rules of Civil Procedure or local rules of the district as to form. The brief failed to apply the law to the facts; instead, it merely set forth the

status of the law with no relevance to Gorham's situation. Many paragraphs were repeated in haphazard fashion throughout the memorandum.

21. Because the memorandum submitted to the court by Defendant was so incomprehensible and because Defendant failed to prosecute Gorham's lawsuit diligently, United States District Judge Malcolm Howard, before whom the motion was being heard, declined to consider Defendant's memorandum at all, stating "... given the consistent failure of plaintiff and plaintiff's counsel to prosecute this action in a diligent fashion, and in light of their frequent inability to comply with both the Federal Rules of Civil Procedure and the Local Rules of this district, the court declines to consider plaintiff's memorandum of law in opposition to the summary judgment motion."

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 he violated one or more of the Revised Rules of Professional Conduct in effect at the time of the actions as follows:
  - a. by retaining the \$1,478.75 received in the Winstead matter and the \$1,631.00 in the Roberson matter contrary to the orders of the Administrative Law Judge, Defendant knowingly disobeyed a ruling of a tribunal in violation of Rule 3.4(c);
  - b. by retaining the \$1,478.75 received in the Winstead matter and the \$1,631.00 in the Roberson matter after such sums were disallowed as fees by the SSA, Defendant engaged in conduct involving dishonesty, deceit and misrepresentation in violation of Rule 8.4(c) and conduct prejudicial to the administration of justice in violation of Rule 8.4(d); and
  - c. by submitting a memorandum of law on Gorham's behalf that was so lacking in form and content as to be detrimental to Gorham's lawsuit, Defendant failed to apply the legal knowledge, skill, thoroughness and preparation reasonably necessary to the representation of Gorham in violation of Rule 1.1(b).

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) dishonest or selfish motive;
- (b) a pattern of misconduct;
- (c) multiple offenses involving multiple clients;
- (d) refusal to acknowledge the wrongful nature of his conduct;
- (e) substantial experience in the practice of law;
- (f) vulnerability of his victims;
- (g) indifference to making restitution;
- (h) issuance of a letter of warning to Defendant within the three years immediately preceding this action (issued August 12, 2003 for failing to abide by his client's decision regarding the scope and objectives of representation); and

(i) prior disciplinary record, in that Defendant received the following discipline:

i. September 3, 1980, Public Censure for failing to properly retain and maintain trust account records;

ii. August 16, 1995, Admonition for failing to communicate with his client and failing to diligently pursue the client's matter; and

iii. November 19, 1999, Admonition for failing to promptly respond to a lawful inquiry of the State Bar.

2. The Hearing Committee found no mitigating factors.

3. The aggravating factors outweigh the mitigating factors.

4. The Hearing Committee finds and concludes that Defendant's conduct caused significant harm or significant potential harm to his clients, to the administration of justice and to the public. Particularly, Defendant has harmed his clients, Mr. Winstead and Mr. Roberson, who were deprived of their funds and who rely on Social Security benefits as their sole source of income.

5. Prior orders imposing lesser sanctions were insufficient to impress upon the Defendant his obligations under the Rules of Professional Conduct and Defendant failed to present any evidence that he has reformed or taken any steps to ensure that the public will not be harmed if he is permitted to continue to practice law. The Committee finds that entry of an order less than a suspension would fail to acknowledge the seriousness of the offenses committed by

Defendant and would send the wrong message to attorneys regarding the conduct expected of member of the Bar in this State.

6. A deposition of Defendant was taken by Plaintiff and the expenses incurred by the Plaintiff for that deposition were reasonable and necessary in the litigation of this case. The expense of the deposition should be taxed to the Defendant.

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

#### ORDER OF DISCIPLINE

1. Defendant's license to practice law in the State of North Carolina is hereby suspended for four (4) years effective thirty (30) days after service of this Order of Discipline on Defendant.

2. Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than thirty (30) days following service of this Order on Defendant.

3. Defendant shall comply with the wind down provisions contained in 27 N.C.A.C. 1B, §.0124, the North Carolina State Bar Discipline and Disability Rules. Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within ten days of the effective date of this Order of Discipline certifying he has complied with the wind down rule.

4. Within 15 days of the effective date of this Order, Defendant will provide the State Bar with a street address and mailing address at which clients seeking return of their files and records in Defendant's possession or control may obtain such files and records and at which the state Bar may serve any notices or other matters upon him.

5. After the completion of two (2) years of active suspension of his license, Defendant may apply for a stay of the balance of the suspension upon filing a motion with the Disciplinary Hearing Commission at least thirty (30) days before any proposed effective date of the stay and demonstrating the following by clear, cogent and convincing evidence:

a. That Defendant made restitution to Frank Winstead in the amount of \$1,478.75 and to Walter Roberson in the amount of \$1,631.00 within one year of the date of this Order of Discipline;

b. That Defendant has kept the North Carolina State Bar Membership Department advised of his current business and home addresses;

c. That Defendant has responded to all communications from the North Carolina State Bar within 30 days of receipt or by the deadline stated in the communication, whichever is sooner, and has participated in good faith in the State Bar's fee dispute resolution process for any petition received after the effective date of this Order.

d. That Defendant has not violated the Revised Rules of Professional Conduct or the laws of the United States or any state or local government during his suspension;

e. That Defendant has properly wound down his law practice and complied with the requirements of 27 N.C.A.C. 1B, §.0124, the North Carolina State Bar Discipline and Disability Rules;

f. That Defendant has complied with the requirements of 27 N.C.A.C. 1B, §.0125(b), the North Carolina State Bar Discipline and Disability Rules; and

g. That Defendant has paid the costs of this proceeding within sixty (60) days of the service of the statement of costs upon him by the Secretary of the North Carolina State Bar.

6. If Defendant successfully seeks a stay of the suspension of his law license, such stay will continue in force only as long as he complies with the conditions of paragraphs 5(b), (c) and (d) on an ongoing basis. If Defendant fails to so comply, the stay of the suspension may be lifted as provided in §.0114(x) of the North Carolina State Bar Discipline and Disability Rules.

7. If Defendant does not seek a stay of the active portion of the suspension or if some part of the suspension is stayed and thereafter the stay is revoked, Defendant must comply with the conditions set out in paragraphs 5(a) through (g) above before seeking reinstatement of his license to practice law.

8. Defendant is taxed with the costs of this action as assessed by the Secretary, which costs shall include the cost of the deposition taken of Defendant on May 11, 2005, and shall be paid within sixty (60) days of service of the notice of costs upon the Defendant.

Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Committee, this 22<sup>nd</sup> day of September, 2005.

  
KAREN EADY-WILLIAMS, CHAIR  
HEARING COMMITTEE