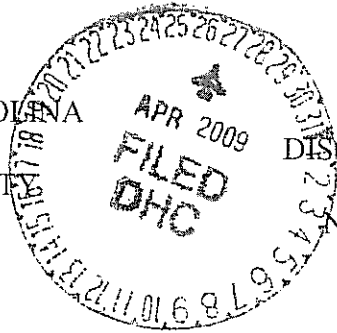


NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
08 DHC 18

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
v.)
MAX D. BALLINGER, Attorney,)
Defendant)

CONSENT ORDER OF
DISCIPLINE

This matter came before a Hearing Committee of the Disciplinary Hearing Commission composed of Sharon B. Alexander, Chair, Harriett Smalls, and Michael J. Houser. Leonor Bailey Hodge represented Plaintiff. Defendant was represented by Norman Smith. Defendant has agreed to waive a formal hearing in the above referenced matter. The parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order. The parties consent to the discipline imposed by this order. Defendant also stipulates that he waives his right to appeal the consent order or to challenge in any way the sufficiency of the findings by consenting to the entry of this order.

Based on the foregoing and on the consent of the parties, the Hearing Committee hereby makes 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, Max D. Ballinger (hereinafter "Ballinger" or "Defendant"), was admitted to the North Carolina State Bar on September 21, 1960 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 Greensboro, Guilford County, North Carolina.

4. Defendant represented several, although not all of the children of decedent Myrtle Greeson Canoy in a civil action entitled Scott Nash Dunn Administrator, CTA of the Estate of Myrtle Greeson Canoy, deceased, plaintiff, vs. Roger Terry Canoy, et al., defendants, case no. 03 CVS 1211, Randolph County Superior Court (hereinafter the "Litigation"). The parties represented by the Defendant were some of the contingent remaindermen.

5. The subject of the Litigation concerned Mr. Dunn's request that the trial court order the various defendants to interplead their prospective claims and settle their claims between themselves as pertained to the estate property and property related to the administration of the estate including real property that had been owned by the decedent during her lifetime.

6. On June 10, 2004 the parties agreed to resolve the Litigation by agreement under which agreement the life tenant would receive fee simple title free and clear to approximately 18 acres and the remaining children of Myrtle Greeson Canoy would receive fee simple title to the remaining 42 acres of the Canoy property.

7. The Honorable John O. Craig, III, Superior Court Judge presided over the proceeding at which the parties agreed to resolve the Litigation.

8. The terms of the agreement between the parties for resolution of the Litigation were stated before Judge Craig in open court on June 10, 2004 and were also reduced to writing on that date.

9. At the conclusion of the June 10, 2004 hearing Defendant declined to draft the proposed Consent Judgment stating that he was involved in a major case that would render him unavailable to address issues pertaining to the Consent Judgment until after June 21, 2004.

10. Judge Craig instructed Mr. Dunn to prepare a draft of a consent judgment and circulate it.

11. Judge Craig informed the parties and their counsel that he would be out of the country from June 17th through June 30th.

12. Mr. Dunn prepared a draft Consent Judgment and provided a copy to the Defendant on or about June 11, 2004.

13. On June 15, 2004 Defendant wrote an unsolicited letter to Judge Craig with copies to counsel for other parties.

14. Defendant enclosed with his June 15th correspondence to Judge Craig a separate Consent Judgment drafted by him.

15. Defendant's proposed Consent Judgment contained terms not agreed to by the parties in open court on June 10, 2004.

16. Within twenty-four (24) hours after mailing the June 15th letter Defendant sent the Court and all parties or their counsel a second letter dated June 16, 2004.

17. Defendant's June 16th letter stated "[e]nclosed is a copy of a Consent Judgment I am having my clients sign. Having not heard from you, I presume that as to you [the Court] the enclosed [Consent Judgment] is satisfactory."

18. At the time Defendant sent his June 16th letter, Defendant was aware that Judge Craig was scheduled to be out of the country for approximately fourteen (14) days beginning June 17, 2004.

19. As of the close of business on June 16th, Judge Craig was unaware that Defendant's June 15th and June 16th letters had been sent.

20. On June 25, 2004, Mr. Dunn informed Defendant that Defendant's proposed Consent Judgment was unacceptable.

21. Defendant did not respond to Mr. Dunn's June 25th correspondence about the Consent Judgment.

22. On July 1st, Mr. Dunn sent to Defendant another proposed Consent Judgment with additional revisions seeking Defendant's confirmation that the most recent version of the proposed Judgment met with Defendant's approval.

23. Defendant did not respond to Mr. Dunn's July 1st correspondence.

24. On July 28, 2004, Mr. Dunn forwarded to Defendant a final version of the Consent Judgment asking that it be signed by the parties by August 20, 2004.

25. On August 15, 2004, Defendant wrote a 13 page letter to Judge Craig asking the Judge to reconsider any decision on his part to sign the proposed Consent Judgment prepared by Mr. Dunn. In this letter Defendant also raised and reargued issues that had previously been resolved when his clients gave their consent to the settlement, and Defendant informed Judge Craig that neither Defendant nor his clients would sign the Consent Judgment proposed by Mr. Dunn. Mr. Dunn was copied on this correspondence to Judge Craig.

26. Defendant failed to file the proper motions as required under the North Carolina Rules of Civil Procedure to make the requests contained in his August 15th letter to Judge Craig. Defendant's August 15th letter was not sent for a proper purpose.

27. On September 6, 2004, Defendant wrote a 10 page letter jointly addressed to Judge Craig and Judge Russell G. Walker, Jr. arguing the merits of his clients' claims,

requesting rulings on the merits and expressing the opinion that the matter could not be settled without the inclusion of additional parties.

29. Defendant failed to properly raise with the Court the issues addressed in his September 6th letter by failing to file the proper motions as required under the North Carolina Rules of Civil Procedure. A letter was not the proper method for Defendant to use to make the requests contained in his September 6th letter to the Court. Judge Craig and the Court of Appeals found that the September 6th letter was not sent for a proper purpose.

30. At a September 16, 2004 hearing Defendant offered his consent to the terms of the Consent Judgment by offering to sign the back and then later at the hearing withdrew his offer to sign the Consent Judgment. Defendant's clients and some of the parties not represented by the Defendant ultimately withdrew their consent to the settlement and no Consent Judgment was entered.

31. Defendant was monetarily sanctioned for his professional misconduct in the Litigation.

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Committee and the Committee has jurisdiction over Defendant and over the subject matter of this proceeding.

2. Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. §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 sending the August 15th letter to Judge Craig seeking to persuade the Court not to sign the Consent Judgment and asking the Court to reopen issues previously resolved by agreement of the parties, Defendant engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);

b. by sending the September 6th letter to Judges Craig and Walker asking the Court to reopen issues previously resolved by agreement of the parties, Defendant engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);

c. by refusing to sign the Consent Judgment prepared by Mr. Dunn and instead arguing in favor of a Consent Judgment containing terms not agreed to by the parties Defendant engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

Based upon the foregoing Findings of Fact and the consent of the parties, the Hearing Committee makes by clear, cogent, and convincing evidence the following:

FINDINGS REGARDING DISCIPLINE

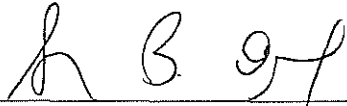
1. Defendant's misconduct is aggravated by his substantial experience in the practice of law.
2. Defendant's misconduct is mitigated by the following factors:
 - (a) absence of a prior disciplinary record;
 - (b) absence of a dishonest or selfish motive; and
 - (c) imposition of other penalties or sanctions.
3. The mitigating factors outweigh the aggravating factors.
4. Defendant's conduct caused harm to the administration of justice and violated one or more Revised Rules of Professional Conduct.
5. Based upon the mitigating factors, especially the fact that Defendant has practiced for over 45 years without prior discipline, entry of an order imposing a censure is not required to protect the public from future misconduct by Defendant. Therefore, the Hearing Panel finds and concludes that under the circumstances of this case the public will be adequately protected by issuing a reprimand to Defendant.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Findings Regarding Discipline, and by consent of the parties, the Hearing Committee hereby enters the following:

ORDER OF DISCIPLINE


1. Defendant is hereby reprimanded for his professional misconduct.
2. Defendant is taxed with the costs of this action as assessed by the Secretary and shall be paid within thirty (30) days of service upon the Defendant of the notice of costs.

Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Committee, this the 27 day of April, 2009.


SHARON B. ALEXANDER, Chair
Hearing Committee

CONSENTED TO:


LEANOR BAILEY HODGE, Deputy Counsel
Attorney for Plaintiff


NORMAN B. SMITH
Attorney for Defendant


MAX D. BALLINGER, Defendant