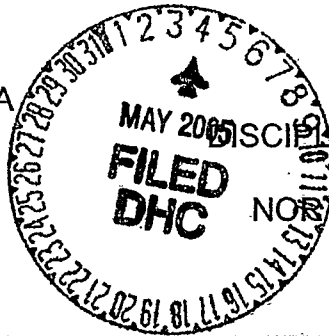


12448

NORTH CAROLINA
WAKE COUNTY



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

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
v.)
JON S. JOHNSON, Attorney,)
Defendant)

ORDER OF DISCIPLINE

This matter was heard on Thursday, April 21, 2005 by a Hearing Committee of the Disciplinary Hearing Commission composed of Elizabeth Bunting, Chair, John M. May, and R. Mitchel Tyler. Margaret Cloutier represented Plaintiff. Defendant did not appear and was not represented. After Defendant failed to file responsive pleadings to the complaint duly served upon him, Defendant's default was entered by the Secretary of the North Carolina State Bar on March 10, 2005 and evidence was introduced by Plaintiff in support of its Motion for Order of Discipline.

Based on the pleadings and the evidence introduced at the hearing, the Hearing Committee hereby enters the following

FINDINGS OF FACT

1. 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 (Chapter 1 of Title 27 of the North Carolina Administrative Code ("NCAC")).

2. Defendant, Jon S. Johnson (hereinafter "Defendant or Johnson"), was admitted to the North Carolina State Bar on August 18, 1984 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 Matthews, Mecklenburg County, North Carolina.

4. Defendant was suspended from the practice of law for a period of five years by a committee of the Disciplinary Hearing Commission of the North Carolina State Bar by Order of Discipline dated November 3, 2000 and was served with the November 3, 2000 Order of Discipline on January 11, 2001. The effective date of the suspension under the Order of Discipline was February 12, 2001.

5. Pursuant to the Discipline and Disability Rules of the North Carolina State Bar, 27 N.C.A.C. 1B §.0124, Defendant was obligated to promptly notify all clients with pending matters of his suspension and advise them to seek legal advice elsewhere.

6. On February 12, 2001, at least fifteen clients of Defendant had pending matters in that Defendant still held money in trust on behalf of those clients. Those clients were Paul Wolfe, Billie Watson, Julie Griffin, Debbie Brooks, Berit McRae, Tina Caldwell, Crystal Caldwell, Shodi Ashtari, Mendairra Roekle, Ruth Dunlap, Martin Williams, Paul Murray, Pavel Boldt, Lenora Scott, and Dorothy Morris.

7. Defendant did not send letters to, or otherwise communicate with, these 15 clients notifying them of his suspension.

8. Pursuant to the Discipline and Disability Rules of the North Carolina State Bar, 27 N.C.A.C. 1B §.0124, Defendant was prohibited from transferring active client files containing confidential information or property to another attorney without prior written permission from the client and was obligated to take reasonable steps to avoid foreseeable prejudice to the rights of his clients, including promptly delivering all file materials and property to which the clients were entitled to the clients and/or their new attorneys.

9. After entry of the November 3, 2000 Order of Discipline, but before it was served on him, Defendant sold the assets of his law practice to attorneys Deanne M. Coan and Richard S. Farris. Defendant left files of clients being represented by Defendant in pending matters at the office then occupied by attorneys Coan and Farris without the prior written permission of those clients.

10. As of February 12, 2001, the effective date of the suspension of Defendant's law license pursuant to the November 3, 2000 Order of Discipline, Defendant held \$15,566.32 in his trust account on behalf of the following clients:

Billie Watson	\$5,315.08
Berit McCrea	50.00
Julie Griffin	4,166.69
Crystal Caldwell	20.00
Tina Caldwell	48.00
Abdirahman Ibrahim	65.00
Martin Williams	25.00
Paul Murray	50.00
Pavel Boldt	65.00
Carol Evers	660.00
Lenora Scott	108.60
Darrell Rivers	62.00
Christopher Chambers	164.63
Derrick Chambers	555.26
Debbie Brooks	1,147.01
Dorothy Morris	215.00
Aana Whatley	693.05
Shodi Ashtari	50.00
Mendairra Roekle	100.00
Ruth Dunlap	2,006.00

11. After being served with the November 3, 2000 Order of Discipline Defendant did not promptly deliver the property of his clients itemized in the preceding paragraph to his clients or their substituted attorney, if any, nor did Defendant disburse such property or funds to the appropriate parties on behalf of his clients.

12. On or about April 3, 2001 Defendant was properly served with a subpoena properly issued by the Secretary of the North Carolina State Bar requiring Defendant to produce for the six years preceding the date of the subpoena for his trust account(s) and business accounts(s) all bank statements, all original cancelled checks, all original deposit slips and items of deposit, all client ledger sheets, all check registers, all other records of client receipt and disbursements, including any cash receipt and disbursement journal(s), settlement statements, and trust account reconciliations.

13. Accompanying the subpoena identified above was a letter addressed to Defendant from Reginald T. Shaw, Investigator with the State Bar, identifying a smaller number of documents to be produced to comply with the subpoena than described in the subpoena.

14. Defendant did not provide to the State Bar all of the documents listed on the subpoena or in the letter of Reginald T. Shaw.

15. State Bar Investigator Reginald Shaw conducted an interview with Defendant on or about April 11, 2001 in which Shaw questioned Defendant about

specific client files and funds remaining in Defendant's trust account on behalf of those clients. Defendant informed Shaw that he had agreed with some of the clients to retain in his trust account funds earmarked for payment of medical care providers until the statute of limitations prevented the medical care providers from claiming the funds at which time Defendant and the client(s) would split the funds. Defendant also told Shaw that Defendant did not send letters to any of his clients informing them of his suspension because he had sold his practice before he was served with the Order of Suspension and therefore had no clients and no obligation to inform anyone of his suspension.

16. One of the clients for whom Defendant was holding funds was Billie Watson. Defendant had settled a personal injury claim on Ms Watson's behalf prior to 2001 and was holding funds in his trust account for payment of a potential Medicare lien. In early 2001 Ms Watson was notified she had to reimburse Medicare but she was unable to reach Defendant to obtain her funds with which to pay the lien. As a result, Ms Watson had to borrow funds from a bank to pay the Medicare lien.

17. On or about October 16, 2001, The Honorable Shirley L. Fulton, Senior Resident Superior Court Judge for the 26th Judicial District, issued an Order of Disbursement of Funds, authorizing the transfer of all remaining funds in Defendant's trust account to the North Carolina State Bar and ordering that Defendant (a) identify and provide a list of the persons or entities and amounts owed for all funds remaining in his trust account, and (b) produce all documents and records for his trust account Defendant was required to keep under Revised Rule 1.15 of the Revised Rules of Professional Conduct for the six years immediately preceding his February 12, 2001 suspension. Defendant was personally served by Sheriff with a copy of Judge Fulton's October 16, 2001 Order on January 7, 2002.

18. Defendant did not provide the documentation as ordered by Judge Fulton.

19. After the entry of Judge Fulton's Order of Disbursement of Funds dated October 16, 2001, the State Bar learned that some of the information provided by Defendant and relied upon by the State Bar in applying to Judge Fulton for the Order of Disbursement, and upon which Judge Fulton relied in issuing the Order of Disbursement, was incorrect. As a result, on or about February 18, 2002 the State Bar moved the court to modify the October 16, 2001 Order of Disbursement based on accurate information the State Bar had gathered and on or about April 9, 2002 Judge J. Gentry Caudill entered a Modified Order of Disbursement reflecting the accurate information provided by the State Bar.

20. On or about February 18, 2002 the State Bar moved the court to order Defendant to appear and show cause why Defendant should not be held in

contempt for failing to provide the documentation ordered by Judge Fulton in her October 16, 2001 Order of Disbursement of Funds. On or about February 18, 2002 Judge Fulton issued an Order to Show Cause ordering Defendant to appear on April 1, 2002 and show cause why Defendant should not be held in contempt for failing to comply with Judge Fulton's October 16, 2001 Order of Disbursement.

21. On or about April 1, 2002, after hearing pursuant to the Order to Show Cause referred to in the preceding paragraph, Resident Superior Court Judge J. Gentry Caudill held Defendant in civil contempt for his failure to provide the documents ordered to be produced in the October 16, 2001 Order of Disbursement, committing Defendant to the custody of the Mecklenburg County Sheriff's Department and allowing Defendant to purge himself of contempt by producing the documents as ordered by Judge Fulton in her October 16, 2001 Order of Disbursement.

22. Between April 1, 2002 and April 10, 2002, Defendant, through counsel, produced some of the documents and information previously ordered and asserted that he could produce the remaining information if released and given access to records available in his home.

23. On April 10, 2002 Judge Caudill issued an order releasing Defendant from custody and ordering Defendant to purge himself of the contempt by providing the necessary documentation by April 22, 2002. Defendant provided the documentation as required by April 22, 2002.

24. On or about March 10, 2003 Superior Court Judge Albert Diaz ordered the disbursement of all remaining funds previously contained in Defendant's trust account and at that time in the possession of the State Bar. The funds were subsequently disbursed pursuant to the March 10, 2003 order.

25. The North Carolina State Bar expended well in excess of 196 man-hours in its efforts to disburse the funds remaining in Defendant's trust account as of the effective date of his suspension.

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 failing to promptly notify his clients that his license to practice law had been suspended as required by 27 N.C.A.C. 1B §.0124, Defendant failed to keep his clients reasonably informed about the status of their matters and failed to explain a matter to the extent reasonably necessary to permit the clients to make informed decisions regarding the representation in violation of Rule 1.4(a) and (b);

b. by delivering confidential client files to other attorneys without the permission of his clients, Defendant knowingly revealed confidential information of his clients in violation of Rule 1.6(c);

c. by failing to promptly deliver the property of his clients itemized in paragraph 10 to his clients or their designated attorneys, and by failing to disburse such funds as appropriate on behalf of his clients, Defendant did not promptly pay or deliver to the clients, or to third persons as directed by the clients, entrusted property belonging to the clients and to which the clients were currently entitled in violation of Rule 1.15-2(m);

d. by failing to produce documentation pursuant to a duly served subpoena issued by the State Bar, 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 conduct prejudicial to the administration of justice in violation of Rule 8.4(d); and

e. by failing to comply with Judge Fulton's October 16, 2001 Order, and by engaging in conduct contemptuous of a judicial authority, 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 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 lengthy and significant prior disciplinary history. Defendant received the following discipline:

i. November 12, 1989, Public Reprimand for failing to zealously represent his client and repeatedly failing to respond to inquiries of a disciplinary authority;

ii. November 6, 1992, Reprimand for failing to communicate with his client and repeatedly failing to respond to inquiries of a disciplinary authority;

iii. December 1, 1999, six month suspension, stayed for two years for failing to participate in good faith in fee dispute arbitration and repeatedly failing to respond to inquiries of a disciplinary authority; and

iv. November 3, 2000, five year suspension, three years active for failing to file and pay federal and state employee withholding taxes.

b. A dishonest or selfish motive;

c. A pattern of misconduct;

d. Multiple offenses over a period of numerous years;

e. Substantial experience in the practice of law;

f. Bad faith obstruction of the disciplinary proceedings by failing to comply with the rules or orders of the disciplinary authorities;

g. Submission of false statements or other deceptive practices during the disciplinary process in his statements to Investigator Shaw and in providing erroneous information to the Bar;

h. Refusal to acknowledge the wrongful nature of his conduct;

i. The vulnerability of at least one victim, Billie Watson, and potentially those clients that appear in paragraph 10 of the Findings of Fact above.

2. Defendant's misconduct is mitigated only by a delay in the disciplinary process through no fault of Defendant.

3. The aggravating factors outweigh the mitigating factors.

4. An order imposing discipline short of disbarment would not sufficiently protect the public for the following reasons:

a. Defendant's conduct significantly and actually harmed his clients, as shown in the record and as shown in the list of the clients in

paragraph 10 of the Findings of Fact whose money he held for some length of time;

b. Because of Defendant's multiple offenses over a number of years and a pattern of misconduct which is likely to continue, significant potential harm exists to future clients;

c. The number of clients harmed or potentially harmed and the extensive period of time over which the harm to his clients has occurred despite prior sanctions indicates that Defendant has not reformed or does not understand that his conduct is in need of reformation in order to continue practicing law;

d. Defendant's multiple violations over a substantial period of time caused harm to the legal profession. Defendant has been sanctioned four times before and yet he continues to refuse to follow the rules of The State Bar. Defendant's most recent misconduct culminated in a public contempt proceeding, which is particularly egregious in light of the fact that no factual contentions justified withholding the information sought; it appears he simply did not want to comply. Defendant's conduct is a poor reflection on the reputation of the legal profession as a whole such that the public trust in attorneys would tend to be eroded, if not permanently damaged.

e. The evidence tended to show that Defendant colluded with some of his clients to avoid payments to creditors, engaged in potential fraud in his attempt to sell his practice to avoid notifying his clients about his impending discipline, and attempted to retain property, i.e. client files, by false pretenses. These activities harmed the public. In addition, Defendant poses a potential future risk of harm to the public should he continue to practice law and engage in multiple violations of the Rules of Professional Conduct in the handling of his clients' records as he has in the past.

f. An Order of Discipline imposing any sanction less than disbarment would fail to acknowledge the seriousness of these offenses and would send the wrong message to attorneys and potential clients, as well as the public, regarding the conduct expected of members of the Bar in this state.

g. The protection of the public requires that Defendant not be permitted to resume the practice of law until he demonstrates that he has reformed, that he understands his obligations to his clients, and that reinstatement would not injure the standing of the legal profession, future clients or the public in general. Disbarred attorneys must show reformation, among other things, before they resume the practice of law, whereas no such showing is necessary for an attorney whose license is merely suspended.

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

ORDER OF DISCIPLINE

1. Jon S. Johnson is hereby DISBARRED from the practice of law in this state, effective 30 days from the date of service of this order upon him.

2. Johnson shall surrender his law license and Bar membership card within 30 days of the service of this order upon him.

3. Johnson is taxed with the costs of this action as assessed by the Secretary which shall be paid within 90 days of service of the notice of costs upon him.

Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Committee, this 29th day of April, 2005.



ELIZABETH BUNTING, CHAIR
HEARING COMMITTEE