

WAKE COUNTY  
NORTH CAROLINA



12716

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
05 DHC 5

THE NORTH CAROLINA STATE BAR  
Plaintiff

v.

MARK F. REYNOLDS, ATTORNEY  
Defendant

)  
)  
) FINDINGS OF FACT  
) CONCLUSIONS OF LAW  
) & ORDER OF DISCIPLINE  
)  
)  
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THIS MATTER came on to be heard and was heard on Friday, May 20, 2005 before a duly assigned hearing committee of the Disciplinary Hearing Commission composed of Stephen E. Culbreth, Chair; M. Ann Reed and R. Mitchel Tyler. Carolin Bakewell represented the N.C. State Bar. The Defendant, Mark F. Reynolds, was not present nor was he represented by counsel. Based upon the pleadings and the evidence presented at the hearing, the hearing committee hereby enters 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, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.
2. The Defendant, Mark F. Reynolds ("Reynolds"), was admitted to the North Carolina State Bar in 1985, 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 Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.
3. During all of the periods relevant hereto, Reynolds was engaged in the practice of law in High Point, North Carolina.

4. The matters alleged in the State Bar's complaint were also the subject of a disciplinary hearing held before Hon. Carlton Tilley in the U.S. District Court for the Middle District of North Carolina in February 2004.

5. Reynolds attended the federal disciplinary hearing, offered evidence and argument on his own behalf and was afforded the opportunity to cross examine the witnesses called by the N.C. State Bar.

6. At the conclusion of the federal disciplinary hearing, Reynolds tendered the surrender of his license. The court accepted the surrender and entered an order disbaring Reynolds from practice in the federal court.

7. Reynolds did not appeal from the federal court's order.

8. Following entry of the federal court order, the N.C. State Bar served Reynolds with a notice of reciprocal discipline pursuant to 27 NCAC 1B. 0116.

9. Reynolds objected to imposition of reciprocal discipline based on the federal disciplinary order and this matter was referred to the Disciplinary Hearing Commission for trial.

10. On Jan. 24, 2005, the N.C. State Bar filed its summons and complaint herein.

11. Reynolds was served with the State Bar's summons and complaint on March 9, 2005.

12. On March 23, 2005, Reynolds wrote to the N.C. State Bar concerning the matters set out in the State Bar's complaint.

13. The March 23, 2005 letter was not styled as an answer and Reynolds did not file any other responsive pleadings in this matter.

14. On April 20, 2005, on motion of the State Bar, the Chair of the Hearing Committee entered an order granting judgment on the pleadings in favor of the N.C. State Bar.

15. Reynolds was properly notified of the Chair's order and of the time, date and place of the hearing herein.

16. Reynolds represented the plaintiff in an action in the U.S. District Court for the Middle District of North Carolina ("federal court"), entitled Thomas v. Alcohol & Drug, Civil Action No. 1:97 CV 918.

17. Reynolds failed to file jury instructions on behalf of his client as required by Rule 51.1(b) of the federal court's local rules.

18. Reynolds represented the defendant in an action in the federal court entitled Washington v. Slane Mill Hosiery, Civil Action N. 1:99 CV 201.

19. Reynolds failed to file jury instructions on behalf of his client as required by Rule 51.1(b) of the federal court's local rules.

20. On June 20, 2002, Reynolds failed to attend the first scheduled settlement conference in the Slane Mill Hosiery case, despite the fact that he had notice that the settlement conference would be held on that date.

21. Reynolds represented the plaintiff in an action in the federal court entitled Dawson v. Hecht's, Civil Action No. 1:99 CV 720.

22. Reynolds filed a motion to remand the Dawson case without filing the brief required by Rule 7.3 of the federal court's local rules.

23. Reynolds represented the defendant in an action in the federal court entitled Springwall Inc. v. Timeless Bedding, Inc., Civil Action No. 1:00 CV 1008.

24. Reynolds failed to comply with various orders of the federal court regarding discovery in the Springwall case.

25. On Dec. 12, 2001, Hon. P. Trevor Sharp ("Judge Sharp") entered an order sanctioning Reynolds for violating the federal court's discovery orders. Judge Sharp found that Reynolds' violations of his orders had been "substantial and repeated."

26. On May 21, 2002, the federal court entered an order granting summary judgment against Reynolds' client in the Springwall case.

27. On May 31, 2002 the plaintiff filed a motion pursuant to Fed. R. Civ. Pro. 59(e) to amend the order granting summary judgment in the Springwall case.

28. More than a month after his deadline for responding to the Rule 59 motion had passed, Reynolds sought an extension of time in which to respond to the motion. In his motion for an extension of time, Reynolds claimed that he had not been served with the Rule 59 motion.

29. On April 25, 2003, Judge James Beaty ("Judge Beaty") entered an order denying Reynolds' motion for an extension of time. Judge Beaty found that Reynolds' explanation was not offered in good faith and that Reynolds had engaged in an unacceptable pattern of conduct. He sanctioned Reynolds in the amount of \$944.

30. On June 25, 2001, Reynolds filed a complaint in the federal court on behalf of the plaintiff in a case entitled Bacchus v. Tubular Textile, Civil Action No. 1:01CV 621.

31. On Nov. 21, 2002, the defendant in Bacchus filed a motion for summary judgment.

32. Although Reynolds was served with the motion for summary judgment, he failed to file a timely response.

33. When he ultimately did respond, Reynolds' brief supporting his response to the motion for summary judgment lacked citations to the record, in violation of Rule 7.2(a)(2) of the federal court's local rules.

34. On March 19, 2003, Judge Sharp entered an order recommending that the court grant the motion for summary judgment in the Bacchus case.

35. Although Reynolds received a copy of Judge Sharp's order, he failed to discuss Judge Sharp's order with his client and therefore failed to have realistic, meaningful settlement discussions with his client before the scheduled prehearing conference in the Bacchus case.

36. A settlement conference was held in the Bacchus case on March 31, 2003, at which time Judge William Osteen ("Judge Osteen") allowed Reynolds additional time in which to respond to Judge Sharp's recommendation.

37. Reynolds told Judge Osteen that he would respond to Judge Sharp's recommendation, but failed to do so.

38. Thereafter, Judge Osteen accepted Judge Sharp's recommendation and dismissed the Bacchus complaint.

39. Reynolds represented the plaintiff in a federal case entitled Goetsch v. Mepla-Alflit, Civil Action No. 1:01CV 642.

40. Reynolds failed to conduct timely discovery on behalf of his client in the Goetsch case.

41. On July 10, 2001, Reynolds filed a complaint on behalf of the plaintiff in a case filed in the federal court entitled Dally v. Elizabeth Carbide, Civil Action No. 1:01CV 667.

42. On April 30, 2002, Judge Wallace Dixon ("Judge Dixon"), entered an order recommending that Reynolds be sanctioned pursuant to Fed. R. Civ. Pro. 11 for failing to properly research the facts and law supporting the complaint before he filed it.

43. Reynolds received a copy of Judge Dixon's recommendation.
44. On July 10, 2002, Judge Frank Bullock ("Judge Bullock"), entered an order sanctioning Reynolds in the Dally case pursuant to Fed. R. Civ. Pro. 11. The order found that Reynolds' complaint contained frivolous claims for tortious interference with contract and alleged violations of Title VII and the Americans With Disabilities Act.
45. Thereafter, the case was remanded to Judge Dixon for proceedings to determine the appropriate sanction to be imposed against Reynolds.
46. On July 23, 2002, Judge Dixon ordered Reynolds to submit personal financial information to the court by Aug. 26, 2002 to enable the court to determine the appropriate sanction in the Dally case.
47. Although Reynolds was served with the July 23, 2002 order, he failed to respond or provide financial information as directed by the federal court.
48. On May 15, 2003, Judge Bullock entered an order sanctioning Reynolds in the amount of \$10,000 for his Rule 11 violations in the Dally case.
49. Reynolds failed to pay the sanction imposed in the Dally case.
50. Reynolds represented the defendant in a case filed in the federal court entitled EEOC v. 2M Drywall, Civil Action No. 1:01CV0812.
51. In 2001, counsel for the plaintiff served Reynolds with requests for admissions, interrogatories and requests for production of documents in the 2M Drywall case.
52. On Jan. 7, 2002, Judge Sharp ordered Reynolds to file discovery responses no later than Jan. 23, 2002.
53. Although he was aware of Judge Sharp's order, Reynolds failed to file discovery responses until Jan. 31, 2002, thereby creating the risk that adverse admissions would be entered against his client.
54. In his answer to the complaint in the 2M Drywall case, Reynolds asserted that his client could not be held responsible for discriminating against a Native American because the plaintiff was not a member of a recognized Indian tribe. In fact, the plaintiff was a member of the Cherokee Nation, which Reynolds knew or should have known.
55. Reynolds failed to file a brief in the 2M Drywall case, in violation of the federal court's scheduling order.

56. Reynolds represented the plaintiff in a case filed in the federal court entitled Farris v. Tubular Textile, Civil Action No. 1:01 CV 984.

57. On March 20, 2003, defense counsel filed a motion to dismiss the plaintiff's complaint in the Farris case.

58. Although Reynolds was served with the motion to dismiss, he failed to file a response.

59. Reynolds represented the plaintiff in a case filed in the federal court entitled Swaim v. Westchester Academy, Civil Action No. 1:01CV486 ("Swaim I").

60. On March 15, 2002, defense counsel filed a motion for summary judgment in the Swaim I case.

61. Reynolds responded to the summary judgment motion on May 20, 2002, three days after the deadline imposed by the court.

62. Thereafter, Reynolds failed to abide by the court's order requiring the parties to engage in mediation. The court sanctioned Reynolds in the amount of \$750.

63. On June 21, 2002, the court dismissed the plaintiff's complaint in the Swaim I case.

64. On Oct. 15, 2002, Reynolds filed a second complaint in the federal court in the Swaim matter. The second case was captioned Swaim v. Westchester Academy, Civil Action No. 1:02CV 880 ("Swaim II").

65. On April 25, 2003, defense counsel filed a motion for summary judgment in Swaim II.

66. Reynolds' response to the motion for summary judgment exceeded the page limits permitted by the federal court's local rules.

67. Reynolds represented the plaintiff in an action filed in the federal court entitled McMillian v. Guilford Juvenile Detention Center, Civil Action No. 1:02CV 0056.

68. Reynolds failed to file a timely response to the defendant's motion to dismiss in the McMillian case.

69. Reynolds represented the plaintiff in an action filed in the federal court entitled Nieves v. Clear Channel, Civil Action No. 1:02CV 469.

70. Reynolds' progress report regarding the status of arbitration in the Nieves case was filed 45 days after the deadline established by the court.

71. On July 24, 2003, during a hearing before Judge Carlton Tilley ("Judge Tilley"), in which Judge Tilley notified Reynolds of the court's concerns with his handling of a number of cases, Reynolds told the federal court that some of the problems were the result of overwork on his part. He falsely represented that he had 32 cases then pending before the federal court and that he had as many as 37 cases at the time the problems cited by Judge Tilley occurred.

72. On Aug. 7, 2003, Reynolds appeared before Judge Osteen in the Bacchus case pursuant to the defendant's motion for an award of attorneys' fees.

73. During the Aug. 7, 2003 hearing, in response to an inquiry from Judge Osteen, Reynolds falsely denied that Judge Bullock had sanctioned him in the Springwall case.

74. During the Aug. 7, 2003 hearing in the Bacchus case, Reynolds told Judge Osteen that he had not responded to the defendant's motion for summary judgment in part because of his heavy caseload. Reynolds falsely represented to the court that he had 33 cases pending on the federal court's docket at the time his response to the summary judgment motion in Bacchus was due.

75. On Aug. 25, 2003, during a hearing in the Springwall case to determine if Reynolds should be held in contempt for failing to pay the Rule 11 sanctions imposed against him earlier in the case, Reynolds told the court that his caseload had contributed to his problems with the court. He falsely represented that he had 33 cases pending on the federal court's docket.

76. Reynolds had 11 cases pending with the Court as of Dec. 31, 2001, he had 10 cases pending as of Dec. 31, 2002 and he had only 10 cases pending in the federal court during July and August 2003.

77. Reynolds misrepresented the number of cases he had on file with the federal court in an attempt to excuse his failures to represent his clients adequately and his failures to comply with the federal court's rules.

78. By order dated Dec. 27, 2002, Judge Catherine Eagles ("Judge Eagles") entered an order censuring Reynolds for professional misconduct in the state courts and directed him to obtain a psychiatric evaluation no later than March 10, 2003.

79. On July 24, 2003, Reynolds agreed to provide a copy of the evaluation to the federal court by July 28, 2003.

80. Reynolds failed to provide the evaluation to the federal court.

81. On Aug. 8, 2003, the federal court entered an order requiring Reynolds to deliver a copy of the evaluation to the court by Aug. 15, 2003.

82. Reynolds did not comply with the federal court's order.

83. On Aug. 18, 2003, Reynolds filed a motion requesting additional time in which to provide the evaluation..

84. The court denied Reynolds' motion.

85. On Aug. 21, 2003, the federal court entered an order directing Reynolds to appear on Sept. 3, 2003 and show cause why he should not be sanctioned for violating the Aug. 8, 2003 order.

86. Reynolds was properly served with the Aug. 21, 2003 show cause order.

87. On Sept. 2, 2003, Reynolds filed a motion to continue the Sept. 3, 2003 show cause hearing. On the same day, John Brubaker, the Clerk of Court, left a message on Reynolds' office telephone answering machine, advising him that the federal court had denied the motion to continue.

88. Reynolds did not appear at the Sept. 3, 2003 show cause hearing.

Based upon the foregoing Findings of Fact, the hearing committee enters the following:

#### CONCLUSIONS OF LAW

(a) By failing to file timely responses to opposing counsel's motions to dismiss and/or motions for summary judgment in the Bacchus, Farris, McMillian and Swaim cases, Reynolds neglected client matters in violation of Rule 1.3 of the Rules of Professional Conduct.

(b) By failing to conduct timely discovery in the Goetsch case and by failing to file timely discovery responses in the 2M Drywall case, Reynolds neglected client matters in violation of Rule 1.3 of the Rules of Professional Conduct.

(c) By failing to file jury instructions on behalf of his client as required by Rule 51.1(b) of the federal court's local rules in the Thomas and Washington cases, failing to attend a court-ordered settlement conference in the Washington case, failing to file the required briefs in the Dawson and 2M Drywall cases, failing to comply with the Court's discovery orders in Springwall, filing a brief in



Bacchus that did not contain appropriate citations to the record, failing to provide financial information to the Court in the Dally case, filing a late arbitration report in the Nieves case and by failing to engage in court-ordered mediation and filing a response that exceeded the page limits in Swaim, Reynolds violated orders of the federal court and/or the local rules for the U.S. District Court, Middle District of North Carolina, in violation of Rule 3.5(a)(4) and 8.4(d) of the Revised Rules of Professional Conduct.

(d) By failing to tell his client before a settlement conference in the Bacchus case that Judge Sharp had entered an order recommending that the client's complaint be dismissed, Reynolds failed to keep his client reasonably informed of the status of the case in violation of Rule 1.4(a)(3).

(e) By filing a complaint in Dally that was not well founded in fact or law, and by asserting a defense in the 2M Drywall case without first ascertaining whether the factual basis of the defense was valid, Reynolds violated Rule 3.1.

(f) By telling a federal judge on Aug. 7, 2003 that he had not previously been sanctioned by Judge Bullock and by attempting to excuse his neglect of client matters by telling three federal judges on three separate occasions in July and August 2003 that he had 32 or 33 cases on the Court's docket, when in fact he only had 10 cases on the docket at the time, Reynolds engaged in dishonest conduct in violation of Rule 8.4(c).

(g) By failing to provide a copy of his psychiatric report to the federal court by Aug. 15, 2003 as ordered by the Court and by failing to appear at a Sept. 3, 2003 show cause hearing after being duly notified of the hearing, Reynolds violated the direct orders of the federal Court and violated Rule 8.4(d).

Based upon the foregoing Findings of Fact, the Conclusions of Law and the evidence presented at the hearing, the hearing committee also makes the following:

#### ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE

1. In December 2002 and in December 2003, Reynolds was disciplined by the Guilford County Superior Court. The misconduct for which Reynolds was disciplined occurred in approximately the same period as the matters cited in the State Bar's complaint herein. Consequently, the Committee did not consider the orders to constitute prior discipline that should be considered in aggravation of Reynolds' misconduct.

2. Reynolds' conduct is aggravated by the following facts:

a) He engaged in a pattern of misconduct.

b) He engaged in multiple violations of the Rules of Professional Conduct.

- c) He has substantial experience in the practice of law.
- d) He failed to acknowledge wrongdoing.
- e) Some of his misconduct involved misleading statements to courts.
- 3. The Hearing Committee found the following mitigating fact:
  - a) Reynolds' misconduct was not motivated by a selfish motive.
- 4. The aggravating factors outweigh the mitigating factors.

Based on the foregoing findings of fact, the Committee enters the following:

#### CONCLUSIONS OF LAW RELEVANT TO DISCIPLINE

1. Reynolds' misconduct caused actual harm and created a threat of significant potential harm to his clients.

2. Reynolds' misconduct harmed the administration of justice in that the federal court had to devote substantial resources to reviewing cases in which Reynolds failed to follow the court's local rules or the Rules of Professional Conduct and in holding show cause and disciplinary hearings.

3. A substantial period of suspension is the only sanction that can adequately protect the public for the following reasons:

a) Reynolds' misconduct occurred over a substantial period of time and therefore appears to be the result of a serious condition or character flaw, rather than an aberration.

b) An order of discipline less than a five year suspension would not sufficiently protect the public because Reynolds has failed to show that he has addressed whatever trait or problem that caused his misconduct and therefore there is a risk that he would continue to violate the Rules of Professional Conduct if he were allowed to continue the practice of law.

c) Entry of an order imposing lesser discipline would fail to acknowledge the seriousness of the offenses that Reynolds committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar in North Carolina.

Based upon the foregoing Findings of Fact, Conclusions of Law and Findings of Fact Regarding Discipline, and any mixed findings of fact and conclusions of law howsoever designated, the Hearing Committee hereby enters the following:

### ORDER OF DISCIPLINE

1. Mark F. Reynolds' license to practice law is hereby suspended for a period of five years commencing 30 days from the date of service of this order upon him.

2. Reynolds shall surrender his law license and membership card to the Secretary of the State Bar no later than 30 days from service of this order upon him.

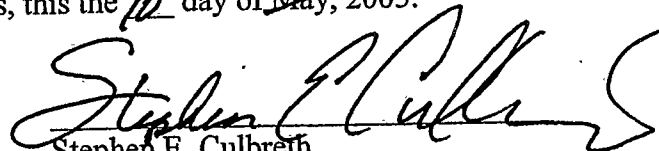
3. Reynolds shall pay the costs of this proceeding as assessed by the Secretary of the N.C. State Bar no later than 30 days from service of this order upon Reynolds.

4. Reynolds shall comply with all provisions of 27 NCAC 1B § .0124 of the North Carolina State Bar Discipline & Disability Rules ("Discipline Rules").

5. Prior to seeking reinstatement of his law license, Reynolds shall present written evidence to the State Bar demonstrating that:

- a) He is not suffering from a mental or physical condition that impairs or interferes with his judgment, competence or performance as an attorney.
- b) He has not violated any laws of the United States or any of the States during the suspension period.
- c) He has paid all dues, late fees and assessments owed to the N.C. State Bar.
- d) He has completed a 3 hour course in law office management at his own expense, offered by a course provider approved by the N.C. State Bar.

Signed by the undersigned Committee Chair with the full knowledge and consent of the other Hearing Committee members, this the 10<sup>th</sup> day of May, 2005.

  
Stephen E. Culbreth  
Chair, Disciplinary Hearing Committee