

NORTH CAROLINA

WAKE COUNTY

1273

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
90 DHC 9

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

WILLIAM J. EAKER, ATTORNEY
Defendant

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This matter was heard on November 16, 1990 by a hearing committee composed of John G. Shaw, Chairman, Karen P. Boyle, and Emily W. Turner. Fern E. Gunn represented the North Carolina State Bar and the Defendant, William J. Eaker, appeared pro se. Based upon the admissions of the Defendant deemed by his default for failure to file an answer or other pleading in this matter, and the evidence offered at the hearing, the hearing committee 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, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.
2. The Defendant, William J. Eaker, was admitted to the North Carolina State Bar on September 22, 1952, 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, Code of Professional Responsibility 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 referred to herein, the Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Charlotte, Mecklenburg County, North Carolina.
4. Carol Williams (hereinafter Williams) retained the Defendant to represent her in a personal injury action which arose in 1981. Williams provided the Defendant with updated medical bills as they were incurred.

5. The Defendant obtained no settlement in Williams's case and no lawsuit was ever filed by the Defendant on behalf of Williams to seek recovery for her injuries.
6. The statute of limitations ran on Williams's personal injury claim.
7. Williams attempted to contact the Defendant by telephone and by letters regarding her case. The Defendant did not respond to complainant's inquiries.
8. Sharon Williams retained the Defendant to represent her in a personal injury action which arose in 1982.
9. The Defendant failed to obtain a settlement in Sharon Williams's case and failed to file a lawsuit on her behalf before the expiration of the statute of limitations in the personal injury action.
10. Patsy Locklear retained the accused to represent her in a personal injury action which arose in January, 1982.
11. Defendant told Locklear that a lawsuit regarding her personal injury action had been filed in Mecklenburg County.
12. The Defendant did not obtain a settlement or file a lawsuit in Locklear's case before the expiration of the statute of limitations in the personal injury action.
13. Patricia Bullock retained the accused to represent her in a personal injury action which arose in 1984.
14. Defendant filed a lawsuit on Bullock's behalf on August 13, 1987.
15. The statute of limitations ran on Bullock's personal injury claim prior to the Defendant filing the lawsuit.
16. Bullock's case was dismissed without prejudice on December 2, 1988 by Judge Frank W. Snapp for failure to prosecute.
17. Defendant did not inform Carol Williams, Sharon Williams, Patsy Locklear, and Patricia Bullock that he had not taken action in their cases before the statute of limitations ran.

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

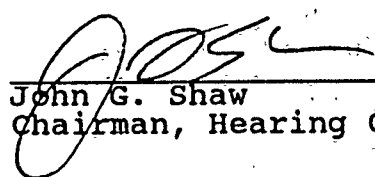
CONCLUSIONS OF LAW

- 1) By failing to obtain a settlement or file a lawsuit in Carol Williams' action prior to the expiration of the statute of limitations, the Defendant failed to act with reasonable diligence and promptness in representing his client in violation of DR6-101(A)(3); has failed to seek the lawful objectives of his client through reasonably available means permitted by law and the disciplinary rules, in violation of DR7-101(A)(1); failed to carry out a contract of employment entered into with a client for professional services in violation of DR7-101(A)(2); prejudiced or damaged his client during the course of the professional relationship, in violation of DR7-101(A)(3); and engaged in conduct prejudicial to the administration of justice in violation of DR1-102(5).
2. By failing to respond to Carol Williams' telephone calls and letters, the Defendant failed to keep his client reasonably informed about the status of a matter and failed to promptly comply with reasonable requests for information, in violation of DR6-101(A)(3).
3. By failing to obtain a settlement or file a lawsuit in Sharon Williams' action prior to the expiration of the statute of limitations, the Defendant failed to act with reasonable diligence and promptness in representing his client in violation of DR6-101(A)(3); has failed to seek the lawful objectives of his client through reasonably available means permitted by law and the disciplinary rules, in violation of DR7-101(A)(1); failed to carry out a contract of employment entered into with a client for professional services in violation of DR7-101(A)(2); prejudiced or damaged his client during the course of the professional relationship, in violation of DR7-101(A)(3); and engaged in conduct prejudicial to the administration of justice in violation of DR1-102(A)(5).
4. By failing to obtain a settlement or file a lawsuit in Locklear's action prior to the expiration of the statute of limitations, the Defendant failed to act with reasonable diligence and promptness in representing his client in violation of DR6-101(A)(3); has failed to seek the lawful objectives of his client through reasonably available means permitted by law and the disciplinary rules, in violation of DR7-101(A)(1); failed to carry out a contract of employment entered into with a client for professional services, in violation of DR7-101(A)(2); prejudiced or damaged his client during the course of the

professional relationship, in violation of DR7-101(A)(3); and engaged in conduct prejudicial to the administration of justice, in violation of DR1-102(A)(5).

5. By telling Locklear that a lawsuit had been filed in her case when Defendant had not filed an action in court, the Defendant engaged in conduct involving dishonesty or misrepresentation in violation of DR1-102(A)(4).
6. By failing to file a lawsuit in Bullock's action prior to the expiration of the statute of limitations, the Defendant failed to act with reasonable diligence and promptness in representing his client in violation of Rule 6(B)(3); has failed to seek the lawful objectives of his client through reasonably available means permitted by law and the Rules of Professional Conduct, in violation of Rule 7.1(A)(1); failed to carry out a contract of employment entered into with a client for professional services, in violation of Rule 7.1(A)(2); prejudiced or damaged his client during the course of the professional relationship, in violation of Rule 7.1(A)(3); and engaged in conduct prejudicial to the administration of justice, in violation of Rule 1.2(D).
7. By failing to inform Carol Williams, Sharon Williams, Patsy Locklear, and Patricia Bullock that he had not taken action in their cases prior to the expiration of the statute of limitations, Defendant failed to keep the client reasonably informed about the status of his clients' cases, in violation of DR6-101(A)(3) and Rule 6(B)(1).

Signed by the undersigned chairman with the full accord and consent of the other members of the hearing committee, this the 12 day of December, 1990.


John G. Shaw
Chairman, Hearing Committee

[239]

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
90 DHC 9

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

WILLIAM J. EAKER, ATTORNEY
Defendant

ORDER OF DISCIPLINE

This matter came on to be heard and was heard on November 16, 1990 before a hearing committee composed of John G. Shaw, Chairman, Karen P. Boyle, and Emily W. Turner. Based upon the Findings of Fact and Conclusions of Law entered by this hearing committee of even date herewith, the hearing committee makes the following additional Findings:

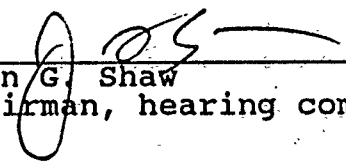
1. Carol D. Williams, Sharon Williams, and Patsy Locklear filed malpractice actions against the Defendant in Mecklenburg County relative to his failure to prosecute their personal injury cases.
2. In the case of Carol D. Williams v. William J. Eaker, 87 CVS 5028, the Defendant, by consent judgment dated October 24, 1988, agreed to pay Carol Williams \$7,500 in settlement of Ms. Williams' claim against the Defendant. The Defendant also agreed to pay the cost of the action in the amount of \$122 plus interest at the legal rate of 8% per annum from April 27, 1987.
3. In the case of Sharon Williams and Patsy Locklear v. William J. Eaker, 87 CVS 13052, by a consent judgment dated May 15, 1989, the Defendant was ordered to pay Sharon Williams \$8,000 in settlement of all matters in dispute between Ms. Williams and the Defendant. The Defendant was also ordered to pay Patsy Locklear \$12,500 in settlement of all matters in dispute between Patsy Locklear and the Defendant.
4. As of November 16, 1990, Defendant had not satisfied the judgments in the cases involving Carol D. Williams, Sharon Williams, and Patsy Locklear.

THEREFORE, based on the foregoing considerations bearing upon the appropriate measure of discipline, the hearing committee hereby enters the following Order of Discipline:

ORDER OF DISCIPLINE

1. The Defendant is suspended from the practice of law for two years. If after the first year of suspension the Defendant has paid all civil judgments against him (as ordered in the actions of Carol D. Williams v. William J. Eaker (87 CVS 5028), Sharon Williams and Patsy Locklear v. William J. Eaker (87 CVS 13052), any remaining portion of the two-year suspension is stayed.
2. The Defendant shall surrender his license certificate and permanent membership card to the Secretary of the North Carolina State Bar.
3. As a condition precedent to reinstatement of his North Carolina law license, Defendant shall comply with the provisions of Section 24 of Article IX of the Rules and Regulations of the North Carolina State Bar regarding the winding up of practice as contained in the Red Book. Defendant shall not violate any laws of North Carolina and the United States and he shall not violate any rules of ethics during the period of suspension.
4. Within ten days of the November 16, 1990 hearing, the Defendant shall submit to the attorney assigned to this matter a list of pending cases or claims which the Defendant is handling, along with their applicable filing deadlines.
5. The Defendant shall pay the costs of this proceeding as assessed by the Secretary.

Signed by the chairman with the express consent of all members of the hearing committee, this the 12 day of December, 1990.



John G. Shaw
Chairman, hearing committee

NORTH CAROLINA
WAKE COUNTY

APR 91 3:07

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
90 DHC 9

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

WILLIAM J. EAKER, ATTORNEY
Defendant

ORDER DISMISSING APPEAL

The undersigned, as chairman of the hearing committee of the Disciplinary Hearing Commission that heard this matter, finds the following from the record and from the Affidavit of B. E. James, Secretary of the North Carolina State Bar:

1. Eaker was served with a copy of the Findings of Fact and Conclusions of Law and the Order of Discipline in this matter by certified mail, return receipt requested, restricted delivery on December 21, 1990.
2. Eaker filed a Notice of Appeal dated January 9, 1991.
3. Appellate Rule 18(d)(2) allows an appellant 35 days from the date of appeal or production of the transcript, if one is ordered under 18(d)(3), in which to serve the appellee with a proposed record on appeal.
4. Appellate Rules 18(b)(3) and 7 require the appellant to file a request for a transcript within 10 days after the notice of appeal is filed.
5. No proposed record on appeal has been filed as required by Rule 18(d)(2) of the Rules of Appellate Procedure as of the date of this motion.
6. Eaker has not requested an extension of time to file the proposed record.
7. No copy of a written request to the court reporter of any portion of the transcript or statement describing the parts of the transcript Eaker intends to file with the record has been filed with the North Carolina State Bar as required by Rule 18(b)(3) and Rule 7(a) of the Rules of Appellate Procedure.

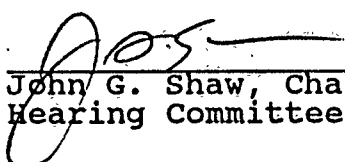
Based upon the foregoing, the undersigned draws the following Conclusion:

For Eaker's failure to take timely action to perfect his appeal, the appeal should be dismissed pursuant to Rule 25(a) of the Rules of Appellate Procedure.

THEREFORE, with the full knowledge and consent of the other members of the hearing committee, the undersigned enters the following Order:

1. The appeal of William J. Eaker in this matter is hereby DISMISSED.

This the 10 day of April, 1991.



John G. Shaw, Chairman
Hearing Committee

[361]