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FILED

NORTH CAROLINA
WAKE COUNTY

1979 JAN 24 PM 2:59
B.E. JAMES, SEC.
THE N.C. STATE BAR

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
78 DHC 8

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

REGINALD L. FRAZIER, Attorney,
Defendant

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This cause coming on to be heard and being heard before the undersigned hearing committee of the Disciplinary Hearing Commission of The North Carolina State Bar at a regularly-scheduled hearing held on December 12, 1978 in the office of The North Carolina State Bar, 107 Fayetteville Street Mall, Raleigh, North Carolina, and said hearing committee having heard the evidence and arguments and contentions of counsel, makes the following findings of fact:

1. The plaintiff, The North Carolina 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.

2. The defendant, Reginald L. Frazier, is a citizen and resident of Craven County, North Carolina and was admitted to The North Carolina State Bar in 1960 and is, and was at all times relevant to this proceeding, an attorney at law licensed to practice law in the State of North Carolina and was and is subject to the Rules, Regulations, Canons of Ethics and Code of Professional Responsibility of The North Carolina State Bar and the laws of the State of North Carolina.

3. On August 2, 1977, John Teel paid defendant the sum of \$500.00 to file an appeal in case number 76 CVS 537 of Carteret County entitled First Citizens Bank and Trust Company vs. Teel Gas Company, Inc., Defendant and Parker Ford, Inc., Third Party Defendant. Notice of appeal had been given in open court by Wiley H. Taylor, Jr., attorney of record for John Teel in the trial of the case.

3. On August 4, 1977, defendant Frazier filed notice of appeal from the adverse judgments entered July 26, 1977 in the Teel Gas Company lawsuit.

4. Defendant was allowed 70 days in which to serve the proposed record on appeal.

5. Judgment in favor of First Citizens Bank and Trust Company was entered on July 26, 1977 and on July 28, 1977 Judge Robert D. Lewis set aside the award of the jury in this matter.

6. Defendant Frazier obtained an extension of 30 days to serve the proposed record on appeal in an Order dated October 3, 1977. This Order, however, was never filed in the court record of the Teel lawsuit.

7. No further action on the appeal was taken by the defendant Frazier. No motion was filed to withdraw as counsel and no motion was filed to withdraw the appeal. No other communication in writing to the court or to other counsel of record appears in the file.

8. The third party defendant Parker Ford filed a motion to dismiss the appeal on October 25, 1977 and a motion by plaintiff First Citizens Bank to dismiss was filed on October 26, 1977.

9. Neither counsel for Parker Ford nor counsel for First Citizens Bank and Trust Company was aware that any extension of time for Teel to file appeal had been granted in the case.

10. The motion to dismiss the appeal came on October 21, 1977 before Judge Robert Rouse, and defendant Frazier acknowledged that he had actual notice of this hearing and of the date but he did not appear and he did not file any motions.

11. Mr. Pat Mason, attorney of record for the third party defendant Parker Ford presented at the hearing an uncertified and unfiled order of Judge Lewis purporting to be an extension of time of 30 days from the 3rd day of October, 1977 to file a case on appeal.

12. That at that point the court on its own motion continued the hearing until November 3, 1977. On that date, Judge Rouse found as a part of the facts that no proposed record on appeal had been served and that the time had expired in which to file notice or record on appeal. Pursuant to the Rules of Civil Procedure the appeal was dismissed.

13. The defendant Frazier did not appear at the November 3, 1977 hearing and there is no evidence in the file of any written motion concerning any decision not to appeal.

14. Defendant Frazier intentionally allowed the appeal time to run without advising his client, Mr. Teel, or telling Teel that he felt that the appeal would be fruitless.

15. The defendant did render some service to Mr. Teel in investigating matters that could be pursued further on behalf of the client but he did not perfect the appeal as he had been requested to do by Mr. Teel and the services rendered by defendant were not worth more than the sum of \$250.00.

16. During the period of time that defendant Frazier was employed by Teel, Mr. John Harmon, an attorney in New Bern, was consulted by Teel and was advised that his appeal time had expired. As a result Teel requested a refund of part of his fee from the defendant. Defendant refused to refund any part of the fee.

BASED UPON THE FOREGOING FINDINGS OF FACT THE HEARING COMMITTEE CONCLUDES that the conduct of the defendant as set forth above constitutes a violation of Chapter 84, Section 28(b)(2) of the General Statutes of North Carolina, in that:

A. Defendant intentionally prejudiced and damaged his client Teel by allowing the time during which the client had a right to appeal to lapse in violation of Disciplinary Rule 7-101(A)(3) of the Code of Professional Responsibility;

B. Defendant did not refund the part of the fee he had not earned in violation of Disciplinary Rule 2-110(A)(3) of the Code of Professional Responsibility;

C. Defendant engaged in professional conduct that is prejudicial to the administration of justice when he intentionally failed to perfect his client Teel's appeal after making formal appeal entries and gaining an extension of time for perfecting the appeal in violation of Disciplinary Rule 1-102(A)(5) of the Code of Professional Responsibility;

D. Defendant engaged in professional conduct that adversely reflects upon his fitness to practice law when he accepted a fee for perfecting an appeal and then failed to perfect said appeal, in violation of Disciplinary Rule 1-102(A)(6) of the Code of Professional Responsibility.

This 2nd day of January, 1979.

Winfred T. Wells Chairman
Winfred T. Wells, Chairman

Jerry L. Jarvis
Jerry L. Jarvis

Mary Alice Warren
Mary Alice Warren