

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
81 DHC 6

THE NORTH CAROLINA STATE BAR,
Plaintiff,

-vs-

RUDOLPH L. EDWARDS, Attorney,
Defendant.

SETTLEMENT
AGREEMENT AND
CONSENT ORDER

Pursuant to Rule 14(8) and (9) of the Discipline and Disbarment Rules of the North Carolina State Bar, the parties have entered into a settlement agreement that is hereby tendered to the Hearing Committee. The Defendant has entered into this agreement freely and voluntarily with the advice of counsel. It is understood by the Defendant that the Hearing Committee has the right under Rule 14(8) to review and reject or approve any settlement agreement reached by the parties. Under the settlement agreement the parties stipulate to the following facts and recommend that these facts should be adopted by the Hearing Committee as the 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, Rudolph L. Edwards, was admitted to the North Carolina State Bar in September 14, 1964, and is and was at all times referred to herein, an Attorney at Law, licensed to practice law in the State of North Carolina, subject to the Rules, Regulations, Canons of Ethics and Code of Professional Responsibility of the North Carolina State Bar and of the laws of the State of North Carolina.

3. At and during all of the times hereinafter referred to, 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 Durham, Durham County, North Carolina.

4. The Disciplinary Hearing Commission has subject matter jurisdiction to hear this matter and has personal jurisdiction over the Defendant.

5. On or about April 10, 1979, the Defendant was employed by Mrs. Sharon M. Phillips to represent her in a child custody and support case against Robert B. Phillips concerning their child Elizabeth.

6. Prior to the time Ms. Phillips employed the Defendant, she had entered into a separation agreement with her husband which granted custody of the child to her husband. The Defendant was advised of that fact and that Ms. Phillips' husband had taken the child from North Carolina to Rock Hill, South Carolina. Ms. Phillips asked the Defendant to help her regain custody and obtain support.

7. On or about April 24, 1979, the Defendant prepared and signed a Complaint on behalf of Ms. Phillips for child custody and support. Ms. Phillips signed the verification of the Complaint on April 24, 1979. The Defendant filed the Complaint on May 3, 1979, in Durham County.

8. By notice and order to Robert B. Phillips filed on May 3, 1979, a hearing on the Complaint was calendared for June 22, 1979, at 1:00 p.m..

9. A hearing was held in the cause on June 22, 1979. The Defendant was present and presented arguments and testimony on behalf of Ms. Phillips. The Defendant successfully argued to the Court that it had jurisdiction even though an ex parte order had been entered in South Carolina after service of the Complaint but prior to the time of the hearing. At the conclusion of the hearing the judge presiding entered an oral judgment awarding, among other items, custody of the child to Ms. Phillips to be delivered no later than June 25, 1979, and child support in the amount of \$40.00 per week. Mr. Phillips, through counsel, gave notice of appeal in open court. The Defendant was requested to prepare a written order reflecting the pronouncements of the judge made in open court.

10. The Defendant assisted Ms. Phillips in locating a South Carolina attorney to represent her interests in the South Carolina courts.

11. The Defendant did not prepare and present the written order reflecting the results of the June 22, 1980, hearing until January 10, 1980, on which date it was filed. The text of said order, as incorporated and attached to the Complaint, is hereby incorporated by reference as if fully set out herein.

12. Ms. Phillips made numerous inquiries of the Defendant between June 22, 1979, and January 10, 1980, concerning the status of the matter. The Defendant personally responded on only one occasion in September, 1979, at which time the Defendant advised Ms. Phillips that he needed to confer with the judge and opposing counsel.

13. Mr. Phillips appealed the decision of the trial court following the filing of the order on January 10, 1980. The Court of Appeals certified its decision to the lower court on October 27, 1980, which certification was filed in the lower court on October 28, 1980. The text of the opinion of the Court of Appeals, as attached and incorporated in the Complaint, is hereby incorporated by reference as if fully set out herein.

14. Shortly after the Court of Appeals certified its decision, the Defendant met with Ms. Phillips and assured her that the matter would be completed in a few weeks.

15. The Defendant made an effort to locate a copy of the transcript or tape recording of the June 22, 1979, hearing but was unsuccessful. The Defendant did at one time shortly after the Court of Appeals' decision advise Ms. Phillips that a new hearing might be required due to the inability of the Defendant to locate any transcript of the prior hearing. However, the Defendant failed to file any other court papers or undertake any legal proceedings on behalf of Ms. Phillips following the decision of the Court of Appeals.

16. As of the date of this agreement, custody of the child has still not been delivered to Ms. Phillips, Ms. Phillips has secured new counsel, and Ms. Phillips was still involved in the custody action brought by her husband and his parents in South Carolina.

17. On March 8, 1981, Ms. Phillips filed a grievance with the North Carolina State Bar.

18. The Chairman of the Grievance Committee of the North Carolina State Bar issued a Letter of Notice to the Defendant pursuant to Rule 12 of the Discipline and Disbarment Rules concerning the grievance, which letter was received by the Defendant on March 30, 1981. The Office of Counsel of the North Carolina State Bar sent a letter to the Defendant on May 21, 1981, requesting that the Defendant respond to the Chairman's letter. On June 29, 1981, the Chairman of the Grievance Committee issued a subpoena to produce a document or object to the Defendant pursuant to

Rule 12 of the Discipline and Disbarment Rules commanding the Defendant's appearance before the Grievance Committee on July 15, 1981. The Defendant failed to respond to any of the correspondence and failed to appear at the Grievance Committee meeting on July 15, 1981.

19. The Defendant did forward a letter to the Grievance Committee on July 24, 1981.

BASED UPON the foregoing facts, the Defendant hereby stipulates, admits, and agrees to the following CONCLUSIONS OF LAW:

1. The Disciplinary Hearing Commission has personal jurisdiction and subject matter jurisdiction to enter an order in this matter.

2. The conduct of the Defendant constitutes grounds for discipline pursuant to North Carolina General Statute §84-28(b)(2) and (3), in that:

(a) By failing to promptly prepare and present to the Court a written order pursuant to the pronouncements of the judge on June 22, 1979, before January 10, 1980, the Defendant neglected a legal matter entrusted to him and engaged in conduct prejudicial to the administration of justice in violation of Disciplinary Rules 6-101(A)(3) and 1-102(A)(5) of the Code of Professional Responsibility of the North Carolina State Bar.

(b) By failing to take any appropriate legal action on behalf of the client to present the matter in court or otherwise represent Ms. Phillips following the decision of the Court of Appeals, the Defendant neglected a legal matter entrusted to him and engaged in conduct prejudicial to the administration of justice in violation of Disciplinary Rules 6-101(A)(3) and 1-102(A)(5) of the Code of Professional Responsibility of the North Carolina State Bar.

(c) By failing to respond to either the Letter of Notice or the subpoena, the Defendant failed to answer a formal inquiry or complaint issued by or in the name of the North Carolina State Bar in a disciplinary matter in violation of North Carolina General Statute §84-28(b)(3) and engaged in conduct which adversely reflects on his fitness to practice law in violation of Disciplinary Rule 1-102(A)(6) of the Code of Professional Responsibility of the North Carolina State Bar.

THE PARTIES also stipulate that the following facts are relevant to consideration of this matter:

1. The Defendant received a private reprimand from the Grievance Committee on October 15, 1980, for neglect of a legal matter. The period of time during which the Defendant neglected that matter occurred during an overlapping period with the case at bar.

2. The Defendant has admitted in his Answer the material issues of fact and that he had engaged in misconduct.

3. The Defendant has voluntarily agreed to review his practice and office procedures and has limited the scope of his participation in civil cases, particularly domestic law cases, by shifting primary responsibility for those cases within his firm to his partner.

4. The primary purpose of attorney discipline is the protection of the public, not merely the punishment of the attorney.

BASED UPON the foregoing the parties have agreed, with the free and voluntary agreement and consent of the Defendant, that the appropriate disposition of the case at bar is that:

1. The Defendant is suspended from the practice of law for a period of six (6) months.

2. The suspension from practice is stayed for a period of two (2) years, at which time the suspension will be lifted, provided the Defendant complies with the following conditions to which he has fully and freely consented:

(a) The Defendant will not agree to represent clients in any matter when he cannot devote adequate time to the matter;

(b) The Defendant will implement a system of internal office time management consistent with prevailing standards of office practice by the trial bar in Durham County.

(c) The Defendant agrees to a periodic review of the time management system by a panel of three Durham attorneys, William V. McPherson, Jr.; Malvern F. King, Jr.; and Edwin C. Bryson, who have agreed to serve the Bar for this purpose. The panel will review the implementation of the time management system by the Defendant to assure that the Defendant handles his client's matters within a reasonable time;

(d) The panel will provide counsel for the State Bar and the Chairman of the Hearing Committee with a report describing either compliance or non-compliance with parts (b) and (c) by the Defendant at intervals of: three (3) months, six (6) months, one (1) year, and two (2) years. A report of non-compliance shall describe the facts

constituting non-compliance. Should it appear to the Chairman of the Hearing Committee by motion or otherwise, that the Defendant is not complying with parts (b) and (c) and is failing to handle any legal matters entrusted to him within a reasonable time, the Chairman shall issue an order setting a time for a hearing before this Hearing Committee regarding the Defendant's failure to comply with this agreement for the purpose of lifting the stay of the suspension.

(e) Nothing in this agreement will prejudice the rights of the North Carolina State Bar to pursue any disciplinary matters involving the Defendant which come to the attention of the North Carolina State Bar after the entering of this agreement, even if the events occurred prior to this agreement.

(f) The Defendant agrees to pay the costs of this proceeding.

Agreed to this the 17th day of NOVEMBER,

1981.

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Rudolph L. Edwards

Rudolph L. Edwards, Defendant

This agreement is approved by the undersigned Hearing Committee members as a Consent Order, this the 23rd day of November, 1981.

W. Osborne Lee, Jr.

W. Osborne Lee, Jr., Chairman

Mary Cecile Bridges

Mary Cecile Bridges

Philip A. Baddour

Philip A. Baddour